
STATUTORY INSTRUMENTS

1995 No. 280

VALUE ADDED TAX

The Value Added Tax (Construction of Buildings) Order 1995

Approved by the House of Commons

<i>Made</i>	- - - -	<i>8th February 1995</i>
<i>Laid before the House of Commons</i>	- - - -	<i>8th February 1995</i>
<i>Coming into force</i>	- -	<i>1st March 1995</i>

The Treasury, in exercise of the powers conferred on them by sections 30(4) and 96(9) of the Value Added Tax Act 1994(1) and of all powers enabling them in that behalf, hereby make the following Order:

1. This Order may be cited as the Value Added Tax (Construction of Buildings) Order 1995 and shall come into force on the 1st March 1995.
2. For Group 5 of Schedule 8 to the Value Added Tax Act 1994 there shall be substituted—

“GROUP 5—CONSTRUCTION OF BUILDINGS, ETC.

Item No.

1. The first grant by a person—
 - (a) constructing a building—
 - (i) designed as a dwelling or number of dwellings; or
 - (ii) intended for use solely for a relevant residential or a relevant charitable purpose; or
 - (b) converting a non-residential building or a non-residential part of a building into a building designed as a dwelling or number of dwellings or a building intended for use solely for a relevant residential purpose,of a major interest in, or in any part of, the building, dwelling or its site.
2. The supply in the course of the construction of—
 - (a) a building designed as a dwelling or number of dwellings or intended for use solely for a relevant residential purpose or a relevant charitable purpose; or

- (b) any civil engineering work necessary for the development of a permanent park for residential caravans,

of any services related to the construction other than the services of an architect, surveyor or any person acting as a consultant or in a supervisory capacity.

3. The supply to a registered housing association in the course of conversion of a non-residential building or a non-residential part of a building into—

- (a) a building or part of a building designed as a dwelling or number of dwellings; or
- (b) a building or part of a building intended for use solely for a relevant residential purpose,

of any services related to the conversion other than the services of an architect, surveyor or any person acting as a consultant or in a supervisory capacity.

4. The supply of building materials to a person to whom the supplier is supplying services within item 2 or 3 of this Group which include the incorporation of the materials into the building (or its site) in question.

Notes:

(1) “Grant” includes an assignment or surrender.

(2) A building is designed as a dwelling or a number of dwellings where in relation to each dwelling the following conditions are satisfied—

- (a) the dwelling consists of self-contained living accommodation;
- (b) there is no provision for direct internal access from the dwelling to any other dwelling or part of a dwelling;
- (c) the separate use, or disposal of the dwelling is not prohibited by the term of any covenant, statutory planning consent or similar provision; and
- (d) statutory planning consent has been granted in respect of that dwelling and its construction or conversion has been carried out in accordance with that consent.

(3) The construction of, or conversion of a non-residential building to, a building designed as a dwelling or a number of dwellings includes the construction of, or conversion of a non-residential building to, a garage provided that—

- (a) the dwelling and the garage are constructed or converted at the same time; and
- (b) the garage is intended to be occupied with the dwelling or one of the dwellings.

(4) Use for a relevant residential purpose means use as—

- (a) a home or other institution providing residential accommodation for children;
- (b) a home or other institution providing residential accommodation with personal care for persons in need of personal care by reason of old age, disablement, past or present dependence on alcohol or drugs or past or present mental disorder;
- (c) a hospice;
- (d) residential accommodation for students or school pupils;
- (e) residential accommodation for members of any of the armed forces;
- (f) a monastery, nunnery or similar establishment; or
- (g) an institution which is the sole or main residence of at least 90 per cent. of its residents,

except use as a hospital, prison or similar institution or an hotel, inn or similar establishment.

(5) Where a number of buildings are—

(a) constructed at the same time and on the same site; and
(b) are intended to be used together as a unit solely for a relevant residential purpose;
then each of those buildings, to the extent that they would not be so regarded but for this Note, are to be treated as intended for use solely for a relevant residential purpose.

(6) Use for a relevant charitable purpose means use by a charity in either or both the following ways, namely—

- (a) otherwise than in the course or furtherance of a business;
- (b) as a village hall or similarly in providing social or recreational facilities for a local community.

(7) Subject to Note (9) below “non-residential” in relation to a building or part of a building, means—

- (a) neither designed nor adapted for use as a dwelling or number of dwellings nor for a relevant residential purpose, or
- (b) if so designed or adapted, was constructed before, and has not been used as a dwelling or number of dwellings or for a relevant residential purpose since, 1st April 1973.

(8) References to a non-residential building or a non-residential part of a building do not include a reference to a garage occupied together with a dwelling.

(9) The conversion, other than to a building designed for a relevant residential purpose, of a non-residential part of a building which already contains a residential part is not included within items 1(b) or 3 unless the result of that conversion is to create an additional dwelling or dwellings.

(10) Where—

- (a) part of a building that is constructed is designed as a dwelling or number of dwellings or is intended for use solely for a relevant residential purpose or relevant charitable purpose (and part is not); or
- (b) part of a building that is converted is designed as a dwelling or number of dwellings or is used solely for a relevant residential purpose (and part is not)—

then in the case of—

- (i) a grant or other supply relating only to the part so designed or intended for that use (or its site) shall be treated as relating to a building so designed or intended for such use;
- (ii) a grant or other supply relating only to the part neither so designed nor intended for such use (or its site) shall not be so treated; and
- (iii) any other grant or other supply relating to, or to any part of, the building (or its site), an apportionment shall be made to determine the extent to which it is to be so treated.

(11) Where, a service falling within the description in items 2 or 3 is supplied in part in relation to the construction or conversion of a building and in part for other purposes, an apportionment may be made to determine the extent to which the supply is to be treated as falling within items 2 or 3.

(12) Where all or part of a building is intended for use solely for a relevant residential purpose or a relevant charitable purpose—

- (a) a supply relating to the building (or any part of it) shall not be taken for the purposes of items 2 and 4 as relating to a building intended for such use unless it is made to a person who intends to use the building (or part) for such a purpose; and

- (b) a grant or other supply relating to the building (or any part of it) shall not be taken as relating to a building intended for such use unless before it is made the person to whom it is made has given to the person making it a certificate in such form as may be specified in a notice published by the Commissioners stating that the grant or other supply (or a specified part of it) so relates.
- (13) The grant of an interest in, or in any part of—
 - (a) a building designed as a dwelling or number of dwellings; or
 - (b) the site of such a building,is not within item 1 if—
 - (i) the interest granted is such that the grantee is not entitled to reside in the building or part, throughout the year; or
 - (ii) residence there throughout the year, or the use of the building or part as the grantee's principal private residence, is prevented by the terms of a covenant, statutory planning consent or similar permission.
- (14) Where the major interest referred to in item 1 is a tenancy or lease—
 - (a) if a premium is payable, the grant falls within that item only to the extent that it is made for consideration in the form of the premium; and
 - (b) if a premium is not payable, the grant falls within that item only to the extent that it is made for consideration in the form of the first payment of rent due under the tenancy or lease.
- (15) The reference in item 2(b) of this Group to the construction of a civil engineering work does not include a reference to the conversion, reconstruction, alteration or enlargement of a work.
- (16) For the purpose of this Group, the construction of a building does not include—
 - (a) the conversion, reconstruction or alteration of an existing building; or
 - (b) any enlargement of, or extension to, an existing building except to the extent the enlargement or extension creates an additional dwelling or dwellings; or
 - (c) subject to Note (17) below, the construction of an annexe to an existing building.
- (17) Note 16(c) above shall not apply where an annexe is intended for use solely for a relevant charitable purpose and—
 - (a) is capable of functioning independently from the existing building; and
 - (b) the only access or where there is more than one means of access, the main access to:
 - (i) the annexe is not via the existing building; and
 - (ii) the existing building is not via the annexe.
- (18) A building only ceases to be an existing building when:
 - (a) demolished completely to ground level; or
 - (b) the part remaining above ground level consists of no more than a single facade or where a corner site, a double facade, the retention of which is a condition or requirement of statutory planning consent or similar permission.
- (19) 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.
- (20) Item 2 and Item 3 do not include the supply of services described in paragraph 1(1) or 5(4) of Schedule 4.

(21) In Item 3 “registered housing association” means a registered housing association within the meaning of the Housing Association Act 1985(2) or Part II of the Housing (Northern Ireland) Order 1992(3).

(22) “Building materials”, in relation to any description of building, means goods of a description ordinarily incorporated by builders in a building of that description, (or its site), but does not include—

- (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) electrical or gas appliances, unless the appliance is an appliance which is—
 - (i) designed to heat space or water (or both) or to provide ventilation, air cooling, air purification, or dust extraction; or
 - (ii) intended for use in a building designed as a number of dwellings and is a door-entry system, a waste disposal unit or a machine for compacting waste; or
 - (iii) a burglar alarm, a fire alarm, or fire safety equipment or designed solely for the purpose of enabling aid to be summoned in an emergency; or
 - (iv) a lift or hoist;
- (d) carpets or carpeting material.

(23) For the purposes of Note (22) above the incorporation of goods in a building includes their installation as fittings.

(24) Section 30(3) does not apply to goods forming part of a description of supply in this Group.”.

8th February 1995

Tim Wood
Derek Conway
Two of the Lords Commissioners of Her
Majesty’s Treasury

(2) 1985 c. 69; Section 1 which defines “housing association” was amended by the Housing (Scotland) Act 1988 (c. 43); Section 3(2) (meaning of “registered”) was amended by the Housing Act 1988 c. 50).

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

EXPLANATORY NOTE

(This note is not part of the Order)

This Order substitutes Group 5 (Construction of Buildings etc) of Schedule 8 to the Value Added Tax Act 1994. The Group has been revised to bring greater certainty to the law relating to zero-rate relief for the construction of dwellings and buildings used for other relevant residential or charitable purposes; in particular where work is carried out on existing buildings. The major changes are that:

- persons converting non-residential property to create new dwellings or buildings for other relevant residential purposes can now zero-rate the grant of a major interest in the building or a part of the building;
- the construction of a self-contained annex used for a relevant charitable purpose can now be zero-rated, even if there is secondary access to it through an existing building;
- a new provision is introduced for apportionment of supplies of services relating in part to the construction or conversion of a qualifying building and in part to other matters;
- a stricter definition of an existing building is introduced.

Two new items are included in the substituted Group. Item 1(b) allows the grant of a major interest in a dwelling or relevant residential building to be zero-rated where they have been converted from a non-residential building by the person making the grant. Item 3 makes special provision for registered housing associations to receive zero-rated supplies of services in the course of converting non-residential buildings to dwellings or relevant residential buildings. This reflects the special situation of housing associations who are not normally permitted to sell their housing stock and, therefore, would not be able to benefit from the new provision in item 1(b).

The existing item 3 is reproduced, with amendments, as item 4 and provides for the zero-rating of supplies of building materials by a person who is also making zero-rated supplies of construction or conversion services. (The item should be read in conjunction with Notes (22) and (23).)

Item 1 has also been amended to make it clear that zero-rate relief is only available on the first grant of a major interest by the person constructing or converting a building (or its site) within that item. In addition, Note (1) has extended the meaning of “grant” of a major interest, to include the surrender of such an interest.

A new Note (2) defines for the purpose of the Group what is meant by a building designed as a dwelling or a number of dwellings. The existing note (2) is reproduced in a revised and extended form as Note (3). The Note provides for the circumstances in which the construction of, or conversion of a non-residential building to, a building designed as a dwelling includes a garage.

The new Note (5) is introduced to clarify the entitlement to zero-rate relief where a number of buildings are constructed which together constitute a single operating unit which is used for a relevant residential purpose.

Note (7) defines non-residential in relation to buildings or parts of buildings and in sub-paragraph (b) gives a concession whereby a derelict dwelling or a dwelling converted to non-residential use and not used as a dwelling since the inception of Value Added Tax in 1973 can benefit from the relief granted by item 1(b). Notes (8) and (9) make further provision regarding the definition of non-residential buildings.

Note (10) reproduces the existing Note (5) but the necessary amendments to apply the apportionment provisions to conversions. A new apportionment provision is introduced by Note (11). This provides for apportionment where a service is supplied only in part in relation to a qualifying building.

Note (16) is a revision of the existing Note (9) and precludes, with two exceptions, any work carried out to an existing building from being the “construction of a building”. The exceptions are set out in sub-paragraphs (b) and (c) of the Note. Sub-paragraph (b) provides for the zero-rating of an enlargement or extension to a building, but only to the extent such an enlargement or extension creates an additional dwelling or dwellings, and sub-paragraph (c) provides for the zero-rating of the construction of an annexe to an existing building, provided it is intended for use solely for a relevant charitable purpose and satisfies the other conditions set out in Note (17).

Note (18) introduces a new definition of what amounts to an existing building for the purpose of the Group.

Note (21) defines a registered housing association for the purposes of item 3.

Note (22) reproduces, with amendments, the existing Note (12) and defines building materials for the purposes of item 4. Sub-paragraph (c) of the Note extends the list of appliances which may be zero-rated as building materials, both by removing the previous restriction on domestic appliances and by including all forms of ventilation and other specified items. Note (23) confirms that the reference in Note (22) to the incorporation of goods in building includes their installation as fittings.

All other provisions in the substituted Group 5 merely reproduce the existing provisions.