
STATUTORY INSTRUMENTS

1995 No. 1268

The Value Added Tax (Special Provisions) Order 1995

Treatment of transactions

5.—(1) Subject to paragraph (2) below, there shall be treated as neither a supply of goods nor a supply of services the following supplies by a person of assets of his business—

- (a) their supply to a person to whom he transfers his business as a going concern where—
 - (i) the assets are to be used by the transferee in carrying on the same kind of business, whether or not as part of any existing business, as that carried on by the transferor, and
 - (ii) in a case where the transferor is a taxable person, the transferee is already, or immediately becomes as a result of the transfer, a taxable person or a person defined as such in [^{F1}section 3(1)] of the Manx Act;
- (b) their supply to a person to whom he transfers part of his business as a going concern where—
 - (i) that part is capable of separate operation,
 - (ii) the assets are to be used by the transferee in carrying on the same kind of business, whether or not as part of any existing business, as that carried on by the transferor in relation to that part, and
 - (iii) in a case where the transferor is a taxable person, the transferee is already, or immediately becomes as a result of the transfer, a taxable person or a person defined as such in [^{F2}section 3(1)] of the Manx Act.

(2) A supply of assets shall not be treated as neither a supply of goods nor a supply of services by virtue of paragraph (1) above to the extent that it consists of—

- (a) a grant which would, but for an election which the transferor has made, fall within item 1 of Group 1 of Schedule 9 to the Act; or
- (b) a grant of a fee simple which falls within paragraph (a) of item 1 of Group 1 of Schedule 9 to the Act,

unless [^{F3}the conditions contained in paragraph (2A) below are satisfied].

[^{F4}(2A) The conditions referred to in paragraph (2) above are that the transferee has, no later than the relevant date—

- (a) made an election in relation to the land which has effect on the relevant date and has given any written notification of the election required by paragraph 3(6) of Schedule 10 to the Act; and
- (b) notified the transferor that paragraph (2B) below does not apply to him.

(2B) This paragraph applies to a transferee where—

- (a) the supply of the asset that is to be transferred to him would become, in relation to him, a capital item as described in regulation 113 of the Value Added Tax Regulations 1995(1) if the supply of that asset to him—
 - (i) were to be treated as neither a supply of goods nor a supply of services; or

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(ii) were not so treated; and

(b) his supplies of that asset will, or would fall, to be exempt supplies by virtue of paragraph 2(3AA) of Schedule 10 to the Act.]

(3) In paragraph (2) of this article—

“election” means an election having effect under paragraph 2 of Schedule 10 to the Act;

“relevant date” means the date upon which the grant would have been treated as having been made or, if there is more than one such date, the earliest of them;

“transferor” and “transferee” include a relevant associate of either respectively as defined in paragraph 3(7) of Schedule 10 to the Act.

(4) There shall be treated as neither a supply of goods nor a supply of services the assignment by an owner of goods comprised in a hire-purchase or conditional sale agreement of his rights and interest thereunder, and the goods comprised therein, to a bank or other financial institution.

Textual Amendments

- F1** Words in art. 5(1)(a)(ii) substituted (18.3.1998) by [The Value Added Tax \(Special Provisions\) \(Amendment\) Order 1998 \(S.I. 1998/760\)](#), arts. 1, 4
- F2** Words in art. 5(1)(b)(iii) substituted (18.3.1998) by [The Value Added Tax \(Special Provisions\) \(Amendment\) Order 1998 \(S.I. 1998/760\)](#), arts. 1, 4
- F3** Words in art. 5(2) substituted (18.3.2004) by [The Value Added Tax \(Special Provisions\) \(Amendment\) Order 2004 \(S.I. 2004/779\)](#), arts. 1, 3
- F4** [Art. 5\(2A\)\(2B\)](#) inserted (18.3.2004) by [The Value Added Tax \(Special Provisions\) \(Amendment\) Order 2004 \(S.I. 2004/779\)](#), arts. 1, 4
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Commencement Information

- I1** Art. 5 in force at 1.6.1995, see [art. 1](#)
- I2** Art. 4 in force at 1.6.1995, see [art. 1](#)

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Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- art. 12(3)(a)(v) words omitted by [S.I. 2019/59 reg. 11\(3\)\(a\)\(ii\)](#) (This amendment not applied to legislation.gov.uk. Reg. 11 omitted on IP completion day by virtue of S.I. 2020/1545, regs. 1, 104(4); S.I. 2020/1641, reg. 2, Sch.)
- art. 12(3)(b)(i)(ii) substituted for words by [S.I. 2020/1545 reg. 30\(5\)\(d\)](#)
- art. 12(3)(b)(ii) words substituted by [S.I. 2021/1164 reg. 34](#)
- art. 12(3)(aa) inserted by [S.I. 2020/1545 reg. 30\(5\)\(c\)](#)
- art. 12(4)(a)(v)(vi) inserted by [S.I. 2021/715 reg. 13\(b\)](#)
- art. 12(4)(a)(iii) word omitted by [S.I. 2021/715 reg. 13\(a\)](#)
- art. 12(5)(iv) words substituted by [S.I. 2020/1545 reg. 30\(5\)\(e\)](#)
- art. 12A inserted by [S.I. 2020/1545 reg. 30\(6\)](#)