



# Finance Act 1997

## 1997 CHAPTER 16

### PART III

#### VALUE ADDED TAX

##### *Groups of companies*

#### **40 Groups containing bodies of different descriptions.**

- (1) In section 43 of the <sup>M1</sup>Value Added Tax Act 1994 (groups of companies), after subsection (1) there shall be inserted the following subsections—

“(1AA) Where—

- (a) it is material, for the purposes of any provision made by or under this Act (“the relevant provision”), whether the person by or to whom a supply is made, or the person by whom goods are acquired or imported, is a person of a particular description,
- (b) paragraph (b) or (c) of subsection (1) above applies to any supply, acquisition or importation, and
- (c) there is a difference that would be material for the purposes of the relevant provision between—
  - (i) the description applicable to the representative member, and
  - (ii) the description applicable to the body which (apart from this section) would be regarded for the purposes of this Act as making the supply, acquisition or importation or, as the case may be, as being the person to whom the supply is made,

the relevant provision shall have effect in relation to that supply, acquisition or importation as if the only description applicable to the representative member were the description in fact applicable to that body.

- (1AB) Subsection (1AA) above does not apply to the extent that what is material for the purposes of the relevant provision is whether a person is a taxable person.”

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- (2) In subsection (2) of that section (self supplies), at the end there shall be inserted “and may provide for that purpose that the representative member is to be treated as a person of such description as may be determined under the order.”
- (3) Subsection (1) above has effect in relation to any supply made after 26th November 1996 and in relation to any acquisition or importation taking place after that date.

#### Marginal Citations

M1 1994 c. 23.

### 41 Group supplies using an overseas member.

- (1) In section 43 of the Value Added Tax Act 1994 (groups of companies), after subsection (2) there shall be inserted the following subsections—

“(2A) A supply made by a member of a group (“the supplier”) to another member of the group (“the UK member”) shall not be disregarded under subsection (1) (a) above if—

- (a) it would (if there were no group) be a supply of services falling within Schedule 5 to a person belonging in the United Kingdom;
- (b) those services are not within any of the descriptions specified in Schedule 9;
- (c) the supplier has been supplied (whether or not by a person belonging in the United Kingdom) with services falling within any of paragraphs 1 to 8 of Schedule 5;
- (d) the supplier belonged outside the United Kingdom when it was supplied with the services mentioned in paragraph (c) above; and
- (e) the services so mentioned have been used by the supplier for making the supply to the UK member.

(2B) Subject to subsection (2C) below, where a supply is excluded by virtue of subsection (2A) above from the supplies that are disregarded in pursuance of subsection (1)(a) above, all the same consequences shall follow under this Act as if that supply—

- (a) were a taxable supply in the United Kingdom by the representative member to itself, and
- (b) without prejudice to that, were made by the representative member in the course or furtherance of its business.

(2C) A supply which is deemed by virtue of subsection (2B) above to be a supply by the representative member to itself—

- (a) shall not be taken into account as a supply made by the representative member when determining any allowance of input tax under section 26(1) in the case of the representative member;
- (b) shall be deemed for the purposes of paragraph 1 of Schedule 6 to be a supply in the case of which the person making the supply and the person supplied are connected within the meaning of section 839 of the Taxes Act (connected persons); and
- (c) subject to paragraph (b) above, shall be taken to be a supply the value and time of which are determined as if it were a supply of services

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which is treated by virtue of section 8 as made by the person by whom the services are received.

(2D) For the purposes of subsection (2A) above where—

- (a) there has been a supply of the assets of a business of a person (“the transferor”) to a person to whom the whole or any part of that business was transferred as a going concern (“the transferee”),
- (b) that supply is either—
  - (i) a supply falling to be treated, in accordance with an order under section 5(3), as being neither a supply of goods nor a supply of services, or
  - (ii) a supply that would have fallen to be so treated if it had taken place in the United Kingdom,

and

- (c) the transferor was supplied with services falling within paragraphs 1 to 8 of Schedule 5 at a time before the transfer when the transferor belonged outside the United Kingdom,

those services, so far as they are used by the transferee for making any supply falling within that Schedule, shall be deemed to have been supplied to the transferee at a time when the transferee belonged outside the United Kingdom.

(2E) Where, in the case of a supply of assets falling within paragraphs (a) and (b) of subsection (2D) above—

- (a) the transferor himself acquired any of the assets in question by way of a previous supply of assets falling within those paragraphs, and
- (b) there are services falling within paragraphs 1 to 8 of Schedule 5 which, if used by the transferor for making supplies falling within that Schedule, would be deemed by virtue of that subsection to have been supplied to the transferor at a time when he belonged outside the United Kingdom,

that subsection shall have effect, notwithstanding that the services have not been so used by the transferor, as if the transferor were a person to whom those services were supplied and as if he were a person belonging outside the United Kingdom at the time of their deemed supply to him; and this subsection shall apply accordingly through any number of successive supplies of assets falling within paragraphs (a) and (b) of that subsection.”

- (2) Subject to subsection (3) below, subsection (1) above has effect in relation to supplies made on or after 26th November 1996.
- (3) Section 43 of the <sup>M2</sup>Value Added Tax Act 1994 shall have effect in relation to supplies made after the day on which this Act is passed with the provisions inserted by subsection (1) above modified in accordance with subsections (4) and (5) below.
- (4) In subsection (2A), in paragraph (c) for the words from “services” to the end of the paragraph there shall be substituted “ any services falling within paragraphs 1 to 8 of Schedule 5 which do not fall within any of the descriptions specified in Schedule 9; ”.
- (5) In subsection (2C), at the beginning there shall be inserted “Except in so far as the Commissioners may by regulations otherwise provide,”.

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**Marginal Citations**

**M2** [1994 c. 23](#).

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