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STATUTORY INSTRUMENTS

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**2002 No. 1503**

**VALUE ADDED TAX**

**The Value Added Tax (Special Provisions)  
(Amendment) (No. 2) Order 2002**

<i>Made</i>	- - - -	<i>10th June 2002</i>
<i>Laid before the House of Commons</i>	- - - -	<i>10th June 2002</i>
<i>Coming into force</i>	- -	<i>1st July 2002</i>

The Treasury, in exercise of the powers conferred on them by section 50A(1), (5) and (8) of the Value Added Tax Act 1994<sup>(1)</sup> and of all other powers enabling them in that behalf, hereby make the following Order:

**1.**—(1) This Order may be cited as the Value Added Tax (Special Provisions) (Amendment) (No. 2) Order 2002 and comes into force on 1st July 2002.

(2) This Order shall not have effect where the taxable person took possession of the goods pursuant to—

(a) an assignment which is an article 5 transaction solely by virtue of article 5(4) of the Value Added Tax (Special Provisions) Order 1995<sup>(2)</sup> or a corresponding provision made under the Manx Act; or

(b) a transaction forming part of a succession of two or more article 5 transactions, at least one of which was such an assignment,

if the assignment or, where there is a succession of transactions comprising two or more assignments, any of the assignments takes effect before 1st July 2002.

(3) In this article—

“article 5 transaction” means a transaction which is treated as being neither a supply of goods nor a supply of services by virtue of a provision of article 5 of the Value Added Tax (Special Provisions) Order 1995 or a corresponding provision made under the Manx Act;

“the Manx Act” means the Value Added Tax Act 1996<sup>(3)</sup>.

**2.** Article 12 of the Value Added Tax (Special Provisions) Order 1995 is amended as follows—

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(1) 1994 c. 23; section 50A was inserted by section 24(1) of the Finance Act 1995 (c. 4).

(2) S.I.1995/1268; relevant amending instruments are S.I. 1997/1616, S.I. 1998/760, S.I. 1999/2831, S.I. 1999/3120 and S.I. 2001/3753.

(3) Act of Tynwald 1996 c. 1.

- (a) for paragraphs (iii) and (iv) of paragraph (3)(a), substitute—
  - “(iii) a de-supplied transaction, other than an article 5 transaction;
  - (iv) subject to paragraph (3A) below, an article 5 transaction;”;
- (b) after paragraph (3), insert—
  - “(3A) An article 5 transaction does not fall within paragraph (iv) of paragraph (3)(a) above unless the taxable person has a relevant predecessor in title.”;
- (c) for paragraph (v) of paragraph (5)(a), substitute—
  - “(v) (where the taxable person took possession of the goods pursuant to a de-supplied transaction, other than an article 5 transaction) by taking the price he paid pursuant to the transaction;
  - (vi) (where the taxable person took possession of the goods pursuant to an article 5 transaction) by taking the price at which his relevant predecessor in title obtained the goods;”;
- (d) omit sub-paragraph (c) of paragraph (5); and
- (e) after paragraph (9) add—
  - “(10) For the purposes of this article—
    - “article 5 transaction” means a transaction which is a de-supplied transaction by virtue of a provision of article 5 above or a corresponding provision made under the Manx Act(4);
    - “de-supplied transaction” means a transaction which was treated by virtue of any Order made or having effect as if made under section 5(3) of the Act or under the corresponding provisions of the Manx Act as being neither a supply of goods nor a supply of services.
  - (11) For the purposes of this article a person is a relevant predecessor in title of a taxable person if—
    - (a) he is the person from whom the taxable person took possession of the goods and himself took possession of them in any of the circumstances described in paragraph (3) above, but not pursuant to an article 5 transaction; or
    - (b) where the goods have been the subject of a succession of two or more article 5 transactions (culminating in the article 5 transaction to which the taxable person was a party), he was a party to one of those transactions and himself took possession of the goods in any of the circumstances described in paragraph (3) above, but not pursuant to an article 5 transaction.”.

*Nick Ainger*

*John Heppell*

Two of the Lords Commissioners of Her Majesty’s Treasury

10th June 2002

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(4) Article 2 of the Value Added Tax (Special Provisions) Order 1995 was amended by S.I. 1998/760 so as to define the Manx Act as “the Value Added Tax Act 1996” (Act of Tynwald 1996; c.1).

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order, which comes into force on 1st July 2002, amends the Value Added Tax (Special Provisions) Order 1995 (the “principal Order”). It prevents the sale of goods being taxed under the margin scheme following certain assignments of rights in hire purchase or conditional sale agreements, if the assignors could not themselves have used the scheme to sell the goods. By article 1(2), the Order does not affect sales on or after 1st July 2002 if the related assignment took place before that date.

The Order amends article 12 of the principal Order, changing the conditions which must be met in order for taxable persons to be able to opt to use the margin scheme to account for VAT on the sale of works of art, antiques, collectors' items and other second-hand goods (but not motor cars).

The new concepts of “de-supplied transaction” and “article 5 transaction” are introduced into paragraph (3)(a) of article 12 and defined in a new paragraph (10). A new paragraph (3A) provides an additional condition in respect of article 5 transactions that there is a “relevant predecessor in title”, which is defined in a new paragraph (11).

These changes affect banks and financial institutions selling goods they obtained when they were assigned the rights in a hire purchase or conditional sale agreement, and all businesses selling goods they obtained as the result of the transfer of a going concern (TOGC). In such cases businesses will only be able to use the margin scheme if the last person to obtain the goods other than by way of an assignment of rights or a TOGC (an article 5 transaction) was himself entitled to use the margin scheme on the sale of the goods by him. Where there has been a succession of assignments or TOGCs, or a mixture of both, it is therefore the first person in that chain who must have been so entitled. In either case, this other person is the relevant predecessor in title.

The Order also revises article 12(5)(a) of the principal Order so that for the purpose of determining the margin, in the case of goods obtained as a result of an assignment or TOGC, the purchase price to be used will be the price paid for the goods by the relevant predecessor in title. There is already a similar rule in respect of TOGCs, which the Order replaces with this wider provision. It also confirms the purchase price to be used for sales of goods obtained as the result of a transaction (other than an assignment or TOGC), which for VAT purposes is treated as neither a supply of goods nor a supply of services (a de-supplied transaction). In this case the person opting to use the margin scheme should use the price he paid when he obtained the goods.