

SCHEDULES

SCHEDULE 2

Section 16.

VAT: GROUPS OF COMPANIES

Amendment of Value Added Tax Act 1994

- 1 (1) Section 43 of the Value Added Tax Act 1994 (groups of companies) shall be amended as follows.
- (2) In subsection (1), for the words “the following provisions of this section” there shall be substituted the words “sections 43A to 43C”.
- (3) Subsections (3) to (8) shall cease to have effect.

2 The following shall be inserted after section 43 of the Value Added Tax Act 1994—

“43A Groups: eligibility

- (1) Two or more bodies corporate are eligible to be treated as members of a group if each is established or has a fixed establishment in the United Kingdom and—
- (a) one of them controls each of the others,
 - (b) one person (whether a body corporate or an individual) controls all of them, or
 - (c) two or more individuals carrying on a business in partnership control all of them.
- (2) For the purposes of this section a body corporate shall be taken to control another body corporate if it is empowered by statute to control that body’s activities or if it is that body’s holding company within the meaning of section 736 of the Companies Act 1985.
- (3) For the purposes of this section an individual or individuals shall be taken to control a body corporate if he or they, were he or they a company, would be that body’s holding company within the meaning of that section.

43B Groups: applications

- (1) This section applies where an application is made to the Commissioners for two or more bodies corporate, which are eligible under section 43A(1), to be treated as members of a group.
- (2) This section also applies where two or more bodies corporate are treated as members of a group and an application is made to the Commissioners—
- (a) for another body corporate, which is eligible under section 43A(1) to be treated as a member of the group, to be treated as a member of the group,

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- (b) for a body corporate to cease to be treated as a member of the group,
 - (c) for a member to be substituted as the group's representative member,
or
 - (d) for the bodies corporate no longer to be treated as members of a group.
- (3) An application with respect to any bodies corporate—
- (a) must be made by one of them or by the person controlling them, and
 - (b) in the case of an application for the bodies to be treated as a group, must appoint one of them as the representative member.
- (4) Where this section applies in relation to an application it shall, subject to subsection (6) below, be taken to be granted with effect from—
- (a) the day on which the application is received by the Commissioners,
or
 - (b) such earlier or later time as the Commissioners may allow.
- (5) The Commissioners may refuse an application, within the period of 90 days starting with the day on which it was received by them, if it appears to them—
- (a) in the case of an application such as is mentioned in subsection (1) above, that the bodies corporate are not eligible under section 43A(1) to be treated as members of a group,
 - (b) in the case of an application such as is mentioned in subsection (2)(a) above, that the body corporate is not eligible under section 43A(1) to be treated as a member of the group, or
 - (c) in any case, that refusal of the application is necessary for the protection of the revenue.
- (6) If the Commissioners refuse an application it shall be taken never to have been granted.

43C Groups: termination of membership

- (1) The Commissioners may, by notice given to a body corporate, terminate its treatment as a member of a group from a date—
- (a) which is specified in the notice, and
 - (b) which is, or falls after, the date on which the notice is given.
- (2) The Commissioners may give a notice under subsection (1) above only if it appears to them to be necessary for the protection of the revenue.
- (3) Where—
- (a) a body is treated as a member of a group, and
 - (b) it appears to the Commissioners that the body is not, or is no longer, eligible under section 43A(1) to be treated as a member of the group,
- the Commissioners shall, by notice given to the body, terminate its treatment as a member of the group from a date specified in the notice.
- (4) The date specified in a notice under subsection (3) above may be earlier than the date on which the notice is given but shall not be earlier than—
- (a) the first date on which, in the opinion of the Commissioners, the body was not eligible to be treated as a member of the group, or

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- (b) the date on which, in the opinion of the Commissioners, the body ceased to be eligible to be treated as a member of the group.”
- 3 For section 83(k) of the Value Added Tax Act 1994 (appeals) there shall be substituted—
- “(k) the refusal of an application such as is mentioned in section 43B(1) or (2);
- (ka) the giving of a notice under section 43C(1) or (3);”.
- 4 After section 84(4) of the Value Added Tax Act 1994 (appeals: supplementary) there shall be inserted—
- “(4A) Where an appeal is brought against the refusal of an application such as is mentioned in section 43B(1) or (2) on the grounds stated in section 43B(5) (c)—
- (a) the tribunal shall not allow the appeal unless it considers that the Commissioners could not reasonably have been satisfied that there were grounds for refusing the application,
- (b) the refusal shall have effect pending the determination of the appeal, and
- (c) if the appeal is allowed, the refusal shall be deemed not to have occurred.
- (4B) Where an appeal is brought against the giving of a notice under section 43C(1) or (3)—
- (a) the notice shall have effect pending the determination of the appeal, and
- (b) if the appeal is allowed, the notice shall be deemed never to have had effect.
- (4C) Where an appeal is brought against the giving of a notice under section 43C(1), the tribunal shall not allow the appeal unless it considers that the Commissioners could not reasonably have been satisfied that there were grounds for giving the notice.
- (4D) Where—
- (a) an appeal is brought against the giving of a notice under section 43C(3), and
- (b) the grounds of appeal relate wholly or partly to the date specified in the notice,
- the tribunal shall not allow the appeal in respect of the date unless it considers that the Commissioners could not reasonably have been satisfied that it was appropriate.”
- 5 (1) Schedule 9A to the Value Added Tax Act 1994 (groups: anti-avoidance) shall be amended as follows.
- (2) At the end of paragraph 2 (which becomes sub-paragraph (1) of that paragraph) there shall be inserted—
- “(2) This paragraph shall not apply where the relevant event is the termination of a body corporate’s treatment as a member of a group by a notice under section 43C(1) or (3).”

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- (3) In paragraph 3(8), for the words “under section 43” there shall be substituted “such as is mentioned in section 43B”.
- (4) In paragraph 7(1), for the words “section 43” there shall be substituted “sections 43 to 43C”.

Transitional provisions

- 6 (1) In this paragraph—
 - “the old law” means sections 43, 83 and 84 of, and Schedule 9A to, the Value Added Tax Act 1994 as they have effect without the amendments in paragraphs 1 to 5 of this Schedule, and
 - “the new law” means sections 43 to 43C, 83 and 84 of, and Schedule 9A to, that Act as they have effect by virtue of paragraphs 1 to 5 of this Schedule.
- (2) Where, immediately before this Schedule comes into force, two or more bodies corporate are treated as members of a group by virtue of the old law—
 - (a) they shall continue to be treated as members of a group, and
 - (b) in their treatment as members of a group after this Schedule comes into force, they shall be treated as if any application under the old law by virtue of which they are treated as members of a group had been an equivalent application under the new law.
- (3) Where an application under section 43 of the Value Added Tax Act 1994 is received by the Commissioners, and has neither taken effect nor been refused before the day on which this Act is passed, the old law shall apply to determine whether the application is to take effect; but where it is determined under this sub-paragraph that an application is to take effect—
 - (a) it shall be treated as if it were an equivalent application under the new law, and
 - (b) it shall be taken to have been granted under the new law at the time when it would have taken effect in accordance with the old law.
- (4) In a case to which sub-paragraph (2) or (3) above applies, the power under section 43C(3) shall not be used to terminate the treatment of a body corporate as a member of a group—
 - (a) on the ground that the body corporate is not established, and does not have a fixed establishment, in the United Kingdom, and
 - (b) from a date before 1st January 2000.
- (5) Where an application which purports to be an application under the old law is received by the Commissioners after the day on which this Act is passed—
 - (a) it shall be treated as if it were an application under the new law, and
 - (b) section 43B of the new law shall apply notwithstanding any provision in the application for a date from which it is to take effect.