
STATUTORY INSTRUMENTS

2004 No. 1933

VALUE ADDED TAX

The Value Added Tax (Disclosure of Avoidance Schemes) (Designations) Order 2004

Approved by the House of Commons

<i>Made</i>	- - - -	<i>22nd July 2004</i>
<i>Laid before the House of Commons</i>	- - - -	<i>22nd July 2004</i>
<i>Coming into force</i>	- -	<i>1st August 2004</i>

Whereas it appears to the Treasury that the schemes described in Schedule 1 to this Order satisfy the matters specified in paragraph 3(1) of Schedule 11A to the Value Added Tax Act 1994(1);

And whereas it appears to the Treasury that the provisions described in Schedule 2 to this Order satisfy the matters specified in paragraph 4(1) of Schedule 11A to that Act;

Now, therefore, the Treasury, in exercise of the powers conferred upon them by paragraph 3(1), (2) and (3), and paragraph 4 of Schedule 11A to that Act, hereby make the following Order:

Citation and commencement

1. This Order may be cited as the Value Added Tax (Disclosure of Avoidance Schemes) (Designations) Order 2004 and comes into force on 1st August 2004.

Interpretation

2.—(1) In this Order “the Act” means the Value Added Tax Act 1994.

(2) Any reference in this Order to “Schedule 8” or “Schedule 9” is a reference to that Schedule to the Act.

(3) For the purposes of this Order a person is connected with another where—

- (a) one of them is an undertaking in relation to which the other is a group undertaking; or
- (b) both of them are connected to the same trust.

(4) For the purposes of this Order a person is connected to a trust where —

- (a) he is the settlor of the trust, a trustee or beneficiary of it; or
- (b) he holds any shares in a company in accordance with the terms of the trust, or is a person on whose behalf such shares are held.

(1) 1994 c. 23; Schedule 11A was inserted by the Finance Act 2004 (c. 12).

(5) For the purposes of this Order “undertaking” and “group undertaking” have the meaning given by section 259 of the Companies Act 1985⁽²⁾.

(6) A scheme is treated as fitting a description contained in the first column of Schedule 1 to this Order even if any feature of that scheme is not actually present (whether as a matter of law or for any other reason), provided a taxable person has treated that feature as being present for the purpose of making—

- (a) a return required under the Act; or
- (b) a claim for the repayment of output tax or an increase in credit for input tax.

(7) A provision is treated as fitting a description contained in Schedule 2 to this Order even if it, or any feature of it, is not actually present (whether as a matter of law or for any other reason), provided a taxable person has treated that feature as being present for the purpose of making—

- (a) a return required under the Act; or
- (b) a claim for the repayment of output tax or an increase in credit for input tax.

Designation of avoidance schemes and provisions included in or associated with avoidance schemes

3.—(1) The schemes described in the first column of Schedule 1 to this Order are designated schemes for the purposes of paragraph 3 of Schedule 11A to the Act and are allocated the reference numbers shown in the second column of Schedule 1.

(2) The provisions described in Schedule 2 to this Order are provisions designated for the purposes of paragraph 4 of Schedule 11A to the Act.

22nd July 2004

Joan Ryan
Jim Murphy
Two of the Lords Commissioners of Her
Majesty’s Treasury

(2) 1985 c. 6; section 259 was inserted by section 22 of the Companies Act 1989 (c. 40).

SCHEDULE 1

Article 3(1)

Description of Scheme	Reference Number
<p><i>First grant of a major interest in a building</i></p> <p>Any scheme comprising or including the first grant of a major interest in any building of a description falling within item 1(a) of Group 5 of Schedule 8 (construction of buildings etc.) where—</p> <p>(a) the grant is made to a person connected with the grantor; and</p> <p>(b) the grantor, or any body corporate treated as a member of a VAT group under section 43 of the Act of which the grantor is a member, attributes to that grant input tax incurred by him—</p> <p>(i) in respect of a service charge relating to the building; or</p> <p>(ii) in connection with any extension, enlargement, repair, maintenance or refurbishment of the building, other than for remedying defects in the original construction.</p>	1
<p><i>Payment handling service</i></p> <p>Any scheme comprising or including a retail supply of goods or services together with a linked supply to the same customer, where the total consideration for the retail supply and the linked supply is no different, or not significantly different, from what it would be for the retail sale alone.</p>	2
<p>NOTE</p> <p>“Linked supply” means a supply by the retailer or any other person that—</p> <p>(a) relates to the means of payment used for the retail supply; and</p> <p>(b) is a supply of a description falling within Group 5 of Schedule 9 (finance).</p>	
<p><i>Value shifting</i></p> <p>Any scheme comprising or including a retail supply of goods or services together with a linked supply to the same customer where—</p> <p>(a) the linked supply is a separate supply under the terms of any agreement made by the customer;</p>	3

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Description of Scheme	Reference Number
(b) part of the total consideration for the retail supply and the linked supply is attributed to the linked supply by the terms of any such agreement; and	
(c) the total consideration for the retail supply and the linked supply is no different, or not significantly different, from what it would be for the retail supply alone.	

NOTES

- (1) “Retail supply” means a supply by retail upon which VAT is charged at the rate in force under section 2(1) of the Act (rate of VAT)(3).
- (2) “Linked supply” means a supply of goods or services made by the retailer or any other person which is zero-rated or exempt.

Leaseback agreement

4

Any scheme comprising or including the supply of goods, or the leasing or

letting on hire of goods, (“the relevant supply”) by a taxable person to a connected relevant person where—

- (a) the taxable person or another taxable person connected with him, including the relevant person, is entitled to credit for all the input tax arising on the purchase of the goods;
- (b) the relevant person uses the goods in the course or furtherance of a business carried on by him, and for the purpose of that business, otherwise than for the purpose of selling, or leasing or letting on hire, the goods; and
- (c) the relevant person or a person connected with him has directly or indirectly provided funds for meeting more than 90% of the cost of the goods.

NOTES

- (1) “Relevant person” means any person who, in respect of the relevant supply, is not entitled to credit for all the input tax wholly attributable to the supplies he makes.

(3) Section 2(1) was amended by section 21 of the Finance Act 1995 (c. 4) and section 99 of the Finance Act 2001 (c. 9).

Description of Scheme	Reference Number
<p>(2) The provision of funds includes—</p> <ul style="list-style-type: none"> (a) the making of a loan of funds; and (b) the provision of any consideration for the issue of any shares or other securities issued wholly or partly for raising the funds. <p>(3) The grant, assignment or surrender of a major interest in land is not a supply of goods for the purposes of this scheme.</p>	5
<p><i>Extended approval period</i></p> <p>Any scheme comprising or including a retail supply of goods where—</p> <ul style="list-style-type: none"> (a) the goods are sent or taken on approval or sale or return or similar terms; (b) payment for the supply is required in full by the retailer before the expiry of any approval, return or similar period; and (c) for the purposes of accounting for VAT, the retailer treats the goods as supplied on a date after the date on which payment is received in full. 	6
<p><i>Groups: third party suppliers</i></p> <p>Any scheme comprising or including supplies made to one or more group members by a specified body in relation to which the benefits condition is not satisfied.</p>	7
<p>NOTE</p> <p>The Value Added Tax (Groups: eligibility) Order 2004⁽⁴⁾ shall apply for the purposes of determining whether—</p> <ul style="list-style-type: none"> (a) a body corporate is a specified body; and (b) the benefits condition is satisfied in relation to it. 	7
<p><i>Exempt education or vocational training by a non-profit making body</i></p> <p>Any scheme comprising or including the conduct of a relevant business by a non-profit making body where—</p> <ul style="list-style-type: none"> (a) it receives a relevant supply from a connected taxable person who is not an eligible body; and (b) in any one prescribed accounting period the value of all such relevant supplies is 	7

(4) S.I.2004/1931.

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Description of Scheme	Reference Number
equal to or more than 20% of the cost of making the supplies comprising the relevant business.	

NOTES

- (1) “Relevant business” means a business whose activities consist wholly or mainly of the supply of education or vocational training to persons who are not taxable persons.
- (2) “Non-profit making body” means a body within Note (1)(e) of Group 6 of Schedule 9 (Education)(5) which is not otherwise within Note 1.
- (3) “Relevant supply” means the supply, including the leasing or letting on hire, for use in a relevant business of—
 - (a) a capital item used in the course or furtherance of the relevant business, and for the purpose of that business, otherwise than solely for the purpose of selling, or leasing or letting on hire, the item;
 - (b) staff;
 - (c) management services;
 - (d) administration services; or
 - (e) accountancy services.
- (4) “Eligible body” has the meaning given by Note (1) of Group 6 of Schedule 9.
- (5) “Vocational training” has the meaning given by Note (3) of Group 6 of Schedule 9, but does not include vocational training of a description falling within item 5 or 5A of that Group.

Taxable education or vocational training by a non-eligible body **8**

Any scheme comprising or including the conduct of a relevant business by a non-eligible body connected to an eligible body where—

- (a) the non-eligible body benefits or intends to benefit the eligible body by way of gift, dividend or otherwise; or
- (b) the eligible body makes any supply to the non-eligible body which is a relevant supply and, in any one prescribed accounting period, the value of all such relevant supplies is equal to or more than

(5) Note (1)(e) was substituted by S.I. [1994/2969](#).

Description of Scheme	Reference Number
20% of the cost of making the supplies comprising the relevant business.	

NOTES

- (1) “Eligible body” has the meaning given by Note (1) of Group 6 of Schedule 9.
- (2) “Relevant business” means a business whose activities consist wholly or mainly of the taxable supply of education or vocational training.
- (3) “Vocational training” has the meaning given by Note (3) of Group 6 of Schedule 9.
- (4) “Relevant supply” means the supply, or leasing or letting on hire, for use in a relevant business of—
 - (a) a capital item used in the course or furtherance of the relevant business, and for the purpose of that business, otherwise than solely for the purpose of selling, or leasing or letting on hire, the item;
 - (b) staff;
 - (c) management services;
 - (d) administration services; or
 - (e) accounting services.

SCHEDULE 2

Article 3(2)

PART 1

Provisions associated with schemes

Confidentiality condition

1. An agreement preventing or limiting the disclosure of how a scheme gives rise to a tax advantage.

The sharing of the tax advantage with another party to the scheme or with the promoter.

2.—(1) An agreement that the tax advantage to a person accruing from the operation of the scheme be shared to any extent with another party to it or another person promoting it.

(2) A person is a promoter of a scheme if, in the course of a trade, profession or business which involves the provision to other persons of services relating to taxation—

- (a) he is to any extent responsible for the design of the proposed arrangements; or
- (b) he invites persons to enter into contracts for the implementation of the proposed arrangements.

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Fee payable to a promoter which is in whole or in part contingent on tax savings from the scheme.

3.—(1) An agreement that payment to a promoter of the scheme be contingent in whole or in part on the tax advantage accruing from the operation of the scheme.

(2) A person is a promoter of a scheme if, in the course of a trade, profession or business which involves the provision to other persons of services relating to taxation—

- (a) he is to any extent responsible for the design of the proposed arrangements; or
- (b) he invites persons to enter into contracts for the implementation of the proposed arrangements.

PART 2

Provisions included in schemes

Prepayment between connected parties

4.—(1) A payment for a supply of goods or services between connected persons—

- (a) before the time applicable under section 6(2) or (3) of the Act; or
- (b) where the supply is a continuous supply and the payment is before the goods or services are provided.

(2) A supply is a continuous supply if it is a supply to which regulation 85 (leases treated as supplies of goods), 86 (supplies of water, gas or any form of power, heat, refrigeration or ventilation), 90 (continuous supply of services), 91 (royalties and similar payments) or 93 (supplies in the construction industry) of the Value Added Tax Regulations 1995(6) applies.

(3) For the purposes of paragraph (1)(b) goods or services are provided at the time when, and to the extent that, the recipient receives the benefit of them.

Funding by loan, share subscription or subscription in securities

5. The funding in whole or in part of a supply of goods or services between connected persons by means of a loan between connected persons or the subscription for shares in, or securities issued by, a connected person.

Off-shore loops

6.—(1) A supply of a relevant service which is used or intended to be used, in whole or in part, directly or indirectly, in making to a person belonging in the United Kingdom, a supply which is zero-rated, exempt or treated as made in another country (and not in the United Kingdom) by virtue of section 7(10) of the Act (place of supply of services).

(2) A “relevant service” is a service of a description falling within—

- (a) article 3(a) of the Value Added Tax (Input Tax) (Specified Supplies) Order 1999(7) (services supplied to a person who belongs outside the member States);
- (b) article 3(b) of that Order (services directly linked to the export of goods to a place outside the member States), insofar as they are supplies of a description falling within item 2 of Group 5 of Schedule 9 (the making of any advance or any credit); or

(6) S.I. 1995/2518; relevant amending instruments are S.I. 1997/1525, S.I. 1997/2887, S.I. 1998/765, S.I. 1999/1374.

(7) S.I. 1999/3121.

(c) article 3(c) of that Order (the provision of intermediary insurance or financial services); or is a supply of a description specified in any of paragraphs 1 to 8 of Schedule 5 to the Act (services supplied where received), and the recipient of that supply belongs in a country, other than the Isle of Man, which is not a member State.

Property transactions between connected persons

7.—(1) A relevant grant where—

- (a) the grantor or grantee of the interest or right is a person who is not entitled to credit for all the input tax wholly attributable to the supplies he makes;
- (b) any work of construction, alteration, demolition, repair, maintenance or civil engineering has been or is to be carried out on the land; and
- (c) the grant is made to a person connected with the grantor.

(2) “Relevant grant” means the grant of any interest in or right over land or of any licence to occupy land or, in relation to land in Scotland, any personal right to call for or be granted any such interest or right, other than a grant of a description falling within item 1 of Group 5 (first grant of a major interest by a person constructing a building designed for dwelling, or intended for use solely for residential or charitable purposes; or by a person converting a non-residential building to residential use) or item 1 of Group 6 (first grant of a major interest in a protected building by a person reconstructing it) of Schedule 8.

(3) “Grant” includes an assignment or surrender and the supply made by the person to whom an interest is surrendered when there is a reverse surrender.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, which comes into force on 1st August 2004, designates tax avoidance schemes for the purposes of paragraph 3(1) of Schedule 11A to the Value Added Tax Act 1994 and allocates them a reference number.

It also designates provisions included in or associated with tax avoidance schemes for the purposes of paragraph 4 of Schedule 11A to this Act.

Schemes designated by this Order and schemes which include or are associated with provisions designated by this Order are subject to the provisions of Schedule 11A requiring, in the circumstances specified in the Schedule, notification to the Commissioners of Customs and Excise.

Article 1 provides for the citation and commencement of this Order.

Article 2 provides for the interpretation of the Order.

Article 3(1) designates the avoidance schemes described in Schedule 1 of the Order and provides for a reference number to be allocated to each scheme.

Article 3(2) designates the provisions included in or associated with avoidance schemes described in Schedule 2.

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