

2004 No. 778

VALUE ADDED TAX

The Value Added Tax (Buildings and Land) Order 2004

Approved by the House of Commons

<i>Made</i>	- - - -	<i>17th March 2004</i>
<i>Laid before the House of Commons</i>		<i>17th March 2004</i>
<i>Coming into force</i>	- -	<i>18th March 2004</i>

The Treasury, in exercise of the powers conferred upon them by section 51(2) of the Value Added Tax Act 1994(a) hereby make the following Order:

1. This Order may be cited as the Value Added Tax (Buildings and Land) Order 2004 and shall come into force on 18th March 2004 in respect of supplies made on or after that date.

2. Schedule 10(b) to the Value Added Tax Act 1994 shall be amended in accordance with the following articles.

3. In paragraph 2(3AA)(b)(c) for “sub-paragraph (3AAA)” substitute “sub-paragraphs (3AAA) or (3B)”.

4. In paragraph 2, before sub-paragraph (4) insert—

“(3B) Where a supply is made by a person other than the person who made the grant giving rise to it, then for the purposes of sub-paragraph (3AA) above—

- (a) the person making the supply shall be treated as the person who made the grant that gave rise to that supply; and
- (b) the grant shall be treated as made at the time when that person made his first supply arising from the grant.”.

5.—(1) Paragraph 3A(d) is amended as follows.

(2) For “and (3AAA)”, wherever occurring, substitute “, (3AAA) and (3B)”.

(3) After sub-paragraph (2) insert—

“(2A) For the purposes of paragraph 2(3AA) where—

- (a) by virtue of paragraph 2(3B), a person is treated as making the grant of the land giving rise to a supply made by him; and
- (b) the grant is not a grant made by a developer of that land within sub-paragraph (2) above only because it is treated as made at a time falling after the expiry of the

(a) 1994 c.23.

(b) Relevant amendments to Schedule 10 were made by section 37 of the Finance Act 1997 (c. 16) and S.I. 1999/593

(c) Sub-paragraph (3AA) was inserted by section 37(2) of the Finance Act 1997 (c. 16) and amended by S.I. 1999/593.

(d) Paragraph 3A was inserted by section 37(3) of the Finance Act 1997 (c. 16) and amended by S.I. 1999/593.

period for adjustments of input tax by virtue of regulations made under section 26(3) and (4),

the grant shall be treated as having been made by a developer of the land to which the grant relates.”.

(4) In sub-paragraph (5), omit the word “or” at the end of paragraph (c) and after that paragraph insert—

“(cc) the provision of any consideration for the acquisition by any person of any shares or other securities described in paragraph (c) above; or”.

John Heppell

Nick Ainger

17th March 2004

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 18 March 2004, amends Schedule 10 to the Value Added Tax Act 1994 (“the Act”). It prevents deferral or absolute savings of Value Added Tax in relation to land or buildings (“property”) occupied by persons who make both taxable and exempt supplies or only exempt supplies or otherwise use property for non-business purposes.

Paragraph 2(1) of Schedule 10 to the Act allows taxpayers to elect to charge VAT on supplies of property that would otherwise be exempt from VAT. Electing to waive exemption allows taxpayers to recover input tax that is attributable to supplies that become taxable as a result.

An election to waive exemption has no effect in relation to certain supplies of property described in the Act. Paragraph 2(3AA) of Schedule 10 to the Act (paragraph 2(3AA) was inserted by section 37(2) of the Finance Act 1997 (c. 16) and amended by S.I. 1999/593) describes some of those supplies. The supplies to which that paragraph applies, relate to property that, in the hands of the person making the supply, is a capital item for the purposes of regulations made under section 26(3) and (4) of the Act (the regulations are regulations 112-116 of the Value Added Tax Regulations 1995 S.I. 1995/2518 amended by S.I. 1995/3147, 1997/1086, 1997/1614, 1999/3114). It will cause a supply to fall for VAT exemption, notwithstanding an election to waive exemption, if the supply arises from a grant made by that person and he (or the person who financed his development of that property) intended or expected that it will be occupied other than wholly or mainly for making taxable supplies.

Article 1 provides for the commencement of this Order and that it has effect in relation to supplies made on or after 18th March 2004.

Article 3 makes a consequential amendment to paragraph 2(3AA) of Schedule 10 to the Act arising from the insertion of paragraph 2(3B) by article 4 of this Order.

Article 4 inserts new paragraph 2(3B) of Schedule 10 to the Act. Paragraph 2(3B) provides that when someone other than the person who made the grant, makes a supply of land that arises from that grant then (for the purposes of paragraph 2(3AA)) that person is treated as making that grant at the time of their first supply arising from it.

Article 5(2) makes consequential amendments to paragraph 3A of Schedule 10 to the Act arising from the insertion of paragraph 2(3B) (paragraph 3A was inserted by section 37(2) of the Finance Act 1997 (c. 16) and amended by S.I. 1999/593).

Article 5(3) inserts paragraph 3A(2A) of Schedule 10 to the Act. It applies so that a grant that is treated as made by virtue of paragraph 2(3B), and which fails to be grant made by a developer of land by virtue of paragraph 3A(2) only because it occurs after the time for making adjustments to input tax required by regulations made under section 26(3) and (4) of the Act will, nevertheless, be treated as a grant made by a developer of land.

Article 5(4) inserts a new paragraph (cc) to the non-exhaustive list of activities in paragraph 3A(5) of Schedule 10 to the Act. These activities constitute the provision of funds for the development of land. The provision of any consideration for the acquisition of shares or securities that finance a development of land is now expressly stipulated to be such an activity.

A full regulatory impact assessment has not been produced for this instrument as it has negligible impact on the costs of business, charities and voluntary bodies.

STATUTORY INSTRUMENTS

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The Value Added Tax (Buildings and Land) Order 2004

£3.00

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under the authority and superintendence of Carol Tullo, Controller of Her Majesty's
Stationery Office and Queen's Printer of Acts of Parliament.

E0668 5/2004 140668T 19585

ISBN 0-11-049249-8



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