
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which come into force on 10th April 2003, further amend the Value Added Tax Regulations 1995 (S.I.1995/2518) (“the principal Regulations”).

Regulation 1 makes discrete provision in relation to commencement.

Regulations 3 and 4 amend regulations 52(1A) and 53(2)(a) respectively, of the principal Regulations, which relate to the annual accounting scheme. Regulation 3 increases the maximum turnover limit for immediate admission to the scheme from £100,000 to £150,000. Regulation 4 corrects a drafting error.

Regulations 5, 6 and 7 amend Part VIIA of the principal Regulations, which relates to the flat-rate scheme for small businesses (“FRS”).

Regulation 5 inserts a new regulation 55JA into the principal Regulations and makes consequential amendments. The new regulation 55JA provides for another exception to the general rule set out in regulation 55H, which sets out the basic rules regarding how a person operating the FRS must determine which appropriate percentage he must apply by reference to the Table set out in regulation 55K. Regulation 55JA sets out the rules that are to be applied when the Table is amended.

Regulation 6 substitutes a new Table of categories of business and appropriate percentages in regulation 55K of the principal Regulations. The categories of general building or construction services, mining or quarrying, journalism, hairdressing or other beauty treatment services and labour-only building or construction services differ from the categories set out in the previous Table.

Regulation 7 amends regulations 55L and 55M of the principal Regulations. The effect is to increase by one half the maximum turnover limits for eligibility to use the FRS.

A regulatory impact assessment on the changes to the flat rate and annual accounting schemes was published on 10th April 2003 and is available at www.hmce.gov.uk.

Regulations 8 and 9 redraft anti-avoidance legislation that took effect on 28th November 2002, in conjunction with changes which will be made to the Value Added Tax Act 1994 by the Finance Act 2003 and which will take effect from 9th April 2003 by virtue of a resolution under the Provisional Collection of Taxes Act 1968. As with the legislation they replace, they restrict the application of regulation 84(2) of the principal Regulations (“regulation 84(2)”) in order to prevent avoidance. Regulation 84(2) applies where the grant or assignment of the fee simple (the freehold) of land is made for a consideration the amount of which cannot be fully determined at the time the grant or assignment is completed.

Regulation 8 makes the application of regulation 84(2) subject to new paragraphs (3) to (5), replacing paragraphs (3) to (9) added to that regulation with effect from 28th November 2002.

Regulation 9 adds new paragraphs (3) to (5) to regulation 84 of the principal Regulations as follows.

Paragraph (3) prevents the regulation 84(2) treatment applying to standard-rated freehold sales of land including a new or incomplete commercial building or civil engineering work where certain persons will occupy the land within 10 years of completing the building or work, and that occupation is “not wholly or mainly for eligible purposes”. Broadly speaking, this means occupation in order to make exempt supplies, or occupation for non-business purposes (unless the occupier is a local authority or government department).

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Paragraph (4) defines the persons whose occupation may cause regulation 84(2) treatment to be denied. These are the grantor, any person who provides finance for the grantor's development of the land, and any person connected to these people.

Paragraph (5) defines various terms used in the amended regulation 84.

Existing VAT definitions are used for determining when a building or a civil engineering work is "completed".

The "grantor's development of the land" means both acquiring an interest in the land and constructing a building or civil engineering work. Other terms are defined in the same way as they are for the option to tax anti-avoidance measures, with minor adaptations. In particular:—

"eligible purposes" means occupation by a taxable person (or a member of a VAT group) in order to make supplies which give an input tax credit, or occupation by a public body for non-business purposes;

"occupation" includes occupation with other persons;

"providing finance" to the grantor includes any direct or indirect method of funding him to meet the costs of acquiring or developing the land, including loans, guarantees, subscribing for shares or securities, or any other transfer of assets or value. However, the purchaser of the freehold grant whose treatment is in question is not providing finance simply by paying the consideration due under the grant;

the definition of "connected" is that used for other VAT purposes. Individuals are connected with spouses, close relatives, business partners and any company that they control. Companies are connected if they are under common control.