
Status: Point in time view as at 01/03/1997. This version of this cross heading contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Value Added Tax Act 1994, Cross Heading: Election to waive exemption. (See end of Document for details)

SCHEDULES

SCHEDULE 10

BUILDINGS AND LAND

Election to waive exemption

- 2 (1) Subject to sub-paragraphs [^{F1}(2), (3) and (3A)] and paragraph 3 below, where an election under this paragraph has effect in relation to any land, if and to the extent that any grant made in relation to it at a time when the election has effect by the person who made the election, or where that person is a body corporate by that person or a relevant associate, would (apart from this sub-paragraph) fall within Group 1 of Schedule 9, the grant shall not fall within that Group.
- (2) Sub-paragraph (1) above shall not apply in relation to a grant if the grant is made in relation to—
- (a) a building or part of a building intended for use as a dwelling or number of dwellings or solely for a relevant residential purpose; or
 - (b) a building or part of a building intended for use solely for a relevant charitable purpose, other than as an office.
- [^{F2}(c) a pitch for a residential caravan;
- (d) facilities for the mooring of a residential houseboat.]
- (3) Sub-paragraph (1) above shall not apply in relation to a grant if—
- (a) the grant is made to a [^{F3}relevant housing association] and the association has given to the grantor a certificate stating that the land is to be used (after any necessary demolition work) for the construction of a building or buildings intended for use as a dwelling or number of dwellings or solely for a relevant residential purpose; or
 - (b) the grant is made to an individual and the land is to be used for the construction, otherwise than in the course or furtherance of a business carried on by him, of a building intended for use by him as a dwelling.
- [^{F4}(3A) Sub-paragraph (1) above shall not apply in relation to a grant made on or after 30th November 1994 if—
- (a) the person making the grant and the person to whom the grant is made are connected persons; and
 - (b) either of them is not a fully taxable person.]
- (4) Subject to the following provisions of this paragraph, no input tax on any supply or importation which, apart from this sub-paragraph, would be allowable by virtue of the operation of this paragraph shall be allowed if the supply or importation took place before the first day for which the election in question has effect.

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- (5) Subject to sub-paragraph (6) below, sub-paragraph (4) above shall not apply where the person by whom the election was made—
- (a) has not, before the first day for which the election has effect, made in relation to the land in relation to which the election has effect any grant falling within Group 1 of Schedule 9; or
 - (b) has before that day made in relation to that land a grant or grants so falling but the grant, or all the grants—
 - (i) were made in the period beginning with 1st April 1989 and ending with 31st July 1989; and
 - (ii) would have been taxable supplies but for the amendments made by Schedule 3 to the ^{M1}Finance Act 1989.
- (6) Sub-paragraph (5) above does not make allowable any input tax on supplies or importations taking place before 1st August 1989 unless—
- (a) it is attributable by or under regulations to grants made by the person on or after 1st April 1989 which would have been taxable supplies but for the amendments made by Schedule 3 to the Finance Act 1989, and
 - (b) the election has effect from 1st August 1989.
- (7) Sub-paragraph (4) above shall not apply in relation to input tax on grants or other supplies which are made in the period beginning with 1st April 1989 and ending with 31st July 1989 [^{F5}if]—
- (a) they would have been zero-rated by virtue of item 1 or 2 of Group 5 of Schedule 8 or exempt by virtue of item 1 of Group 1 of Schedule 9 but for the amendments made by Schedule 3 to the Finance Act 1989; and
 - (b) the election has effect from 1st August 1989.
- (8) Sub-paragraph (4) above shall not apply in relation to any election having effect from any day on or after 1st January 1992, except in respect of the input tax on a supply or importation which took place before 1st August 1989.
- (9) Where a person has made an exempt grant in relation to any land and has made an election in relation to that land which has effect from any day before 1st January 1992, he may apply to the Commissioners for sub-paragraph (4) above to be disapplied in respect of any input tax on a supply or importation which took place on or after 1st August 1989, but the Commissioners shall only permit the disapplication of that sub-paragraph if they are satisfied, having regard to all the circumstances of the case, and in particular to—
- (a) the total value of—
 - (i) exempt grants made;
 - (ii) taxable grants made or expected to be made, in relation to the land; and
 - (b) the total amount of input tax in relation to the land which had been incurred before the day from which the election had effect,
- that a fair and reasonable attribution of the input tax mentioned in paragraph (b) above will be secured.

Textual Amendments

F1 Words in Sch. 10 para. 2(1) substituted (30.11.1994) by S.I. 1994/3013, arts. 1, 2(a)(i)

F2 Sch. 10 para. 2(c)(d) inserted (1.3.1995) by S.I. 1995/279, arts. 1, 3(a)

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- F3** Words in Sch. 10 para. 2(3)(a) substituted (1.3.1997) by S.I. 1997/51, arts. 1, 2(a)
F4 Sch. 10 para. 2(3A) inserted (30.11.1994) by S.I. 1994/3013, arts. 1, 2(a)(ii)
F5 Word in Sch. 10 para. 2(7) inserted (1.3.1995) by S.I. 1995/279, arts. 1, 3(b)

Marginal Citations

- M1** 1989 c. 26.

- 3 (1) An election under paragraph 2 above shall have effect—
- (a) subject to the following provisions of this paragraph, from the beginning of the day on which the election is made or of any later day specified in the election; or
 - (b) where the election was made before 1st November 1989, from the beginning of 1st August 1989 or of any later day so specified.
- (2) An election under paragraph 2 above shall have effect in relation to any land specified, or of a description specified, in the election.
- (3) Where such an election is made in relation to, or to part of, a building (or planned building), it shall have effect in relation to the whole of the building and all the land within its curtilage and for the purposes of this sub-paragraph buildings linked internally or by a covered walkway, and [^{F6}complexes consisting of a number of units grouped around a fully enclosed concourse], shall be taken to be a single building (if they otherwise would not be).
- [^{F7}(4) Subject to sub-paragraph (5) below, an election under paragraph 2 above shall be irrevocable.
- (5) Where—
- (a) the time that has elapsed since the day on which an election had effect is—
 - (i) less than 3 months; or
 - (ii) more than 20 years;
 - (b) in a case to which paragraph (a)(i) above applies—
 - (i) no tax has become chargeable and no credit for input tax has been claimed by virtue of the election; and
 - (ii) no grant in relation to the land which is the subject of the election has been made which, by virtue of being a supply of the assets of a business to a person to whom the business (or part of it) is being transferred as a going concern, has been treated as neither a supply of goods nor a supply of services; and
 - (c) the person making the election obtains the written consent of the Commissioners;
- the election shall be revoked, in a case to which paragraph (a)(i) above applies, from the date on which it was made, and in a case to which paragraph (a)(ii) above applies, from the date on which the written consent of the Commissioners is given or such later date as they may specify in their written consent.]
- [^{F8}(5A) Where—
- (a) an election under paragraph 2 above is made in relation to any land, and
 - (b) apart from this sub-paragraph, a grant in relation to that land would be taken to have been made (whether in whole or in part) before the time when the election takes effect,

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that paragraph shall have effect, in relation to any supplies to which the grant gives rise which are treated for the purposes of this Act as taking place after that time, as if the grant had been made after that time.

(5B) Accordingly, the references in paragraph 2(9) above and sub-paragraph (9) below to grants being exempt or taxable shall be construed as references to supplies to which a grant gives rise being exempt or, as the case may be, taxable.]

[^{F7}(6) An election under paragraph 2 above shall have effect after 1st March 1995 only if—

- (a) in the case of an election made before that date—
 - (i) it also had effect before that date; or
 - (ii) written notification of the election is given to the Commissioners not later than the end of the period of 30 days beginning with the day on which the election was made, or not later than the end of such longer period beginning with that day as the Commissioners may in any particular case allow, together with such information as the Commissioners may require;
- (b) in the case of an election made on or after that date—
 - (i) written notification of the election is given to the Commissioners not later than the end of the period of 30 days beginning with the day on which the election is made, or not later than the end of such longer period beginning with that day as the Commissioners may in any particular case allow, together with such information as the Commissioners may require; and
 - (ii) in a case in which sub-paragraph (9) below requires the prior written permission of the Commissioners to be obtained, that permission has been given.]

(7) In paragraph 2 above and this paragraph “relevant associate”, in relation to a body corporate by which an election under paragraph 2 above has been made in relation to any building or land, means a body corporate which under section 43—

- (a) was treated as a member of the same group as the body corporate by which the election was made at the time when the election first had effect;
- (b) has been so treated at any later time when the body corporate by which the election was made had an interest in, right over or licence to occupy the building or land (or any part of it); or
- (c) has been treated as a member of the same group as a body corporate within paragraph (a) or (b) above or this paragraph at a time when that body corporate had an interest in, right over or licence to occupy the building or land (or any part of it).

[^{F9}(7A) In paragraph 2 above—

- (a) “houseboat” means a houseboat within the meaning of Group 9 of Schedule 8; and
- (b) a houseboat is not a residential houseboat if residence in it throughout the year is prevented by the terms of a covenant, statutory planning consent or similar permission.]

[^{F10}(8) In paragraph 2 above “relevant housing association” means—

- (a) a registered social landlord within the meaning of Part I of the Housing Act 1996 ^{F11},

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- (b) a registered housing association within the meaning of the Housing Associations Act 1985^{F12} (Scottish registered housing associations), or
- (c) a registered housing association within the meaning of Part II of the Housing (Northern Ireland) Order 1992^{F13} (Northern Irish registered housing associations).]

[^{F14}(8A) For the purposes of paragraph 2 above—

- (a) any question whether a person is connected with another shall be determined in accordance with section 839 of the Taxes Act^{F15}; and
- (b) a person is a fully taxable person if at the end of the prescribed accounting period of his in which the grant is made he is entitled to credit for input tax on all supplies to, and acquisitions and importations by, him in that period (apart from any on which input tax is excluded from credit by virtue of section 25(7)).]

(9) Where a person who wishes to make an election in relation to any land (the relevant land) to have effect on or after 1st January 1992, has made, makes or intends to make, an exempt grant in relation to the relevant land at any time between 1st August 1989 and before the beginning of the day from which he wishes an election in relation to the relevant land to have effect, he shall not make an election in relation to the relevant land unless [^{F16}the conditions for automatic permission specified in a notice published by the Commissioners are met or] he obtains the prior written permission of the Commissioners, who shall only give such permission if they are satisfied having regard to all the circumstances of the case and in particular to—

- (a) the total value of exempt grants in relation to the relevant land made or to be made before the day from which the person wishes his election to have effect;
- (b) the expected total value of grants relating to the relevant land that would be taxable if the election were to have effect; and
- (c) the total amount of input tax which has been incurred on or after 1st August 1989 or is likely to be incurred in relation to the relevant land,

that there would be secured a fair and reasonable attribution of the input tax mentioned in paragraph (c) above to grants in relation to the relevant land which, if the election were to have effect, would be taxable.

Textual Amendments

- F6** Words in Sch. 10 para. 3(3) substituted (1.3.1995) by S.I. 1995/279, arts. 1, 4(a)
- F7** Sch. 10 para. 3(4)(5)(6) substituted (1.3.1995) by S.I. 1995/279, arts. 1, 4(b)
- F8** Sch. 10 para. 3(5A)(5B) inserted (retrospectively) by 1997 c. 16, s. 35(2)(4)
- F9** Sch. 10 para. 3(7A) inserted (1.3.1995) by S.I. 1995/279, arts. 1, 4(c)
- F10** Sch. 10 para. 3(8) substituted (1.3.1997) by S.I. 1997/51, arts. 1, 2(b)
- F11** 1996 c.52.
- F12** 1985 c.69.
- F13** S.I. 1992/1725 (N.I.15).
- F14** Sch. 10 para. 3(8A) inserted (30.11.1994) by S.I. 1994/3013, arts. 1, 2(b)
- F15** Section 96(1) of the Value Added Tax Act 1994 defines "the Taxes Act" as meaning the [Income and Corporation Taxes Act 1988 \(c.1\)](#).
- F16** Words in Sch. 10 para. 3(9) substituted (1.3.1995) by S.I. 1995/279, arts. 1, 4(d)

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VALID FROM 19/03/1997

- [^{F17}3A (1) This paragraph shall have effect for the construction of paragraph 2(3AA) above.
- (2) For the purposes of paragraph 2(3AA) above a grant made by any person in relation to any land is a grant made by a developer of that land if—
- (a) the land, or a building or part of a building on that land, is an asset falling in relation to that person to be treated as a capital item for the purposes of any regulations under section 26(3) and (4) providing for adjustments relating to the deduction of input tax; and
 - (b) the grant was made at a time falling within the period over which such regulations allow adjustments relating to the deduction of input tax to be made as respects that item.
- (3) In paragraph 2(3AA) above and this paragraph the references to a person's being responsible for financing the grantor's development of the land for exempt use are references to his being a person who, with the intention or in the expectation that the land will become, or continue (for a period at least) to be, exempt land—
- (a) has provided finance for the grantor's development of the land; or
 - (b) has entered into any agreement, arrangement or understanding (whether or not legally enforceable) to provide finance for the grantor's development of the land.
- (4) In sub-paragraph (3)(a) and (b) above the references to providing finance for the grantor's development of the land are references to doing any one or more of the following, that is to say—
- (a) directly or indirectly providing funds for meeting the whole or any part of the cost of the grantor's development of the land;
 - (b) directly or indirectly procuring the provision of such funds by another;
 - (c) directly or indirectly providing funds for discharging, in whole or in part, any liability that has been or may be incurred by any person for or in connection with the raising of funds to meet the cost of the grantor's development of the land;
 - (d) directly or indirectly procuring that any such liability is or will be discharged, in whole or in part, by another.
- (5) The references in sub-paragraph (4) above to the provision of funds for a purpose referred to in that sub-paragraph include references to—
- (a) the making of a loan of funds that are or are to be used for that purpose;
 - (b) the provision of any guarantee or other security in relation to such a loan;
 - (c) the provision of any of the consideration for the issue of any shares or other securities issued wholly or partly for raising such funds; or
 - (d) any other transfer of assets or value as a consequence of which any such funds are made available for that purpose.
- (6) In sub-paragraph (4) above the references to the grantor's development of the land are references to the acquisition by the grantor of the asset which—
- (a) consists in the land or a building or part of a building on the land, and
 - (b) in relation to the grantor falls to be treated for the purposes mentioned in sub-paragraph (2)(a) above as a capital item;

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and for the purposes of this sub-paragraph the acquisition of an asset shall be taken to include its construction or reconstruction and the carrying out in relation to that asset of any other works by reference to which it falls to be treated for the purposes mentioned in sub-paragraph (2)(a) above as a capital item.

(7) For the purposes of paragraph 2(3AA) above and this paragraph land is exempt land if, at a time falling within the period mentioned in sub-paragraph (2)(b) above—

- (a) the grantor,
- (b) a person responsible for financing the grantor's development of the land for exempt use, or
- (c) a person connected with the grantor or with a person responsible for financing the grantor's development of the land for exempt use,

is in occupation of the land without being in occupation of it wholly or mainly for eligible purposes.

(8) For the purposes of this paragraph, but subject to sub-paragraphs (10) and (12) below, a person's occupation at any time of any land is not capable of being occupation for eligible purposes unless he is a taxable person at that time.

(9) Subject to sub-paragraphs (10) to (12) below, a taxable person in occupation of any land shall be taken for the purposes of this paragraph to be in occupation of that land for eligible purposes to the extent only that his occupation of that land is for the purpose of making supplies which—

- (a) are or are to be made in the course or furtherance of a business carried on by him; and
- (b) are supplies of such a description that any input tax of his which was wholly attributable to those supplies would be input tax for which he would be entitled to a credit.

(10) For the purposes of this paragraph—

- (a) occupation of land by a body to which section 33 applies is occupation of the land for eligible purposes to the extent that the body occupies the land for purposes other than those of a business carried on by that body; and
- (b) any occupation of land by a Government department (within the meaning of section 41) is occupation of the land for eligible purposes.

(11) For the purposes of this paragraph, where land of which any person is in occupation—

- (a) is being held by that person in order to be put to use by him for particular purposes, and
- (b) is not land of which he is in occupation for any other purpose,

that person shall be deemed, for so long as the conditions in paragraphs (a) and (b) above are satisfied, to be in occupation of that land for the purposes for which he proposes to use it.

(12) Sub-paragraphs (8) to (11) above shall have effect where land is in the occupation of a person who—

- (a) is not a taxable person, but
- (b) is a person whose supplies are treated for the purposes of this Act as supplies made by another person who is a taxable person,

as if the person in occupation of the land and that other person were a single taxable person.

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- (13) For the purposes of this paragraph a person shall be taken to be in occupation of any land whether he occupies it alone or together with one or more other persons and whether he occupies all of that land or only part of it.
- (14) Any question for the purposes of this paragraph whether one person is connected with another shall be determined in accordance with section 839 of the Taxes Act.]

Textual Amendments

F17 Sch. 10 para. 3A inserted (19.3.1997 with effect as mentioned in s. 37(4)-(6) of the amending Act) by 1997 c. 16, s. 37(3)-(6)

F18 4

Textual Amendments

F18 Sch. 10 para. 4 deleted (1.3.1995) by S.I. 1995/279, arts. 1, 5

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