

**2004 No.3148**

**VALUE ADDED TAX**

**The Value Added Tax (Place of Supply of Goods) Order 2004**

*Made* - - - - - *30th November 2004*  
*Laid before the House of Commons* *2nd December 2004*  
*Coming into force* - - - *1st January 2005*

The Treasury, in exercise of the powers conferred on them by sections 7(11) and 9A of the Value Added Tax Act 1994(a), hereby make the following Order:

**PART 1**  
**PRELIMINARY**

**Citation and commencement**

**1.**—(1) This Order may be cited as the Value Added Tax (Place of Supply of Goods) Order 2004 and shall come into force on 1st January 2005.

(2) Part 3 (supplies of gas and electricity) has effect in relation to supplies made on or after 1st January 2005.

**Rules for determining place of supply**

**2.** The rules for determining where a supply of goods is made shall be varied in accordance with the following provisions of this Order.

**Revocation**

**3.** The Value Added Tax (Place of Supply of Goods) Order 1992(b) is hereby revoked.

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(a) 1994 c. 23; section 9A was inserted by section 21 of the Finance Act 2004 (c. 12).  
(b) S.I. 1992/3283.

## PART 2

### GOODS SUPPLIED ON BOARD SHIPS, AIRCRAFT AND TRAINS

#### Interpretation of Part 2

4. In this Part—

“Community transport” means the transportation of passengers between the point of departure and the point of arrival in the course of which—

- (a) there is a stop in a member State other than that in which lies the point of departure; and
- (b) there is no stop in a country which is not a member State;

“homeward stage” means that part of the return trip which ends at the first stop in the country in which the return trip commenced and which involves only such other stops, if any, as are in member States where there have previously been stops (in the course of that return trip);

“pleasure cruise” includes a cruise wholly or partly for the purposes of education or training;

“point of arrival” means the last place in the member States where it is expected that passengers who have commenced their journey at a place in a member State will terminate their journey or, where there is to follow a leg which will involve a stop in a place outside the member States, the last such place before such leg is undertaken;

“point of departure” means the first place in the member States where it is expected that passengers will commence their journey or, where there has been a leg which involved a stop in a place outside the member States, the first such place after such leg has been completed;

“return trip” means any journey involving two or more countries where it is expected that the means of transport will stop in the country from which it originally departed.

5. Subject to articles 6 to 8, where goods are supplied on board a ship, aircraft or train in the course of a Community transport, those goods shall be treated as supplied at the point of departure.

6. Subject to articles 7 and 8, any goods supplied on board a ship or aircraft in the course of a Community transport for consumption on board shall be treated as supplied outside the member States.

7. For the purposes of this Part—

- (a) part of transportation where it is expected that a different means of transport will be used shall be treated as separate transportation; and
- (b) the homeward stage of a return trip shall be treated as separate transportation.

8. This Part shall not apply to any goods supplied as part of a pleasure cruise.

## PART 3

### SUPPLIES OF GAS AND ELECTRICITY

#### Interpretation of Part 3

9. In this Part—

- (a) “the Act” means the Value Added Tax Act 1994;
- (b) “dealer” means a person whose principal activity in respect of receiving supplies of relevant goods is the re-selling of those goods and whose own consumption of those goods is negligible;
- (c) “relevant goods” means gas supplied through the natural gas distribution network, and electricity;

- (d) “re-selling” for the purposes of article 9(b) does not include—
  - (i) re-sale as part of a single composite supply of other goods or services, or
  - (ii) re-sale as a supply that falls to be disregarded under section 43(1)(a) of the Act where relevant goods are to be effectively used and consumed by a member of a VAT group;
- (e) “VAT group” means any bodies corporate treated under sections 43A to 43C of the Act as members of a group.

**10.** Relevant goods supplied to a dealer shall be treated as supplied at the place where that dealer has established his business or has a fixed establishment to which the relevant goods are supplied or, in the absence of such a place of business or fixed establishment, the place where he has his permanent address or usually resides.

**11.** Subject to articles 12 and 13, supplies of relevant goods not falling within article 10 above shall be treated as supplied at—

- (a) the place where the recipient of the supply has effective use and consumption of the goods, or
- (b) in relation to any part of the goods not consumed, the place where the recipient of the supply has established his business or has a fixed establishment to which the goods are supplied, or in the absence of such place of business or fixed establishment, the place where he has his permanent address or usually resides.

**12.** Where the recipient of supplies of relevant goods supplies those goods as part of a single composite supply of other goods or services, that constitutes effective use and consumption by him of the goods for the purposes of article 11(a).

**13.** The supply of relevant goods to a member of a VAT group, where the goods are effectively used and consumed by a member of that group, shall constitute effective use and consumption of the goods for the purposes of article 11(a).

**14.** For the purposes of section 9A of the Act (reverse charge on gas and electricity supplied by persons outside the United Kingdom) a person is outside the United Kingdom if he has established his business or has a fixed establishment outside the United Kingdom or, in the absence of such a place of business or fixed establishment, the place where he has his permanent address or usually resides is outside the United Kingdom.

30th November 2004

*Jim Murphy*  
*Nick Ainger*  
Two of the Lords Commissioners of Her Majesty’s Treasury

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order, which comes into force on 1st January 2005, forms part of the implementation of Council Directive 2003/92/EC (OJ L260, 11.10.03 p.8). It is part of a package of new measures which apply to supplies of natural gas and electricity. A transposition note in respect of this implementation is available at [www.hmce.gov.uk](http://www.hmce.gov.uk).

Part 1 of the Order varies the rules for determining the place where a supply of goods is made and applies Part 3 of the Order (supplies of gas and electricity) to any supplies made on or after 1 January 2005. It also revokes The Value Added Tax (Place of Supply of Goods) Order 1992 (S.I. 1992/3283).

### **Goods supplied on board ships, aircraft and trains**

Part 2 of the Order re-enacts, with minor amendments, the provisions of The Value Added Tax (Place of Supply of Goods) Order 1992. It applies to goods supplied on board ships, aircraft and trains engaged in the intra-Community transportation of passengers and provides for the place of supply of those goods to be the member State in which the transportation commenced. However, goods supplied for consumption on board ships and aircraft are treated as supplied outside the Community.

### **Supplies of gas and electricity**

Article 9 provides for the interpretation of Part 3 of the Order.

Article 10 applies to supplies of gas supplied through the natural gas distribution network and of electricity where they are made to a dealer. It makes the place of supply the place where the dealer has established his business or is domiciled.

Article 11 applies where supplies of the same type are made to somebody other than a dealer. It makes the place of supply the place where the gas or electricity is effectively used and consumed. Where any part of the natural gas or electricity is not so used and consumed, the place of supply is the place where the customer has established his business or is domiciled.

Article 12 treats a person who combines a supply of gas or electricity with other goods or services for the purposes of reselling them, as having used and consumed that gas and electricity. This is to ensure that Article 11 applies as intended at the final stage of a supply chain in circumstances where the nature of the supply changes such that they are no longer relevant goods.

Article 13 provides that a supply of gas or electricity to a member of a VAT group is a supply for effective use and consumption even where the gas or electricity is to be so used or consumed by another member of that VAT group. This is to ensure that Article 11 still has effect where the supply between the group members, to which Article 11 would otherwise apply, is disregarded under section 43(1)(a) of the Value Added Tax Act 1994.

Article 14 defines a person who is outside the United Kingdom for the purposes of section 9A of the Value Added Tax Act 1994.

A full regulatory impact assessment of the effect that this instrument will have on the costs of businesses is available at [www.hmce.gov.uk](http://www.hmce.gov.uk).

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