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STATUTORY INSTRUMENTS

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**2003 No. 2318**

**The Value Added Tax (Amendment) (No. 5) Regulations 2003**

**Continuous supplies**

**3. After regulation 94A insert—**

**“94B.—**(1) This regulation applies in relation to the following supplies where they are provided in the circumstances referred to in paragraph (2) below—

- (a) supplies falling within regulation 85 above (leases treated as supplies of goods) other than any supply which is exempt by virtue of Group 1 of Schedule 9 to the Act or would be exempt but for the operation of paragraph 2(1) of Schedule 10 to the Act;
  - (b) supplies falling within regulation 86(1) to (4) above (supplies of water, gas or any form of power, heat, refrigeration or ventilation);
  - (c) supplies falling within regulation 90 above (continuous supplies of services) other than any supply which is exempt by virtue of Group 1 of Schedule 9 to the Act or would be exempt but for the operation of paragraph 2(1) of Schedule 10 to the Act.
- (2) The circumstances referred to in paragraph (1) above are—
- (a) that the person making the supply and the person to whom it is made are connected with each other, or
  - (b) one of those persons is an undertaking in relation to which the other is a group undertaking (except where both undertakings are treated under sections 43A to 43C of the Act as members of the same group), and
  - (c) the supply is subject to the rates of VAT prescribed in section 2 or section 29A of the Act.

(3) But this regulation does not apply where a person can show that a person to whom he has made a supply of a description falling within paragraph (1) above is entitled under sections 25 and 26 of the Act to credit for all of the VAT on that supply.

(4) For the purposes of paragraph (2) above, any question whether a person is connected with another shall be determined in accordance with section 839 of the Income and Corporation Taxes Act 1988(1) and “undertaking” and “group undertaking” have the same meaning as in section 259 of the Companies Act 1985(2).

(5) Where this regulation applies, goods or services shall, to the extent that they have not already been treated as supplied by virtue of the regulations specified in paragraph (1) above (or any provision of the Act or other regulations made under the Act), and to the extent that they have been provided, be treated as separately and successively supplied—

- (a) in the case of supplies the provision of which commenced on or before 1st October 2003, at the end of the period of twelve months after that date;

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(1) 1988 c. 1.

(2) 1985 c. 6; section 259 was inserted by section 22 of the Companies Act 1989 (c. 40).

- (b) in the case of supplies the provision of which commenced after 1st October 2003, at the end of the period of twelve months after the supplies commenced; or
- (c) where the Commissioners are satisfied that each category of supply has been adequately identified, on such other period end date nominated for each category and falling within the period specified in sub-paragraph (5)(a) or (b) above as may be notified by the taxable person to the Commissioners in writing,

and thereafter at the end of each subsequent period of twelve months.

(6) But where the person making the supply, within the period of six months after the time applicable under paragraph (5) above either—

- (a) issues a VAT invoice in respect of it, or
- (b) receives a payment in respect of it,

the supply shall, to the extent that it has not been treated as taking place at some other time by virtue of the regulations specified in paragraph (1) above (or any provision of the Act or other regulations made under the Act), be treated as taking place at the time the invoice is issued or the payment is received, unless the person making the supply has notified the Commissioners in writing that he elects not to avail himself of this paragraph.

(7) The Commissioners may, at the request of a taxable person, allow paragraph (6) above to apply in relation to supplies made by him (or such supplies as may be specified) as if for the period of six months there were substituted such other period as may be prescribed by them.

(8) A taxable person may after the start of any period to be established under paragraph (5) above—

- (a) in relation to some or all of his supplies, and
- (b) where the Commissioners give their approval,

select an alternative period end date falling before the end of that period (which end date but for this paragraph would be established under paragraph (5) above), from which date subsequent periods of twelve months will end.

(9) A date selected and approved under paragraph (8) above shall be the date which establishes the end of the taxable person's current period.

(10) For the purposes of paragraph (8) above, a reference to a period end established under paragraph (5) above includes a reference to a period end established by an earlier application of paragraph (8) above.

(11) Where the supply is one of the leasing of assets, and that leasing depends on one or more other leases of those assets (the superior lease or leases), then the reference in paragraph (2) above to the person making the supply includes a reference to any lessor of a superior lease.

(12) For the purposes of paragraph (11) above, a reference to the leasing of assets includes a reference to any letting, hiring or rental of assets however described, and "lessor" shall be construed accordingly.

(13) For the purposes of this regulation, goods or services are provided at the time when and to the extent that, the recipient receives the benefit of them.

(14) Where this regulation applies, the regulations specified in paragraph (1) above shall not apply to the extent that supplies have been treated as having taken place under this regulation."