



# Finance Act 2004

## 2004 CHAPTER 12

### PART 2

#### VALUE ADDED TAX

#### **22 Use of stock in trade cars for consideration less than market value**

- (1) The Value Added Tax Act 1994 (c. 23) is amended as follows.
- (2) In Schedule 6 (valuation: special cases) after paragraph 1 (supply to connected person at less than market value etc) insert—

“1A (1) Where—

- (a) the value of a supply made by a taxable person for a consideration is (apart from this sub-paragraph) less than its open market value,
  - (b) the taxable person is a motor manufacturer or motor dealer,
  - (c) the person to whom the supply is made is—
    - (i) an employee of the taxable person,
    - (ii) a person who, under the terms of his employment, provides services to the taxable person, or
    - (iii) a relative of a person falling within sub-paragraph (i) or (ii) above,
  - (d) the supply is a supply of services by virtue of sub-paragraph (4) of paragraph 5 of Schedule 4 (business goods put to private use etc),
  - (e) the goods mentioned in that sub-paragraph consist of a motor car (whether or not any particular motor car) that forms part of the stock in trade of the taxable person, and
  - (f) the supply is not one to which paragraph 1 above applies,
- the Commissioners may direct that the value of the supply shall be taken to be its open market value.

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- (2) A direction under this paragraph shall be given by notice in writing to the person making the supply, but no direction may be given more than 3 years after the time of the supply.
- (3) A direction given to a person under this paragraph in respect of a supply made by him may include a direction that the value of any supply—
- (a) which is made by him after the giving of the notice, or after such later date as may be specified in the notice, and
  - (b) as to which the conditions in paragraphs (a) to (f) of sub-paragraph (1) above are satisfied,
- shall be taken to be its open market value.

- (4) In this paragraph—

“motor car” means any motor vehicle of a kind normally used on public roads which has three or more wheels and either—

- (a) is constructed or adapted solely or mainly for the carriage of passengers, or
- (b) has to the rear of the driver’s seat roofed accommodation which is fitted with side windows or which is constructed or adapted for the fitting of side windows,

but does not include any vehicle excluded by sub-paragraph (5) below;

“motor dealer” means a person whose business consists in whole or in part of obtaining supplies of, or acquiring from another member State or importing, new or second-hand motor cars for resale with a view to making an overall profit on the sale of them (whether or not a profit is made on each sale);

“motor manufacturer” means a person whose business consists in whole or in part of producing motor cars including producing motor cars by conversion of a vehicle (whether a motor car or not);

“relative” means husband, wife, brother, sister, ancestor or lineal descendant;

“stock in trade” means new or second-hand motor cars (other than second-hand motor cars which are not qualifying motor cars within sub-paragraph (6) below) which are—

- (a) produced by a motor manufacturer or, as the case may require, supplied to or acquired from another member State or imported by a motor dealer, for the purpose of resale, and
- (b) intended to be sold—
  - (i) by a motor manufacturer within 12 months of their production, or
  - (ii) by a motor dealer within 12 months of their supply, acquisition from another member State or importation, as the case may require,

and such motor cars shall not cease to be stock in trade where they are temporarily put to a use in the motor manufacturer’s or, as the case may be, the motor dealer’s business which involves making them available for private use.

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- (5) The vehicles excluded by this sub-paragraph are—
- (a) vehicles capable of accommodating only one person;
  - (b) vehicles which meet the requirements of Schedule 6 to the Road Vehicles (Construction and Use) Regulations 1986 and are capable of carrying twelve or more seated persons;
  - (c) vehicles of not less than three tonnes unladen weight (as defined in the Table to regulation 3(2) of the Road Vehicles (Construction and Use) Regulations 1986);
  - (d) vehicles constructed to carry a payload (the difference between—
    - (i) a vehicle’s kerb weight (as defined in the Table to regulation 3(2) of the Road Vehicles (Construction and Use) Regulations 1986), and
    - (ii) its maximum gross weight (as defined in that Table)),  
of one tonne or more;
  - (e) caravans, ambulances and prison vans;
  - (f) vehicles constructed for a special purpose other than the carriage of persons and having no other accommodation for carrying persons than such as is incidental to that purpose.
- (6) For the purposes of this paragraph a motor car is a “qualifying motor car” if—
- (a) it has never been supplied, acquired from another member State, or imported in circumstances in which the VAT on that supply, acquisition or importation was wholly excluded from credit as input tax by virtue of an order under section 25(7) (as at 17th March 2004 see article 7 of the Value Added Tax (Input Tax) Order 1992); or
  - (b) a taxable person has elected under such an order for it to be treated as such.
- (7) The Treasury may by order amend any of the definitions in this paragraph.”.
- (3) In section 83(v) (appeal to tribunal with respect to any direction under paragraph 1 or 2 of Schedule 6 etc) after “paragraph 1” insert “, 1A”.
- (4) In section 97 (orders, rules and regulations) in subsection (4) (orders to which the House of Commons affirmative procedure in subsection (3) applies) after paragraph (e) insert—
- “(f) an order under paragraph 1A(7) of Schedule 6;”.
- (5) The amendment made by subsection (2) applies in relation to any use or availability for use on or after the appointed day (whatever the date of the directions mentioned in paragraph 5(4) of Schedule 4 to the Value Added Tax Act 1994 (c. 23)).
- (6) In subsection (5) “the appointed day” means such day as the Treasury may by order made by statutory instrument appoint.

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#### **Commencement Information**

- II** S. 22(2) has effect as specified by [The Finance Act 2004, section 22\(2\), \(Appointed Day\) Order 2004 \(S.I. 2004/3104\)](#), **art. 2**

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