

Status: Point in time view as at 01/04/2010.

Changes to legislation: There are currently no known outstanding effects for the Value Added Tax Act 1994, SCHEDULE 9A. (See end of Document for details)

SCHEDULES

[^{F1}SCHEDULE 9A

ANTI-AVOIDANCE PROVISIONS: GROUPS

Textual Amendments

F1 Sch. 9A inserted (29.4.1996) by 1996 c. 8, s. 31, Sch. 4

Power to give directions

- 1 (1) Subject to paragraph 2 below, the Commissioners may give a direction under this Schedule if, in any case—
- (a) a relevant event has occurred;
 - (b) the condition specified in sub-paragraph (3) below is fulfilled;
 - (c) that condition would not be fulfilled apart from the occurrence of that event; and
 - (d) in the case of an event falling within sub-paragraph (2)(b) below, the transaction in question is not a supply which is the only supply by reference to which the case falls within paragraphs (a) to (c) above.
- (2) For the purposes of this Schedule, a relevant event occurs when a body corporate—
- (a) begins to be, or ceases to be, treated as a member of a group; or
 - (b) enters into any transaction.
- (3) The condition mentioned in sub-paragraph (1) above is that—
- (a) there has been, or will or may be, a taxable supply on which VAT has been, or will or may be, charged otherwise than by reference to the supply's full value;
 - (b) there is at least a part of the supply which is not or, as the case may be, would not be zero-rated; and
 - (c) the charging of VAT on the supply otherwise than by reference to its full value gives rise or, as the case may be, would give rise to a tax advantage.
- (4) For the purposes of this paragraph the charging of VAT on a supply (“the undercharged supply”) otherwise than by reference to its full value shall be taken to give rise to a tax advantage if, and only if, a person has become entitled—
- (a) to credit for input tax allowable as attributable to that supply or any part of it, or
 - (b) in accordance with regulations under section 39, to any repayment in respect of that supply or any part of it.
- (5) The cases where a person shall be taken for the purposes of sub-paragraph (4) above to have become entitled to a credit for input tax allowable as attributable to the undercharged supply, or to a part of it, shall include any case where—

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- (a) a person has become entitled to a credit for any input tax on the supply to him, or the acquisition or importation by him, of any goods or services; and
 - (b) whatever the supplies to which the credit was treated as attributable when the entitlement to it arose, those goods or services are used by him in making the undercharged supply, or a part of it.
- (6) For the purposes of sub-paragraphs (4) and (5) above where—
- (a) there is a supply of any of the assets of a business of a person (“the transferor”) to a person to whom the whole or any part of that business is transferred as a going concern (“the transferee”), and
 - (b) that supply is treated, in accordance with an order under section 5(3), as being neither a supply of goods nor a supply of services,
- the question, so far as it falls to be determined by reference to those assets, whether a credit for input tax to which any person has become entitled is one allowable as attributable to the whole or any part of a supply shall be determined as if the transferor and the transferee were the same person.
- (7) Where, in a case to which sub-paragraph (6) above applies, the transferor himself acquired any of the assets in question by way of a supply falling within paragraphs (a) and (b) of that sub-paragraph, that sub-paragraph shall have the effect, as respects the assets so acquired, of requiring the person from whom those assets were acquired to be treated for the purposes of sub-paragraphs (4) and (5) above as the same person as the transferor and the transferee, and so on in the case of any number of successive supplies falling within those paragraphs.
- (8) For the purposes of this paragraph any question—
- (a) whether any credit for input tax to which a person has become entitled was, or is to be taken to have been, a credit allowable as attributable to the whole or any part of a supply, or
 - (b) whether any repayment is a repayment in respect of the whole or any part of a supply,
- shall be determined, in relation to a supply of a right to goods or services or to a supply of goods or services by virtue of such a right, as if the supply of the right and supplies made by virtue of the right were a single supply of which the supply of the right and each of those supplies constituted different parts.
- (9) References in this paragraph to the full value of a supply are references to the amount which (having regard to any direction under paragraph 1 of Schedule 6) would be the full value of that supply for the purposes of the charge to VAT if that supply were not a supply falling to be disregarded, to any extent, in pursuance of section 43(1)(a).
- (10) References in this paragraph to the supply of a right to goods or services include references to the supply of any right, option or priority with respect to the supply of goods or services, and to the supply of an interest deriving from any right to goods or services.

Restrictions on giving directions

- 2 [The Commissioners shall not give a direction under this Schedule by reference to a ^{F2}(1)] relevant event if they are satisfied that—
- (a) the change in the treatment of the body corporate, or
 - (b) the transaction in question,

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had as its main purpose or, as the case may be, as each of its main purposes a genuine commercial purpose unconnected with the fulfilment of the condition specified in paragraph 1(3) above.

[This paragraph shall not apply where the relevant event is the termination of a body ^{F3}(2) corporate's treatment as a member of a group by a notice under section 43C(1) or (3).]

Textual Amendments

- F2** Sch. 9A para. 2(1) renumbered (27.7.1999) by 1999 c. 16, s. 16, **Sch. 2 para. 5(2)**
F3 Sch. 9A para. 2(2) inserted (27.7.1999) by 1999 c. 16, s. 16, **Sch. 2 para. 5(2)**

Form of directions under Schedule

- 3 (1) The directions that may be given by the Commissioners under this Schedule are either—
- (a) a direction relating to any supply of goods or services that has been made, in whole or in part, by one body corporate to another; or
 - (b) a direction relating to a particular body corporate.
- (2) A direction under this Schedule relating to a supply shall require it to be assumed (where it would not otherwise be the case) that, to the extent described in the direction, the supply was not a supply falling to be disregarded in pursuance of section 43(1)(a).
- (3) A direction under this Schedule relating to a body corporate shall require it to be assumed (where it would not otherwise be the case) that, for such period (comprising times before the giving of the direction or times afterwards or both) as may be described in the direction, the body corporate—
- (a) did not fall to be treated, or is not to be treated, as a member of a group, or of a particular group so described; or
 - (b) fell to be treated, or is to be treated, as a member of any group so described of which, for that period, it was or is eligible to be a member.
- (4) Where a direction under this Schedule requires any assumptions to be made, then—
- (a) so far as the assumptions relate to times on or after the day on which the direction is given, this Act shall have effect in relation to such times in accordance with those assumptions; and
 - (b) paragraph 6 below shall apply for giving effect to those assumptions in so far as they relate to earlier times.
- (5) A direction falling within sub-paragraph (3)(b) above may identify in relation to any times or period the body corporate which is to be assumed to have been, or to be, the representative member of the group at those times or for that period.
- (6) A direction under this Schedule may vary the effect of a previous direction under this Schedule.
- (7) The Commissioners may at any time, by notice in writing to the person to whom it was given, withdraw a direction under this Schedule.
- (8) The refusal or non-refusal by the Commissioners of an application [^{F4}such as is mentioned in section 43B] shall not prejudice the power of the Commissioners to

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give a direction under this Schedule requiring any case to be assumed to be what it would have been had the application not been refused or, as the case may be, had it been refused.

Textual Amendments

F4 Words in Sch. 9A para. 3(8) substituted (27.7.1999) by 1999 c. 16, s. 16, **Sch. 2 para. 5(3)**

Time limit on directions

- 4 (1) A direction under this Schedule shall not be given more than six years after whichever is the later of—
- (a) the occurrence of the relevant event by reference to which it is given; and
 - (b) the time when the relevant entitlement arose.
- (2) A direction under this Schedule shall not be given by reference to a relevant event occurring on or before 28th November 1995.
- (3) Subject to sub-paragraphs (1) and (2) above, a direction under this Schedule—
- (a) may be given by reference to a relevant event occurring before the coming into force of this Schedule; and
 - (b) may require assumptions to be made in relation to times (including times before 29th November 1995) falling before the occurrence of the relevant event by reference to which the direction is given, or before the relevant entitlement arose.
- (4) For the purposes of this paragraph the reference, in relation to the giving of a direction, to the relevant entitlement is a reference to the entitlement by reference to which the requirements of paragraph 1(4) above are taken to be satisfied for the purposes of that direction.

Manner of giving directions

- 5 (1) A direction under this Schedule relating to a supply may be given to—
- (a) the person who made the supply to which the direction relates; or
 - (b) any body corporate which, at the time when the direction is given, is the representative member of a group of which that person was treated as being a member at the time of the supply.
- (2) A direction under this Schedule relating to a body corporate (“the relevant body”) may be given to that body or to any body corporate which at the time when the direction is given is, or in pursuance of the direction is to be treated as, the representative member of a group of which the relevant body—
- (a) is treated as being a member;
 - (b) was treated as being a member at a time to which the direction relates; or
 - (c) is to be treated as being, or having been, a member at any such time.
- (3) A direction given to any person under this Schedule shall be given to him by notice in writing.
- (4) A direction under this Schedule must specify the relevant event by reference to which it is given.

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Assessment in consequence of a direction

- 6 (1) Subject to sub-paragraph (3) below, where—
- (a) a direction is given under this Schedule, and
 - (b) there is an amount of VAT (“the unpaid tax”) for which a relevant person would have been liable before the giving of the direction if the facts had accorded with the assumptions specified in the direction,
- the Commissioners may, to the best of their judgement, assess the amount of unpaid tax as tax due from the person to whom the direction was given or another relevant person and notify their assessment to that person.
- (2) In sub-paragraph (1) above the reference to an amount of VAT for which a person would, on particular assumptions, have been liable before the giving of a direction under this Schedule is a reference to the aggregate of the following—
- (a) any amount of output tax which, on those assumptions but not otherwise, would have been due from a relevant person at the end of a prescribed accounting period ending before the giving of the direction;
 - (b) the amount of any credit for input tax to which a relevant person is treated as having been entitled at the end of such an accounting period but to which he would not have been entitled on those assumptions; and
 - (c) the amount of any repayment of tax made to a relevant person in accordance with regulations under section 39 but to which he would not have been entitled on those assumptions.
- (3) Where any assessment falls to be made under this paragraph in a case in which the Commissioners are satisfied that the actual revenue loss is less than the unpaid tax, the total amount to be assessed under this paragraph shall not exceed what appears to them, to the best of their judgement, to be the amount of that loss.
- (4) For the purposes of the making of an assessment under this paragraph in relation to any direction, the actual revenue loss shall be taken to be equal to the amount of the unpaid tax less the amount given by aggregating the amounts of every entitlement—
- (a) to credit for input tax, or
 - (b) to a repayment in accordance with regulations under section 39,
- which (whether as an entitlement of the person in relation to whom the assessment is made or as an entitlement of any other person) would have arisen on the assumptions contained in the direction, but not otherwise.
- (5) An assessment under this paragraph relating to a direction may be notified to the person to whom that direction is given by being incorporated in the same notice as that direction.
- (6) An assessment under this paragraph shall not be made—
- (a) more than one year after the day on which the direction to which it relates was given, or
 - (b) in the case of any direction that has been withdrawn.
- (7) Where an amount has been assessed on any person under this paragraph and notified to him—
- (a) that amount shall be deemed (subject to the provisions of this Act as to appeals) to be an amount of VAT due from him;

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- (b) that amount may be recovered accordingly, either from that person or, in the case of a body corporate that is for the time being treated as a member of a group, from the representative member of that group; and
 - (c) to the extent that more than one person is liable by virtue of any assessment under this paragraph in respect of the same amount of unpaid tax, those persons shall be treated as jointly and severally liable for that amount.
- (8) Sub-paragraph (7) above does not have effect if or to the extent that the assessment in question has been withdrawn or reduced.
- (9) Sections 74 and 77(6) apply in relation to assessments under this paragraph as they apply in relation to assessments under section 73 but as if the reference in subsection (1) of section 74 to the reckonable date were a reference to the date on which the assessment is notified.
- (10) Where by virtue of sub-paragraph (9) above any person is liable to interest under section 74—
- (a) section 76 shall have effect in relation to that liability with the omission of subsections (2) to (6); and
 - (b) section 77, except subsection (6), shall not apply to an assessment of the amount due by way of interest;
- and (without prejudice to the power to make assessments for interest for later periods) the interest to which any assessment made under section 76 by virtue of paragraph (a) above may relate shall be confined to interest for a period of no more than two years ending with the time when the assessment to interest is made.
- (11) In this paragraph “ a relevant person ”, in relation to a direction, means—
- (a) the person to whom the direction is given;
 - (b) the body corporate which was the representative member of any group of which that person was treated as being, or in pursuance of the direction is to be treated as having been, a member at a time to which the assumption specified in the direction relates; or
 - (c) any body corporate which, in pursuance of the direction, is to be treated as having been the representative member of such a group.

Interpretation of Schedule etc.

- 7 (1) References in this Schedule to being treated as a member of a group and to being eligible to be treated as a member of a group shall be construed in accordance with [F5section 43 to 43C].
- (2) For the purposes of this Schedule the giving of any notice or notification to any receiver, liquidator or person otherwise acting in a representative capacity in relation to another shall be treated as the giving of a notice or, as the case may be, notification to the person in relation to whom he so acts.]

Textual Amendments

F5 Words in Sch. 9A para. 7(1) substituted (27.7.1999) by 1999 c. 16, s. 16, Sch. 2 para. 5(4)

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