
STATUTORY INSTRUMENTS

1997 No. 1523

VALUE ADDED TAX

The Value Added Tax (Reverse Charge) (Anti-avoidance) Order 1997

Made - - - - 30th June 1997
Laid before the House of
Commons - - - - 30th June 1997
Coming into force in accordance with article 1

The Treasury, in exercise of the powers conferred on them by section 8(5), (7) and (8) of the Value Added Tax Act 1994⁽¹⁾ and of all other powers enabling them in that behalf, hereby make the following Order:

Citation and commencement

1. This Order may be cited as the Value Added Tax (Reverse Charge) (Anti-avoidance) Order 1997 and shall apply in relation to any services performed on or after 1st July 1997.

Interpretation

2. In this Order—

“the Act” means the Value Added Tax Act 1994;

“the Regulations” means the Value Added Tax Regulations 1995⁽²⁾;

“relevant telecommunications services” means services within the description which by virtue of this Order is inserted as paragraph 7A of Schedule 5 to the Act;

“relevant period” means such part of a period over which relevant telecommunications services are performed as falls after 30th June 1997;

“a supply of relevant telecommunications services by virtue of a right” means a supply of relevant telecommunications services performed on or after 1st July 1997 which is made by virtue of the exercise of a right which had been granted before 1st July 1997.

(1) 1994 c. 23; section 8(7) and (8) was added by section 42 of the Finance Act 1997 (c. 16).
(2) S.I. 1995/2518; to which there are amendments not relevant to this Order.

Insertion of telecommunications services into Schedule 5 to the Act

3.—(1) Schedule 5 to the Act shall be amended in accordance with the following paragraphs of this article.

(2) After paragraph 7 there shall be inserted the following—

“7A. Telecommunications services, that is to say services relating to the transmission, emission or reception of signals, writing, images and sounds or information of any nature by wire, radio, optical or other electromagnetic systems, including the transfer or assignment of the right to use capacity for such transmission, emission or reception.”.

(3) In paragraph 8 for the words “paragraphs 1 to 7” there shall be substituted the words “paragraphs 1 to 7A”.

(4) In paragraph 9 for the words “paragraphs 1 to 8” there shall be substituted the words “paragraphs 1 to 7 and 8”.

Modification of the effect of regulation 82 of the Regulations

4.—(1) Where a supply of relevant telecommunications services is treated as if it were a taxable supply by virtue of section 8(1) or 43(2B) of the Act(3), the effect of regulation 82 of the Regulations shall be modified as follows—

- (a) it shall have no effect in relation to relevant telecommunications services which are performed or which, by virtue of article 10 below, are treated as performed before 1st July 1997;
 - (b) it shall have no effect in relation to relevant telecommunications services which are wholly chargeable to VAT in another member State;
 - (c) where—
 - (i) relevant telecommunications services are performed on or after 1st July 1997; and
 - (ii) a payment in respect of those services has been made before that date,
 it shall have effect in relation to those services as if the payment was made on 1st July 1997.
- (2) Where the circumstances mentioned in paragraph (3) below apply—
- (a) relevant telecommunications services which are paid for on or after 1st July 1997 shall be treated as being supplied only to the extent covered by the lower of—
 - (i) so much of the payment as exceeds the part of the payment for the supply by reference to which VAT is chargeable in another member State; and
 - (ii) so much of the payment as is properly attributable to the relevant period; and
 - (b) relevant telecommunications services which are supplied for a consideration which is not in money shall be treated as being supplied only to the extent covered by the lower of—
 - (i) so much of the consideration as exceeds the part of the consideration for the supply by reference to which VAT is chargeable in another member State; and
 - (ii) so much of the consideration as is properly attributable to the relevant period.
- (3) The circumstances referred to in paragraph (2) above and article 7 below are that—
- (a) relevant telecommunications services are performed on or after 1st July 1997; and
 - (b) either—
 - (i) the services are chargeable to VAT in part in another member State; or
 - (ii) the period over which the services are performed commenced before 1st July 1997.

(3) Section 43(2B) of the Act was inserted by section 41 of the Finance Act 1997 (c. 16).

Treatment of a right to relevant telecommunications services

5.—(1) Subject to article 6 below, where the circumstances mentioned in article 8(3) below apply the time at which and extent to which a supply of relevant telecommunications services by virtue of a right is to be treated as made shall be determined as if the supply of relevant telecommunications services and the right were a single supply of which the supply of the right and each of those supplies constituted different parts.

(2) Without prejudice to the generality of paragraph (1) above, the payment for a right to relevant telecommunications services or the consideration for that right, as the case may be, shall, for the purposes of article 4 above, be treated as if it were the payment or the consideration for the relevant telecommunications services supplied by virtue of the right.

Rights not exercised before 1st July 1997

6. Where—

- (a) the circumstances mentioned in article 8(3) below apply;
- (b) a right to relevant telecommunications services is exercised on or after 1st July 1997;
- (c) the consideration for the right was in money; and
- (d) a payment in respect of the right was made before 1st July 1997,

the payment shall be deemed to have been made at the time of the exercise of the right.

Value of supply of relevant telecommunications services

7. Where the circumstances mentioned in article 4(3) above apply, the effect of paragraph 8 of Schedule 6 to the Act shall be modified so that the value of the supply treated as made shall be taken—

- (a) in a case where the consideration for which the relevant telecommunications services were in fact supplied was a consideration in money, to be such amount as is equal to the lower of—
 - (i) so much of the consideration as exceeds the part of the consideration for the supply by reference to which VAT is chargeable in another member State; and
 - (ii) so much of the consideration as is properly attributable to the relevant period; and
- (b) in a case where that consideration did not consist or not wholly consist of money, to be such amount in money as is equivalent to the lower of—
 - (i) so much of the consideration as exceeds the part of the consideration for the supply by reference to which VAT is chargeable in another member State; and
 - (ii) so much of the consideration as is properly attributable to the relevant period.

Value of relevant telecommunications services supplied by virtue of a right

8.—(1) For the purposes of paragraph 8 of Schedule 6 to the Act and article 7 above, where the circumstances mentioned in paragraph (3) below apply, the consideration for which the relevant telecommunications services were in fact supplied shall be deemed to be the higher of—

- (a) the consideration for which the services were in fact received; and
- (b) the lower of—
 - (i) the open market value of the relevant telecommunications services which were in fact supplied which shall be valued as if they had not been supplied by virtue of the right; and

- (ii) the amount determined in accordance with paragraph (2) below.
- (2) The amount referred to in paragraph (1)(b)(ii) above is the sum of—
- (a) the consideration for which the relevant telecommunications services were in fact supplied; and
 - (b) the consideration for the right to those services,
- reduced by the open market value of the right to the relevant telecommunications services which shall be valued as if the right was a right to those services to be supplied at the open market value for those services determined in accordance with paragraph (1)(b)(i) above.
- (3) The circumstances referred to in paragraph (1) above are that—
- (a) there is a supply of relevant telecommunications services by virtue of a right; and
 - (b) the consideration for the relevant telecommunications services which were in fact supplied is less than the open market value of those services which shall be valued as if they had not been supplied by virtue of the right.

Meaning of a right to relevant telecommunications services

9. References in this Order to a right to relevant telecommunications services include references to any right, option or priority with respect to a supply of relevant telecommunications services, and to any interest deriving from any right to relevant telecommunications services.

Time when relevant telecommunications services are treated as performed

10.—(1) For the purposes of this Order relevant telecommunications services which are supplied for a consideration the whole or part of which is determined or payable periodically or from time to time or in respect of which statements or invoices are issued periodically or from time to time, shall be treated as performed on the expiration of the period to which a payment, statement or invoice (as the case may be) relates.

(2) Where paragraph (1) above applies the services shall be treated as performed to the extent covered by the payment, statement or invoice.

30th June 1997

Bob Ainsworth
Graham Allen
Two of the Lords Commissioners of Her
Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order applies to services performed on or after 1st July 1997.

Article 3 amends Schedule 5 to the Act. It inserts paragraph 7A and amends paragraphs 8 and 9 of the Schedule. The amendment gives effect to a derogation from Article 9(1) of Council Directive 77/388 (OJNo. L145, 13.6.1977, p. 1) which was made by Council Decision 6236/97 (OJ No. L86, 28.3.1997, p. 33).

Where section 8(1) or 43(2B) of the Act applies, a supply of services within the description contained in paragraph 7A (“relevant telecommunications services”) or of the services of agents who procure such services, are treated as if a supply of services had been made in the United Kingdom by the recipient of those services. Prior to this Order a supply of such services was not treated as made in the United Kingdom where it was made by a supplier who belongs in a country other than the United Kingdom.

Paragraph 9 is amended so that a reverse charge is made by business customers to the extent that they use relevant telecommunications services which are treated as taking place in the United Kingdom by virtue of the Value Added Tax (Place of Supply of Services) Order 1992 (S.I.1992/3121) as amended by the Value Added Tax (Place of Supply of Services) (Amendment) Order 1997 (S.I. 1997/1524).

Article 4 modifies the effect of regulation 82 of the Value Added Tax Regulations 1995 (S.I. 1995/2518). Articles 4 and 10 ensure that relevant telecommunications services are treated as supplied only to the extent that they are performed on or after 1st July 1997 and are not chargeable to VAT in another member State.

For the purposes of the time at which and the extent to which relevant telecommunications services are treated as supplied, Articles 5, 6, and 9 treat a right to relevant telecommunications services which was granted before 1st July 1997 and the services which are performed by virtue of that right as if they were a single supply.

Article 7 modifies the effect of paragraph 8 of Schedule 6 to the Act so that VAT is charged on a supply of relevant telecommunications services only to the extent that the supply is performed on or after 1st July 1997 and is not chargeable to VAT in another member State.

Article 8 applies to relevant telecommunications services which are supplied by virtue of a right to those services granted before 1st July 1997 where the consideration for those services is less than their open market value. However, for the purposes of the open market valuation, no account is taken of the right by virtue of which the services are supplied. Where article 8 applies, the effect of paragraph 8 of Schedule 6 to the Act is modified. The consideration for the services is deemed to be the lower of (i) the open market value of the services when they are valued as if they had not been supplied by virtue of the right and (ii) the sum of the consideration for the right and the consideration for the services which is reduced by the open market value of the right. However, for the purposes of that reduction, the right is valued as if it had been a right to supply the services at their open market value without regard to the effect on the value resulting from the existence of the right itself.