Order made by the Treasury, laid before the House of Commons under section 45(3) of the Value Added Tax Act 1983, for approval by a resolution of that House within twenty-eight days beginning with the day on which the Order was made, subject to extension for periods of dissolution, prorogation or adjournment for more than four days.

STATUTORY INSTRUMENTS

1991 No. 2569

VALUE ADDED TAX

The Value Added Tax (Buildings and Land) Order 1991

Approved by the House of Commons

Made - - - -	*13th November 1991*
Laid before the House of Commons - - - -	*14th November 1991*
Coming into force - -	*1st January 1992*

The Treasury, in exercise of the powers conferred on them by sections 17(2), 35A(2) and 48(6) of the Value Added Tax Act 1983(**1**) and of all other powers enabling them in that behalf, hereby make the following Order:

1. This Order may be cited as the Value Added Tax (Buildings and Land) Order 1991 and shall come into force on 1st January 1992.

2. Group 1 (Land) of Schedule 6 to the Value Added Tax Act 1983(**2**) shall be varied as follows—

(a) in item 1 there shall be inserted after the words "or of any licence to occupy land," the words "or, in relation to land in Scotland, any personal right to call for or be granted any such interest or right,";

(b) after paragraph (a) in item 1 there shall be inserted the following paragraph—

"(aa) a supply made pursuant to a developmental tenancy, developmental lease or developmental licence;";

(c) at the end of paragraph (b) in item 1 there shall be added the following words—

"unless at the time of the grant the grantor grants to the grantee the fee simple of the land over which the right to take game or fish is exercisable";

(d) the word "and" immediately preceding paragraph (k) in item 1 shall be omitted and, after that paragraph there shall be inserted

"and

(l) the grant of any right, including—

(**1**) 1983 c. 55; section 35A was inserted by paragraph 6(1) of Schedule 3 to the Finance Act 1989 (c. 26).
(**2**) 1983 c. 55; Group 1 was amended by paragraph 4(1) of Schedule 3 to the Finance Act 1989 (c. 26) and S.I. 1990/ 2553.

(i) an equitable right,

(ii) a right under an option or right of pre-emption, or

(iii) in relation to land in Scotland, a personal right, within any of paragraphs (a) or (b) to (k) above";

(e) after Note (6) there shall be inserted the following Note—

"(6A) A tenancy of, lease of or licence to occupy a building or work is treated as becoming a developmental tenancy, developmental lease or developmental licence (as the case may be) when a tenancy of, lease of or licence to occupy a building or work, whose construction, reconstruction, enlargement or extension commenced on or after 1st January 1992, is treated as being supplied to and by the developer under paragraph 6(1) of Schedule 6A to this Act.".

3. Paragraph 2 of Schedule 6A to the Value Added Tax Act 1983(**3**) shall be amended by adding after sub-paragraph (7) the following sub-paragraphs—

"(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,

(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, in paragraph (b) above will be secured.".

4. Paragraph 3 of Schedule 6A to the Value Added Tax Act 1983 shall be amended as follows—

(a) in sub-paragraph (1), there shall be inserted at the beginning of paragraph (a) the words "subject to the following provisions of this paragraph,";

(b) for sub-paragraph (6), there shall be substituted the following—

"(6) An election under paragraph 2 above shall be irrevocable and, except where it is an election of a description specified in a notice published by the Commissioners, shall not have effect unless—

(a) in a case to which sub-paragraph (10) below applies, the Commissioners have given the permission required under that subparagraph;

(b) in any other case, written notification of the election is given to the Commissioners not later than the end of the period of thirty 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.";

(c) sub-paragraph (7) shall be omitted;

(d) after sub-paragraph (9), there shall be added the following sub-paragraph—

(**3**) 1983 c. 55; Schedule 6A was inserted by paragraph 6(2) of Schedule 3 to the Finance Act 1989 (c. 26).

"(10) 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 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, 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.".

5. Paragraph 5 of Schedule 6A to the Value Added Tax Act 1983 shall be amended by adding the following sub-paragraphs after sub-paragraph (7)—

"(8) Subject to sub-paragraph (10) below, sub-paragraphs (1) and (2) and subparagraphs (4) to (7) above shall apply in relation to any of the following reconstructions, enlargements or extensions—

(a) a reconstruction, enlargement or extension of an existing building which is commenced on or after 1st January 1992 and—

(i) which is carried out wholly or partly on land (hereafter referred to as new building land) adjoining the curtilage of the existing building, or

(ii) as a result of which the gross external floor area of the reconstructed, enlarged or extended building (excluding any floor area on new building land) exceeds the gross external floor area of the existing building by not less than 20 per cent of the gross external floor area of the existing building;

(b) a reconstruction of an existing building which is commenced on or after 1st January 1992 and in the course of which at least 80 per cent of the area of the floor structures of the existing building are removed;

(c) a reconstruction, enlargement or extension of a civil engineering work which is commenced on or after 1st January 1992 and which is carried out wholly or partly on land (hereafter referred to as new land) adjoining the land on or in which the existing work is situated, reconstructed, enlarged or extended building or work and as if references to construction were references to reconstruction, enlargement or extension.

(9) For the purposes of sub-paragraph (8)(a) above, extensions to an existing building shall include the provision of any annex having internal access to the existing building.

(10) Sub-paragraphs (1) and (2) and sub-paragraphs (4) to (7) above shall not apply to a reconstruction, enlargement or extension—

(a) falling within sub-paragraph (8)(a)(i), (ii) or (c) above where the developer has held an interest in at least 75 per cent of all of the land on which the reconstructed, enlarged or extended building or work stands, or is constructed, throughout the period of ten years ending with the last day of the prescribed accounting period during which the reconstructed, enlarged or extended building or work becomes substantially ready for occupation or use; or

(b) to the extent that it falls within sub-paragraph (8)(a)(ii) above or falling within sub-paragraph (8)(b) above, where the interest in, right over or licence to occupy the building concerned (or any part of it) has already been treated as supplied to and by the developer under paragraph 6(1) below.".

6. Paragraph 6 of Schedule 6A to the Value Added Tax Act 1983 shall be amended as follows—

(a) for paragraph (a) of sub-paragraph (2) there shall be substituted the following—

"(a) the value of grants relating to the land on which the building or work is constructed, made or to be made to the developer, but excluding, in a case where construction of the building or work in question commenced before 1st January 1992, the value of any grants to be made for consideration in the form of rent the amount of which cannot be ascertained by the developer when the supply is treated as made, and in any other case excluding the value of any—

(i) grants made before the relevant day to the extent that consideration for such grants was in the form of rent, and to the extent that such rent was properly attributable to a building which has been demolished,

(ii) grants made before the relevant day in respect of a building which has been reconstructed, enlarged or extended so that the reconstruction, enlargement or extension falls within paragraph 5(8)(a)(ii) above, and does not fall also within paragraph 5(8)(b) above, to the extent that consideration for such grants was in the form of rent, and to the extent that such rent was properly attributable to the building as it existed before the commencement of the reconstruction, enlargement or extension,

(iii) grants made before the relevant day in respect of a building which has been so reconstructed that the reconstruction falls within paragraph 5(8)(b) above, to the extent that consideration for such grants was in the form of rent, and to the extent that such rent was properly attributable to the building before the reconstruction commenced,

(iv) grants falling within paragraph (aa) of item 1 of Group 1 of Schedule 6 to this Act; and";

(b) there shall be inserted after sub-paragraph (2) the following sub-paragraphs—

"(2A) Where the rate of tax (the lower rate) chargeable on a supply (the construction supply) falling within sub-paragraph (2)(b) above, the value of which is included in the value of a supply (the self-supply) treated as made by sub-paragraph (1) above, is lower than the rate of tax (the current rate) chargeable on that self-supply, then tax on the self-supply shall be charged—

(a) on so much of its value as is comprised of the relevant part of the value of the construction supply, at the lower rate; and

(b) on the remainder of its value at the current rate.

(2B) For the purposes of sub-paragraph (2A)(a) above, the relevant part of the value of the construction supply means—

(a) where the construction supply is a supply of goods, the value of such of those goods as have actually been delivered by the supplier;

(b) where the construction supply is a supply of services, the value of such of those services as have actually been performed by the supplier,";

(c) there shall be added after sub-paragraph (3) the following sub-paragraphs—

"(4) For the purposes of sub-paragraph (2)(a)(i) above, the relevant day is the day on which the demolition of the building in question commenced and, for the purposes of sub-

paragraph (2)(a)(ii) and (iii) above, the relevant day is the day on which the reconstruction, enlargement or extension in question commenced.

(5) In the application of sub-paragraphs (1) to (4) above to a reconstruction, enlargement or extension to which sub-paragraphs (1) and (2) and sub-paragraphs (4) to (7) of paragraph 5 above apply by virtue of paragraph 5(8) above—

(a) references to the building or work shall be construed as references to the reconstructed, enlarged or extended building or work, and references to construction shall be construed as references to reconstruction, enlargement or extension;

(b) the reference in paragraph (a) of sub-paragraph (2) to the value of grants relating to the land on which the building or work is constructed shall be construed as a reference—

(i) in relation to a reconstruction, enlargement or extension of an existing building to the extent that it falls within paragraph 5(8)(a)(i) above and does not fall also within paragraph 5(8)(b) above, to the value of grants relating to the new building land;

(ii) in relation to a reconstruction, enlargement or extension of an existing building, to the extent that it falls within paragraph 5(8)(a)(ii) above and does not fall also within paragraph 5(8)(b) above, to the value of grants relating to the land on which the existing building stands multiplied by the appropriate fraction;

(iii) in relation to a reconstruction, enlargement or extension to a work falling within paragraph 5(8)(c) above, to the value of grants relating to the new land.

(6) For the purposes of sub-paragraph (5)(b)(ii) above the appropriate fraction shall be calculated by dividing the additional gross external floor area resulting from the reconstruction, enlargement or extension (excluding any floor area on new building land) by the gross external floor area of the reconstructed, enlarged or extended building (excluding any floor area on new building land).".

7. After paragraph 6 of Schedule 6A to the Value Added Tax Act 1983 there shall be inserted the following paragraph—

"**6A.**—(1) Where a developer is a tenant, lessee or licensee and becomes liable to a charge to tax under paragraph 6(1) above in respect of his tenancy, lease or licence he shall notify forthwith in writing his landlord, lessor or licensor (as the case may be)—

(a) of the date from which the tenancy, lease or licence becomes a developmental tenancy, developmental lease or developmental licence for the purposes of paragraph (aa) of item 1 of Group 1 of Schedule 6 to this Act;

(b) in a case falling within paragraph 5(8)(a)(ii) above, of the appropriate fraction determined in accordance with paragraph 6(6) above.

(2) Where the appropriate fraction has been notified in accordance with subparagraph (1)(b) above, any supply made pursuant to the tenancy, lease or licence in question shall be treated as made pursuant to a developmental tenancy, developmental lease or developmental licence (a developmental supply) as if, and only to the extent that, the consideration for the developmental supply is for an amount equal to the whole of the consideration for the supply made pursuant to the tenancy, lease or licence, multiplied by the appropriate fraction.".

8. Paragraph 8 of Schedule 6A to the Value Added Tax Act 1983 shall be amended by substituting for the words "The Notes to Group 8 of Schedule 5 to this Act and" the words "Notes (1) to (6) and Note (10) to Group 8 of Schedule 5 to this Act and Notes (1) and (2) to".

Sydney Chapman
Irvine Patnick
Two of the Lords Commissioners of Her Majesty's Treasury

13th November 1991

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends Group 1 (Land) of Schedule 6 (Exemptions) and Schedule 6A (Buildings and Land) to the Value Added Tax Act 1983, with effect from 1st January 1992.

Article 2 amends Group 1 of Schedule 6 as follows:

(a) Item 1 is extended so as to exempt the supply of certain personal rights (which arise only in Scotland) relating to land;

(b) A new paragraph (aa) is inserted to exclude from exemption, and thus cause to be chargeable at the standard rate, any grant pursuant to a developmental tenancy, lease or licence;

(c) The taxation of the grant of any right to take game or fish (ie "sporting rights" provided for by excluding paragraph (b) no longer applies when the sporting rights are sold freehold with the land over which they are exercisable;

(d) A new paragraph (l) is added so as to exclude from exemption, and thus cause to be chargeable at the standard rate, the grant of certain rights and options in relation to land where the grant of the legal or actual interest in or right over the land to which the rights or options relate would itself be standard-rated;

(e) A new Note (6A) relevant to the newly inserted paragraph (aa) is inserted. It determines the time when a tenancy or lease or a licence to occupy land is treated as becoming a developmental tenancy, lease or licence. This is when a developer is liable to pay a self-supply charge under paragraph 6(1) of Schedule 6A in respect of a building or civil engineering work whose construction, reconstruction, enlargement or extension commences on or after 1st January 1992.

Article 3 provides for amendments to paragraph 2 of Schedule 6A dealing with elections to waive exemption. Two new sub-paragraphs, (8) and (9), are added, both dealing with entitlement to input tax. For elections first having effect on or after 1st January 1992, the rule in paragraph 2(4) stipulating that input tax incurred before the election has effect is not allowable is abolished except in relation to input tax incurred before 1st August 1989. For elections first having effect before 1st January 1992, the elector may apply to the Commissioners of Customs and Excise (the Commissioners) to have the rule in paragraph 2(4) disapplied in respect of input tax incurred on or after 1st August 1989. The Commissioners, however, can only authorise the disapplication when they are satisfied that there will result a fair and reasonable attribution of input tax incurred before the effective date of the election.

Article 4 makes a number of amendments to paragraph 3 of Schedule 6A which deals with the procedures for making elections to waive exemption. There is one amendment of substance, the addition of a new sub-paragraph (10), the other amendments being consequential. The new sub-paragraph (10) provides that a person not already bound by an election having effect on 1st January 1992 must obtain the prior written permission of the Commissioners if, between 1st August 1989 and the day he wishes the election to be effective, he has made or intends to make any exempt grant in relation to the land concerned. The Commissioners can only authorise the election when they are satisfied that there will result a fair and reasonable attribution of input tax to grants which would become taxable in the event of the election having effect.

Articles 5 and 6 respectively amend paragraphs 5 and 6 of Schedule 6A providing for the self-supply charge on developers of certain non-residential buildings and civil engineering works, and article 7 inserts a new paragraph 6A into Schedule 6A.

The effect of the amendments in article 5 is to extend the developer's self-supply charge to three distinct categories of reconstruction, enlargement or extension of existing buildings and also to reconstructions, enlargements or extensions of any existing civil engineering work carried out wholly or partly on new land. In all cases, the change only affects work commencing on or after 1st January 1992 and, except for a reconstruction in which at least 80 per cent of the area of the floor structures of the existing building are removed, the self-supply charge does not apply in cases in which the developer has held an interest in at least 75 per cent of all the land concerned during the ten years ending on the first day when the self-supply charge would otherwise be chargeable. In addition, the self-supply charge does not apply where the reconstruction, enlargement or extension takes place within the curtilage of an existing building in respect of which the developer has already been liable to such a charge.

The effect of article 6 is to amend the value of the self-supply charge set out in paragraph 6 of Schedule 6A. The amendments can be divided into three categories. First, under the amendments to paragraph 6(2)(a), which apply to developments commencing on or after 1st January 1992, rents paid by the developer relating to a demolished building on the site, or to a reconstructed or enlarged building, are in either case removed from the basis of value insofar as they are attributable to the demolished building or the existing building as it existed before the reconstruction or enlargement. In addition, and in all cases, the value of any grants made taxable by being excluded from exemption under paragraph (aa) of item 1 of Group 1 of Schedule 6 are excluded from the land element of the self-supply charge, so as to prevent double taxation. Secondly the new sub-paragraphs, (2A) and (2B), provide a relief when the rate of tax chargeable on the self-supply is higher than that applicable to some or all of the construction supplies that have to be taken into account under sub-paragraph 6(2)(b). The relief takes the form of applying the lower rate of tax to that portion of the value of the self-supply charge referable to supplies of goods actually delivered, and to supplies of services actually performed, before the change of rate. Thirdly, there are new sub-paragraphs (5) and (6) which contain provisions applying the basis of value to the various categories of reconstruction, enlargement and extension brought within the scope of the self-supply charge from 1st January 1992 by the new sub-paragraph 5(8) to Schedule 6A.

Article 7 adds a new paragraph 6A to Schedule 6A. It requires a developer who is a tenant, lessee or licensee to notify his landlord, lessor or licensor in writing of the date on which the landlord, lessor or licensor must start to charge tax on grants falling under excluding paragraph (aa) from item 1 of Group 1 of Schedule 6 and, in relation to one category of reconstruction, enlargement or extension, of the appropriate fraction to enable the landlord, lessor or licensor to apportion the rent between the supply which is exempt and the supply which is taxable under paragraph (aa).

Article 8 amends paragraph 8 of Schedule 6A by specifying which Notes to Group 8 (Construction of Dwellings, etc) of Schedule 5 (Zero-rating) and to Group 1 of Schedule 6 apply, with appropriate modifications, to Schedule 6A.