

Order made by the Treasury, laid before the House of Commons under section 97(3) and (4) of the Value Added Tax Act 1994, for approval by resolution of that House within twenty-eight days beginning with the day on which the Order was made, subject to extension for periods of dissolution, prorogation or adjournment for more than four days.

S T A T U T O R Y I N S T R U M E N T S

2011 No. 86

VALUE ADDED TAX

The Value Added Tax (Buildings and Land) Order 2011

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| <i>Made</i> | - - - - | <i>17th January 2011</i> |
| <i>Laid before the House of Commons</i> | | <i>18th January 2011</i> |
| <i>Coming into force</i> | - - | <i>1st March 2011</i> |

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

Citation, commencement and effect

1. This Order may be cited as the Value Added Tax (Buildings and Land) Order 2011 and shall come into force on 1st March 2011.
2. Articles 4 to 7 shall have effect in relation to supplies made on or after 1st March 2011 other than a supply arising from a grant made before 1st March 2011.
3. Article 8 of this Order shall have effect in relation to buildings that are completed on or after 1st March 2011.

Amendment of Schedule 10 to the Value Added Tax Act 1994

4. Schedule 10 to the Value Added Tax Act 1994(b) (buildings and land) is amended as follows.
5. In paragraph 15(c) (meaning of “exempt land”: basic definition), for sub-paragraph (3A) substitute—

“(3A) Where a person (“P”) is in occupation of the land at any time before the end of the relevant adjustment period as respects that land, P is treated for the purposes of sub-paragraph (2) as not in occupation of the land at that time if—

- (a) the building occupation conditions are met at that time, or
- (b) P’s occupation of the land arises solely by reference to any automatic teller machine of P.”.

(a) 1994 c. 23.
(b) Schedule 10 was substituted by S.I. 2008/1146.
(c) Paragraph 15 was amended by S.I. 2010/485 to treat persons who fulfil certain conditions as not in occupation of the land for the purposes of the exempt land test set out in that paragraph.

6. In paragraph 15A(a) (meaning of “exempt land”: the building occupation conditions)—
- (a) in sub-paragraph (1)(b)(ii) for “10%” substitute “the maximum allowable percentage”;
 - (b) at the end of sub-paragraph (2) add—
“if that occupation is not wholly, or substantially wholly, for eligible purposes.”;
 - (c) for sub-paragraph (4) substitute—
“(4) In sub-paragraph (1)(b)(ii)—
“the maximum allowable percentage” means—
 - (a) 2% where P is the grantor or a person connected with the grantor, and
 - (b) 10% where P is a development financier or a person connected with a development financier (but not also the grantor or a person connected with the grantor), and
“relevant building”—
 - (a) means a building any relevant interest in which is included in the grant, other than any part of such a building in which, immediately before the grant, neither the grantor nor any person connected with the grantor held a relevant interest, but
 - (b) does not include any building P’s occupation of which arises solely by reference to any automatic teller machine of P.”; and
 - (d) after sub-paragraph (6) insert—
“(6A) Sub-paragraph (5) of paragraph 15 (determination of whether occupation “wholly, or substantially wholly” for eligible purposes to be by reference to criteria in public notice) applies for the purposes of this paragraph.”.
7. In paragraph 16 (meaning of “exempt land”: eligible purposes) omit sub-paragraph (7).
8. For paragraphs 35 to 37 (residential and charitable buildings: change of use etc) and their headings substitute—

“Introductory

35.—(1) This Part of this Schedule applies where one or more relevant zero-rated supplies relating to a building (or part of a building) have been made to a person (“P”).

(2) In this Part of this Schedule—

“relevant zero-rated supply” means a grant or other supply which relates to a building (or part of a building) intended for use solely for—

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

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

“relevant premises” means the building (or part of a building) in relation to which a relevant zero-rated supply has been made to P;

“relevant period”, in relation to relevant premises, means 10 years beginning with the day on which the relevant premises are completed.

(3) Where P is a body corporate treated as a member of a group under sections 43A to 43D(c), any reference in this Part of this Schedule to P includes a reference to any member of that group.

(a) Paragraph 15A was inserted by S.I. 2010/485.
 (b) Group 5 was substituted by the Value Added Tax (Construction of Buildings) Order SI 1995/280
 (c) Sections 43A, B and C were inserted by section 16 of and paragraph 2 of Schedule 2 to the Finance Act 1999 (c. 16), subject to paragraph 6 of Schedule 2 to that Act. Sections 43AA and D were inserted by section 20(2) of the Finance Act 2004 (c. 12). There are also amendments to sections 43A to D which are not relevant to this Order.

Disposal of interest or change of use following relevant zero-rated supply

36.—(1) Paragraph 37 applies on each occasion during the relevant period when—

- (a) there is an increase in the proportion of the relevant premises falling within sub-paragraph (2) or (3), and
- (b) as a result, the proportion of the relevant premises so falling (“R2”) exceeds the maximum proportion of those premises so falling at any earlier time in the relevant period (“R1”).

(2) The relevant premises fall (or part of the relevant premises falls) within this sub-paragraph if P has, since the beginning of the relevant period, disposed of P’s entire interest in the relevant premises (or part).

(3) The relevant premises fall (or a part of the relevant premises falls) within this sub-paragraph if—

- (a) those premises do not (or that part does not) fall within sub-paragraph (2), and
- (b) those premises are (or that part is) being used for a purpose that is neither a relevant residential purpose nor a relevant charitable purpose.

(4) Sub-paragraph (5) applies where—

- (a) only a proportion of the use of the relevant premises (or the use of a part of those premises) is for a relevant residential purpose or a relevant charitable purpose, and
- (b) that use is not confined to a part of those premises (or of that part) which is used solely for a relevant residential purpose or a relevant charitable purpose.

(5) Where this sub-paragraph applies, sub-paragraph (3) applies as if—

- (a) the same proportion of the relevant premises (or part) were being used for a relevant residential purpose or a relevant charitable purpose, and
- (b) the remainder of the relevant premises (or part) were being used for a purpose that is neither a relevant residential purpose nor a relevant charitable purpose.

(6) Where P is a charity using the relevant premises (or a part of the relevant premises) as a village hall or similarly in providing social or recreational facilities for a local community the premises are (or the part is) treated as being used for a relevant charitable purpose whether or not any person in occupation is using the premises (or part) for a relevant charitable purpose.

Charge to VAT

37.—(1) Where this paragraph applies, P’s interest, right or licence in the relevant premises held immediately prior to the time when the increase referred to in paragraph 36(1) occurs is treated for the purposes of this Part of this Schedule as—

- (a) supplied to P for the purposes of a business which P carries on, and
- (b) supplied by P in the course or furtherance of that business

immediately prior to the time of that increase.

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

(3) The value of the supply is taken to be—

- (a) in the case of the first deemed supply under this paragraph, the amount obtained by the formula—

$$R2 \times Y \times \left(\frac{120 - Z}{120} \right), \text{ and}$$

- (b) in the case of any subsequent deemed supply under this paragraph, the amount obtained by the formula—

$$(R2 - R1) \times Y \times \left(\frac{120 - Z}{120} \right)$$

- (4) For the purpose of sub-paragraph (3)—
- (a) R1 and R2 have the meaning given by paragraph 36(1)(b),
 - (b) Y is the amount that yields an amount of VAT chargeable on it equal to—
 - (i) the VAT which would have been chargeable on the relevant zero-rated supply, or
 - (ii) if there was more than one supply, the aggregate amount of the VAT which would have been chargeable on the supplies,
 had the relevant premises not been intended for use solely for a relevant residential purpose or a relevant charitable purpose, and
 - (c) Z is the number of whole months since the day on which the relevant premises were completed.”

Michael Fabricant
Angela Watkinson

17th January 2011

Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends paragraphs 15, 15A and 16 of Schedule 10 (“the Schedule”) to the Value Added Tax Act 1994 (c. 23) (“the Act”). It also substitutes new paragraphs 35 to 37 of the Schedule. It comes into force on 1st March 2011. Articles 4 to 7 of this Order have effect in relation to supplies made on or after 1st March 2011 other than a supply arising from a grant made before that date. Article 8 has effect in relation to buildings completed on or after 1st March 2011.

Part 1 of Schedule 10 to the Act makes provision for a person to opt to tax any land. Paragraph 2 of that Schedule provides that the effect of an option to tax is that supply of land, which is exempt, becomes taxable. Paragraphs 12 to 17 of Schedule 10 are anti-avoidance provisions which prevent the application of the option to tax by developers of land in certain circumstances. Articles 4 to 7 of these regulations provide relief from those provisions. The effect of the Articles is that the option to tax will not be disapplied where a development financier or a person connected to the development financier occupies 10% or less of any building included in the grant. Further, it will not be disapplied where a grantor or a person connected to the grantor occupies 2% or less of any building included in the grant. It will not be disapplied in either scenario where the only occupation of the person concerned (“P”) is in relation to an automatic teller machine of P.

Article 4 substitutes a new sub-paragraph (3A) in paragraph 15. The new provision provides that where a person (“P”) is in occupation of the land at any time before the end of the relevant adjustment period as defined in the Schedule, P is treated as not in occupation of the land for the purposes of sub-paragraph (2) at that time if certain building occupation conditions are met, or if the occupation arises solely by reference to any automatic teller machine of P.

Article 5 amends sub-paragraph (2) of paragraph 15A to provide that occupation by a person connected with P is treated as occupation by P unless that occupation is wholly, or substantially wholly, for eligible purposes. Article 5 also substitutes a new sub-paragraph (4) of paragraph 15A, and amends the building occupation conditions to introduce a “maximum allowable percentage” that P may occupy in order to be treated as not in occupation of the land. If P is a grantor or a person connected to the grantor, the maximum allowable percentage is 2%. If P is a development financier or person connected to a development financier, the maximum allowable percentage is 10%. The new sub-paragraph (4) also defines “relevant building”, and excludes any building that P occupies solely by reference to any automatic teller machine of P. The new sub-paragraph (6A) applies the same criteria as paragraph 15(5) to determine whether occupation is wholly, or substantially wholly, for eligible purposes.

In the light of the amending provisions in Articles 4 and 5 which treat P as not being in occupation of land where it arises only as a result of any automatic teller machine of P, paragraph 16(7), which treated such occupation as occupation for eligible purposes, is no longer needed, and is therefore omitted.

Paragraphs 35 to 37 make provision for when and how a charge to VAT will arise in circumstances where the construction of, or grant of an interest in, a building (“premises”) has been zero-rated on the basis of its intended use (“a relevant purpose”) and that use changes after the grant has been made.

Under the previous provisions, the charge to tax and the method of calculation of the charge differed depending on whether or not the recipient of the zero-rated supply subsequently granted an interest to a third party. Where a change in use occurred in an unidentifiable part of the premises, the charge arose on the entire premises or part of the premises.

Article 3 substitutes new paragraphs 35 to 37. The new paragraphs provide for a uniform application of the charge to VAT and a single method for its calculation as follows.

Paragraph 35 sets the context and provides additional definitions to aid interpretation.

Paragraph 36(1) provides for a charge to arise on each occasion that there is an increase in the use of the premises for a non-relevant purpose.

Paragraph 36(2) provides there is a charge to VAT where a person disposes of the entire interest in the premises or in a part of the premises.

Paragraph 36(3) provides that there is a charge to VAT where an identifiable area of the premises, or of a part of the premises, is used by a person in occupation of the premises (or part) for a non-relevant purpose.

Paragraphs 36(4) and (5) apply where use is made of the premises (or of part of the premises) for both a relevant and a non-relevant purpose. The proportion of use for a non-relevant purpose is to be calculated in the same proportion as if an identifiable part of the building were used for a non-relevant purpose.

Paragraph 36(6) treats the premises as being used for a relevant charitable purpose where the premises are a village hall or similar even though the occupier may not be using the premises for a charitable purpose.

Paragraph 37 provides for the charge to VAT and makes provision as to how the supply is to be valued.

A full and final Impact Assessment has not been produced for this instrument as a negligible impact on the private or voluntary sectors is foreseen.