

## SCHEDULES

### SCHEDULE 2

Section 3

#### SUPPLEMENTARY CHARGE TO VAT

##### PART 1

#### SUPPLEMENTARY CHARGE TO VAT

##### *The charge*

- 1 (1) There is a supplementary charge to value added tax on a supply of goods or services that is treated as taking place on or after 22 June 2010 if—
- (a) the supply spans the date of the VAT change,
  - (b) it is subject to VAT at the rate in force under section 2 of VATA 1994,
  - (c) the person to whom the supply is made is not entitled under VATA 1994 to credit for, or the repayment or refund of, all of the VAT on the supply, and
  - (d) a relevant condition is met.
- (2) In this Schedule “the date of the VAT change” means 4 January 2011.
- (3) For the cases in which a supply, other than the grant of a right to goods or services, spans the date of the VAT change and the relevant conditions in relation to such a supply, see paragraph 2.
- (4) For the cases in which a supply consisting of the grant of a right to goods or services spans the date of the VAT change and the relevant conditions in relation to such a supply, see paragraph 3.
- (5) Sub-paragraph (1) has effect subject to the exceptions made by or under Part 2 of this Schedule.
- (6) In this Schedule—
- Part 3 contains provision about liability for, and the amount of, a supplementary charge under this Schedule,
  - Part 4 contains special provision about listed supplies, and
  - Part 5 contains provision about administration and interpretation.
- (7) A supplementary charge to value added tax under this Schedule is to be treated for all purposes as if it were value added tax charged in accordance with VATA 1994.

##### *Supply spanning the date of the VAT change*

- 2 (1) For the purposes of this Schedule, a supply of goods or services spans the date of the VAT change where—

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- (a) by virtue of the issue of a VAT invoice or the receipt of a payment by the person making the supply (“the supplier”), the supply is treated as taking place before the date of the VAT change, but
  - (b) the basic time of supply (see paragraph 4) is on or after the date of the VAT change.
- (2) The relevant conditions are—
- (a) in relation to a supply that is within sub-paragraph (1)(a) by virtue of the issue of a VAT invoice, conditions A to D, and
  - (b) in relation to a supply that is within sub-paragraph (1)(a) by virtue of the receipt of a payment, conditions A to C.
- (3) Condition A is that the supplier and the person to whom the supply is made are connected with each other at any time in the period—
- (a) beginning with the day on which the supply is treated as taking place, and
  - (b) ending on the date of the VAT change.
- (4) Paragraph 5 modifies condition A in cases involving a series of supplies.
- (5) Condition B is that the aggregate of the following is more than £100,000—
- (a) the relevant consideration for the supply, and
  - (b) the relevant consideration for every related supply of goods or services (including every related grant of a right to goods or services) that spans the date of the VAT change (see paragraph 6).
- (6) Condition C is that a prepayment in respect of the supply is financed by the supplier or a person connected with the supplier (see paragraph 7).
- (7) In sub-paragraph (6) “prepayment”, in respect of a supply, means a payment that is received by the supplier before the basic time of supply.
- (8) Condition D is that full payment of the amount shown on the VAT invoice referred to in sub-paragraph (1)(a) is not due before the end of the period of 6 months beginning with the date on which the invoice is issued.
- (9) This paragraph does not apply in relation to a supply consisting of the grant of a right to goods or services (see paragraph 3).

*Grant of right spanning the date of the VAT change*

- 3 (1) For the purposes of this Schedule, a supply consisting of the grant by a person (“the grantor”) of a right to goods or services spans the date of the VAT change where—
- (a) that supply is treated as taking place before the date of the VAT change,
  - (b) the goods or services are to be supplied at a discount or free of charge, and
  - (c) the basic time of supply for the supply of some or all of the goods or services (see paragraph 4) is on or after the date of the VAT change.
- (2) In relation to the grant of the right, the relevant conditions are conditions A to C.
- (3) Condition A is that the grantor and the person to whom the right is granted are connected with each other at any time in the period—
- (a) beginning with the day on which the supply consisting of the grant of the right is treated as taking place, and

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- (b) ending on the date of the VAT change or, if the right is exercised (entirely or partly) on a later date, that date (or, if more than one, the first of those dates).
- (4) Paragraph 5 modifies condition A in cases involving a series of supplies.
- (5) Condition B is that the aggregate of the following is more than £100,000—
  - (a) the relevant consideration for the grant of the right, and
  - (b) the relevant consideration for every related supply of goods or services (including every related grant of a right to goods or services) that spans the date of the VAT change (see paragraph 6).
- (6) Condition C is that the payment made in respect of the grant of the right is financed by the grantor or a person connected with the grantor (see paragraph 7).
- (7) In this Schedule references to a right to goods or services include—
  - (a) any right or option with respect to such goods or services, and
  - (b) any interest deriving from such a right or option.

*“Basic time of supply”*

- 4 (1) In this Schedule the “basic time of supply” is the time given by subsection (2) or (3) of section 6 of VATA 1994 (disregarding subsections (4) to (14) of that section).
- (2) Sub-paragraph (1) does not apply in relation to listed supplies (see Part 4 of this Schedule).

*Series of supplies*

- 5 (1) This paragraph applies where—
  - (a) the supply or grant of a right referred to in paragraph 2 or 3 (“the affected supply or grant”) is one of a series of supplies of, or grants of a right to, the same or substantially the same goods or services, and
  - (b) each of the supplies, and the grants of a right, in the series was or will be made in the expectation that the affected supply or grant would or will take place.
- (2) In condition A in paragraphs 2 and 3, the references to the supplier and the grantor include any person who makes one of the supplies or grants one of the rights in the series.

*“Relevant consideration” and “related” supplies*

- 6 (1) This paragraph applies for the purposes of condition B in paragraphs 2 and 3.
- (2) “Relevant consideration” means—
  - (a) in relation to a supply that is within paragraph 2(1) by virtue of the issue of a VAT invoice, the amount shown on that invoice,
  - (b) in relation to a supply that is within paragraph 2(1) by virtue of the receipt of a payment, the amount of that payment, and
  - (c) in relation to a grant of a right to goods or services within paragraph 3(1), the consideration for the grant of the right,but does not include any amount in respect of VAT.

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- (3) A supply within paragraph 2(1), or a grant of a right within paragraph 3(1), is related to another such supply or grant if they are both made as part of the same scheme.
- (4) “Scheme” includes any arrangements, transaction or series of transactions.

#### *Financing*

- 7 (1) This paragraph applies for the purposes of condition C in paragraphs 2 and 3.
- (2) A payment is financed by a person if, directly or indirectly, the person—
  - (a) provides funds to enable the person to whom the supply is made to make the whole or part of the payment (whether the funds are provided before or after the payment is made),
  - (b) procures the provision of such funds by another person,
  - (c) provides 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 raising funds to enable the person to whom the supply is made to make the payment, or
  - (d) procures that any such liability is or will be discharged (in whole or in part) by another person.
- (3) In sub-paragraph (2) the references to providing funds for a purpose are to—
  - (a) making a loan of funds that are or are to be used for that purpose,
  - (b) providing a guarantee or other security in relation to such a loan,
  - (c) providing consideration for the issue of shares or other securities issued wholly or partly for raising those funds,
  - (d) providing consideration for the acquisition by any person of any such shares or securities, or
  - (e) any other transfer of assets or value as a consequence of which any of those funds are made available for that purpose.

#### *Connected persons*

- 8 Section 1122 of CTA 2010 (connected persons) applies for the purposes of this Schedule.

#### *Receipt of payments*

- 9 In this Schedule a reference to receipt of a payment by the person making a supply or granting a right (however expressed) includes a reference to receipt by a person to whom a right to receive it has been assigned.

#### *Power to change relevant conditions*

- 10 (1) The Treasury may by order amend this Part of this Schedule by adding, modifying or omitting relevant conditions.
- (2) An order under this paragraph—
  - (a) may make different provision for different cases, and
  - (b) may make incidental or consequential amendments of this Schedule.

## PART 2

### EXCEPTIONS

#### *Letting etc of assets*

- 11 (1) This paragraph applies in relation to a supply within paragraph 2 which arises from the letting, hiring or rental of assets.
- (2) There is no supplementary charge under this Schedule if—
- (a) the period to which the VAT invoice or payment referred to in paragraph 2(1) relates does not exceed 12 months, and
  - (b) the VAT invoice is issued, or the payment is received, in accordance with normal commercial practice in relation to the letting, hiring or rental of such assets.

#### *Condition B cases involving normal commercial practice*

- 12 There is no supplementary charge under this Schedule on a supply of goods or services within paragraph 2 or a grant of a right to goods or services within paragraph 3 if—
- (a) the only relevant condition met is condition B, and
  - (b) the supply is made, or the right is granted, in accordance with normal commercial practice in relation to the supply of, or the grant of a right to, such goods or services.

#### *Condition D cases involving hire purchase, conditional sale or credit sale of goods*

- 13 There is no supplementary charge under this Schedule on a supply of goods within paragraph 2 if—
- (a) the only relevant condition met is condition D,
  - (b) the VAT invoice—
    - (i) relates to a supply of goods made under a hire-purchase, conditional sale or credit sale agreement,
    - (ii) forms part of that agreement, and
    - (iii) is issued in accordance with normal commercial practice in relation to a supply made under such an agreement, and
  - (c) the basic time of supply of the goods is intended and expected to be within 6 months of the date of the VAT invoice which relates to the supply.

#### *Normal commercial practice*

- 14 In this Part of this Schedule, “normal commercial practice”, in relation to a supply or grant of a right, means—
- (a) normal commercial practice of the supplier or grantor at a time when an increase in the rate of VAT in force under section 2 of VATA 1994 is not expected, or
  - (b) if the supplier or grantor has no such practice, the normal commercial practice of suppliers making similar supplies, or granters granting similar rights, in the United Kingdom at such a time.

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*Further exceptions*

- 15 (1) The Treasury may by order provide that there is no supplementary charge under this Schedule on supplies (including grants of rights to goods or services) of a description specified in the order.
- (2) An order under this paragraph—
- (a) may make provision having effect in relation to supplies of goods or services that are treated as taking place on or after 22 June 2010 or a later date, and
  - (b) may have effect in relation to a supplementary charge which has become due before the order is made.

**PART 3**

LIABILITY AND AMOUNT

*Liability*

- 16 (1) A supplementary charge under this Schedule on a supply within paragraph 2—
- (a) is a liability of the supplier (subject to sub-paragraph (3)), and
  - (b) becomes due on the date of the VAT change (rather than at the time of supply).
- (2) A supplementary charge under this Schedule on a supply consisting of the grant of a right to goods or services within paragraph 3—
- (a) is a liability of the grantor (subject to sub-paragraph (3)), and
  - (b) becomes due on the first occasion on or after the date of the VAT change on which the right is exercised (rather than at the time the right is granted).
- (3) If, on the date on which the supplementary charge becomes due, the person who would be liable to pay the charge under sub-paragraph (1) or (2)—
- (a) is not a taxable person, but
  - (b) is treated as a member of a group under sections 43A to 43D of VATA 1994,
- the supplementary charge is a liability of the representative member of the group.

*Amount*

- 17 (1) The amount of the supplementary charge on a supply within paragraph 2 is equal to the difference between—
- (a) the amount of VAT chargeable on the supply apart from this Schedule, and
  - (b) the amount of VAT that would be chargeable on the supply if it were subject to VAT at the rate of 20%.
- (2) The amount of the supplementary charge on a grant of a right to goods or services within paragraph 3 is equal to the difference between—
- (a) the amount of VAT chargeable on the grant of the right apart from this Schedule, and
  - (b) the amount of VAT that would be chargeable on the grant of the right if it were subject to VAT at the rate of 20%,
- (but see sub-paragraph (3)).

(3) If the basic time of supply for some of those goods and services is before the date of the VAT change, sub-paragraph (2) has effect as if the references to the amount of VAT chargeable and to the amount of VAT that would be chargeable were references to the relevant proportion of each of those amounts.

(4) “The relevant proportion” is—

$$\frac{P}{W}$$

where—

P is so much of the consideration for the grant of the right as is attributable on a just and reasonable basis to a right to the goods and services for which the basic time of supply is on or after the date of the VAT change, and  
W is the whole of the consideration for the grant of the right.

#### PART 4

##### LISTED SUPPLIES

###### “Listed supply”

- 18 (1) In this Schedule “listed supply” means a supply falling within sub-paragraph (2)—
- (a) which is made for a consideration the whole or part of which is determined or payable periodically or from time to time, and
  - (b) which is treated as taking place by virtue of the issue of a VAT invoice or the receipt of a payment by the person making the supply.
- (2) The following supplies fall within this sub-paragraph—
- (a) a supply of services,
  - (b) a supply arising from the grant of a major interest in land,
  - (c) a supply of water other than—
    - (i) distilled water, deionised water or water of similar purity, or
    - (ii) bottled water,
  - (d) a supply of—
    - (i) coal gas, water gas, producer gases or similar gases, or
    - (ii) petroleum gases, or other gaseous hydrocarbons, in a gaseous state,
  - (e) a supply of power, heat, refrigeration or ventilation, and
  - (f) a supply of goods together with services in the course of the construction, alteration, demolition, repair or maintenance of a building or civil engineering work.
- (3) The Treasury may by order amend sub-paragraph (2) by—
- (a) adding or omitting any description of supply, or
  - (b) varying any description of supply for the time being listed in that sub-paragraph.

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*“Basic time of supply”: listed supplies*

- 19 (1) For the purposes of this Schedule, in relation to a listed supply, “the basic time of supply” is the end of the period to which the VAT invoice or payment mentioned in paragraph 18(1) relates, except as provided in sub-paragraphs (2) and (4).
- (2) Where the person making the supply issues an invoice—
- (a) in respect of part of the listed supply to which the VAT invoice or payment mentioned in paragraph 18(1) relates, and
  - (b) for a period (a “billing period”) ending before the end of the period to which that VAT invoice or payment relates,
- “the basic time of supply”, in relation to that part of the supply, is the end of the billing period.
- (3) For the purposes of sub-paragraph (2), the listed supply (and the consideration for the supply) must be apportioned between periods on a just and reasonable basis.
- (4) Where a listed supply is treated as taking place by virtue of—
- (a) the issue by the person making the supply of a VAT invoice relating to a premium for the grant of a tenancy or lease, or
  - (b) the receipt by the person making the supply of such a premium,
- “the basic time of supply” is the date of the grant of the tenancy or lease.

## PART 5

### ADMINISTRATION AND INTERPRETATION

*Person ceasing to be taxable person before supplementary charge due*

- 20 (1) This paragraph applies if, on the date on which a supplementary charge under this Schedule becomes due (“the due date”), the person who is liable to pay the charge under paragraph 16 is not a taxable person.
- (2) The supplementary charge must be accounted for by that person in accordance with VATA 1994 (and regulations made under that Act) as if it were VAT due in the last period for which the person was required to make a return by or under VATA 1994.
- (3) If an amount assessed as due by way of supplementary charge under this Schedule would (in the absence of this sub-paragraph) carry interest from a date earlier than the due date, it is to be treated as only carrying interest from the due date.

*Adjustment of contracts following the VAT change*

- 21 (1) This paragraph applies where—
- (a) a contract for the supply of goods or services is made before the date of the VAT change, and
  - (b) there is a supplementary charge under this Schedule on the supply.
- (2) The consideration for the supply is to be increased by an amount equal to the supplementary charge, unless the contract provides otherwise.



### *Invoices*

- 22 Regulations under paragraph 2A of Schedule 11 to VATA 1994 (VAT invoices) may make provision about the provision, replacement or correction of invoices in connection with a supplementary charge under this Schedule.

### *Orders under this Schedule*

- 23 (1) An order under this Schedule is to be made by statutory instrument.
- (2) A statutory instrument containing an order under this Schedule is subject to annulment in pursuance of a resolution of the House of Commons, unless it is an instrument to which sub-paragraph (4) applies.
- (3) Sub-paragraph (4) applies to a statutory instrument containing an order made under paragraph 10 (or under that paragraph and under other provisions) which extends the supplies that are subject to a supplementary charge under this Schedule.
- (4) An instrument to which this sub-paragraph applies—
- (a) must be laid before the House of Commons, and
  - (b) ceases to have effect at the end of the period of 28 days beginning with the day on which it was made unless it is approved during that period by a resolution of the House of Commons.
- (5) In reckoning the period of 28 days no account is to be taken of any time during which Parliament is dissolved or prorogued or during which the House of Commons is adjourned for more than 4 days.
- (6) The order ceasing to have effect does not affect—
- (a) anything previously done under it, or
  - (b) the making of a new order.

### *Interpretation: general*

- 24 (1) Expressions used in this Schedule and in VATA 1994 have the same meaning in this Schedule as in that Act.
- (2) In this Schedule—
- (a) “treated as taking place” means treated as taking place for the purposes of the charge to VAT, and
  - (b) references to the person by or to whom a supply is made (however expressed) are to the person by or to whom the supply is treated as being made for the purposes of VATA 1994.