

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

1998 No. 762

VALUE ADDED TAX

The Value Added Tax (Supply of Services) (Amendment) Order 1998

<i>Made</i>	- - - -	<i>17th March 1998</i>
<i>Laid before the House of Commons</i>	- - - -	<i>17th March 1998</i>
<i>Coming into force</i>	- -	<i>18th March 1998</i>

The Treasury, in exercise of the powers conferred on them by section 5(4) 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 (Supply of Services) (Amendment) Order 1998 and shall come into force on 18th March 1998 in relation to services which are put to any private use, or used or made available to any person for use for a purpose other than a purpose of the business, on or after that date.

2. The Value Added Tax (Supply of Services) Order 1993(2) shall be amended in accordance with the following provisions of this Order.

3. In article 6(b), for “was” there shall be substituted “has or will become”.

4. In article 7—

(a) for “was entitled” there shall be substituted “has or will become entitled”; and

(b) from the words “credit” to “Act” there shall be substituted “credit under sections 25 and 26 of the Act”.

5. After article 7 there shall be added—

“8. Where—

(1) 1994 c. 23.

(2) S.I. 1993/1507, amended by S.I. 1995/1668.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (a) there is a supply of any of the assets of a business of a person (“the transferor”) to a person to whom the whole or any part of that business is transferred as a going concern (“the transferee”), and
- (b) that supply is treated in accordance with an Order made under section 5(3) of the Act (or under an enactment re-enacted in section 5(3) of the Act) as being neither a supply of goods nor a supply of services,

the liability of the transferee to tax in accordance with articles 5, 6(b) and 7 above, shall be determined as if the transferor and the transferee were the same person.

9. Where a transferor has himself acquired any assets by way of a supply falling within paragraphs (a) and (b) of article 8 above, that article shall have the effect of requiring the person from whom those assets were acquired to be treated for the purposes of determining the liability of the transferee to tax in accordance with articles 5, 6(b) and 7 above as the same person as the transferor and the transferee, and so on in the case of any number of successive supplies falling within those paragraphs.”.

*Graham Allen
Jim Dowd*

Two of the Lord Commissioners of Her
Majesty’s Treasury

17th March 1998

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, which comes into force on 18th March 1998, amends the Value Added Tax (Supply of Services) Order 1993 (S.I.1993/1507) (the “principal Order”).

Under the principal Order, owners of businesses must account for VAT on services put to private use, if they were entitled to recover VAT when they purchased the services. The effect of the amendments is that a change in the ownership of a business will not prevent this VAT charge from arising.

Article 3 amends article 6(b) of the principal Order, which limits the VAT charge to cases where input tax has been recoverable on the purchase of the services which are later put to private use. The effect of the amendment is that there will be a VAT charge, even if the input tax entitlement arises after the services are put to private use.

Article 4 amends article 7 of the principal Order, which prevents the VAT charge from exceeding the input tax which has been recoverable on the services put to private use. The effect of the amendment is that input tax which becomes recoverable after the services are put to private use is also taken into account.

Article 5 adds a new article 8 to the principal Order, covering the situation where a business is transferred VAT-free as a going concern. In this case the purchaser is treated as the same person as the vendor, when determining the amount of the purchaser’s VAT charge; whether or not input tax was recoverable; and whether or not the VAT charge has exceeded the irrecoverable input tax. The article also adds a new article 9 to the principal Order, applying the rule in article 8 to situations where a business is transferred VAT-free as a going concern more than once. In such a case the purchaser is treated as if he and all previous owners were the same person.