

SCHEDULES

SCHEDULE 10

Section 51.

BUILDINGS AND LAND

Residential and charitable buildings: change of use etc

- 1 (1) In this paragraph “relevant zero-rated supply” means a grant or other supply taking place on or after 1st April 1989 which—
- (a) relates to a building intended for use solely for a relevant residential purpose or a relevant charitable purpose or part of such a building; and
 - (b) is zero-rated, in whole or in part, by virtue of Group 5 of Schedule 8.
- (2) Sub-paragraph (3) below applies where—
- (a) one or more relevant zero-rated supplies relating to a building (or part of a building) have been made to any person,
 - (b) 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 the building or any part of it (or 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), and
 - (c) after the grant the whole or any part of the building, or of the part to which the grant relates, (or 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.
- (3) Where this sub-paragraph applies, to the extent that 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 shall be taken to be a taxable supply in the course or furtherance of a business which is not zero-rated by virtue of Group 5 of Schedule 8 (if it would not otherwise be such a supply).
- (4) Sub-paragraph (5) below applies where—
- (a) one or more relevant zero-rated supplies relating to a building (or part of a building) have been made to any person; and
 - (b) within the period of 10 years beginning with the day on which the building is completed, the person uses the building or any part of it (or 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.

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- (5) Where this sub-paragraph applies, his 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,
- shall be treated for the purposes of this Act as supplied to him for the purpose of a business carried on by him and supplied by him in the course or furtherance of the business when he first uses it for a purpose which is neither a relevant residential purpose nor a relevant charitable purpose.
- (6) Where sub-paragraph (5) applies—
- (a) the supply shall be taken to be a taxable supply which is not zero-rated by virtue of Group 5 of Schedule 8 (if it would not otherwise be such a supply); and
 - (b) the value of the supply shall be such that the amount of VAT chargeable on it is equal to the amount of the VAT which would have been chargeable on the relevant zero-rated supply (or, where there was more than one such supply, the aggregate amount which would have been chargeable on them) had so much of the building as is mentioned in sub-paragraph (5) above not been intended for use solely for a relevant residential purpose or a relevant charitable purpose.

Election to waive exemption

- 2 (1) Subject to sub-paragraphs (2) and (3) and paragraph 3 below, where an election under this paragraph has effect in relation to any land, if and to the extent that any grant made in relation to it at a time when the election has effect by the person who made the election, or where that person is a body corporate by that person or a relevant associate, would (apart from this sub-paragraph) fall within Group 1 of Schedule 9, the grant shall not fall within that Group.
- (2) Sub-paragraph (1) above shall not apply in relation to a grant if the grant is made in relation to—
- (a) a building or part of a building intended for use as a dwelling or number of dwellings or solely for a relevant residential purpose; or
 - (b) a building or part of a building intended for use solely for a relevant charitable purpose, other than as an office.
- (3) Sub-paragraph (1) above shall not apply in relation to a grant if—
- (a) the grant is made to a registered housing association and the association has given to the grantor a certificate stating that the land is to be used (after any necessary demolition work) for the construction of a building or buildings intended for use as a dwelling or number of dwellings or solely for a relevant residential purpose; or
 - (b) the grant is made to an individual and the land is to be used for the construction, otherwise than in the course or furtherance of a business carried on by him, of a building intended for use by him as a dwelling.
- (4) Subject to the following provisions of this paragraph, no input tax on any supply or importation which, apart from this sub-paragraph, would be allowable by virtue of

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the operation of this paragraph shall be allowed if the supply or importation took place before the first day for which the election in question has effect.

- (5) Subject to sub-paragraph (6) below, sub-paragraph (4) above shall not apply where the person by whom the election was made—
- (a) has not, before the first day for which the election has effect, made in relation to the land in relation to which the election has effect any grant falling within Group 1 of Schedule 9; or
 - (b) has before that day made in relation to that land a grant or grants so falling but the grant, or all the grants—
 - (i) were made in the period beginning with 1st April 1989 and ending with 31st July 1989; and
 - (ii) would have been taxable supplies but for the amendments made by Schedule 3 to the Finance Act 1989.
- (6) Sub-paragraph (5) above does not make allowable any input tax on supplies or importations taking place before 1st August 1989 unless—
- (a) it is attributable by or under regulations to grants made by the person on or after 1st April 1989 which would have been taxable supplies but for the amendments made by Schedule 3 to the Finance Act 1989, and
 - (b) the election has effect from 1st August 1989.
- (7) Sub-paragraph (4) above shall not apply in relation to input tax on grants or other supplies which are made in the period beginning with 1st April 1989 and ending with 31st July 1989—
- (a) they would have been zero-rated by virtue of item 1 or 2 of Group 5 of Schedule 8 or exempt by virtue of item 1 of Group 1 of Schedule 9 but for the amendments made by Schedule 3 to the Finance Act 1989; and
 - (b) the election has effect from 1st August 1989.
- (8) Sub-paragraph (4) above shall not apply in relation to any election having effect from any day on or after 1st January 1992, except in respect of the input tax on a supply or importation which took place before 1st August 1989.
- (9) Where a person has made an exempt grant in relation to any land and has made an election in relation to that land which has effect from any day before 1st January 1992, he may apply to the Commissioners for sub-paragraph (4) above to be disapplied in respect of any input tax on a supply or importation which took place on or after 1st August 1989, but the Commissioners shall only permit the disapplication of that sub-paragraph if they are satisfied, having regard to all the circumstances of the case, and in particular to—
- (a) the total value of—
 - (i) exempt grants made;
 - (ii) taxable grants made or expected to be made, in relation to the land; and
 - (b) the total amount of input tax in relation to the land which had been incurred before the day from which the election had effect,
- that a fair and reasonable attribution of the input tax mentioned in paragraph (b) above will be secured.

- 3 (1) An election under paragraph 2 above shall have effect—

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- (a) subject to the following provisions of this paragraph, from the beginning of the day on which the election is made or of any later day specified in the election; or
 - (b) where the election was made before 1st November 1989, from the beginning of 1st August 1989 or of any later day so specified.
- (2) An election under paragraph 2 above shall have effect in relation to any land specified, or of a description specified, in the election.
- (3) Where such an election is made in relation to, or to part of, a building (or planned building), it shall have effect in relation to the whole of the building and all the land within its curtilage and for the purposes of this sub-paragraph buildings linked internally or by a covered walkway, and parades, precincts and complexes divided into separate units, shall be taken to be a single building (if they otherwise would not be).
- (4) Where such an election is made in relation to agricultural land (including a building on agricultural land), it shall have effect in relation to any other agricultural land if that other land is not separated from it by—
 - (a) land which is not agricultural land; or
 - (b) agricultural land in separate ownership.
- (5) For the purposes of sub-paragraph (4) above—
 - (a) land shall be taken not to be separated from other land if it is separated from it only by a road, railway, river or something similar; and
 - (b) land is in separate ownership from land in relation to which an election is made if the person by whom the election is made had no interest in, right over or licence to occupy it and, where that person is a body corporate, no relevant associate has any such interest, right or licence.
- (6) An election under paragraph 2 above shall be irrevocable and, except where it is an election of a description specified in a notice published by the Commissioners, shall not have effect unless—
 - (a) in a case to which sub-paragraph (9) below applies, the Commissioners have given the permission required under that sub-paragraph;
 - (b) in any other case, written notification of the election is given to the Commissioners not later than the end of the period of 30 days beginning with the day on which the election is made, or not later than the end of such longer period beginning with that day as the Commissioners may in any particular case allow, together with such information as the Commissioners may require.
- (7) In paragraph 2 above and this paragraph “relevant associate”, in relation to a body corporate by which an election under paragraph 2 above has been made in relation to any building or land, means a body corporate which under section 43—
 - (a) was treated as a member of the same group as the body corporate by which the election was made at the time when the election first had effect;
 - (b) has been so treated at any later time when the body corporate by which the election was made had an interest in, right over or licence to occupy the building or land (or any part of it); or
 - (c) has been treated as a member of the same group as a body corporate within paragraph (a) or (b) above or this paragraph at a time when that body

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corporate had an interest in, right over or licence to occupy the building or land (or any part of it).

- (8) In paragraph 2 above “registered housing association” means a registered housing association within the meaning of the Housing Associations Act 1985 or Part VII of the Housing (Northern Ireland) Order 1981.
- (9) Where a person who wishes to make an election in relation to any land (the relevant land) to have effect on or after 1st January 1992, has made, makes or intends to make, an exempt grant in relation to the relevant land at any time between 1st August 1989 and before the beginning of the day from which he wishes an election in relation to the relevant land to have effect, he shall not make an election in relation to the relevant land unless he obtains the prior written permission of the Commissioners, who shall only give such permission if they are satisfied having regard to all the circumstances of the case and in particular to—
- (a) the total value of exempt grants in relation to the relevant land made or to be made before the day from which the person wishes his election to have effect;
 - (b) the expected total value of grants relating to the relevant land that would be taxable if the election were to have effect; and
 - (c) the total amount of input tax which has been incurred on or after 1st August 1989 or is likely to be incurred in relation to the relevant land,
- that there would be secured a fair and reasonable attribution of the input tax mentioned in paragraph (c) above to grants in relation to the relevant land which, if the election were to have effect, would be taxable.
- 4 (1) This paragraph has effect where rent is payable in consideration of the grant of an interest in, right over, or licence to occupy any building or land to which an election under paragraph 2 above relates (or any part of any such building or land).
- (2) If—
- (a) the rent relates to a period beginning before and ending on or after the first day for which the election has effect; and
 - (b) the grant for which the rent is consideration would, apart from this subparagraph, take place before that day,
- the grant shall be treated as taking place on that day to the extent that it is made for rent relating to the part of the period falling on or after that day.
- (3) If—
- (a) the rent relates to a period beginning on or after the first day for which the election has effect; and
 - (b) the grant for which the rent is consideration would, apart from this subparagraph, take place before that day,
- the grant shall be treated as taking place on the first day of the period to which the rent relates.
- (4) If—
- (a) the rent relates to a period beginning before the first day for which the election has effect; and
 - (b) the grant for which the rent is consideration takes place on or after that day,
- VAT shall not be chargeable on the grant by virtue of paragraph 2 above to the extent that it is made for rent relating to any time before that day.

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- (5) Where the rent is payable by a person in relation to a period when he is in occupation of a building completed before 1st August 1989 (or part of such a building) or land of which he was in occupation immediately before that date, any VAT which would be chargeable by virtue of paragraph 2 above on the grant for which the rent is consideration—
- (a) except in the case of a charity, shall be chargeable as if the consideration were reduced by 50 per cent. if and to the extent that the rent relates to or to any part of the year beginning on 1st August 1989 and ending on 31st July 1990; and
 - (b) in the case of a charity—
 - (i) shall be chargeable as if the consideration were reduced by 80 per cent. if and to the extent that the rent relates to or to any part of the year beginning on 1st August 1989 and ending on 31st July 1990;
 - (ii) shall be chargeable as if the consideration were reduced by 60 per cent. if and to the extent that the rent relates to or to any part of the year beginning on 1st August 1990 and ending on 31st July 1991;
 - (iii) shall be chargeable as if the consideration were reduced by 40 per cent. if and to the extent that the rent relates to or to any part of the year beginning on 1st August 1991 and ending on 31st July 1992; and
 - (iv) shall be chargeable as if the consideration were reduced by 20 per cent. if and to the extent that the rent relates to or to any part of the year beginning on 1st August 1992 and ending on 31st July 1993.

Developers of certain non-residential buildings etc.

- 5 (1) Paragraph 6 below shall apply on the first occasion during the period beginning with the day when the construction of a building or work within sub-paragraph (2) below is first planned and ending 10 years after the completion of the building or work on which a person who is a developer in relation to the building or work—
- (a) grants an interest in, right over or licence to occupy the building or work (or any part of it) which is an exempt supply; or
 - (b) is in occupation of the building, or uses the work (or any part of it) when not a fully taxable person (or, if a person treated under section 43 as a member of a group when the representative member is not a fully taxable person).
- (2) Subject to sub-paragraph (3) below, the buildings and works within this sub-paragraph are—
- (a) any building neither designed as a dwelling or number of dwellings nor intended for use solely for a relevant residential purpose or a relevant charitable purpose; and
 - (b) any civil engineering work, other than a work necessary for the development of a permanent park for residential caravans.
- (3) A building or work is not within sub-paragraph (2) above if—
- (a) construction of it was commenced before 1st August 1989; or
 - (b) a grant of the fee simple in it which falls within paragraph (a)(ii) or (iv) of item 1 of Group 1 of Schedule 9 has been made before the occasion concerned.

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- (4) For the purposes of this paragraph a taxable person is, in relation to any building or work, a fully taxable person throughout a prescribed accounting period if—
- (a) at the end of that period he is entitled to credit for input tax on all supplies to, and importations by, him in the period (apart from any on which input tax is excluded from credit by virtue of section 25(7)); or
 - (b) the building or work is not used by him at any time during the period in, or in connection with, making any exempt supplies of goods or services.
- (5) Subject to sub-paragraph (6) below, in this paragraph and paragraph 6 below “developer”, in relation to a building or work, means any person who—
- (a) constructs it;
 - (b) order it to be constructed; or
 - (c) finances its construction,
- with a view to granting an interest in, right over or licence to occupy it (or any part of it) or to occupying or using it (or any part of it) for his own purposes.
- (6) Where—
- (a) a body corporate treated under section 43 as a member of a group is a developer in relation to a building or work; and
 - (b) it grants an interest in, right over or licence to occupy the building or work (or any part of it) to another body corporate which is treated under that section as a member of the group,
- then, for the purposes of this paragraph and paragraph 6 below, as from the time of the grant any body corporate such as is mentioned in sub-paragraph (7) below shall be treated as also being a developer in relation to the building or work.
- (7) The bodies corporate referred to in sub-paragraph (6) above are any which under section 43—
- (a) was treated as a member of the same group as the body corporate making the grant at the time of the grant; or
 - (b) has been so treated at any later time when the body corporate by which the grant was made had an interest in, right over or licence to occupy the building or work (or any part of it); or
 - (c) has been treated as a member of the same group as a body corporate within paragraph (a) or (b) above or this paragraph at a time when that body corporate had an interest in, right over or licence to occupy the building or work (or any part of it).
- (8) Subject to sub-paragraph (10) below, sub-paragraphs (1), (2) and (4) to (7) above shall apply in relation to any of the following reconstructions, enlargements or extensions—
- (a) a reconstruction, enlargement or extension of an existing building which is commenced on or after 1st January 1992 and—
 - (i) which is carried out wholly or partly on land (hereafter referred to as new building land) adjoining the curtilage of the existing building, or
 - (ii) as a result of which the gross external floor area of the reconstructed, enlarged or extended building (excluding any floor area on new building land) exceeds the gross external floor area of the existing building by not less than 20 per cent. of the gross external floor area of the existing building;

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- (b) a reconstruction of an existing building which is commenced on or after 1st January 1992 and in the course of which at least 80 per cent. of the area of the floor structures of the existing building are removed;
- (c) a reconstruction, enlargement or extension of a civil engineering work which is commenced on or after 1st January 1992 and which is carried out wholly or partly on land (hereafter referred to as new land) adjoining the land on or in which the existing work is situated,

as if references to the building or work were references to the reconstructed, enlarged or extended building or work and as if references to construction were references to reconstruction, enlargement or extension.

- (9) For the purposes of sub-paragraph (8)(a) above, extensions to an existing building shall include the provision of any annex having internal access to the existing building.
- (10) Sub-paragraphs (1) and (2) and sub-paragraphs (4) to (7) above shall not apply to a reconstruction, enlargement or extension—
 - (a) falling within sub-paragraph (8)(a)(i) or (ii) or (c) above where the developer has held an interest in at least 75 per cent. of all of the land on which the reconstructed, enlarged or extended building or work stands, or is constructed, throughout the period of 10 years ending with the last day of the prescribed accounting period during which the reconstructed, enlarged or extended building or work becomes substantially ready for occupation or use; or
 - (b) to the extent that it falls within sub-paragraph (8)(a)(ii) above or falling within sub-paragraph (8)(b) above, where the interest in, right over or licence to occupy the building concerned (or any part of it) has already been treated as supplied to and by the developer under paragraph 6(1) below.
- 6 (1) Where this paragraph applies the interest in, right over or licence to occupy the buildings or work (or any part of it) held by the developer shall be treated for the purposes of this Act as supplied to the developer for the purpose of a business carried on by him and supplied by him in the course or furtherance of the business on the last day of the prescribed accounting period during which it applies, or, if later, of the prescribed accounting period during which the building or work becomes substantially ready for occupation or use.
- (2) The supply treated as made by sub-paragraph (1) above shall be taken to be a taxable supply and the value of the supply shall be the aggregate of—
 - (a) the value of grants relating to the land on which the building or work is constructed made or to be made to the developer, but excluding, in a case where construction of the building or work in question commenced before 1st January 1992, the value of any grants to be made for consideration in the form of rent the amount of which cannot be ascertained by the developer when the supply is treated as made, and in any other case excluding the value of any—
 - (i) grants made before the relevant day to the extent that consideration for such grants was in the form of rent, and to the extent that such rent was properly attributable to a building which has been demolished,
 - (ii) grants made before the relevant day in respect of a building which has been reconstructed, enlarged or extended so that the reconstruction, enlargement or extension falls within paragraph 5(8)(a)(ii) above, and does not fall also within paragraph 5(8)(b) above,

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to the extent that consideration for such grants was in the form of rent, and to the extent that such rent was properly attributable to the building as it existed before the commencement of the reconstruction, enlargement or extension,

(iii) grants made before the relevant day in respect of a building which has been so reconstructed that the reconstruction falls within paragraph 5(8)(b) above, to the extent that consideration for such grants was in the form of rent, and to the extent that such rent was properly attributable to the building before the reconstruction commenced,

(iv) grants falling within paragraph (b) of item 1 of Group 1 of Schedule 9, and

(b) the value of all the taxable supplies of goods and services, other than any that are zero-rated, made or to be made for or in connection with the construction of the building or work.

(3) Where the rate of VAT (the lower rate) chargeable on a supply (the construction supply) falling within sub-paragraph (2)(b) above, the value of which is included in the value of a supply (the self-supply) treated as made by sub-paragraph (1) above, is lower than the rate of VAT (the current rate) chargeable on that self-supply, then VAT on the self-supply shall be charged—

(a) on so much of its value as is comprised of the relevant part of the value of the construction supply, at the lower rate; and

(b) on the remainder of its value at the current rate.

(4) For the purposes of sub-paragraph (3)(a) above, the relevant part of the value of the construction supply means—

(a) where the construction supply is a supply of goods, the value of such of those goods as have actually been delivered by the supplier;

(b) where the construction supply is a supply of services, the value of such of those services as have actually been performed by the supplier,

on or before the last day upon which the lower rate is in force.

(5) Where the value of a supply which, apart from this sub-paragraph, would be treated as made by sub-paragraph (1) above would be less than £100,000, no supply shall be treated as made by that sub-paragraph.

(6) For the purposes of sub-paragraph (2)(a)(i) above, the relevant day is the day on which the demolition of the building in question commenced and, for the purposes of sub-paragraph (2)(a)(ii) and (iii) above, the relevant day is the day on which the reconstruction, enlargement or extension in question commenced.

(7) In the application of sub-paragraphs (1) to (6) above to a reconstruction, enlargement or extension to which sub-paragraphs (1) and (2) and sub-paragraphs (4) to (7) of paragraph 5 above apply by virtue of paragraph 5(8) above—

(a) references to the building or work shall be construed as references to the reconstructed enlarged or extended building or work, and references to construction shall be construed as references to reconstruction, enlargement or extension;

(b) the reference in paragraph (a) of sub-paragraph (2) to the value of grants relating to the land on which the building or work is constructed shall be construed as a reference—

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- (i) in relation to a reconstruction, enlargement or extension of an existing building to the extent that it falls within paragraph 5(8)(a)(i) above and does not fall also within paragraph 5(8)(b) above, to the value of grants relating to the new building land;
 - (ii) in relation to a reconstruction, enlargement or extension of an existing building, to the extent that it falls within paragraph 5(8)(a)(ii) above and does not fall also within paragraph 5(8)(b) above, to the value of grants relating to the land on which the existing building stands multiplied by the appropriate fraction;
 - (iii) in relation to a reconstruction, enlargement or extension to a work falling within paragraph 5(8)(c) above, to the value of grants relating to the new land.
- (8) For the purposes of sub-paragraph (7)(b)(ii) above the appropriate fraction shall be calculated by dividing the additional gross external floor area resulting from the reconstruction, enlargement or extension (excluding any floor area on new building land) by the gross external floor area of the reconstructed, enlarged or extended building (excluding any floor area on new building land).
- 7 (1) Where a developer is a tenant, lessee or licensee and becomes liable to a charge to VAT under paragraph 6(1) above in respect of his tenancy, lease or licence he shall notify forthwith in writing his landlord, lessor or licensor (as the case may be)—
- (a) of the date from which the tenancy, lease or licence becomes a developmental tenancy, developmental lease or developmental licence for the purposes of paragraph (b) of item 1 of Group 1 of Schedule 9;
 - (b) in a case falling within paragraph 5(8)(a)(ii) above, of the appropriate fraction determined in accordance with paragraph 6(8) above.
- (2) Where the appropriate fraction has been notified in accordance with sub-paragraph (1)(b) above, any supply made pursuant to the tenancy, lease or licence in question shall be treated as made pursuant to a developmental tenancy, developmental lease or developmental licence (a developmental supply) as if, and only to the extent that, the consideration for the developmental supply is for an amount equal to the whole of the consideration for the supply made pursuant to the tenancy, lease or licence, multiplied by the appropriate fraction.

General

- 8 Where the benefit of the consideration for the grant of an interest in, right over or licence to occupy land accrues to a person but that person is not the person making the grant—
- (a) the person to whom the benefit accrues shall for the purposes of this Act be treated as the person making the grant; and
 - (b) to the extent that any input tax of the person actually making the grant is attributable to the grant it shall be treated as input tax of the person to whom the benefit accrues.
- 9 Notes (1) to (6) and Note (10) to Group 5 of Schedule 8 and Notes (1) and (2) to Group 1 of Schedule 9 apply in relation to this Schedule as they apply in relation to their respective Groups but subject to any appropriate modifications.