
STATUTORY INSTRUMENTS

2008 No. 1146

The Value Added Tax (Buildings and Land) Order 2008

Citation, commencement and effect

1.—(1) This Order may be cited as the Value Added Tax (Buildings and Land) Order 2008 and comes into force on 1st June 2008.

(2) This Order, apart from article 4, has effect in relation to supplies made on or after 1st June 2008.

(3) Article 4 has effect in relation to supplies made on or after 1st June 2020.

(4) Paragraphs (2) and (3) are subject to Schedule 2 (transitional provisions and savings).

Rewrite of Schedule 10 to VATA 1994

2. For Schedule 10 to VATA 1994(1) (buildings and land) substitute—

“SCHEDULE 10

Section 51

BUILDINGS AND LAND

PART 1

THE OPTION TO TAX LAND

Introduction

Overview of the option to tax

1.—(1) This Part of the Schedule makes provision for a person to opt to tax any land.

(2) The effect of the option to tax is dealt with in paragraph 2 (exempt supplies become taxable), as read with paragraph 3.

(3) Grants are excluded from the effect of paragraph 2 by—

- (a) paragraph 5 (dwellings designed or adapted, and intended for use, as dwelling etc),
- (b) paragraph 6 (conversion of buildings for use as dwelling etc),
- (c) paragraph 7 (charities),
- (d) paragraph 8 (residential caravans),
- (e) paragraph 9 (residential houseboats),
- (f) paragraph 10 (relevant housing associations), and

(1) Section 179 of the Finance Act 2006 (c. 25) provides that in that Act “VATA 1994” means the Value Added Tax Act 1994 (c. 23). Schedule 10 was amended by the Finance Act 1995 (c. 4), section 26(2) and (3); the Finance Act 1997 (c. 16) sections 35(2), 36(1), 37(2) and (3) and Schedule 18, Part 4(2); S.I. 1994/3013, 1995/279, 1997/51, 1999/593, 2002/1102 and 2004/778.

- (g) paragraph 11 (grant to individual for construction of dwelling).
- (4) Paragraphs 12 to 17 (anti-avoidance: developers of land etc) provide for certain supplies to which any grant gives rise to be excluded from the effect of paragraph 2.
- (5) Paragraphs 18 to 30 deal with—
 - (a) the scope of the option to tax,
 - (b) the day from which the option to tax has effect,
 - (c) notification requirements,
 - (d) elections to opt to tax land subsequently acquired,
 - (e) the revocation of the option,
 - (f) the effect of the option to tax in relation to new buildings, and
 - (g) requirements for prior permission in the case of exempt grants made before the exercise of an option to tax.
- (6) Paragraphs 31 to 34 deal with definitions which apply for the purposes of this Part, as well as other supplemental matters.

The option to tax

Effect of the option to tax: exempt supplies become taxable

- 2.—(1) This paragraph applies if—
 - (a) a person exercises the option to tax any land under this Part of this Schedule, and
 - (b) a grant is made in relation to the land at any time when the option to tax it has effect.
- (2) If the grant is made—
 - (a) by the person exercising that option, or
 - (b) by a relevant associate (if that person is a body corporate),
 the grant does not fall within Group 1 of Schedule 9 (exemptions for land).
- (3) For the meaning of “relevant associate”, see paragraph 3.

Meaning of “relevant associate”

- 3.—(1) This paragraph explains for the purposes of this Part of this Schedule what is meant by a “relevant associate” in a case where a body corporate (“the opter”) exercises an option to tax in relation to any building or land.
- (2) A body corporate is a relevant associate of the opter if under sections 43A to 43D(2) (groups of companies) the body corporate—
 - (a) was treated as a member of the same group as the opter at the time when the option first had effect,
 - (b) has been so treated at any later time when the opter had a relevant interest in the building or land, or

(2) Section 43A was inserted by the Finance Act 1999 (c. 16), section 16 and Schedule 2, paragraph 2; section 43AA was inserted by the Finance Act 2004 (c. 12), section 20(1); sections 43B and 43C were inserted by the Finance Act 1999 (c. 16), section 16 and Schedule 2, paragraph 2 and amended by the Finance Act 2004 (c. 12), section 20(4); section 43D was inserted by the Finance Act 2004 (c. 12), section 20(2).

- (c) has been treated as a member of the same group as a body corporate within paragraph (a) or (b) of this sub-paragraph at a time when that body had a relevant interest in the building or land.
- (3) But a body corporate ceases to be a relevant associate of the opter in relation to the building or land in the following circumstances.
- (4) The body corporate ceases to be a relevant associate of the opter in relation to the building or land at the time when all of the following conditions are first met—
 - (a) the body corporate has no relevant interest in the building or land and no part of any consideration payable in respect of any disposal by the body corporate of such an interest is unpaid,
 - (b) the body corporate or the opter is not treated under sections 43A to 43D as a member of the group mentioned above, and
 - (c) the body corporate is not connected with any person who has a relevant interest in the building or land where that person is the opter or another relevant associate of the opter.
- (5) The body corporate also ceases to be a relevant associate of the opter in relation to the building or land if the body corporate—
 - (a) meets conditions specified in a public notice (see paragraph 4), or
 - (b) gets the prior permission of the Commissioners⁽³⁾ (also, see that paragraph).

The time when the body corporate ceases to be a relevant associate of the opter is determined in accordance with that paragraph.

(6) In this paragraph “relevant interest in the building or land” means an interest in, right over or licence to occupy the building or land (or any part of it).

Permission for a body corporate to cease to be a relevant associate of the opter

- 4.—(1) This paragraph applies for the purposes of paragraph 3(5) in relation to a body corporate which has been a relevant associate of the opter.
- (2) If the conditions specified in the public notice under paragraph 3(5)(a) are met in relation to the body corporate, it ceases to be a relevant associate of the opter only if notification of those conditions being met is given to the Commissioners.
 - (3) The notification must—
 - (a) be made in a form specified in a public notice,
 - (b) state the day from which the body corporate is to cease to be a relevant associate of the opter (which may not be before the day on which the notification is given),
 - (c) contain a statement by the body corporate certifying that, on that day, the conditions specified in the public notice under paragraph 3(5)(a) are met in relation to it, and
 - (d) contain other information specified in a public notice.
 - (4) An application for the prior permission of the Commissioners must—
 - (a) be made in a form specified in a public notice,
 - (b) contain a statement by the body corporate certifying which (if any) of the conditions specified in the public notice under paragraph 3(5)(a) are met in relation to it, and

(3) Section 96(1) of the Value Added Tax Act 1994 (c. 23) defines “the Commissioners” as meaning the Commissioners of Customs and Excise. The functions of the Commissioners of Customs and Excise were transferred to the Commissioners for Her Majesty’s Revenue and Customs by section 5(2) of the Commissioners for Revenue and Customs Act 2005 (c. 11). Section 50 of that Act provides that a reference to the Commissioners of Customs and Excise shall be taken as a reference to the Commissioners for Her Majesty’s Revenue and Customs.

- (c) contain other information specified in a public notice.
- (5) If the body corporate gets the prior permission of the Commissioners, it ceases to be a relevant associate of the opter from—
 - (a) the day on which the Commissioners give their permission, or
 - (b) such earlier or later day as they specify in their permission.
- (6) The Commissioners may specify an earlier day only if—
 - (a) the body corporate has purported to give a notification of its ceasing to be a relevant associate of the opter,
 - (b) the conditions specified in the public notice are not, in the event, met in relation to the body corporate, and
 - (c) the Commissioners consider that the grounds on which those conditions are not so met are insignificant.
- (7) The day specified may be the day from which the body corporate would have ceased to be a relevant associate of the opter if those conditions had been so met.
- (8) The Commissioners may specify conditions subject to which their permission is given and, if any of those conditions are broken, they may treat the application as if it had not been made.

Exclusions from effect of option to tax

Dwellings designed or adapted, and intended for use, as dwelling etc

- 5.—**(1) An option to tax has no effect in relation to any grant in relation to a building or part of a building if the building or part of the building is designed or adapted, and is intended, for use—
- (a) as a dwelling or number of dwellings, or
 - (b) solely for a relevant residential purpose.
- (2) In relation to the expression “relevant residential purpose”, see the certification requirement imposed as a result of the application of Note (12) of Group 5 of Schedule 8(4) by paragraph 33 of this Schedule.

Conversion of buildings for use as dwelling etc

- 6.—**(1) An option to tax has no effect in relation to any grant made to a person (“the recipient”) in relation to a building or part of a building if the recipient certifies that the building or part of the building is intended for use—
- (a) as a dwelling or number of dwellings, or
 - (b) solely for a relevant residential purpose.
- (2) The recipient must give the certificate to the person making the grant (“the seller”)—
- (a) within the period specified in a public notice, or
 - (b) if the seller agrees, at any later time before the seller makes a supply to which the grant gives rise.
- (3) The recipient may give the certificate to the seller only if the recipient—
- (a) intends to use the building or part of the building as mentioned above,
 - (b) has the relevant conversion intention, or
 - (c) is a relevant intermediary.

- (4) The recipient is a relevant intermediary if—
 - (a) the recipient intends to dispose of the relevant interest to another person, and
 - (b) that other person gives the recipient a certificate stating that the other person has the relevant conversion intention or the relevant disposal intention.
- (5) For this purpose a person has the relevant disposal intention if—
 - (a) the person intends to dispose of the relevant interest to a third person, and
 - (b) the third person gives a qualifying certificate to the person.
- (6) A person (P) gives a qualifying certificate to another if P gives a certificate to that other person stating that P has the relevant conversion intention or intends to dispose of the relevant interest to another person (Q) who has given a certificate to P stating—
 - (a) that Q has the relevant conversion intention, or
 - (b) that Q intends to dispose of the relevant interest to another person who has given a qualifying certificate to Q,

and so on (in the case of further disposals of the relevant interest).

- (7) In this paragraph—

“the relevant conversion intention”, in relation to a person, means an intention of the person to convert the building or part of the building with a view to its being used as mentioned above, and

“the relevant interest”, in relation to any interest in the building or part of the building to which the grant gives rise, means the whole of that interest.

(8) For the purposes of this paragraph a building or part of a building is not to be regarded as intended for use as a dwelling or number of dwellings at any time if there is intended to be a period before that time during which it will not be so used (but disregarding use for incidental or other minor purposes).

(9) For the purposes of this paragraph the reference to use solely for a relevant residential purpose is to be read without regard to Note (12) of Group 5 of Schedule 8 (which would otherwise apply as a result of paragraph 33 of this Schedule).

- (10) The Commissioners may publish a notice for the purposes of this paragraph—

- (a) preventing a person from giving any certificate under this paragraph unless the person meets conditions specified in the notice,
- (b) specifying the form in which any certificate under this paragraph must be made, and
- (c) specifying any information which any certificate under this paragraph must contain.

Charities

7.—(1) An option to tax has no effect in relation to any grant made to a person in relation to a building or part of a building intended by the person for use—

- (a) solely for a relevant charitable purpose, but
- (b) not as an office.

(2) In relation to the expression “relevant charitable purpose”, see the certification requirement imposed as a result of the application of Note (12) of Group 5 of Schedule 8 by paragraph 33 of this Schedule.

Residential caravans

8.—(1) An option to tax has no effect in relation to any grant made in relation to a pitch for a residential caravan.

(2) A caravan is not a residential caravan if residence in it throughout the year is prevented by the terms of a covenant, statutory planning consent or similar permission.

Residential houseboats

9.—(1) An option to tax has no effect in relation to any grant made in relation to facilities for the mooring of a residential houseboat.

“Mooring” includes anchoring or berthing.

(2) In this paragraph—

- (a) “houseboat” means a houseboat within the meaning of Group 9 of Schedule 8, and
- (b) a houseboat is not a residential houseboat if residence in it throughout the year is prevented by the terms of a covenant, statutory planning consent or similar permission.

Relevant housing associations

10.—(1) An option to tax has no effect in relation to any grant made to a relevant housing association in relation to any land if the association certifies that the land is to be used (after any necessary demolition work) for the construction of a building or buildings intended for use—

- (a) as a dwelling or number of dwellings, or
 - (b) solely for a relevant residential purpose.
- (2) The association must give the certificate to the person making the grant (“the seller”)—
- (a) within the period specified in a public notice, or
 - (b) if the seller agrees, at any later time before the seller makes a supply to which the grant gives rise.
- (3) In this paragraph “relevant housing association” means—
- (a) a registered social landlord within the meaning of Part 1 of the Housing Act 1996⁽⁵⁾ (English or Welsh registered social landlords),
 - (b) a registered social landlord within the meaning of the Housing (Scotland) Act 2001⁽⁶⁾ (Scottish registered social landlords), or
 - (c) a registered housing association within the meaning of Part 2 of the Housing (Northern Ireland) Order 1992⁽⁷⁾ (Northern Irish registered housing associations).
- (4) For the purposes of this paragraph the reference to use solely for a relevant residential purpose is to be read without regard to Note (12) of Group 5 of Schedule 8⁽⁸⁾ (which would otherwise apply as a result of paragraph 33 of this Schedule).
- (5) The Commissioners may publish a notice for the purposes of this paragraph—
- (a) specifying the form in which any certificate under this paragraph must be made, and
 - (b) specifying any information which any certificate under this paragraph must contain.

(5) 1996 c. 52.

(6) 2001 asp 10; section 111 of that Act provides that a registered social landlord means a body registered in the register maintained under section 57 of that Act.

(7) S.I. 1992/1725 (N.I.15).

(8) Group 5 of Schedule 8 was substituted by S.I. 1995/280.

Grant to individual for construction of dwelling

11. An option to tax has no effect in relation to any grant made to an individual if—
- (a) the land is to be used for the construction of a building intended for use by the individual as a dwelling, and
 - (b) the construction is not carried out in the course or furtherance of a business carried on by the individual.

Anti-avoidance

Developers of exempt land

- 12.—(1) A supply is not, as a result of an option to tax, a taxable supply if—
- (a) the grant giving rise to the supply was made by a person (“the grantor”) who was a developer of the land, and
 - (b) the exempt land test is met.
- (2) The exempt land test is met if, at the time when the grant was made (or treated for the purposes of this paragraph as made), the relevant person intended or expected that the land—
- (a) would become exempt land (whether immediately or eventually and whether or not as a result of the grant), or
 - (b) would continue, for a period at least, to be exempt land.
- (3) “The relevant person” means—
- (a) the grantor, or
 - (b) a development financier.
- (4) For the meaning of a development financier, see paragraph 14.
- (5) For the meaning of “exempt land”, see paragraphs 15 and 16.
- (6) If a supply is made by a person other than the person who made the grant giving rise to it—
- (a) the person making the supply is treated for the purposes of this paragraph as the person who made the grant giving rise to it, and
 - (b) the grant is treated for the purposes of this paragraph as made at the time when that person made the first supply arising from the grant.
- (7) For a special rule in the case of a grant made on or after 19th March 1997 and before 10th March 1999, see paragraph 17.
- (8) Nothing in this paragraph applies in relation to a supply arising from—
- (a) a grant made before 26th November 1996, or
 - (b) a grant made on or after that date but before 30th November 1999, in pursuance of a written agreement entered into before 26th November 1996, on terms which (as terms for which provision was made by that agreement) were fixed before 26th November 1996.

Meaning of grants made by a developer

- 13.—(1) This paragraph applies for the purposes of paragraph 12.
- (2) A grant made by any person (“the grantor”) in relation to any land is made by a developer of the land if—

- (a) the land is, or was intended or expected to be, a relevant capital item (see sub-paragraphs (3) to (5)), and
 - (b) the grant is made at an eligible time as respects that capital item (see sub-paragraph (6)).
- (3) The land is a relevant capital item if—
- (a) the land, or
 - (b) the building or part of a building on the land,
- is a capital item in relation to the grantor.
- (4) The land was intended or expected to be a relevant capital item if the grantor, or a development financier, intended or expected that—
- (a) the land, or
 - (b) a building or part of a building on, or to be constructed on, the land,
- would become a capital item in relation to the grantor or any relevant transferee.
- (5) A person is a relevant transferee if the person is someone to whom the land, building or part of a building was to be transferred—
- (a) in the course of a supply, or
 - (b) in the course of a transfer of a business or part of a business as a going concern.
- (6) A grant is made at an eligible time as respects a capital item if it is made before the end of the period provided in the relevant regulations for the making of adjustments relating to the deduction of input tax as respects the capital item.
- (7) But if—
- (a) a person other than the grantor is treated by paragraph 12(6) as making the grant of the land, and
 - (b) the grant is consequently treated as made at what would otherwise be an ineligible time,
- the grant is treated instead as if were not made at an ineligible time.
- (8) In this paragraph a “capital item”, in relation to any person, means an asset falling, in relation to the person, to be treated as a capital item for the purposes of the relevant regulations.
- (9) In this paragraph “the relevant regulations”, as respects any item, means regulations under section 26(3) and (4) providing for adjustments relating to the deduction of input tax to be made as respects that item.

Meaning of “development financier”

- 14.—**(1) This paragraph explains for the purposes of paragraphs 12 to 17 what is meant, in relation to the grantor of any land, by a development financier.
- (2) A “development financier” means a person who—
- (a) has provided finance for the grantor’s development of the land, or
 - (b) has entered into any arrangement to provide finance for the grantor’s development of the land,
- with the intention or in the expectation that the land will become exempt land or continue (for a period at least) to be exempt land.
- (3) For the purposes of this paragraph references to finance being provided for the grantor’s development of the land are to doing (directly or indirectly) any one or more of the following—
- (a) providing funds for meeting the whole or any part of the cost of the grantor’s development of the land,

- (b) procuring the provision of such funds by another,
 - (c) providing funds for discharging (in whole or in part) any liability that has been or may be incurred by any person for or in connection with the raising of funds to meet the cost of the grantor's development of the land, and
 - (d) procuring that any such liability is or will be discharged (in whole or in part) by another.
- (4) For the purposes of this paragraph references to providing funds for a particular purpose are to—
- (a) the making of a loan of funds that are or are to be used for that purpose,
 - (b) the provision of any guarantee or other security in relation to such a loan,
 - (c) the provision of any of the consideration for the issue of any shares or other securities issued wholly or partly for raising those funds,
 - (d) the provision of any consideration for the acquisition by any person of any shares or other securities issued wholly or partly for raising those funds, or
 - (e) any other transfer of assets or value as a consequence of which any of those funds are made available for that purpose.
- (5) For the purposes of this paragraph references to the grantor's development of the land are to the acquisition by the grantor of the asset which—
- (a) consists in the land or a building or part of a building on the land, and
 - (b) is, or (as the case may be) was intended or expected to be, a relevant capital item in relation to the grantor (within the meaning of paragraph 13).
- (6) For this purpose the reference to the acquisition of the asset includes—
- (a) its construction or reconstruction, and
 - (b) the carrying out in relation to it of any other works by reference to which it is, or was intended or expected to be, a relevant capital item (within the meaning of paragraph 13).
- (7) In this paragraph "arrangement" means any agreement, arrangement or understanding (whether or not legally enforceable).

Meaning of "exempt land": basic definition

15.—(1) This paragraph explains for the purposes of paragraphs 12 to 17 what is meant by exempt land.

(2) Land is exempt land if, at any time before the end of the relevant adjustment period as respects that land—

- (a) a relevant person is in occupation of the land, and
- (b) that occupation is not wholly, or substantially wholly, for eligible purposes.

(3) Each of the following is a relevant person—

- (a) the grantor,
- (b) a person connected with the grantor,
- (c) a development financier, and
- (d) a person connected with a development financier.

(4) The relevant adjustment period as respects any land is the period provided in the relevant regulations (within the meaning of paragraph 13) for the making of adjustments relating to the deduction of input tax as respects the land.

(5) For the purposes of this paragraph any question whether a person’s occupation of any land is “wholly, or substantially wholly,” for eligible purposes is to be decided by reference to criteria specified in a public notice.

Meaning of “exempt land”: eligible purposes

16.—(1) This paragraph explains what is meant for the purposes of paragraph 15 by a person occupying land for eligible purposes.

(2) A person cannot occupy land at any time for eligible purposes unless the person is a taxable person at that time (but this rule is qualified by sub-paragraphs (5) and (6)).

(3) A taxable person occupies land for eligible purposes so far as the occupation is for the purpose of making creditable supplies (but this rule is qualified by sub-paragraphs (5) to (7)).

(4) “Creditable supplies” means supplies which—

- (a) are or are to be made in the course or furtherance of a business carried on by the person, and
- (b) are supplies of such a description that the person would be entitled to a credit for any input tax wholly attributable to those supplies.

(5) Any occupation of land by a body to which section 33(9) applies (local authorities etc) is occupation of the land for eligible purposes so far as the occupation is for purposes other than those of a business carried on by the body.

(6) Any occupation of land by a Government department (within the meaning of section 41(10)) is occupation of the land for eligible purposes.

(7) Any occupation of land by a person is occupation of the land for eligible purposes in so far as the occupation arises merely by reference to any automatic teller machine of the person which is fixed to the land.

(8) If a person occupying land—

- (a) holds the land in order to put it to use for particular purposes, and
- (b) does not occupy it for any other purpose,

the person is treated for the purposes of this paragraph, for so long as the conditions in paragraphs (a) and (b) continue to be met, as occupying the land for the purposes for which the person proposes to use it.

(9) If land is in the occupation of a person (“A”) who—

- (a) is not a taxable person, but
- (b) is a person whose supplies are treated for the purposes of this Act as made by another person (“B”) who is a taxable person,

the land is treated for the purposes of this paragraph as if A and B were a single taxable person.

(10) For the purposes of this paragraph a person occupies land—

- (a) whether the person occupies it alone or together with one or more other persons, and
- (b) whether the person occupies all of the land or only part of it.

(9) Section 33 has been amended by the Greater London Authority Act 1999 (c. 29), section 423 and Schedule 34, Part 7; the Merchant Shipping Act 1995 (c. 21) section 314(2) and Schedule 13, paragraph 95; and the Communications Act 2003 (c. 21) section 406(1) and Schedule 17, paragraph 129(1), (2)(a) and (b).

(10) Section 41 has been amended by the Scotland Act 1998 (c. 46), section 125 and Schedule 8, paragraph 30; the Government of Wales Act 1998 (c. 38), section 125 and Schedule 12, paragraph 35; the Health Act 1999 (c. 8), section 65(1) and Schedule 4, paragraph 86; the National Health Service Reform and Health Care Professions Act 2002 (c. 17), section 6(2) and Schedule 5, paragraph 40; the Health and Social Care (Community Health and Standards) Act 2003 (c. 43), section 33(3); the Government of Wales Act 2006 (c. 32), section 160(1) and Schedule 10, paragraph 39; and S.I. 2000/90.

Paragraph 12: grants made on or after 19th March 1997 and before 10th March 1999

17.—(1) A grant in relation to land which was made—

- (a) on or after 19th March 1997, and
- (b) before 10th March 1999,

is treated for the purposes of paragraph 12 as made on 10th March 1999 if, at the time of the grant, the capital item test was met.

(2) The capital item test was met if the person making the grant, or a development financier, intended or expected that—

- (a) the land, or
- (b) a building or part of a building on, or to be constructed on, the land,

would become a capital item in relation to the grantor or any relevant transferee but it had not become such an item.

(3) For the purposes of that test “capital item” and “relevant transferee” have the meaning given by paragraph 13.

Scope of the option, its duration, notification etc

Scope of the option

18.—(1) An option to tax has effect in relation to the particular land specified in the option.

(2) If an option to tax is exercised in relation to—

- (a) a building, or
- (b) part of a building,

the option has effect in relation to the whole of the building and all the land within its curtilage.

(3) If an option to tax—

- (a) is exercised in relation to any land, but
- (b) is not exercised by reference to a building or part of a building,

the option is nonetheless taken to have effect in relation to any building which is (or is to be) constructed on the land (as well as in relation to land on which no building is constructed).

(4) For the purposes of this paragraph—

- (a) buildings linked internally or by a covered walkway, and
- (b) complexes consisting of a number of units grouped around a fully enclosed concourse,

are treated as a single building.

(5) But for those purposes—

- (a) buildings which are linked internally are not treated as a single building if the internal link is created after the buildings are completed, and
- (b) buildings which are linked by a covered walkway are not treated as a single building if the walkway starts to be constructed after the buildings are completed.

(6) In this paragraph a “building” includes—

- (a) an enlarged or extended building,
- (b) an annexe to a building, and
- (c) a planned building.

(7) In this paragraph “covered walkway” does not include a covered walkway to which the general public has reasonable access.

The day from which the option has effect

19.—(1) An option to tax has effect from—

- (a) the start of the day on which it is exercised, or
- (b) the start of any later day specified in the option.

(2) But if, when an option to tax is exercised, the person exercising the option intends to revoke it in accordance with paragraph 23 (revocation of option: the “cooling off” period), the option is treated for the purposes of this Act as if it had never been exercised.

(3) An option to tax may be revoked in accordance with paragraph 22(2) or (3) and any of paragraphs 23 to 25, but not otherwise.

(4) This paragraph needs to be read with—

- (a) paragraph 20 (requirement to notify the option), and
- (b) paragraph 29(3) (application for prior permission in the case of an exempt grant before the exercise of an option to tax).

Requirement to notify the option

20.—(1) An option to tax has effect only if—

- (a) notification of the option is given to the Commissioners⁽¹¹⁾ within the allowed time, and
- (b) that notification is given together with such information as the Commissioners may require.

(2) Notification of an option is given within the allowed time if (and only if) it is given—

- (a) before the end of the period of 30 days beginning with the day on which the option was exercised, or
- (b) before the end of such longer period beginning with that day as the Commissioners may in any particular case allow.

(3) The Commissioners may publish a notice for the purposes of this paragraph specifying—

- (a) the form in which a notification under this paragraph must be made, and
- (b) the information which a notification under this paragraph must contain.

(4) Notification of an option to tax does not need to be given under this paragraph if the option is treated as exercised in accordance with paragraph 29(3).

Real estate elections: elections to opt to tax land subsequently acquired

21.—(1) A person (E) may make an election (a “real estate election”) for this paragraph to have effect in relation to—

- (a) relevant interests in any building or land which E acquires after the election is made, and

⁽¹¹⁾ Section 96(1) of the Value Added Tax Act 1994 (c. 23) defines “the Commissioners” as meaning the Commissioners of Customs and Excise. The functions of the Commissioners of Customs and Excise were transferred to the Commissioners for Her Majesty’s Revenue and Customs by section 5(2) of the Commissioners for Revenue and Customs Act 2005 (c. 11). Section 50 of that Act provides that a reference to the Commissioners of Customs and Excise shall be taken as a reference to the Commissioners for Her Majesty’s Revenue and Customs.

- (b) relevant interests in any building or land which a body corporate acquires after the election is made at a time when the body is a relevant group member.
- (2) If E makes a real estate election—
- (a) E is treated for the purposes of this Part of this Schedule as if E had exercised an option to tax in relation to the building or land in which the relevant interest is acquired,
 - (b) that option is treated for those purposes as if it had been exercised on the day on which the acquisition was made and as if it had effect from the start of that day, and
 - (c) paragraph 20 does not apply in relation to that option,
- but this sub-paragraph is subject to sub-paragraphs (3) to (5).
- (3) A person (P) is not to be treated as a result of this paragraph as exercising an option to tax in relation to any building or land where at any time—
- (a) P, or any body corporate which was a relevant group member at that time, exercises an option to tax in relation to the building (or part of the building) or land apart from this paragraph, and
 - (b) that option has effect from a time earlier than the time from which an option to tax exercised by P in relation to the building or land would otherwise have been treated as having effect as a result of this paragraph.
- (4) A person (P) is not to be treated as a result of this paragraph as exercising an option to tax in relation to any building or land in which a relevant interest is acquired (“the later interest”) if—
- (a) the person making the acquisition in question held another relevant interest in that building or land before P makes a real estate election, and
 - (b) the person making the acquisition in question continues to hold that other relevant interest at the time when the later interest is acquired.
- (5) A person is not to be treated as a result of this paragraph as exercising an option to tax in relation to any building or land if—
- (a) a relevant interest in the building or land is acquired as mentioned in sub-paragraph (1), and
 - (b) on the relevant assumptions the case would fall within paragraph 28 (pre-option exempt grants: requirement for prior permission before exercise of option to tax).
- (6) The relevant assumptions are that—
- (a) the effect of this paragraph is disregarded, and
 - (b) the day from which the person would want the option to tax to have effect for the purposes of paragraphs 28 or 29(3) is the day on which the relevant interest is acquired.
- (7) A real estate election has effect only if—
- (a) notification of the election is given to the Commissioners before the end of the period of 30 days beginning with the day on which it was made or such longer period as the Commissioners may in any particular case allow,
 - (b) the notification is made in a form specified in a public notice, and
 - (c) the notification contains information so specified.
- (8) The Commissioners may at any time require a person who has made a real estate election to give to the Commissioners information specified in a public notice before the end of—
- (a) the period of 30 days beginning with that time, or
 - (b) such longer period as the Commissioners may in any particular case allow.
- (9) If a person (P) does not comply with that requirement—

- (a) the Commissioners may revoke the election, and
- (b) that revocation has effect in relation to relevant interests in any building or land acquired after the notified time by P or a body corporate which is a relevant group member at the time of acquisition.

“The notified time” means the time specified in a notification given by the Commissioners to P (which may not be before the notification is given).

(10) A real estate election may not be revoked except in accordance with sub-paragraph (9).

(11) If a real estate election made by a person (P) is revoked in accordance with that sub-paragraph, another real estate election may be made at any subsequent time by—

- (a) P, or
- (b) any body corporate which is a relevant group member at that subsequent time,

but only with the prior permission of the Commissioners.

(12) In this paragraph—

“relevant group member”, in relation to any person making a real estate election and any time, means a body corporate which is treated under sections 43A to 43D(12) as a member of the same group as that person at that time, and

“relevant interest”, in relation to any building or land, means any interest in, right over or licence to occupy the building or land (or any part of it).

Real estate elections: supplementary

22.—(1) This paragraph applies if, at any time (“the relevant time”), a person (E) makes a real estate election under paragraph 21.

(2) An option to tax exercised in relation to any building or part of any building before the relevant time by—

- (a) E, or
- (b) any relevant group member,

is treated for the purposes of this Part of this Schedule as if it had been revoked from the relevant time if, at that time, neither E nor any relevant group member has a relevant interest in that building.

(3) An option to tax exercised in relation to any land (otherwise than by reference to any building or part of a building) before the relevant time by—

- (a) E, or
- (b) any relevant group member,

is treated for the purposes of this Part of this Schedule as if it had been revoked in accordance with sub-paragraph (4) from the relevant time if, at that time, neither E nor any relevant group member has a relevant interest in that land, or E or any relevant group member has a relevant interest in only some of it.

(4) The option is treated for the purposes of this Part of this Schedule as if it had been revoked in relation to—

- (a) that land, or

(12) Section 43A was inserted by the Finance Act 1999 (c. 16), section 16 and Schedule 2, paragraph 2; section 43AA was inserted by the Finance Act 2004 (c. 12), section 20(1); sections 43B and 43C were inserted by the Finance Act 1999 (c. 16), section 16 and Schedule 2, paragraph 2 and amended by the Finance Act 2004 (c. 12), section 20(4); section 43D was inserted by the Finance Act 2004 (c. 12), section 20(2).

- (b) the parts of that land in which neither E nor any relevant group member has a relevant interest at the relevant time,
as the case may be.
- (5) Sub-paragraphs (2) and (3) are subject to paragraph 26 (anti-avoidance).
- (6) An option to tax (“the original option”) exercised in relation to any land (otherwise than by reference to any building or part of a building) before the relevant time by—
 - (a) E, or
 - (b) any relevant group member,may, in circumstances specified in a public notice, be converted by E into separate options to tax if, at the relevant time, E or any relevant group member has a relevant interest in the land or any part of it.
- (7) The original option is converted into separate options to tax different parcels of land comprised in that land or part.
- (8) Those separate options to tax are treated for the purposes of this Part of this Schedule—
 - (a) as if they had been exercised by E, and
 - (b) as if they had effect from the time from which the original option had effect.
- (9) But—
 - (a) those separate options to tax are treated for the purposes of paragraph 3(2) as if they had effect from the relevant time, and
 - (b) paragraph 23 (revocation of an option: the “cooling off” period) does not apply to those separate options to tax.
- (10) The notification of the election given by E must identify—
 - (a) the separate options to tax treated as exercised by E as a result of sub-paragraphs (6) to (8), and
 - (b) the different parcels of land in relation to which those separate options to tax are treated as having effect.
- (11) In this paragraph—
 - (a) any reference to any relevant group member is to a body corporate which is a relevant group member at the relevant time, and
 - (b) any reference to any relevant group member, in relation to any relevant interest in any building or land (or any part of it), is to any relevant group member regardless of whether it has exercised an option to tax the building or land (or any part of it).
- (12) In this paragraph “relevant group member” and “relevant interest”, have the meaning given by paragraph 21.
- (13) In this paragraph any reference to a real estate election under paragraph 21 does not include an election which is made under sub-paragraph (11) of that paragraph.

Revocation of option: the “cooling off” period

- 23.—**(1) An option to tax any land exercised by any person (“the taxpayer”) may be revoked with effect from the day on which it was exercised if—
- (a) the time that has lapsed since the day on which the option had effect is less than 6 months,
 - (b) the taxpayer has not used the land since the option had effect,
 - (c) no tax has become chargeable as a result of the option,

- (d) there is no relevant transfer of a business as a going concern (see sub-paragraph (2)), and
 - (e) notification of the revocation is given to the Commissioners (see sub-paragraph (3)).
- (2) There is no relevant transfer of a business as a going concern if, since the option had effect, no grant in relation to the land has been made which is treated as neither a supply of goods nor a supply of services because—
- (a) the supply is a supply of the assets of a business by the taxpayer to a person to whom the business (or part of it) is transferred as a going concern, or
 - (b) the supply is a supply of assets of a business by a person to the taxpayer to whom the business (or part of it) is so transferred.
- (3) The notification of the revocation must—
- (a) be made in a form specified in a public notice, and
 - (b) contain information so specified.
- (4) The Commissioners may publish a notice for the purposes of this paragraph providing that a revocation under this paragraph is effective only if—
- (a) the conditions specified in the notice are met in relation to the option, or
 - (b) the taxpayer gets the prior permission of the Commissioners on an application made to them before the end of the 6 month period mentioned above.
- (5) A notice under sub-paragraph (4) may—
- (a) provide that, in a case falling with paragraph (a) of that sub-paragraph, the taxpayer must certify that the conditions specified under that paragraph are met in relation to the option,
 - (b) specify the form in which an application under paragraph (b) of that sub-paragraph must be made,
 - (c) provide that an application under that paragraph must contain a statement by the taxpayer certifying which (if any) of the conditions specified under sub-paragraph (4) (a) are met in relation to the option,
 - (d) specify other information which an application under sub-paragraph (4)(a) must contain, and
 - (e) provide that the Commissioners may specify conditions subject to which their permission is given and, if any of those conditions are broken, the Commissioners may treat the revocation as if it had not been made.

Revocation of option: lapse of 6 years since having a relevant interest

24.—(1) An option to tax exercised by any person in relation to any building or land is treated for the purposes of this Part of this Schedule as revoked if the person does not have a relevant interest in the building or land throughout any continuous period of 6 years beginning at any time after the option has effect.

(2) The option to tax is treated for the purposes of this Part of this Schedule as revoked from the end of that period.

(3) In this paragraph “a relevant interest in the building or land” means an interest in, right over or licence to occupy the building or land (or any part of it).

(4) This paragraph is subject to paragraph 26 (anti-avoidance).

Revocation of option: lapse of more than 20 years since option had effect

25.—(1) An option to tax any land exercised by any person (“the taxpayer”) may be revoked if the time that has lapsed since the day on which the option had effect is more than 20 years and—

- (a) at the time when the option is to be revoked the conditions specified in a public notice are met in relation to the option (in which case, see sub-paragraphs (2) to (4)), or
- (b) the taxpayer gets the prior permission of the Commissioners (in which case, see the remaining sub-paragraphs).

(2) If the conditions specified in the public notice are met in relation to the option, the revocation has effect only if notification of the revocation is given to the Commissioners.

(3) The notification must—

- (a) be made in the specified form,
- (b) state the day from which the option is to be revoked (which may not be before the day on which the notification is given),
- (c) contain a statement by the taxpayer certifying that, on that day, the conditions specified in the public notice are met in relation to the option, and
- (d) contain other information specified in a public notice.

(4) If—

- (a) notification of the revocation of an option is given to the Commissioners on the basis that the conditions specified in the public notice were met in relation to the option, but
- (b) it is subsequently discovered that those conditions were not met in relation to the option,

the Commissioners may nonetheless treat the option as if it had been validly revoked in accordance with this paragraph.

(5) An application for the prior permission of the Commissioners must—

- (a) be made in a form specified in a public notice,
- (b) contain a statement by the taxpayer certifying which (if any) of the conditions specified in the public notice under sub-paragraph (1)(a) are met in relation to the option, and
- (c) contain other information specified in a public notice.

(6) If the taxpayer gets the prior permission of the Commissioners for the revocation of an option, the option is revoked from—

- (a) the day on which the Commissioners give their permission, or
- (b) such earlier or later day as they specify in their permission.

(7) The Commissioners may specify an earlier day only if—

- (a) the taxpayer has purported to give a notification of the revocation of the option,
- (b) the conditions specified in the public notice are not, in the event, met in relation to the option, and
- (c) the Commissioners consider that the grounds on which those conditions are not so met are insignificant.

(8) The day specified may be the day from which the option would have been revoked if those conditions had been so met.

(9) The Commissioners may specify conditions subject to which their permission is given and, if any of those conditions are broken, they may treat the revocation as if it had not been made.

Revocation of option under paragraph 22(2) or (3) or 24: anti-avoidance

26.—(1) Paragraphs 22(2) and (3) and 24 (which in particular circumstances treat an option to tax exercised in relation to any building or land as revoked) do not apply if—

- (a) the person exercising the option mentioned in paragraph 22(2) or (3) or 24 (“the opter”) is a body corporate,
- (b) the opter has been treated under sections 43A to 43D(13) as a member of a group at any time in the relevant 6 year period, and
- (c) any relevant associate of the opter in relation to the building or land ceases to be treated under those sections as a member of the same group as the opter without at the same time ceasing to be a relevant associate of the opter in relation to the building or land in accordance with paragraph 3(4).

(2) In sub-paragraph (1)(c) the reference to a relevant associate of the opter in relation to any building or land includes a body corporate which has been a relevant associate of the opter in relation to the building or land at any time before the start of the relevant 6 year period.

(3) In this paragraph “the relevant 6 year period”, in relation to any option to tax, means the period of 6 years ending with the time from which the option would (but for this paragraph) have been treated as revoked as a result of paragraph 22(2) or (3) or 24.

Exclusion of new building from effect of an option

27.—(1) This paragraph applies if—

- (a) a person (“the taxpayer”) has at any time opted to tax any land,
- (b) at any subsequent time the construction of a building (“the new building”) on the land begins, and
- (c) no land within the curtilage of the new building is within the curtilage of an existing building.

(2) The taxpayer may exclude—

- (a) the whole of the new building, and
- (b) all the land within its curtilage,

from the effect of the option if notification of that exclusion is given to the Commissioners.

(3) The exclusion has effect from the earliest of the following times—

- (a) the time when a grant of an interest in, or in any part of, the new building is first made,
- (b) the time when the new building, or any part of it, is first used,
- (c) the time when the new building is completed.

(4) The notification of the exclusion must—

- (a) be made in a form specified in a public notice,
- (b) be given before the time from which it is to have effect and state that time, and
- (c) contain other information so specified.

(5) Sub-paragraphs (4) to (6) of paragraph 18 (meaning of “building”) apply for the purposes of this paragraph as they apply for the purposes of that paragraph.

(13) Section 43A was inserted by the Finance Act 1999 (c. 16), section 16 and Schedule 2, paragraph 2; section 43AA was inserted by the Finance Act 2004 (c. 12), section 20(1); sections 43B and 43C were inserted by the Finance Act 1999 (c. 16), section 16 and Schedule 2, paragraph 2 and amended by the Finance Act 2004 (c. 12), section 20(4); section 43D was inserted by the Finance Act 2004 (c. 12), section 20(2).

(6) For the purposes of this paragraph the reference to the construction of a building is to be read without regard to Note (17)(14) or (18)(b) of Group 5 of Schedule 8 (which would otherwise apply as a result of paragraph 33 of this Schedule).

(7) The Commissioners may publish a notice for determining the time at which the construction of a building on any land is to be taken to begin for the purposes of this paragraph.

Pre-option exempt grants: requirement for prior permission before exercise of option to tax

28.—(1) This paragraph applies if—

- (a) a person wants to exercise an option to tax any land with effect from a particular day,
- (b) at any time (“the relevant time”) before that day the person has made, makes or intends to make an exempt supply to which any grant in relation to the land gives rise, and
- (c) the relevant time is within the period of 10 years ending with that day.

(2) The person may exercise the option to tax the land only if—

- (a) the conditions specified in a public notice are met in relation to the land, or
- (b) the person gets the prior permission of the Commissioners (but see also paragraph 30).

(3) The Commissioners must refuse their permission if they are not satisfied that there would be a fair and reasonable attribution of relevant input tax to relevant supplies.

(4) For this purpose—

“relevant input tax” means input tax incurred, or likely to be incurred, in relation to the land, and

“relevant supplies” means supplies to which any grant in relation to the land gives rise which would be taxable (if the option has effect).

(5) In deciding whether there would be a fair and reasonable attribution of relevant input tax to relevant supplies, the Commissioners must have regard to all the circumstances of the case.

(6) But they must have regard in particular to—

- (a) the total value of any exempt supply to which any grant in relation to the land gives rise and which is made or to be made before the day from which the person wants the option to have effect,
- (b) the expected total value of any supply to which any grant in relation to the land gives rise that would be taxable (if the option has effect), and
- (c) the total amount of input tax incurred, or likely to be incurred, in relation to the land.

Paragraph 28: application for prior permission

29.—(1) An application for the prior permission of the Commissioners under paragraph 28 must—

- (a) be made in a form specified in a public notice,
- (b) contain a statement by the applicant certifying which (if any) of the conditions specified in the public notice under paragraph 28(2)(a) are met in relation to the land, and
- (c) contain other information specified in a public notice.

(2) The Commissioners may specify conditions subject to which their permission is given and, if any of those conditions are broken, they may treat the application as if it had not been made.

(3) If the applicant (A) gets the prior permission of the Commissioners, A is, as a result of this sub-paragraph, treated for the purposes of this Part of this Schedule as if A had exercised the option to tax the land with effect from—

- (a) the start of the day on which the application was made, or
- (b) the start of any later day specified in the application.

Paragraph 28: purported exercise where prior permission not obtained

30.—(1) This paragraph applies if—

- (a) an option to tax was purportedly exercised in a case where, before the option could be exercised, the prior permission of the Commissioners was required under paragraph 28, and
- (b) notification of the purported option was purportedly given to the Commissioners in accordance with paragraph 20.

(2) The Commissioners may, in the case of any such option, subsequently dispense with the requirement for their prior permission to be given under paragraph 28.

(3) If the Commissioners dispense with that requirement, a purported option—

- (a) is treated for the purposes of this Part of this Schedule as if it had instead been validly exercised, and
- (b) has effect in accordance with paragraph 19.

Supplementary provisions

Timing of grant and supplies

31.—(1) This paragraph applies if—

- (a) an option to tax is exercised in relation to any land,
- (b) a grant in relation to the land would otherwise be taken to have been made (whether in whole or in part) before the time when the option has effect, and
- (c) the grant gives rise to supplies which are treated for the purposes of this Act as taking place after that time.

(2) For the purposes of this Part of this Schedule, the option to tax has effect, in relation to those supplies, as if the grant had been made after that time.

Supplies in relation to a building where part designed or intended for residential or charitable use and part designed or intended for other uses

32. Note (10) of Group 5(15) of Schedule 8 applies for the purposes of this Part of this Schedule.

Definitions in Schedules 8 or 9 that are applied for the purposes of this Schedule

33. In this Part of this Schedule, references to the expressions listed in the first column are to be read in accordance with the provisions listed in the second column—

<i>Expression</i>	<i>Provision</i>
building designed or adapted for use as a dwelling or a number of dwellings	Note (2) to Group 5 of Schedule 8(16)
completion of a building	Note (2) to Group 1 of Schedule 9
construction of a building	Notes (16) to (18) to Group 5 of Schedule 8(17) (but see paragraph 27(6) of this Schedule)
construction of a building intended for use as a dwelling or a number of dwellings	Note (3) to Group 5 of Schedule 8
grant	Note (1) to Group 5 of Schedule 8/ Notes (1) and (1A) to Group 1 of Schedule 9(18)
use for a relevant charitable purpose	Notes (6) and (12) to Group 5 of Schedule 8
use for a relevant residential purpose	Notes (4), (5) and (12) to Group 5 of Schedule 8 (but see paragraphs 6(9) and 10(4) of this Schedule)

Other definitions etc

34.—(1) In this Part of this Schedule—

“notification” means written notification, and

“permission” means written permission.

(2) For the purposes of this Part of this Schedule any question whether a person is connected with another person is to be decided in accordance with section 839 of the Taxes Act(**19**).

(3) Any reference in any provision of this Part of this Schedule to a public notice is to a notice published by the Commissioners for the purposes of that provision.

PART 2

RESIDENTIAL AND CHARITABLE BUILDINGS: CHANGE OF USE ETC

Meaning of “relevant zero-rated supply”

35. For the purposes of this Part of this Schedule a “relevant zero-rated supply” means a grant or other supply which—

(a) relates to a building (or part of a building) intended for use solely for a relevant residential purpose, or

(b) relates to a building (or part of a building) intended for use solely for a relevant charitable purpose,

and which, as a result of Group 5 of Schedule 8, is zero-rated (in whole or in part).

(16) Group 5 of Schedule 8 was substituted by S.I. 1995/280.

(17) Note (17) to Group 5 of Schedule 8 was amended by S.I. 2002/1101.

(18) Note (1) to Group 1 of Schedule 9 was amended and Note (1A) to that Group was inserted by S.I. 1995/282.

(19) 1988 c. 1; section 839 was amended by the Finance Act 1995 (c. 4), section 74 and Schedule 17, paragraph 20; the Finance Act 2006 (c. 25), sections 89 and 178, Schedule 13, paragraphs 7 and 25 and Schedule 26, Part 3(15); the Income Tax Act 2007 (c. 3), section 1027 and Schedule 1, paragraphs 1 and 223; and S.I. 2005/3229.

Person to whom supply made grants interest etc in building and building not intended solely for relevant residential or charitable purpose

36.—(1) This paragraph applies if—

- (a) one or more relevant zero-rated supplies relating to a building (or part of a building) have been made to a person, and
- (b) conditions A and B are met.

(2) Condition A is that, within the period of 10 years beginning with the day on which the building is completed, the person grants an interest in, right over or licence to occupy—

- (a) the building or any part of it, or
- (b) the building or any part of it including, consisting of or forming part of the part to which the relevant zero-rated supply or supplies related.

(3) Condition B is that after the grant—

- (a) the whole or any part of the building or of the part to which the grant relates, or
- (b) the whole of the building or of the part to which the grant relates, or any part of it including, consisting of or forming part of the part to which the relevant zero-rated supply or supplies related,

is not intended for use solely for a relevant residential purpose or a relevant charitable purpose.

(4) So far as the grant relates to so much of the building as—

- (a) by reason of its intended use gave rise to the relevant zero-rated supply or supplies, and
- (b) is not intended for use solely for a relevant residential purpose or a relevant charitable purpose after the grant,

it is taken to be a taxable supply in the course or furtherance of a business which is not zero-rated as a result of Group 5 of Schedule 8.

Person to whom supply made uses building otherwise than for relevant residential or charitable purpose

37.—(1) This paragraph applies if one or more relevant zero-rated supplies relating to a building (or part of a building) have been made to a person and, within the period of 10 years beginning with the day on which the building is completed, the person uses—

- (a) the building or any part of it, or
- (b) the building or any part of it including, consisting of or forming part of the part to which the relevant zero-rated supply or supplies related,

for a purpose which is neither a relevant residential purpose nor a relevant charitable purpose.

(2) The person's interest in, right over or licence to occupy so much of the building as—

- (a) by reason of its intended use gave rise to the relevant zero-rated supply or supplies, and
- (b) is used otherwise than for a relevant residential purpose or a relevant charitable purpose,

is treated as follows.

(3) The interest, right or licence is treated for the purposes of this Act as—

- (a) supplied to the person for the purposes of a business which the person carries on, and
- (b) supplied by the person in the course or furtherance of the business when the person first uses it for a purpose which is neither a relevant residential purpose nor a relevant charitable purpose.

(4) The supply is taken to be a taxable supply which is not zero-rated as a result of Group 5 of Schedule 8.

(5) The value of the supply is taken to be the amount obtained by the formula—

$$A \times \left(\frac{10 - B}{10} \right)$$

(6) For the purposes of the formula, A is the amount that yields an amount of VAT chargeable on it equal to—

- (a) the VAT which would have been chargeable on the relevant zero-rated supply, or
- (b) if there was more than one supply, the aggregate amount of the VAT which would have been chargeable on the supplies,

had so much of the building not been intended for use solely for a relevant residential purpose or a relevant charitable purpose.

(7) For the purposes of the formula, B is the number of whole years since the day the building was completed for which the building or part concerned has been used for—

- (a) a relevant residential purpose, or
- (b) a relevant charitable purpose.

Supplies in relation to a building where part designed for residential or charitable use and part designed for other uses

38. Note (10) of Group 5 of Schedule 8 applies for the purposes of this Part of this Schedule.

Definitions

39. In this Part of this Schedule, references to the expressions listed in the first column are to be read in accordance with the provisions listed in the second column—

<i>Expression</i>	<i>Provision</i>
completion of a building	Note (2) to Group 1 of Schedule 9
grant	Note (1) to Group 5 of Schedule 8(20)/ Notes (1) and (1A) to Group 1 of Schedule 9(21)
use for a relevant charitable purpose	Notes (6) and (12) to Group 5 of Schedule 8
use for a relevant residential purpose	Notes (4), (5) and (12) to Group 5 of Schedule 8

PART 3

GENERAL

Benefit of consideration for grant accruing to a person other than the grantor

40.—(1) This paragraph applies if the benefit of the consideration for the grant of an interest in, right over or licence to occupy land accrues to a person (“the beneficiary”) other than the person making the grant.

(20) Group 5 of Schedule 8 was substituted by S.I. 1995/280.

(21) Note (1) to Group 1 of Schedule 9 was amended and Note (1A) to that Group was inserted by S.I. 1995/282.

(2) The beneficiary is to be treated for the purposes of this Act as the person making the grant.

(3) So far as any input tax of the person actually making the grant is attributable to the grant, it is to be treated for the purposes of this Act as input tax of the beneficiary.”.

Appeals

3.—(1) VATA 1994(22) is amended as follows.

(2) In section 83(23) (appeals), after paragraph (wa) insert—

“(wb) any refusal of the Commissioners to grant any permission under, or otherwise to exercise in favour of a particular person any power conferred by, any provision of Part 1 of Schedule 10;”.

(3) In section 84(24) (further provisions relating to appeals), after subsection (7A) insert—

“(7ZA) Where there is an appeal against such a refusal as is mentioned in section 83(wb)

-
- (a) the tribunal shall not allow the appeal unless it considers that the Commissioners could not reasonably have been satisfied that there were grounds for the refusal, and
 - (b) the refusal shall have effect pending the determination of the appeal.”.

Developmental tenancies, leases or licences

4.—(1) Paragraph (b) of item 1 in Group 1 of Schedule 9 to VATA 1994 (exempt supplies of land not to include supplies made pursuant to a developmental tenancy, developmental lease or developmental licence) is repealed.

(2) Note (7)(25) in that Group (meaning of developmental tenancy, developmental lease or developmental licence) is repealed.

Co-owners etc of buildings and land

5.—(1) Section 26 of FA 1995(26) (co-owners etc of buildings and land) is repealed.

(2) Accordingly—

- (a) section 51A of VATA 1994(27) is repealed, and
- (b) paragraph 8(2) and (3)(28) of Schedule 10 to that Act are repealed without being rewritten in that Schedule as substituted by article 2.

Consequential amendments, repeals and revocations

6. Schedule 1 contains consequential amendments, repeals and revocations.

(22) Section 179 of the Finance Act 2006 (c. 25) provides that in that Act “VATA 1994” means the Value Added Tax Act 1994 (c. 23).

(23) Section 83 has been amended; the relevant amendment was made by section 31(3) of the Finance Act 1996 (c. 8) which inserted paragraph (wa).

(24) Section 84 has been amended; the relevant amendment was made by section 31(4) of the Finance Act 1996 which inserted subsection (7A).

(25) Note (7) in Group 1 of Schedule 9 was amended by S.I. 1995/282.

(26) Section 179 of the Finance Act 2006 (c. 25) provides that in that Act “FA” followed by a year means the Finance Act of that year; accordingly, “FA 1995” means the Finance Act 1995 (c. 4).

(27) 1994 c. 23; section 51A was inserted by section 26(1) of the Finance Act 1995 (c. 4).

(28) Paragraph 8(2) and (3) was inserted by section 26(2) of the Finance Act 1995 (c. 4).

Transitional provisions and savings

7. Schedule 2 contains transitional provisions and savings.

21st April 2008

Frank Roy
Alan Campbell
Two of the Lords Commissioners of Her
Majesty's Treasury