



# Value Added Tax Act 1994

## 1994 CHAPTER 23

### PART III

#### APPLICATION OF ACT IN PARTICULAR CASES

#### **41 Application to the Crown.**

- (1) This Act shall apply in relation to taxable supplies by the Crown as it applies in relation to taxable supplies by taxable persons.
- (2) Where the supply by a Government department of any goods or services does not amount to the carrying on of a business but it appears to the Treasury that similar goods or services are or might be supplied by taxable persons in the course or furtherance of any business, then, if and to the extent that the Treasury so direct, the supply of those goods or services by that department shall be treated for the purposes of this Act as a supply in the course or furtherance of any business carried on by it.
- (3) Where VAT is chargeable on the supply of goods or services to a Government department, on the acquisition of any goods by a Government department from another member State or on the importation of any goods by a Government department from a place outside the member States and the supply, acquisition or importation is not for the purpose—
  - (a) of any business carried on by the department, or
  - (b) of a supply by the department which, by virtue of a direction under subsection (2) above, is treated as a supply in the course or furtherance of a business,then, if and to the extent that the Treasury so direct and subject to subsection (4) below, the Commissioners shall, on a claim made by the department at such time and in such form and manner as the Commissioners may determine, refund to it the amount of the VAT so chargeable.
- (4) The Commissioners may make the refunding of any amount due under subsection (3) above conditional upon compliance by the claimant with requirements with respect to

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the keeping, preservation and production of records relating to the supply, acquisition or importation in question.

- (5) For the purposes of this section goods or services obtained by one Government department from another Government department shall be treated, if and to the extent that the Treasury so direct, as supplied by that other department and similarly as regards goods or services obtained by or from the Crown Estate Commissioners.
- (6) In this section “Government department” includes [<sup>F1</sup>the Scottish Administration]<sup>F2</sup>, the National Assembly for Wales, [a Northern Ireland department, a Northern Ireland health and social services body, any body of persons exercising functions on behalf of a Minister of the Crown, including <sup>F3</sup> . . . any part of a Government department (as defined in the foregoing) designated for the purposes of this subsection by a direction of the Treasury.
- (7) For the purposes of subsection (6) above, [<sup>F4</sup>a health service body as defined in section 60(7) of the National Health Service and Community Care Act 1990, and a National Health Service trust established under Part I of that Act] or the <sup>M1</sup>National Health Service (Scotland) Act 1978 shall be regarded as a body of persons exercising functions on behalf of a Minister of the Crown.
- (8) In subsection (6) “a Northern Ireland health and social services body” means—
- (a) a health and social services body as defined in Article 7(6) of the <sup>M2</sup>Health and Personal Social Services (Northern Ireland) Order 1991; and
  - (b) a Health and Social Services trust established under that Order.

#### Textual Amendments

- F1** Words in s. 41(6) inserted (6.5.1999) by 1998 c. 46, s. 125, **Sch. 8 para. 30** (with s. 126(3)); S.I. 1998/3178, art. 2(2), **Sch. 3**
- F2** Words in s. 41(6) inserted (1.4.1999) by 1998 c. 38, s. 125, **Sch. 12 para. 35** (with ss. 139(2), 143(2)); S.I. 1999/782, **art. 2**
- F3** Words in s. 41(6) omitted (8.2.2000) by virtue of S.I. 2000/90, art. 3(1), **Sch. 1 para. 29(a)** (with art. 2(5))
- F4** Words in s. 41(7) substituted (8.2.2000) by S.I. 2000/90, art. 3(1), **Sch. 1 para. 29(b)** (with art. 2(5))

#### Modifications etc. (not altering text)

- C1** S. 41 modified (2.12.1999) by S.I. 1999/3145, **art. 8**; S.I. 1999/3208, **art. 2**

#### Marginal Citations

- M1** 1978 c. 29.  
**M2** S.I.1991/194.

## 42 Local authorities.

A local authority which makes taxable supplies is liable to be registered under this Act, whatever the value of the supplies; and accordingly Schedule 1 shall apply, in a case where the value of the taxable supplies made by a local authority in any period of one year does not exceed the sum for the time being specified in paragraph 1(1)(a) of that Schedule, as if that value exceeded that sum.

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### 43 Groups of companies.

- (1) Where under [<sup>F5</sup>sections 43A to 43C] any bodies corporate are treated as members of a group, any business carried on by a member of the group shall be treated as carried on by the representative member, and—
- (a) any supply of goods or services by a member of the group to another member of the group shall be disregarded; and
  - (b) any [<sup>F6</sup>supply which is a supply to which paragraph (a) above does not apply and is a supply] of goods or services by or to a member of the group shall be treated as a supply by or to the representative member; and
  - (c) any VAT paid or payable by a member of the group on the acquisition of goods from another member State or on the importation of goods from a place outside the member States shall be treated as paid or payable by the representative member and the goods shall be treated—
    - (i) in the case of goods acquired from another member State, for the purposes of section 73(7); and
    - (ii) in the case of goods imported from a place outside the member States, for those purposes and the purposes of section 38,as acquired or, as the case may be, imported by the representative member; and all members of the group shall be liable jointly and severally for any VAT due from the representative member.

[<sup>F7</sup>(1AA) Where—

- (a) it is material, for the purposes of any provision made by or under this Act (“the relevant provision”), whether the person by or to whom a supply is made, or the person by whom goods are acquired or imported, is a person of a particular description,
- (b) paragraph (b) or (c) of subsection (1) above applies to any supply, acquisition or importation, and
- (c) there is a difference that would be material for the purposes of the relevant provision between—
  - (i) the description applicable to the representative member, and
  - (ii) the description applicable to the body which (apart from this section) would be regarded for the purposes of this Act as making the supply, acquisition or importation or, as the case may be, as being the person to whom the supply is made,the relevant provision shall have effect in relation to that supply, acquisition or importation as if the only description applicable to the representative member were the description in fact applicable to that body.

(1AB) Subsection (1AA) above does not apply to the extent that what is material for the purposes of the relevant provision is whether a person is a taxable person.]

(1A) .....

- (2) An order under section 5(5) or (6) may make provision for securing that any goods or services which, if all the members of the group were one person, would fall to be treated under that section as supplied to and by that person, are treated as supplied to and by the representative member [<sup>F8</sup>and may provide for that purpose that the representative member is to be treated as a person of such description as may be determined under the order.].

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- [<sup>F9</sup>(2A) A supply made by a member of a group (“the supplier”) to another member of the group (“the UK member”) shall not be disregarded under subsection (1)(a) above if—
- (a) it would (if there were no group) be a supply of services falling within Schedule 5 to a person belonging in the United Kingdom;
  - (b) those services are not within any of the descriptions specified in Schedule 9;
  - (c) the supplier has been supplied (whether or not by a person belonging in the United Kingdom) with [<sup>F10</sup>any services falling within paragraphs 1 to 8 of Schedule 5 which do not fall within any of the descriptions specified in Schedule 9;]
  - (d) the supplier belonged outside the United Kingdom when it was supplied with the services mentioned in paragraph (c) above; and
  - (e) the services so mentioned have been used by the supplier for making the supply to the UK member.
- (2B) Subject to subsection (2C) below, where a supply is excluded by virtue of subsection (2A) above from the supplies that are disregarded in pursuance of subsection (1)(a) above, all the same consequences shall follow under this Act as if that supply—
- (a) were a taxable supply in the United Kingdom by the representative member to itself, and
  - (b) without prejudice to that, were made by the representative member in the course or furtherance of its business.
- (2C) [<sup>F11</sup>Except in so far as the Commissioners may by regulations otherwise provide,]a supply which is deemed by virtue of subsection (2B) above to be a supply by the representative member to itself—
- (a) shall not be taken into account as a supply made by the representative member when determining any allowance of input tax under section 26(1) in the case of the representative member;
  - (b) shall be deemed for the purposes of paragraph 1 of Schedule 6 to be a supply in the case of which the person making the supply and the person supplied are connected within the meaning of section 839 of the Taxes Act (connected persons); and
  - (c) subject to paragraph (b) above, shall be taken to be a supply the value and time of which are determined as if it were a supply of services which is treated by virtue of section 8 as made by the person by whom the services are received.
- (2D) For the purposes of subsection (2A) above where—
- (a) there has been a supply of the assets of a business of a person (“the transferor”) to a person to whom the whole or any part of that business was transferred as a going concern (“the transferee”),
  - (b) that supply is either—
    - (i) a supply falling to be treated, in accordance with an order under section 5(3), as being neither a supply of goods nor a supply of services, or
    - (ii) a supply that would have fallen to be so treated if it had taken place in the United Kingdom,
- and

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- (c) the transferor was supplied with services falling within paragraphs 1 to 8 of Schedule 5 at a time before the transfer when the transferor belonged outside the United Kingdom,

those services, so far as they are used by the transferee for making any supply falling within that Schedule, shall be deemed to have been supplied to the transferee at a time when the transferee belonged outside the United Kingdom.

- (2E) Where, in the case of a supply of assets falling within paragraphs (a) and (b) of subsection (2D) above—

- (a) the transferor himself acquired any of the assets in question by way of a previous supply of assets falling within those paragraphs, and
- (b) there are services falling within paragraphs 1 to 8 of Schedule 5 which, if used by the transferor for making supplies falling within that Schedule, would be deemed by virtue of that subsection to have been supplied to the transferor at a time when he belonged outside the United Kingdom,

that subsection shall have effect, notwithstanding that the services have not been so used by the transferor, as if the transferor were a person to whom those services were supplied and as if he were a person belonging outside the United Kingdom at the time of their deemed supply to him; and this subsection shall apply accordingly through any number of successive supplies of assets falling within paragraphs (a) and (b) of that subsection.]

<sup>F12</sup>(3) .....

(4) .....

(5) .....

<sup>F13</sup>(5A) .....

(6) .....

(7) .....

(8) .....

[<sup>F14</sup>(9) Schedule 9A (which makes provision for ensuring that this section is not used for tax avoidance) shall have effect.]

#### Textual Amendments

- F5** Words in s. 43(1) substituted (27.7.1999) by 1999 c. 16, s. 16, **Sch. 2 para. 1(2)**
- F6** Words in s. 43(1)(b) substituted (1.5.1995 with effect as mentioned in s. 25(5) of the amending Act) by 1995 c. 4, s. 25(2)(5)
- F7** S. 43(1AA)(1AB) inserted (with effect in relation to any supply made after 26.11.1996 and in relation to any acquisition or importation taking place after that date) by 1997 c. 16, s. 40(1)(3)
- F8** Words in s. 43(2) inserted (19.3.1997) by 1997 c. 16, s. 40(2)
- F9** S. 43(2A)-(2E) inserted (with effect in relation to supplies made on or after 26.11.1996) by 1997 c. 16, s. 41(1)(2)
- F10** Words in s. 43(2A) substituted (19.3.1997) by 1997 c. 16, s. 41(3)(4)
- F11** Words in s. 43(2C) inserted (19.3.1997) by 1997 c. 16, s. 41(3)(5)
- F12** S 43(3)-(8) repealed (27.7.1999 with effect as mentioned in Sch. 2 para. 6 of the amending Act) by 1999 c. 16, ss. 16, 139, Sch. 2 para. 1(3), **Sch. 20 Pt. II(1)**
- F13** S. 43(5A) inserted (1.5.1995 with effect as mentioned in s. 25(5) of the amending Act) by 1995 c. 4, s. 25(4)(5)

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**F14** S. 43(9) inserted (29.4.1996) by [1996 c. 8, s. 31\(1\)](#)

**[43A** <sup>F15</sup>**Groups: eligibility.**

- (1) Two or more bodies corporate are eligible to be treated as members of a group if each is established or has a fixed establishment in the United Kingdom and—
  - (a) one of them controls each of the others,
  - (b) one person (whether a body corporate or an individual) controls all of them, or
  - (c) two or more individuals carrying on a business in partnership control all of them.
- (2) For the purposes of this section a body corporate shall be taken to control another body corporate if it is empowered by statute to control that body's activities or if it is that body's holding company within the meaning of section 736 of the <sup>M3</sup>Companies Act 1985.
- (3) For the purposes of this section an individual or individuals shall be taken to control a body corporate if he or they, were he or they a company, would be that body's holding company within the meaning of that section.]

**Textual Amendments**

**F15** Ss. 43A-43C inserted (27.7.1999) by [1999 c. 16, s. 16, Sch. 2 para. 2](#)

**Marginal Citations**

**M3** [1985 c.6.](#)

**[<sup>F16</sup>43B Groups: applications.**

- (1) This section applies where an application is made to the Commissioners for two or more bodies corporate, which are eligible under section 43A(1), to be treated as members of a group.
- (2) This section also applies where two or more bodies corporate are treated as members of a group and an application is made to the Commissioners—
  - (a) for another body corporate, which is eligible under section 43A(1) to be treated as a member of the group, to be treated as a member of the group,
  - (b) for a body corporate to cease to be treated as a member of the group,
  - (c) for a member to be substituted as the group's representative member, or
  - (d) for the bodies corporate no longer to be treated as members of a group.
- (3) An application with respect to any bodies corporate—
  - (a) must be made by one of them or by the person controlling them, and
  - (b) in the case of an application for the bodies to be treated as a group, must appoint one of them as the representative member.
- (4) Where this section applies in relation to an application it shall, subject to subsection (6) below, be taken to be granted with effect from—
  - (a) the day on which the application is received by the Commissioners, or
  - (b) such earlier or later time as the Commissioners may allow.

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- (5) The Commissioners may refuse an application, within the period of 90 days starting with the day on which it was received by them, if it appears to them—
- (a) in the case of an application such as is mentioned in subsection (1) above, that the bodies corporate are not eligible under section 43A(1) to be treated as members of a group,
  - (b) in the case of an application such as is mentioned in subsection (2)(a) above, that the body corporate is not eligible under section 43A(1) to be treated as a member of the group, or
  - (c) in any case, that refusal of the application is necessary for the protection of the revenue.
- (6) If the Commissioners refuse an application it shall be taken never to have been granted.]

**Textual Amendments**

**F16** Ss. 43A-43C inserted (27.7.1999) by 1999 c. 16, s. 16, Sch. 2 para. 2

**[<sup>F17</sup>43C Groups: termination of membership.**

- (1) The Commissioners may, by notice given to a body corporate, terminate its treatment as a member of a group from a date—
- (a) which is specified in the notice, and
  - (b) which is, or falls after, the date on which the notice is given.
- (2) The Commissioners may give a notice under subsection (1) above only if it appears to them to be necessary for the protection of the revenue.
- (3) Where—
- (a) a body is treated as a member of a group, and
  - (b) it appears to the Commissioners that the body is not, or is no longer, eligible under section 43A(1) to be treated as a member of the group,
- the Commissioners shall, by notice given to the body, terminate its treatment as a member of the group from a date specified in the notice.
- (4) The date specified in a notice under subsection (3) above may be earlier than the date on which the notice is given but shall not be earlier than—
- (a) the first date on which, in the opinion of the Commissioners, the body was not eligible to be treated as a member of the group, or
  - (b) the date on which, in the opinion of the Commissioners, the body ceased to be eligible to be treated as a member of the group.]

**Textual Amendments**

**F17** Ss. 43A-43C inserted (27.7.1999) by 1999 c. 16, s. 16, Sch. 2 para. 2

**44 Supplies to groups.**

- (1) Subject to subsections (2) to (4) below, subsection (5) below applies where—

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- (a) a business, or part of a business, carried on by a taxable person is transferred as a going concern to a body corporate treated as a member of a group under section 43;
  - (b) on the transfer of the business or part, chargeable assets of the business are transferred to the body corporate; and
  - (c) the transfer of the assets is treated by virtue of section 5(3)(c) as neither a supply of goods nor a supply of services.
- (2) Subsection (5) below shall not apply if the representative member of the group is entitled to credit for the whole of the input tax on supplies to it and acquisitions and importations by it—
- (a) during the prescribed accounting period in which the assets are transferred, and
  - (b) during any longer period to which regulations under section 26(3)(b) relate and in which the assets are transferred.
- (3) Subsection (5) below shall not apply if the Commissioners are satisfied that the assets were assets of the taxable person transferring them more than 3 years before the day on which they are transferred.
- (4) Subsection (5) below shall not apply to the extent that the chargeable assets consist of capital items in respect of which regulations made under section 26(3) and (4), and in force when the assets are transferred, provide for adjustment to the deduction of input tax.
- (5) The chargeable assets shall be treated for the purposes of this Act as being, on the day on which they are transferred, both supplied to the representative member of the group for the purpose of its business and supplied by that member in the course or furtherance of its business.
- (6) A supply treated under subsection (5) above as made by a representative member shall not be taken into account as a supply made by him when determining the allowance of input tax in his case under section 26.
- (7) The value of a supply treated under subsection (5) above as made to or by a representative member shall be taken to be the open market value of the chargeable assets.
- (8) For the purposes of this section, the open market value of any chargeable assets shall be taken to be the price that would be paid on a sale (on which no VAT is payable) between a buyer and a seller who are not in such a relationship as to affect the price.
- (9) The Commissioners may reduce the VAT chargeable by virtue of subsection (5) above in a case where they are satisfied that the person by whom the chargeable assets are transferred has not received credit for the full amount of input tax arising on the supply to or acquisition or importation by him of the chargeable assets.
- (10) For the purposes of this section, assets are chargeable assets if their supply in the United Kingdom by a taxable person in the course or furtherance of his business would be a taxable supply (and not a zero-rated supply).

#### **45 Partnerships.**

- (1) The registration under this Act of persons—
- (a) carrying on a business in partnership, or



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- (b) carrying on in partnership any other activities in the course or furtherance of which they acquire goods from other member States,  
may be in the name of the firm; and no account shall be taken, in determining for any purpose of this Act whether goods or services are supplied to or by such persons or are acquired by such persons from another member State, of any change in the partnership.
- (2) Without prejudice to section 36 of the <sup>M4</sup>Partnership Act 1890 (rights of persons dealing with firm against apparent members of firm), until the date on which a change in the partnership is notified to the Commissioners a person who has ceased to be a member of a partnership shall be regarded as continuing to be a partner for the purposes of this Act and, in particular, for the purpose of any liability for VAT on the supply of goods or services by the partnership or on the acquisition of goods by the partnership from another member State.
- (3) Where a person ceases to be a member of a partnership during a prescribed accounting period (or is treated as so doing by virtue of subsection (2) above) any notice, whether of assessment or otherwise, which is served on the partnership and relates to, or to any matter arising in, that period or any earlier period during the whole or part of which he was a member of the partnership shall be treated as served also on him.
- (4) Without prejudice to section 16 of the <sup>M5</sup>Partnership Act 1890 (notice to acting partner to be notice to the firm) any notice, whether of assessment or otherwise, which is addressed to a partnership by the name in which it is registered by virtue of subsection (1) above and is served in accordance with this Act shall be treated for the purposes of this Act as served on the partnership and, accordingly, where subsection (3) above applies, as served also on the former partner.
- (5) Subsections (1) and (3) above shall not affect the extent to which, under section 9 of the <sup>M6</sup>Partnership Act 1890, a partner is liable for VAT owed by the firm; but where a person is a partner in a firm during part only of a prescribed accounting period, his liability for VAT on the supply by the firm of goods or services during that accounting period or on the acquisition during that period by the firm of any goods from another member State shall be such proportion of the firm's liability as may be just.

#### Marginal Citations

- M4** 1890 c. 39.  
**M5** 1890 c. 39.  
**M6** 1890 c. 39.

## 46 Business carried on in divisions or by unincorporated bodies, personal representatives etc.

- (1) The registration under this Act of a body corporate carrying on a business in several divisions may, if the body corporate so requests and the Commissioners see fit, be in the names of those divisions.
- (2) The Commissioners may by regulations make provision for determining by what persons anything required by or under this Act to be done by a person carrying on a business is to be done where a business is carried on in partnership or by a club, association or organisation the affairs of which are managed by its members or a committee or committees of its members.

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- (3) The registration under this Act of any such club, association or organisation may be in the name of the club, association or organisation; and in determining whether goods or services are supplied to or by such a club, association or organisation or whether goods are acquired by such a club, association or organisation from another member State, no account shall be taken of any change in its members.
- (4) The Commissioners may by regulations make provision for persons who carry on a business of a taxable person who has died or become bankrupt or has had his estate sequestrated or has become incapacitated to be treated for a limited time as taxable persons, and for securing continuity in the application of this Act in cases where persons are so treated.
- (5) In relation to a company which is a taxable person, the reference in subsection (4) above to the taxable person having become bankrupt or having had his estate sequestrated or having become incapacitated shall be construed as a reference to its being in liquidation or receivership or to an administration order being in force in relation to it.
- (6) References in this section to a business include references to any other activities in the course or furtherance of which any body corporate or any club, association, organisation or other unincorporated body acquires goods from another member State.

#### 47 Agents etc.

- (1) Where—
    - (a) goods are acquired from another member State by a person who is not a taxable person and a taxable person acts in relation to the acquisition, and then supplies the goods as agent for the person by whom they are so acquired; or
    - (b) goods are imported from a place outside the member States by a taxable person who supplies them as agent for a person who is not a taxable person,

[<sup>F18</sup>then, if the taxable person acts in relation to the supply in his own name, the goods shall] be treated for the purposes of this Act as acquired and supplied or, as the case may be, imported and supplied by the taxable person as principal.
  - (2) For the purposes of subsection (1) above a person who is not resident in the United Kingdom and whose place or principal place of business is outside the United Kingdom may be treated as not being a taxable person if as a result he will not be required to be registered under this Act.
- [<sup>F19</sup>(2A) Where, in the case of any supply of goods to which subsection (1) above does not apply, goods are supplied through an agent who acts in his own name, the supply shall be treated both as a supply to the agent and as a supply by the agent.]
- (3) Where <sup>F20</sup>. . . services are supplied through an agent who acts in his own name the Commissioners may, if they think fit, treat the supply both as a supply to the agent and as a supply by the agent.

#### Textual Amendments

**F18** Words in s. 47(1) substituted (1.5.1995 with effect as mentioned in s. 23(4)(a) of the amending Act) by 1995 c. 4, s. 23(1)

**F19** S. 47(2A) inserted (1.5.1995 with effect as mentioned in s. 23(4)(b) of the amending Act) by 1995 c. 4, s. 23(2)

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**F20** Words in s. 47(3) repealed (1.5.1995 with effect as mentioned in s. 23(4)(b) of the amending Act) by 1995 c. 4, ss. 23(3), 162, Sch. 29 Pt. VI(2) Note

#### **48 VAT representatives.**

- (1) Where any person—
  - (a) is a taxable person for the purposes of this Act or, without being a taxable person, is a person who makes taxable supplies or who acquires goods in the United Kingdom from one or more other member States;
  - (b) does not have any business establishment or other fixed establishment in the United Kingdom; and
  - (c) in the case of an individual, does not have his usual place of residence in the United Kingdom,the Commissioners may direct that person to appoint another person (in this Act referred to as a “VAT representative”) to act on his behalf in relation to VAT.
- (2) With the agreement of the Commissioners, any person who has not been required to appoint a VAT representative under subsection (1) above may do so if he is a person in relation to whom the conditions specified in paragraphs (a) to (c) of that subsection are satisfied.
- (3) Where any person is appointed by virtue of this section to be the VAT representative of another (“his principal”), then, subject to subsections (4) to (6) below, the VAT representative—
  - (a) shall be entitled to act on his principal’s behalf for any of the purposes of this Act, of any other enactment (whenever passed) relating to VAT or of any subordinate legislation made under this Act or any such enactment;
  - (b) shall, subject to such provisions as may be made by the Commissioners by regulations, secure (where appropriate by acting on his principal’s behalf) his principal’s compliance with and discharge of the obligations and liabilities to which his principal is subject by virtue of this Act, any such other enactment or any such subordinate legislation; and
  - (c) shall be personally liable in respect of—
    - (i) any failure to secure his principal’s compliance with or discharge of any such obligation or liability; and
    - (ii) anything done for purposes connected with acting on his principal’s behalf,as if the obligations and liabilities imposed on his principal were imposed jointly and severally on the VAT representative and his principal.
- (4) A VAT representative shall not be liable by virtue of subsection (3) above himself to be registered under this Act, but regulations made by the Commissioners may—
  - (a) require the registration of the names of VAT representatives against the names of their principals in any register kept for the purposes of this Act; and
  - (b) make it the duty of a VAT representative, for the purposes of registration, to notify the Commissioners, within such period as may be prescribed, that his appointment has taken effect or has ceased to have effect.
- (5) A VAT representative shall not by virtue of subsection (3) above be guilty of any offence except in so far as—

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- (a) the VAT representative has consented to, or connived in, the commission of the offence by his principal;
  - (b) the commission of the offence by his principal is attributable to any neglect on the part of the VAT representative; or
  - (c) the offence consists in a contravention by the VAT representative of an obligation which, by virtue of that subsection, is imposed both on the VAT representative and on his principal.
- (6) The Commissioners may by regulations make provision as to the manner and circumstances in which a person is to be appointed, or is to be treated as having ceased to be, another's VAT representative; and regulations under this subsection may include such provision as the Commissioners think fit for the purposes of subsection (4) above with respect to the making or deletion of entries in any register.
- (7) Where a person fails to appoint a VAT representative in accordance with any direction under subsection (1) above, the Commissioners may require him to provide such security, or further security, as they may think appropriate for the payment of any VAT which is or may become due from him.
- [<sup>F21</sup>(7A) A sum required by way of security under subsection (7) above shall be deemed for the purposes of—
- (a) section 51 of the Finance Act 1997 (enforcement by distress) and any regulations under that section, and
  - (b) section 52 of that Act (enforcement by diligence),
- to be recoverable as if it were VAT due from the person who is required to provide it.]
- (8) For the purposes of this Act a person shall not be treated as having been directed to appoint a VAT representative, or as having been required to provide security under subsection (7) above, unless the Commissioners have either—
- (a) served notice of the direction or requirement on him; or
  - (b) taken all such other steps as appear to them to be reasonable for bringing the direction or requirement to his attention.

#### Textual Amendments

**F21** S. 48(7A) inserted (1.7.1997) by 1997 c. 16, s. 53(6); S.I. 1997/1432, art. 2

#### 49 Transfers of going concerns.

- (1) Where a business carried on by a taxable person is transferred to another person as a going concern, then—
- (a) for the purpose of determining whether the transferee is liable to be registered under this Act he shall be treated as having carried on the business before as well as after the transfer and supplies by the transferor shall be treated accordingly; and
  - (b) any records relating to the business which, under paragraph 6 of Schedule 11, are required to be preserved for any period after the transfer shall be preserved by the transferee instead of by the transferor, unless the Commissioners, at the request of the transferor, otherwise direct.
- (2) Without prejudice to subsection (1) above, the Commissioners may by regulations make provision for securing continuity in the application of this Act in cases where

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a business carried on by a taxable person is transferred to another person as a going concern and the transferee is registered under this Act in substitution for the transferor.

- (3) Regulations under subsection (2) above may, in particular, provide—
- (a) for liabilities and duties under this Act (excluding sections 59 to 70) of the transferor to become, to such extent as may be provided by the regulations, liabilities and duties of the transferee; and
  - (b) for any right of either of them to repayment or credit in respect of VAT to be satisfied by making a repayment or allowing a credit to the other;

but no such provision as is mentioned in paragraph (a) or (b) of this subsection shall have effect in relation to any transferor and transferee unless an application in that behalf has been made by them under the regulations.

## **50 Terminal markets.**

- (1) The Treasury may by order make provision for modifying the provisions of this Act in their application to dealings on terminal markets and such persons ordinarily engaged in such dealings as may be specified in the order, subject to such conditions as may be so specified.
- (2) Without prejudice to the generality of subsection (1) above, an order under this section may include provision—
- (a) for zero-rating the supply of any goods or services or for treating the supply of any goods or services as exempt;
  - (b) for the registration under this Act of any body of persons representing persons ordinarily engaged in dealing on a terminal market and for disregarding such dealings by persons so represented in determining liability to be registered under this Act, and for disregarding such dealings between persons so represented for all the purposes of this Act;
  - (c) for refunding, to such persons as may be specified by or under the order, input tax attributable to such dealings on a terminal market as may be so specified, and may contain such incidental and supplementary provisions as appear to the Treasury to be necessary or expedient.
- (3) An order under this section may make different provision with respect to different terminal markets and with respect to different commodities.

## **[<sup>F22</sup>50A Margin schemes.**

- (1) The Treasury may by order provide, in relation to any such description of supplies to which this section applies as may be specified in the order, for a taxable person to be entitled to opt that, where he makes supplies of that description, VAT is to be charged by reference to the profit margin on the supplies, instead of by reference to their value.
- (2) This section applies to the following supplies, that is to say—
- (a) supplies of works of art, antiques or collectors' items;
  - (b) supplies of motor vehicles;
  - (c) supplies of second-hand goods; and
  - (d) any supply of goods through a person who acts as an agent, but in his own name, in relation to the supply.

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- (3) An option for the purposes of an order under this section shall be exercisable, and may be withdrawn, in such manner as may be required by such an order.
- (4) Subject to subsection (7) below, the profit margin on a supply to which this section applies shall be taken, for the purposes of an order under this section, to be equal to the amount (if any) by which the price at which the person making the supply obtained the goods in question is exceeded by the price at which he supplies them.
- (5) For the purposes of this section the price at which a person has obtained any goods and the price at which he supplies them shall each be calculated in accordance with the provisions contained in an order under this section; and such an order may, in particular, make provision stipulating the extent to which any VAT charged on a supply, acquisition or importation of any goods is to be treated as included in the price at which those goods have been obtained or are supplied.
- (6) An order under this section may provide that the consideration for any services supplied in connection with a supply of goods by a person who acts as an agent, but in his own name, in relation to the supply of the goods is to be treated for the purposes of any such order as an amount to be taken into account in computing the profit margin on the supply of the goods, instead of being separately chargeable to VAT as comprised in the value of the services supplied.
- (7) An order under this section may provide for the total profit margin on all the goods of a particular description supplied by a person in any prescribed accounting period to be calculated by—
- (a) aggregating all the prices at which that person obtained goods of that description in that period together with any amount carried forward to that period in pursuance of paragraph (d) below;
  - (b) aggregating all the prices at which he supplies goods of that description in that period;
  - (c) treating the total profit margin on goods supplied in that period as being equal to the amount (if any) by which, for that period, the aggregate calculated in pursuance of paragraph (a) above is exceeded by the aggregate calculated in pursuance of paragraph (b) above; and
  - (d) treating any amount by which, for that period, the aggregate calculated in pursuance of paragraph (b) above is exceeded by the aggregate calculated in pursuance of paragraph (a) above as an amount to be carried forward to the following prescribed accounting period so as to be included, for the period to which it is carried forward, in any aggregate falling to be calculated in pursuance of paragraph (a) above.
- (8) An order under this section may—
- (a) make different provision for different cases; and
  - (b) make provisions of the order subject to such general or special directions as may, in accordance with the order, be given by the Commissioners with respect to any matter to which the order relates.]

**Textual Amendments**

**F22** S. 50A inserted (1.5.1995) by 1995 c. 4, s. 24(1)

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*Changes to legislation: There are currently no known outstanding effects for the Value Added Tax Act 1994, Part III. (See end of Document for details)*

## **51 Buildings and land.**

- (1) Schedule 10 shall have effect with respect to buildings and land.
- (2) The Treasury may by order amend Schedule 10.

## **52 Trading stamp schemes.**

The Commissioners may by regulations modify sections 19 and 20 and Schedules 6 and 7 for the purpose of providing (in place of the provision for the time being contained in those sections and Schedules) for the manner of determining for the purposes of this Act the value of—

- (a) a supply of goods, or
- (b) a transaction in pursuance of which goods are acquired from another member State,

in a case where the goods are supplied or acquired under a trading stamp scheme (within the meaning of the <sup>M7</sup>Trading Stamps Act 1964 or the <sup>M8</sup>Trading Stamps Act (Northern Ireland) 1965) or under any scheme of an equivalent description which is in operation in another member State.

### **Marginal Citations**

**M7** 1964 c. 71.

**M8** 1965 c. 6 (N.I.).

## **53 Tour operators.**

- (1) The Treasury may by order modify the application of this Act in relation to supplies of goods or services by tour operators or in relation to such of those supplies as may be determined by or under the order.
- (2) Without prejudice to the generality of subsection (1) above, an order under this section may make provision—
  - (a) for two or more supplies of goods or services by a tour operator to be treated as a single supply of services;
  - (b) for the value of that supply to be ascertained, in such manner as may be determined by or under the order, by reference to the difference between sums paid or payable to and sums paid or payable by the tour operator;
  - (c) for account to be taken, in determining the VAT chargeable on that supply, of the different rates of VAT that would have been applicable apart from this section;
  - (d) excluding any body corporate from the application of section 43;
  - (e) as to the time when a supply is to be treated as taking place.
- (3) In this section “tour operator” includes a travel agent acting as principal and any other person providing for the benefit of travellers services of any kind commonly provided by tour operators or travel agents.
- (4) Section 97(3) shall not apply to an order under this section, notwithstanding that it makes provision for excluding any VAT from credit under section 25.



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#### **54 Farmers etc.**

- (1) The Commissioners may, in accordance with such provision as may be contained in regulations made by them, certify for the purposes of this section any person who satisfies them—
  - (a) that he is carrying on a business involving one or more designated activities;
  - (b) that he is of such a description and has complied with such requirements as may be prescribed; and
  - (c) where an earlier certification of that person has been cancelled, that more than the prescribed period has elapsed since the cancellation or that such other conditions as may be prescribed are satisfied.
- (2) Where a person is for the time being certified under this section, then (whether or not that person is a taxable person) so much of any supply by him of any goods or services as, in accordance with provision contained in regulations, is allocated to the relevant part of his business shall be disregarded for the purpose of determining whether he is, has become or has ceased to be liable or entitled to be registered under Schedule 1.
- (3) The Commissioners may by regulations provide for an amount included in the consideration for any taxable supply which is made—
  - (a) in the course or furtherance of the relevant part of his business by a person who is for the time being certified under this section;
  - (b) at a time when that person is not a taxable person; and
  - (c) to a taxable person,to be treated, for the purpose of determining the entitlement of the person supplied to credit under sections 25 and 26, as VAT on a supply to that person.
- (4) The amount which, for the purposes of any provision made under subsection (3) above, may be included in the consideration for any supply shall be an amount equal to such percentage as the Treasury may by order specify of the sum which, with the addition of that amount, is equal to the consideration for the supply.
- (5) The Commissioners' power by regulations under section 39 to provide for the repayment to persons to whom that section applies of VAT which would be input tax of theirs if they were taxable persons in the United Kingdom includes power to provide for the payment to persons to whom that section applies of sums equal to the amounts which, if they were taxable persons in the United Kingdom, would be input tax of theirs by virtue of regulations under this section; and references in that section, or in any other enactment, to a repayment of VAT shall be construed accordingly.
- (6) Regulations under this section may provide—
  - (a) for the form and manner in which an application for certification under this section, or for the cancellation of any such certification, is to be made;
  - (b) for the cases and manner in which the Commissioners may cancel a person's certification;
  - (c) for entitlement to a credit such as is mentioned in subsection (3) above to depend on the issue of an invoice containing such particulars as may be prescribed, or as may be notified by the Commissioners in accordance with provision contained in regulations; and
  - (d) for the imposition on certified persons of obligations with respect to the keeping, preservation and production of such records as may be prescribed and of obligations to comply with such requirements with respect to any of those matters as may be so notified;



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and regulations made by virtue of paragraph (b) above may confer on the Commissioners power, if they think fit, to refuse to cancel a person's certification, and to refuse to give effect to any entitlement of that person to be registered, until the end of such period after the grant of certification as may be prescribed.

- (7) In this section references, in relation to any person, to the relevant part of his business are references—
- (a) where the whole of his business relates to the carrying on of one or more designated activities, to that business; and
  - (b) in any other case, to so much of his business as does so relate.
- (8) In this section “designated activities” means such activities, being activities carried on by a person who, by virtue of carrying them on, falls to be treated as a farmer for the purposes of Article 25 of the directive of the Council of the European Communities dated 17th May 1977 No. [77/388/EEC](#) (common flat-rate scheme for farmers), as the Treasury may by order designate.

## **55 Customers to account for tax on supplies of gold etc.**

- (1) Where any person makes a supply of gold to another person and that supply is a taxable supply but not a zero rated supply, the supply shall be treated for purposes of Schedule 1—
- (a) as a taxable supply of that other person (as well as a taxable supply of the person who makes it); and
  - (b) in so far as that other person is supplied in connection with the carrying on by him of any business, as a supply made by him in the course or furtherance of that business;
- but nothing in paragraph (b) above shall require any supply to be disregarded for the purposes of that Schedule on the grounds that it is a supply of capital assets of that other person's business.
- (2) Where a taxable person makes a supply of gold to a person who—
- (a) is himself a taxable person at the time when the supply is made; and
  - (b) is supplied in connection with the carrying on by him of any business,
- it shall be for the person supplied, on the supplier's behalf, to account for and pay tax on the supply, and not for the supplier.
- (3) So much of this Act and of any other enactment or any subordinate legislation as has effect for the purposes of, or in connection with, the enforcement of any obligation to account for and pay VAT shall apply for the purposes of this section in relation to any person who is required under subsection (2) above to account for and pay any VAT as if that VAT were VAT on a supply made by him.
- (4) Section 6(4) to (10) shall not apply for determining when any supply of gold is to be treated as taking place.]
- (5) References in this section to a supply of gold are references to—
- [<sup>F23</sup>(a) any supply of goods consisting in fine gold, in gold grain of any purity or in gold coins of any purity; or]. . .
  - (b) any supply of goods containing gold where the consideration for the supply (apart from any VAT) is, or is equivalent to, an amount which does not exceed, or exceeds by no more than a negligible amount, the open market value of the gold contained in the goods [<sup>F24</sup>; or.

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- (c) any supply of services consisting in the application to another person's goods of a treatment or process which produces goods a supply of which would fall within paragraph (a) above.]
- (6) The Treasury may by order provide for this section to apply, as it applies to the supplies specified in subsection (5) above, to such other supplies of—
- (a) goods consisting in or containing any precious or semi-precious metal or stones; or
- (b) services relating to, or to anything containing, any precious or semi-precious metal or stones,
- as may be specified or described in the order.

#### Textual Amendments

**F23** S. 55(5)(a) substituted (29.4.1996 with application in relation to any supply after 28.11.1995) by [1996 c. 8, s. 32\(1\)\(2\)](#)

**F24** S. 55(5)(c) inserted (29.4.1996 with application to supplies made on or after 1.1.1996) by [1996 c. 8, s. 29\(3\)\(5\)](#)

#### Modifications etc. (not altering text)

**C2** S. 55(1)-(4) applied (1.1.2000) by [S.I. 1999/3116, art. 4](#)

**C3** S. 55(2) excluded (1.1.2000) by [S.I. 1973/173, art. 7](#) (as added (1.1.2000) by [S.I. 1999/3117, art. 8](#))

## 56 Fuel for private use.

- (1) The provisions of this section apply where, in any prescribed accounting period, fuel which is or has previously been supplied to or imported or manufactured by a taxable person in the course of his business—
- (a) is provided or to be provided by the taxable person to an individual for private use in his own vehicle or a vehicle allocated to him and is so provided by reason of that individual's employment; or
- (b) where the taxable person is an individual, is appropriated or to be appropriated by him for private use in his own vehicle; or
- (c) where the taxable person is a partnership, is provided or to be provided to any of the individual partners for private use in his own vehicle.
- (2) For the purposes of this section fuel shall not be regarded as provided to any person for his private use if it is supplied at a price which—
- (a) in the case of fuel supplied to or imported by the taxable person, is not less than the price at which it was so supplied or imported; and
- (b) in the case of fuel manufactured by the taxable person, is not less than the aggregate of the cost of the raw material and of manufacturing together with any excise duty thereon.
- (3) For the purposes of this section and section 57—
- (a) "fuel for private use" means fuel which, having been supplied to or imported or manufactured by a taxable person in the course of his business, is or is to be provided or appropriated for private use as mentioned in subsection (1) above;
- (b) any reference to fuel supplied to a taxable person shall include a reference to fuel acquired by a taxable person from another member State and any

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- reference to fuel imported by a taxable person shall be confined to a reference to fuel imported by that person from a place outside the member States;
- (c) any reference to an individual's own vehicle shall be construed as including any vehicle of which for the time being he has the use, other than a vehicle allocated to him;
  - (d) subject to subsection (9) below, a vehicle shall at any time be taken to be allocated to an individual if at that time it is made available (without any transfer of the property in it) either to the individual himself or to any other person, and is so made available by reason of the individual's employment and for private use; and
  - (e) fuel provided by an employer to an employee and fuel provided to any person for private use in a vehicle which, by virtue of paragraph (d) above, is for the time being taken to be allocated to the employee shall be taken to be provided to the employee by reason of his employment.
- (4) Where under section 43 any bodies corporate are treated as members of a group, any provision of fuel by a member of the group to an individual shall be treated for the purposes of this section as provision by the representative member.
- (5) In relation to the taxable person, tax on the supply, acquisition or importation of fuel for private use shall be treated for the purposes of this Act as input tax, notwithstanding that the fuel is not used or to be used for the purposes of a business carried on by the taxable person (and, accordingly, no apportionment of VAT shall fall to be made under section 24(5) by reference to fuel for private use).
- (6) At the time at which fuel for private use is put into the fuel tank of an individual's own vehicle or of a vehicle allocated to him, the fuel shall be treated for the purposes of this Act as supplied to him by the taxable person in the course or furtherance of his business for a consideration determined in accordance with subsection (7) below (and, accordingly, where the fuel is appropriated by the taxable person to his own private use, he shall be treated as supplying it to himself in his private capacity).
- (7) In any prescribed accounting period of the taxable person in which, by virtue of subsection (6) above, he is treated as supplying fuel for private use to an individual, the consideration for all the supplies made to that individual in that period in respect of any one vehicle shall be that which, by virtue of section 57, is appropriate to a vehicle of that description, and that consideration shall be taken to be inclusive of VAT.
- (8) In any case where—
- (a) in any prescribed accounting period, fuel for private use is, by virtue of subsection (6) above, treated as supplied to an individual in respect of one vehicle for a part of the period and in respect of another vehicle for another part of the period; and
  - (b) at the end of that period one of those vehicles neither belongs to him nor is allocated to him,
- subsection (7) above shall have effect as if the supplies made to the individual during those parts of the period were in respect of only one vehicle.
- (9) In any prescribed accounting period a vehicle shall not be regarded as allocated to an individual by reason of his employment if—
- (a) in that period it was made available to, and actually used by, more than one of the employees of one or more employers and, in the case of each of them, it was made available to him by reason of his employment but was not in that period ordinarily used by any one of them to the exclusion of the others; and

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- (b) in the case of each of the employees, any private use of the vehicle made by him in that period was merely incidental to his other use of it in that period; and
- (c) it was in that period not normally kept overnight on or in the vicinity of any residential premises where any of the employees was residing, except while being kept overnight on premises occupied by the person making the vehicle available to them.
- (10) In this section and section 57—
- “employment” includes any office; and related expressions shall be construed accordingly;
- “vehicle” means a mechanically propelled road vehicle other than—
- (a) a motor cycle as defined in section 185(1) of the <sup>M9</sup>Road Traffic Act 1988 or, for Northern Ireland, in Article 37(1)(f) of the <sup>M10</sup>Road Traffic (Northern Ireland) Order 1981, or
- (b) an invalid carriage as defined in that section or, for Northern Ireland, in Article 37(1)(g) of that Order.

#### Marginal Citations

**M9** 1988 c. 54.

**M10** S.I.1981/154 (N.I.1).

#### 57 Determination of consideration for fuel supplied for private use.

- (1) This section has effect to determine the consideration referred to in section 56(7) in respect of any one vehicle; and in this section—
- “the prescribed accounting period” means that in respect of supplies in which the consideration is to be determined; and
- “the individual” means the individual to whom those supplies are treated as made.

- [<sup>F25</sup>(1A) Where the prescribed accounting period is a period of 12 months, the consideration appropriate to any vehicle is that specified in relation to a vehicle of the appropriate description in the second column of Table A below.]
- (2) Where the prescribed accounting period is a period of 3 months, the consideration appropriate to any vehicle is that specified in relation to a vehicle of the appropriate description in the [<sup>F26</sup>third] column of Table A below.
- (3) Where the prescribed accounting period is a period of one month, the consideration appropriate to any vehicle is that specified in relation to a vehicle of the appropriate description in the [<sup>F27</sup>fourth] column of Table A below.

[<sup>F28</sup>TABLE A

<i>Description of vehicle</i>	<i>12 month period</i>	<i>3 month period</i>	<i>1 month period</i>
	£	£	£
Diesel engine 2000 or less	785.00	196.00	65.00

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More than 2000	995.00	248.00	82.00
Any other type of engine 1400 or less	850.00	212.00	70.00
More than 1400 but not more than 2000	1075.00	268.00	89.00
More than 2000	1585.00	396.00	132.00]

- (4) The Treasury may by order taking effect from the beginning of any prescribed accounting period beginning after the order is made substitute a different Table for Table A for the time being set out above.
- (5) Where, by virtue of section 56(8), subsection (7) of that section has effect as if, in the prescribed accounting period, supplies of fuel for private use made in respect of 2 or more vehicles were made in respect of only one vehicle, the consideration appropriate shall be determined as follows—
- if each of the 2 or more vehicles falls within the same description of vehicle specified in Table A above, that Table shall apply as if only one of the vehicles were to be considered throughout the whole period, and
  - if one of those vehicles falls within a description of vehicle specified in that Table which is different from the other or others, the consideration shall be the aggregate of the relevant fractions of the consideration appropriate for each description of vehicle under that Table.
- (6) For the purposes of subsection (5)(b) above, the relevant fraction in relation to any vehicle is that which the part of the prescribed accounting period in which fuel for private use was supplied in respect of that vehicle bears to the whole of that period.
- (7) In the case of a vehicle having an internal combustion engine with one or more reciprocating pistons, its cubic capacity for the purposes of Table A above is the capacity of its engine as calculated for the purposes of the <sup>M11</sup>Vehicle Excise and Registration Act 1994.
- (8) In the case of a vehicle not falling within subsection (7) above, its cubic capacity shall be such as may be determined for the purposes of Table A above by order by the Treasury.

#### Textual Amendments

- F25** S. 57(1A) inserted (with application in relation to prescribed accounting periods beginning on or after 6.4.1995) by 1995 c. 4, s. 30(2)(6)(7)
- F26** Word in s. 57(2) substituted (with application in relation to prescribed accounting periods beginning on or after 6.4.1995) by 1995 c. 4, s. 30(3)(6)(7)
- F27** Word in s. 57(3) substituted (with application in relation to prescribed accounting periods beginning on or after 6.4.1995) by 1995 c. 4, s. 30(4)(6)(7)
- F28** S. 57(3) Table A substituted (5.4.1998 with effect as mentioned in art. 1 of the amending S.I.) by S.I. 1998/788, art. 2

#### Marginal Citations

- M11** 1994 c. 22.

**Status:**

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**Changes to legislation:**

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