

**EXPLANATORY MEMORANDUM TO**  
**THE VALUE ADDED TAX (BUILDINGS AND LAND) ORDER**

**2010 No. 485**

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs and is laid before the House of Commons by Command of Her Majesty.

This memorandum contains information for the Select Committee on Statutory Instruments.

2. **Purpose of the instrument**

2.1 This Treasury Order amends, with effect from *1 April* 2010, Schedule 10 ("Schedule 10") to the Value Added Tax Act 1994 (c. 23) ("the Act"). The amendments made by this Order provide further facilitation in the use by businesses of the option to tax supplies of land and buildings. In the absence of the option to tax such supplies would fall to be exempt from Value Added Tax ("VAT") and this would impact on the ability of businesses to claim credit for VAT incurred on supplies made to them that are used for making the supplies of land or buildings concerned. This Treasury Order also amends the definition of a "relevant housing association" in paragraph 10(3) to Schedule 10 of the VAT Act 1994 in light of Part 2 of the Housing and Regeneration Act 2008.

3. **Matters of special interest to the Select Committee on Statutory Instruments]**

3.1 None.

4. **Legislative Context**

4.1 Section 4(1) of the Act provides that VAT is chargeable on supplies of goods or services made in the United Kingdom where it is a taxable supply made by a taxable person in the course or furtherance of a business carried on by that person.

4.2 Subject to the exclusions mentioned therein, Group 1 of Schedule 9 to the Act (Group 1") exempts from VAT 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.

4.3 Part 1 of Schedule 10 relates to the option to tax land. Where a business opts to tax land or a building, supplies of it made by the business (which would otherwise be exempt from VAT by virtue of Group 1) are chargeable to VAT at the standard rate of (currently) 17.5%. Part 1 of Schedule 10 contains the main rules for the operation of an option to tax including those relating to-

- the requirements for making an option to tax and the time from which the option has effect;
- its scope in relation to land, a building or part of a building;
- it having effect to cause supplies of the land or buildings made by persons that have not made an option to tax in respect of the land or buildings to be taxable e.g. supplies made by a “relevant associate” of an opter;
- supplies that remain VAT exempt notwithstanding the making of an option by reason of social policy e.g. in respect of residential property, and also in order to prevent abusive tax avoidance (the anti-avoidance provision);
- the circumstances and time from which, whether at the choice of the person who made the option or by automatic operation of the law, an option is revoked so that it no longer causes VAT to be chargeable on supplies of the land or building previously subject to the option.

4.4 This Order makes three amendments to Part 1 of Schedule 10. Two of the amendments are designed to facilitate the use of the option to tax by businesses and the third is a consequential amendment arising from the Housing and Regeneration Act 2008. In particular, the amendments made by the Order-

- exclude certain transactions from the effect of the “anti-avoidance provision” and allow developers to tax supplies of buildings where persons financing construction work are in occupation of only minor parts of buildings (see paragraphs 14 – 17 of the Schedule and in particular paragraph 15 which defines “exempt land” for the purposes of the provision);
- remove the condition that a taxpayer having opted to tax the land must not have used it since the option had effect if he is to revoke the option (deletion of paragraph 23(1)(b) ); *and*
- in light of provision made by the Housing and Regeneration Act 2008 in relation to social housing, add “private registered providers of social housing” to the definition of a “relevant housing association” in paragraph 10(3)”.

4.5 The first amendment to the Schedule amends paragraph 15 and inserts paragraph 15A. The meaning of “exempt land” for the purposes of the anti-avoidance rules is amended. Minor occupation of buildings by persons that have provided finance for developments (or connected persons) is no longer treated as “occupation” where the following apply

- the land being granted comprises a building or buildings;

- the occupation by the financier is of no more than 10% of any building included in the grant and does not include any land that is not a building; and
- the person that provided the finance (financier) is not “connected” to the person that made the grant;

4.6 The second amendment to the Schedule deletes paragraph 23(1)(b) thereby removing one of the conditions that need to be met if an option to tax is to be revoked less than 6 months from the day it took effect. However, tertiary legislation will impose further conditions in this regard...

4.7 The third amendment is a consequential change in VAT Legislation following the enactment of the Housing and Regeneration Act 2008. The definition of “relevant housing association” in paragraph 10(3) includes “registered social landlords” under Part 1 of the Housing Act 1996. The system of “registered social landlords” under that Part was established in England and Wales, but Part 2 of the Housing and Regeneration Act 2008 replaces the system in England (it is preserved in Wales). To ensure that English social landlords continue to enjoy the same VAT reliefs as they do at present, the definition of “relevant housing association” is amended to include “private registered providers of social housing” under the new system for England”. There is also an amendment to paragraph 10(3)(a) to indicate that the system under Part 1 of the Housing Act 1996 will continue to apply but only in Wales.

4.8 The expression “private registered provider of social housing” is to be defined for all enactments and instruments by virtue of provision made by the Housing and Regeneration Act 2008 as amended by the Housing and Regeneration Act 2008 (Registration of Local Authorities) Order 2010 (see paragraph 5 of Schedule 1 and paragraph 1 of Schedule 2 to that Order, which has been laid in draft before Parliament). It is anticipated that the relevant amendments to the 2008 Act will have effect from 1 April 2010, at the same time as “private registered providers of social housing” are added to the class of relevant housing associations. As this Order will be made before 1 April 2010, article 4(2) provides a free standing definition of “private registered provider of social housing” until the general interpretation provision is in force.

## **5. Territorial Extent and Application**

5.1 This instrument extends to the United Kingdom.

## **6. European Convention on Human Rights**

Stephen Timms has made the following statement regarding Human Rights:

In my view the provisions of the Value Added Tax (Buildings and Land) Order 2010 are compatible with the Convention rights.

## **7. Policy background**

- *What is being done and why*

7.1 The option to tax land afforded by Schedule 10 of the Act is politically and legally important because of its relevance to the commercial property sector. It is also by its nature one of the most complex and difficult parts of the VAT legislation arising in part from the complexities of English and Scottish land law and because it contains extensive anti avoidance legislation.

7.2 Following the introduction of the Value Added Tax (Buildings and Land) Order 2008, 2008 No.1146, which came into force on 1 June 2008, there has been constant dialogue and consultation with business to ensure that the re-written schedule 10 is achieving its objectives and does not create unnecessary burdens on business.

7.3 As a result, two further issues have been identified by business and HMRC within Schedule 10 of the VAT Act 1994 which the following amendments address by seeking to simplify the working of Schedule 10. These amendments seek to ensure that any tax avoidance opportunities are removed and that innocents are not caught. These are,-

- Changes to the “exempt land” test which forms part of the anti-avoidance rules. Occupation of land by banks and other lenders that have also provided part of the funding for property developments will no longer “trip” the avoidance test and cause an option to tax to be disapplied, as long as the occupation is of no more than 10% of the total building. This will make it easier for developers to obtain funding where, for example, they are constructing retail complexes.
- Changes to the rules under which businesses are able to revoke the option to tax within the cooling-off period. “Use” of the land by the owner during the cooling-off period will no longer preclude the revocation of the option to tax however, tertiary legislation will impose further conditions in this regard.

## **8. Consultation outcome**

8.1 There has been continual consultation with business regarding Schedule 10 of the VAT Act 1994 since it was substituted by the Value Added Tax (Buildings and Land) Order 2008 (S.I. 2008/1146) with effect from 1st June 2008. The current proposed minor amendments are a result of suggestions put forward by business so that the intended benefits do occur whilst the revenue is protected from future avoidance risks. Additionally we have identified some simplifications to the application of the option to tax anti-avoidance test, which should ensure fewer “innocent” transactions are caught.

## **9. Guidance**

9.1 An Information Sheet which will also contain tertiary legislation will be issued shortly after the SI is laid. A new revised Notice 742A *Opting to tax*

*land and buildings* is to be issued and which will include the tertiary legislation as well as revised guidance.

## **10. Impact**

10.1 An Impact Assessment has not been prepared for this instrument as it has a negligible impact on Business, charities, voluntary bodies or the public sector.

## **11. Regulating small business**

11.1 The legislation affects small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to simplify the mechanics of the option to tax as far as possible.

## **12. Monitoring & review**

12.1 The working of this legislation will be monitored jointly with business and the legislation may be amended accordingly to ensure that it is fit for purpose.

## **13. Contact**

The following are available to answer queries regarding the instrument,

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