

Order made by the Treasury, laid before the House of Commons under section 97(3) of the Value Added Tax Act 1994, for approval by a 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

1997 No. 2744

VALUE ADDED TAX

**The Value Added Tax (Drugs, Medicines
and Aids for the Handicapped) Order 1997**

<i>Made</i>	- - - -	<i>18th November 1997</i>
<i>Laid before the House of Commons</i>	- - - -	<i>18th November 1997</i>
<i>Coming into force</i>	- -	<i>1st January 1998</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 other powers enabling them in that behalf, hereby make the following Order:

1. This Order may be cited as the Value Added Tax (Drugs, Medicines and Aids for the Handicapped) Order 1997 and shall have effect, in relation to supplies made on or after 1st January 1998 and any acquisition or importation taking place, on or after that date.

2. Group 12 (supplies of drugs, medicines, aids for the handicapped, etc) of Schedule 8 to the Value Added Tax Act 1994⁽²⁾ shall be amended in accordance with articles 3 to 7 below.

3. In item 1 (supply of goods dispensed under prescription), for “supply of any goods dispensed,” there shall be substituted “supply of any qualifying goods dispensed to an individual for his personal use where the dispensing is”.

4. In item 1A (supply of goods by doctors) after “any” there shall be inserted “qualifying” and for “regulation 41 of the Health and Personal Social Services (General Medical and Pharmaceutical Services) Regulations (Northern Ireland) 1973”, there shall be substituted “regulation 12 of the Pharmaceutical Services Regulations (Northern Ireland) 1997”⁽³⁾.

5. After Note (2), there shall be inserted the following Note—

“(2A) In items 1 and 1A, “qualifying goods” means any goods designed or adapted for use in connection with any medical or surgical treatment except—

(a) hearing aids;

(1) 1994 c. 23.

(2) 1994 c. 23; amended by S.I.1995/652.

(3) S.R. (N.I.) 1997 No. 381.

- (b) dentures; and
- (c) spectacles and contact lenses.”.

6. In paragraph (b) of Note (4) delete “other than mechanically propelled vehicles intended or adapted for use on roads”.

7. After Note (5), there shall be inserted the following Notes—

“(5A) In item 1 the reference to personal use does not include any use which is, or involves, a use by or in relation to an individual while that individual, for the purposes of being provided (whether or not by the person making the supply) with medical or surgical treatment, or with any form of care—

- (a) is an in-patient or resident in a relevant institution which is a hospital or nursing home; or
- (b) is attending at the premises of a relevant institution which is a hospital or nursing home.

(5B) Subject to Notes (5C) and (5D), in item 2 the reference to domestic or personal use does not include any use which is, or involves, a use by or in relation to a handicapped person while that person, for the purposes of being provided (whether or not by the person making the supply) with medical or surgical treatment, or with any form of care—

- (a) is an in-patient or resident in a relevant institution; or
- (b) is attending at the premises of a relevant institution.

(5C) Note (5B) does not apply for the purpose of determining whether any of the following supplies falls within item 2, that is to say—

- (a) a supply to a charity;
- (b) a supply by a person mentioned in any of paragraphs (a) to (g) of Note (5H) of an invalid wheelchair or invalid carriage;
- (c) a supply by a person so mentioned of any parts or accessories designed solely for use in or with an invalid wheelchair or invalid carriage.

(5D) Note (5B) applies for the purpose of determining whether a supply of goods by a person not mentioned in any of paragraphs (a) to (g) of Note (5H) falls within item 2 only if those goods are—

- (a) goods falling within paragraph (a) of that item;
- (b) incontinence products and wound dressings; or
- (c) parts and accessories designed solely for use in or with goods falling within paragraph (a) of this Note.

(5E) Subject to Note (5F), item 2 does not include—

- (a) a supply made in accordance with any agreement, arrangement or understanding (whether or not legally enforceable) to which any of the persons mentioned in paragraphs (a) to (g) of Note (5H) is or has been a party otherwise than as the supplier; or
- (b) any supply the whole or any part of the consideration for which is provided (whether directly or indirectly) by a person so mentioned.

(5F) A supply to a handicapped person of an invalid wheelchair or invalid carriage is excluded from item 2 by Note (5E) only if—

- (a) that Note applies in relation to that supply by reference to a person falling within paragraph (g) of Note (5H); or

(b) the whole of the consideration for the supply is provided (whether directly or indirectly) by a person falling within any of paragraphs (a) to (f) of Note (5H).

(5G) In Notes (4), (5C) and (5F), the references to an invalid wheelchair and to an invalid carriage do not include references to any mechanically propelled vehicle which is intended or adapted for use on roads.

(5H) The persons referred to in Notes (5C) to (5F) are—

- (a) a Health Authority or Special Health Authority in England and Wales;
- (b) a Health Board or Special Health Board in Scotland;
- (c) a Health and Social Services Board in Northern Ireland;
- (d) the Common Services Agency for the Scottish Health Service, the Northern Ireland Central Services Agency for Health and Social Services and the Isle of Man Health Services Board;
- (e) a National Health Service trust established under Part I of the National Health Service and Community Care Act 1990⁽⁴⁾ or the National Health Service (Scotland) Act 1978⁽⁵⁾;
- (f) a Health and Social Services trust established under Article 10 of the Health and Personal Social Services (Northern Ireland) Order 1991⁽⁶⁾; or
- (g) any person not falling within any of paragraphs (a) to (f) above who is engaged in the carrying on of any activity in respect of which a relevant institution is required to be approved, licensed or registered or as the case may be, would be so required if not exempt.

(5I) In Notes (5A), (5B) and (5H), “relevant institution” means any institution (whether a hospital, nursing home or other institution) which provides care or medical or surgical treatment and is either—

- (a) approved, licensed or registered in accordance with the provisions of any enactment or Northern Ireland legislation; or
- (b) exempted by or under the provisions of any enactment or Northern Ireland legislation from any requirement to be approved, licensed or registered;,

and in this Note the references to the provisions of any enactment or Northern Ireland legislation include references only to provisions which, so far as relating to England, Wales, Scotland or Northern Ireland, have the same effect in every locality within that part of the United Kingdom.”.

*Bob Ainsworth
Jon Owen Jones*

Two of the Lords Commissioners of Her
Majesty’s Treasury

18th November 1997

⁽⁴⁾ 1990 c. 19.

⁽⁵⁾ 1978 c. 29.

⁽⁶⁾ S.I. 1991/194 (N.I.1).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, which comes into force on 1st January 1998, amends Group 12 of Schedule 8 to the Value Added Tax Act 1994.

Article 3 amends Item 1 of the Group and requires that, for zero-rating to apply, the goods must be qualifying goods and that they must be dispensed by a pharmacist to an individual for his personal use. Article 4 amends Item 1A so that only qualifying goods may be supplied by Doctors who are required or authorised to provide pharmaceutical services on behalf of the National Health Service at the zero-rate. Article 4 also updates the reference to legislation operating in Northern Ireland. Article 5 inserts a new Note (2A), which defines qualifying goods for the purposes of items 1 and 1A.

Article 7 inserts new Notes (5A) to (5I) which restrict Items 1, 1A and 2 of the Group.

Note (5A) provides that the supply of qualifying goods is not eligible for zero-rating if those goods are used while a person is receiving medical or surgical treatment or care in, or whilst attending a hospital or nursing home.

Note (5B) provides that the supply of medical and surgical appliances is not eligible for zero-rating if those goods are used while a handicapped person is receiving care or medical or surgical treatment in, or whilst attending a hospital, nursing home or other institution. These hospitals, nursing homes and other institutions (“relevant institutions”) are defined in Note (5I).

Note (5C) provides that Note (5B) does not apply for the purposes of determining whether supplies to charities and supplies of invalid wheelchairs and carriages and parts and accessories thereto by persons mentioned in Note (5H) are within item 2.

Note (5D) provides that goods of a description falling within item 2 (but not medical or surgical appliances, parts and accessories thereto, incontinence products and wound dressings) can be supplied at the zero-rate to handicapped persons receiving medical or surgical treatment or any form of care in a relevant institution by persons other than those mentioned in Note (5H). Note (5E) however provides that if such other suppliers make the supply in accordance with an agreement, arrangement or understanding to which a person mentioned in Note (5H) is or has been a party or has paid for the goods then the supply will be excluded from the zero-rate. Note (5F) provides that the supply of an invalid wheelchair or invalid carriage will only be excluded from the zero-rate by Note (5E) if a person mentioned in paragraph (g) of Note (5H) is or has been a party to the supply or paid for it in whole or in part or a person mentioned in paragraphs (a) to (f) of Note (5H) has paid the whole of the consideration for the supply. Note (5G) defines invalid wheelchair and invalid carriage for the purposes of the Group and Article 6 makes the necessary consequential change to Note (4).