
STATUTORY INSTRUMENTS

1999 No. 2833

**The Value Added Tax (Supplies of Goods where
Input Tax cannot be recovered) Order 1999**

Supplies of goods where input tax cannot be recovered

2.—(1) Schedule 9 to the Value Added Tax Act 1994 shall be varied in accordance with paragraphs (2) and (3) of this article.

(2) In Part I there shall be inserted after the entry relating to Sport, sports competitions and physical education the following entry—

“Supplies of goods where input tax cannot be recovered Group 14”.

(3) In Part II after Group 13(1) there shall be added the following—

“GROUP 14—SUPPLIES OF GOODS WHERE INPUT TAX CANNOT BE RECOVERED

Item No.

1. A supply of goods in relation to which each of the following conditions is satisfied, that is to say—

- (a) there is input tax of the person making the supply (“the relevant supplier”), or of any predecessor of his, that has arisen or will arise on the supply to, or acquisition or importation by, the relevant supplier or any such predecessor of goods used for the supply made by the relevant supplier;
- (b) the only such input tax is non-deductible input tax; and
- (c) the supply made by the relevant supplier is not a supply which would be exempt under Item 1 of Group 1 of Schedule 9 but for an election under paragraph 2 of Schedule 10.

Notes:

(1) Subject to Note (2) below, in relation to any supply of goods by the relevant supplier, the goods used for that supply are—

- (a) the goods supplied; and
- (b) any goods used in the process of producing the supplied goods so as to be comprised in them.

(2) In relation to a supply by any person consisting in or arising from the grant of a major interest in land (“the relevant supply”)—

- (a) any supply consisting in or arising from a previous grant of a major interest in the land is a supply of goods used for the relevant supply; and

- (b) subject to paragraph (a) above, the goods used for the relevant supply are any goods used in the construction of a building or civil engineering work so as to become part of the land.
- (3) Subject to Notes (7) to (10) below, non-deductible input tax is input tax to which Note (4) or (5) below applies.
- (4) This Note applies to input tax which (disregarding this Group and regulation 106 of the Value Added Tax Regulations 1995(2) (de minimis rule)) is not, and will not become, attributable to supplies to which section 26(2) applies.
- (5) This Note applies to input tax if—
- (a) disregarding this Group and the provisions mentioned in Note (6) below, the relevant supplier or a predecessor of his has or will become entitled to credit for the whole or a part of the amount of that input tax; and
 - (b) the effect (disregarding this Group) of one or more of those provisions is that neither the relevant supplier nor any predecessor of his has or will become entitled to credit for any part of that amount.
- (6) The provisions mentioned in Note (5) above are—
- (a) Article 5 of the Value Added Tax (Input Tax) Order 1992(3) (no credit for input tax on goods or services used for business entertainment);
 - (b) Article 6(4) of that Order (no credit for input tax on non-building materials incorporated in a building or site);
 - (c) Article 7(5) of that Order (no credit for input tax on motor cars);
 - (d) any provision directly or indirectly re-enacted (with or without modification) in a provision mentioned in paragraphs (a) to (c) above.
- (7) For the purposes of this Group the input tax of a person shall be deemed to include any VAT which—
- (a) has arisen or will arise on a supply to, or acquisition or importation by, that person; and
 - (b) would fall to be treated as input tax of that person but for its arising when that person is not a taxable person.
- (8) Subject to Note (9) below, the input tax that is taken to be non-deductible input tax shall include any VAT which—
- (a) is deemed to be input tax of any person by virtue of Note (7) above; and
 - (b) would be input tax to which Note (4) or (5) above would apply if it were input tax of that person and, in the case of a person to whom section 39 applies, if his business were carried on in the United Kingdom.
- (9) Non-deductible input tax does not include any VAT that has arisen or will arise on a supply to, or acquisition or importation by, any person of any goods used for a supply of goods (“the relevant supply”) if—
- (a) that VAT; or
 - (b) any other VAT arising on the supply to, or acquisition or importation by, that person or any predecessor of his of any goods used for the relevant supply,
- has been or will be refunded under section 33, 39 or 41.
- (10) Input tax arising on a supply, acquisition or importation of goods shall be disregarded for the purposes of determining whether the conditions in Item No. 1(a) and (b) are satisfied if, at a time

(2) S.I. 1995/2518.

(3) S.I. 1992/3222; Article 5 was amended by S.I. 1995/281.

(4) Article 6 was amended by S.I. 1995/281.

(5) Article 7 was amended by S.I. 1995/281 and S.I. 1995/1666.

after that supply, acquisition or importation but before the supply by the relevant supplier, a supply of the goods or of anything in which they are comprised is treated under or by virtue of any provision of this Act as having been made by the relevant supplier or any predecessor of his to himself.

(11) In relation to any goods or anything comprised in any goods, a person is a predecessor of another (“the putative successor”) only if Note (12) or (13) below applies to him in relation to those goods or that thing; and references in this Group to a person’s predecessors include references to the predecessors of his predecessors through any number of transfers and events such as are mentioned in Notes (12) and (13).

(12) This Note applies to a person in relation to any goods or thing if—

- (a) the putative successor is a person to whom he has transferred assets of his business by a transfer of that business, or a part of it, as a going concern;
- (b) those assets consisted of or included those goods or that thing; and
- (c) the transfer of the assets is one falling by virtue of an Order under section 5(3) (or under an enactment re-enacted in section 5(3)) to be treated as neither a supply of goods nor a supply of services.

(13) This Note applies to a body corporate in relation to any goods or thing if—

- (a) those goods or that thing formed part of the assets of the business of that body at a time when it became a member of a group of which the putative successor was at that time the representative member;
- (b) those goods or that thing formed part of the assets of the business of that body corporate, or of any other body corporate which was a member of the same group as that body, at a time when that body was succeeded as the representative member of the group by the putative successor; or
- (c) those goods or that thing formed part of the assets of the putative successor at a time when it ceased to be a member of a group of which the body corporate in question was at the time the representative member.

(14) References in Note (13) above to a body corporate’s being or becoming or ceasing to be a member of a group or the representative member of a group are references to its falling to be so treated for the purposes of section 43.

(15) In Notes (11) to (13) above the references to anything comprised in other goods shall be taken, in relation to any supply consisting in or arising from the grant of a major interest in land, to include anything the supply, acquisition or importation of which is, by virtue of Note (2) above, taken to be a supply, acquisition or importation of goods used for making the supply so consisting or arising.

(16) Notes (1) and (1A) to Group 1 shall apply for the purposes of this Group as they apply for the purposes of that Group.”.