

Order made by the Treasury, laid before the House of Commons under section 45(3) of the Value Added Tax Act 1983, 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.

STATUTORY INSTRUMENTS

1992 No. 3222

VALUE ADDED TAX

The Value Added Tax (Input Tax) Order 1992

<i>Made</i>	- - - -	<i>16th December 1992</i>
<i>Laid before the House of Commons</i>	- - - -	<i>17th December 1992</i>
<i>Coming into force</i>	- -	<i>1st January 1993</i>

The Treasury, in exercise of the powers conferred on them by section 14(10) of the Value Added Tax Act 1983(1) and of all other powers enabling them in that behalf, hereby make the following Order:

Citation and commencement

1. This Order may be cited as the Value Added Tax (Input Tax) Order 1992, and shall come into force on 1st January 1993.

Interpretation

2. In this Order—

“the Act” means the Value Added Tax Act 1983;

“the Manx Act” means the Value Added Tax and Other Taxes Act 1973(2);

“caravan” includes a motor caravan but does not include a caravan of a description specified in item 1 of Group 11 of Schedule 5 to the Act;

“firearms” means rifles, shotguns, pistols (including revolvers) and air guns but does not include a weapon specified by section 5(1) of the Firearms Act 1968(3);

“motor car” means any motor vehicle of a kind normally used on public roads which has three or more wheels and either—

(a) is constructed or adapted solely or mainly for the carriage of passengers; or

(1) 1983 c. 55; section 14(10) was amended by paragraph 15(6) of Schedule 3 to the Finance (No. 2) Act 1992 (c. 48).
(2) Acts of Tynwald 1973 c. 1.
(3) 1968 c. 27; section 5(1) was amended by section 1 of the Firearms (Amendment) Act 1988 (c. 45).

(b) has to the rear of the driver's seat roofed accommodation which is fitted with side windows or which is constructed or adapted for the fitting of side windows;

but does not include—

- (i) vehicles capable of accommodating only one person or suitable for carrying twelve or more persons;
- (ii) vehicles of not less than three tonnes unladen weight;
- (iii) caravans, ambulances and prison vans;
- (iv) vehicles of a type approved by the Assistant Commissioner of Police of the Metropolis as conforming to the condition of fitness for the time being laid down by him for the purposes of the London Cab Order 1934(4); or
- (v) vehicles constructed for a special purpose other than the carriage of persons and having no other accommodation for carrying persons than such as is incidental to that purpose;

“motor cycle” includes a motor bicycle, motor tricycle or motor scooter (whether or not a sidecar is attached), a bicycle or tricycle with an attachment for propelling it by mechanical means and any mechanically propelled vehicle with three wheels capable of accommodating only one person;

“printed matter” includes printed stationery but does not include anything produced by typing, duplicating or photocopying;

“works of art”, “antiques” and “collectors' pieces” means the following goods—

- (a) paintings, drawings and pastels, executed by hand, other than hand-painted or hand-decorated manufactured articles;
- (b) original engravings, prints and lithographs;
- (c) original sculptures and statuary, in any material;
- (d) antiques, of an age exceeding one hundred years, except pearls and loose gem stones;
- (e) collections and collectors' pieces of zoological, botanical, mineralogical, anatomical, historical, archaeological, paleontological or ethnographic interest.

Revocations

3. The provisions specified in the first column of the Schedule to this Order are hereby revoked to the extent specified in the second column of that Schedule.

Disallowance of input tax

4.—(1) Tax charged on the—

- (a) supply;
- (b) acquisition from another member State; or
- (c) importation,

of any goods such as are described in paragraph (2) below which are supplied, acquired or imported in any of the circumstances described in paragraph (3) below shall be excluded from any credit under section 14 of the Act.

(2) The goods referred to in paragraph (1) above are—

- (a) works of art, antiques and collectors' pieces;
- (b) used motor cycles;

- (c) used caravans;
- (d) used boats and outboard motors;
- (e) used electronic organs;
- (f) used aircraft;
- (g) used firearms.

(3) The circumstances of the supply to, or acquisition or importation by, a taxable person of goods described in paragraph (2) above are as follows—

- (a) a supply in respect of which no tax was chargeable under the Act or under Part 1 of the Manx Act;
- (b) a supply on which tax chargeable under either of those Acts was chargeable by virtue of any Order made under section 18 of the Act or a corresponding provision made under the Manx Act;
- (c) a transaction which was treated by virtue of any Order made under section 3(3) of the Act or under a corresponding provision of the Manx Act as being neither a supply of goods nor a supply of services; or
- (d) (if the goods are a work of art, an antique or a collectors' piece) their acquisition from another member State or their importation and (whether by virtue of an Order made under section 19(1) of the Act or otherwise) no tax was chargeable on their acquisition or, as the case may be, their importation.

5.—(1) Tax charged on any goods or services supplied to a taxable person, or on any goods acquired by a taxable person, or on any goods imported by a taxable person, is to be excluded from any credit under section 14 of the Act, where the goods or services in question are used or to be used by the taxable person for the purposes of business entertainment.

(2) Where, by reason of the operation of paragraph (1) above, a taxable person has claimed no input tax on a supply, acquisition or importation of any goods, or on a supply of any services, tax shall be charged on a supply by him of the goods in question not being a letting on hire or on a supply by him of the services in question, as if that supply were for a consideration equal to the excess of—

- (a) the consideration for which the goods or services are supplied by him, over
- (b) the relevant amount,

and accordingly shall not be charged unless there is such an excess.

(3) For the purposes of this article, “business entertainment” means entertainment including hospitality of any kind provided by a taxable person in connection with a business carried on by him, but does not include the provision of any such entertainment for either or both—

- (a) employees of the taxable person;
- (b) if the taxable person is a body corporate, its directors or persons otherwise engaged in its management,

unless the provision of entertainment for persons such as are mentioned in sub- paragraph (a) and (b) above is incidental to its provision for others.

(4) For the purposes of sub-paragraph (b) of paragraph (2) above, the relevant amount is—

- (a) if the goods or services in question had been supplied to the taxable person, the consideration for the supply to him;
- (b) if the goods in question had been acquired by him from another member State, the value of their acquisition plus the tax chargeable thereon;
- (c) if the goods in question had been imported by him, the value of the goods for the purposes of charging tax on importation plus any tax chargeable on their importation.

6.—(1) Subject to paragraph (2) below where a taxable person constructing a building or effecting works to any building, in either case for the purpose of granting a major interest in it or in any part of it, incorporates goods in any part of the building or its sitewhich is used for the purpose of a dwelling, input tax on the supply, or acquisition or importation of the goods shall be excluded from any credit under section 14 of the Act.

(2) Paragraph (1) above shall not apply to materials, builders' hardware, sanitary ware or other articles of a kind ordinarily installed by builders as fixtures except—

- (a) finished or prefabricated furniture, other than furniture designed to be fitted in kitchens;
- (b) materials for the construction of fitted furniture, other than kitchen furniture;
- (c) domestic electrical or gas appliances, other than those designed to provide space heating or water heating or both;
- (d) carpets or carpeting materials.

7.—(1) Subject to paragraph (2) below tax charged on—

- (a) the supply to a taxable person;
- (b) the acquisition by a taxable person from another member State; or
- (c) the importation by a taxable person,

of a motor car shall be excluded from any credit under section 14 of the Act.

(2) Paragraph (1) above does not apply where—

- (a) the supply is a letting on hire; or
- (b) the motor car is supplied, acquired or imported for the purpose of its conversion into a vehicle which is not a motor car; or
- (c) the motor car is unused and is supplied to, or acquired or imported by, the taxable person for the purpose of being sold; or
- (d) the motor car is unused and forms part of the assets of the taxable person's business and is supplied by him in the circumstances—
 - (i) described in paragraph 5A of Schedule 2 to the Act⁽⁵⁾ (removal of business assets to another member State), and
 - (ii) by way of a zero-rated supply by virtue of regulations made under section 16(7) of the Act; or
- (e) the motor car is unused and is supplied to, or acquired or imported by, a taxable person whose business includes the production of motor cars (other than the production of motor cars solely by the conversion of vehicles) and the motor car is for the purpose of research and deveopment to be carried out by him; or
- (f) the motor car is unused and is supplied to a taxable person whose only taxable supplies are concerned with the letting of motor cars on hire to another taxable person whose business consists predominantly of making supplies of a description falling within item 12 of Group 14 of Schedule 5 to the Act; or
- (g) the motor car is supplied to, or acquired or imported by, a taxable person for the primary purpose of—
 - (i) being provided by him for hire with the services of a driver for the purpose of carrying passengers;
 - (ii) being provided by him for self-drive hire;

(5) Paragraph 5A of Schedule 2 to the Value Added Tax Act 1983 (c. 55) was inserted by the Finance (No. 2) Act 1992 (c. 48) Schedule 3 paragraph 60.

(iii) being used as a vehicle in which instruction in the driving of a motor car is to be given by him; or

(iv) the letting on hire to a person who is not a taxable person on condition that he uses the motor car primarily for one of the purposes described in sub- paragraphs (i) to (iii) above.

(3) In this article—

(a) “sold” includes being supplied under a hire-purchase agreement;

(b) “self-drive hire” means hire where the hirer is the person normally expected to drive the motor car and the period of hire to each hirer, together with the period of hire of any other motor car expected to be hired to him by the taxable person—

(i) will normally be less than 30 consecutive days; and

(ii) will normally be less than 90 days in any period of 12 months.

(4) On the supply by a taxable person of a motor car in respect of which tax has been excluded from any credit by virtue of paragraph (1) above, or of any other provision made or having effect as if made under section 14(10) of the Act, tax shall be chargeable as if the supply were for a consideration equal to the excess of—

(a) the consideration for which the motor car is supplied by him, over

(b) the relevant amount,

and accordingly shall not be charged unless there is such an excess.

(5) For the purposes of paragraph (4)(b) above, the relevant amount is—

(a) if the motor car had been obtained by the taxable person by way of a supply to him by another taxable person, the consideration for that supply;

(b) if the motor car had been treated as supplied by the taxable person to himself by virtue of an order made under section 3(5) of the Act, the value of that supply plus the tax chargeable thereon;

(c) if the motor car had been acquired by the taxable person from another member State, the value of that acquisition plus the tax chargeable thereon;

(d) if the motor car had been imported by the taxable person, the value of the motor car for the purposes of charging tax on importation together with any tax chargeable on its importation.

Irvine Patnick

Gregory Knight

Two of the Lords Commissioners of Her Majesty's Treasury

16th December 1992

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SCHEDULE

Article 3

REVOCATIONS

<i>Provision</i>	<i>Extent of Revocation</i>
The Value Added Tax (Cars) Order 1980 (no. 442)	The whole Order insofar as it contains provisions in respect of which approval by the House of Commons was required under section 43(4) of the Finance Act 1972 ⁽⁶⁾
The Value Added Tax (Special Provisions) Order 1981 (No. 1741)	The whole Order insofar as it contains provisions in respect of which approval by the House of Commons was required under section 43(4) of the Finance Act 1972 ⁽⁷⁾
The Value Added Tax (Special Provisions) (Amendment) (No. 2) Order 1984 (No. 736)	The whole Order
The Value Added Tax (Handicapped Persons) Order 1985 (No. 919)	Article 2
The Value Added Tax (Construction of Buildings) (No. 2) Order 1987 (No. 1072)	Article 3
The Value Added Tax (Special Provisions) (Amendment) Order 1988 (No. 1124)	The whole Order
The Value Added Tax (Cars) (Amendment) (No. 2) Order 1992 (No. 1654)	The whole Order

EXPLANATORY NOTE

(This note is not part of the Order)

Under the directive of the Council of the European Communities dated 17th May 1977, No. [77/388/EEC](#) (O.J. No. L145, 13.6.1977, p. 1) as amended by the directive of that Council dated 16th December 1991, No. 91/680 EEC (O.J. No. L376, 31.12.1991, p. 1), as from 1st January 1993 goods removed to the United Kingdom from another member State of the European Communities will no longer be chargeable to tax on importation. However, such goods may become chargeable to tax on their acquisition in the United Kingdom. Goods imported into the United Kingdom from a place outside the member States will continue to be chargeable to tax on their importation.

This Order revokes and re-enacts, with amendments, the provisions specified in the Schedule. The amendments are made in consequence of the new charging event arising from an acquisition of goods from another member State.

- (6) [1972 c. 41](#); provisions of the Value Added Tax (Cars) Order 1980 which did not require approval by the House of Commons under section 43(4) of the Finance Act 1972 are revoked by the [Value Added Tax \(Cars\) Order 1992 \(No. 3122\)](#).
- (7) [1972 c. 41](#); provisions of the Value Added Tax (Special Provisions) Order 1981 which did not require approval by the House of Commons under section 43(4) of the Finance Act 1972 are revoked by the [Value Added Tax \(Special Provisions\) Order 1992 \(No. 3129\)](#).

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Article 4 re-enacts, with amendments, article 7 of the [Value Added Tax \(Special Provisions\) Order 1981 \(No. 1741\)](#) (the 1981 Order). It excludes, in certain circumstances, input tax incurred on the supply, acquisition or importation of works of art, antiques, collectors' pieces and specified used goods from any credit.

Article 5 re-enacts, with amendments, article 9 of the 1981 Order. It excludes from credit input tax incurred on goods supplied to, or acquired or imported by, a taxable person or on any services supplied to a taxable person where he uses them for the purposes of business entertainment. The article also gives consequential relief by providing that output tax is chargeable on the supply of such goods by reference only to the excess (if any) of the consideration for which they are supplied over the cost of their purchase plus (in the case of goods acquired from another member State or imported from a place outside the member States) the tax chargeable on their acquisition or importation.

Article 6 re-enacts, with amendments, article 8 of the 1981 Order, and excludes from credit input tax incurred on the supply, acquisition or importation of certain goods incorporated in a dwelling.

Article 7 re-enacts, with amendments, article 4 of the [Value Added Tax \(Cars\) Order 1980 \(No. 448\)](#). It excludes from credit input tax incurred on a motor car supplied to, or acquired or imported by, a taxable person which is used by him otherwise than for one of the purposes prescribed in the article. The article also gives consequential relief by providing for the output tax on a used car in respect of which input tax is not creditable to be chargeable by reference only to the excess (if any) of the consideration for which the car is supplied over the cost of its purchase plus (in the case of a car acquired from another member State or imported from a place outside the member States) the tax chargeable on its acquisition or importation.