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## SCHEDULES

### SCHEDULE 3

#### VAT: SUPPLEMENTARY CHARGE AND ORDERS CHANGING RATE

##### PART 1

##### SUPPLEMENTARY CHARGE TO VAT

###### *The charge*

- 1 (1) There is a supplementary charge on a supply of goods or services that is treated as taking place on or after 25 November 2008 if—
  - (a) the supply spans the date of the VAT change,
  - (b) it is subject to VAT at the rate in force under section 2 of VATA 1994,
  - (c) the person to whom the supply is made is not entitled under VATA 1994 to credit for, or the repayment or refund of, all of the VAT on the supply, and
  - (d) a relevant condition is met.
- (2) In this Schedule “the date of the VAT change” means 1 January 2010.
- (3) For the cases in which a supply, other than the grant of a right to goods or services, spans the date of the VAT change and the relevant conditions in relation to such a supply, see paragraph 2.
- (4) For the cases in which a supply consisting of the grant of a right to goods or services spans the date of the VAT change and the relevant conditions in relation to such a supply, see paragraph 3.
- (5) Sub-paragraph (1) has effect subject to the exceptions made by or under Part 2 of this Schedule.
- (6) In this Schedule—
  - Part 3 contains provision about liability for, and the amount of, a supplementary charge under this Schedule,
  - Part 4 contains special provision about listed supplies, and
  - Part 5 contains provision about administration and interpretation.
- (7) A supplementary charge under this Schedule is to be treated for all purposes as if it were value added tax charged in accordance with VATA 1994.

###### *Supply spanning the date of the VAT change*

- 2 (1) For the purposes of this Schedule a supply of goods or services spans the date of the VAT change where—

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- (a) by virtue of the issue of a VAT invoice or the receipt of a payment by the person making the supply (“the supplier”), the supply is treated as taking place before the date of the VAT change, but
  - (b) the basic time of supply (see paragraph 4) is on or after the date of the VAT change.
- (2) The relevant conditions are—
- (a) in relation to a supply that is within sub-paragraph (1)(a) by virtue of the issue of a VAT invoice, conditions A to D, and
  - (b) in relation to a supply that is within sub-paragraph (1)(a) by virtue of the receipt of a payment, conditions A to C.
- (3) Condition A is that the supplier and the person to whom the supply is made are connected with each other at any time in the period—
- (a) beginning with the day on which the supply is treated as taking place, and
  - (b) ending on the date of the VAT change.
- (4) Paragraph 5 modifies condition A in cases involving a series of supplies.
- (5) Condition B is that the aggregate of the following is more than £100,000—
- (a) the relevant consideration for the supply, and
  - (b) the relevant consideration for every related supply of goods or services (including every related grant of a right to goods or services) that spans the date of the VAT change (see paragraph 6).
- (6) Condition C is that a prepayment in respect of the supply is financed by the supplier or a person connected with the supplier (see paragraph 7).
- (7) In sub-paragraph (6) “prepayment”, in respect of a supply, means a payment that is received by the supplier before the basic time of supply.
- (8) Condition D is that full payment of the amount shown on the VAT invoice referred to in sub-paragraph (1)(a) is not due before the end of the period of 6 months beginning with the date on which the invoice is issued.
- (9) This paragraph does not apply in relation to a supply consisting of the grant of a right to goods or services (see paragraph 3).

*Grant of right spanning the date of the VAT change*

- 3
- (1) For the purposes of this Schedule a supply consisting of the grant by a person (“the grantor”) of a right to goods or services spans the date of the VAT change where—
    - (a) that supply is treated as taking place before the date of the VAT change,
    - (b) the goods or services are to be supplied at a discount or free of charge, and
    - (c) the basic time of supply for the supply of some or all of the goods or services (see paragraph 4) is on or after the date of the VAT change.
  - (2) In relation to the grant of the right, the relevant conditions are conditions A to C.
  - (3) Condition A is that the grantor and the person to whom the right is granted are connected with each other at any time in the period—
    - (a) beginning with the day on which the supply consisting of the grant of the right is treated as taking place, and

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- (b) ending on the date of the VAT change or, if the right is exercised (entirely or partly) on a later date, that date (or, if more than one, the first of those dates).
- (4) Paragraph 5 modifies condition A in cases involving a series of supplies.
- (5) Condition B is that the aggregate of the following is more than £100,000—
  - (a) the relevant consideration for the grant of the right, and
  - (b) the relevant consideration for every related supply of goods or services (including every related grant of a right to goods or services) that spans the date of the VAT change (see paragraph 6).
- (6) Condition C is that the payment made in respect of the grant of the right is financed by the grantor or a person connected with the grantor (see paragraph 7).
- (7) In this Schedule references to a right to goods or services include—
  - (a) any right or option with respect to such goods or services, and
  - (b) any interest deriving from such a right or option.

*“Basic time of supply”*

- 4 (1) In this Schedule the “basic time of supply” is the time given by subsection (2) or (3) of section 6 of VATA 1994 (disregarding subsections (4) to (14) of that section).
- (2) Sub-paragraph (1) does not apply in relation to listed supplies (see Part 4 of this Schedule).

*Series of supplies*

- 5 (1) This paragraph applies where—
  - (a) the supply or grant of a right referred to in paragraph 2 or 3 (“the affected supply or grant”) is one of a series of supplies of, or grants of a right to, the same or substantially the same goods or services, and
  - (b) each of the supplies, and the grants of a right, in the series was or will be made in the expectation that the affected supply or grant would or will take place.
- (2) In condition A in paragraphs 2 and 3 the references to the supplier and the grantor include any person who makes one of the supplies or grants one of the rights in the series.

*“Relevant consideration” and “related” supplies*

- 6 (1) This paragraph applies for the purposes of condition B in paragraphs 2 and 3.
- (2) “Relevant consideration” means—
  - (a) in relation to a supply that is within paragraph 2(1) by virtue of the issue of a VAT invoice, the amount shown on that invoice,
  - (b) in relation to a supply that is within paragraph 2(1) by virtue of the receipt of a payment, the amount of that payment, and
  - (c) in relation to a grant of a right to goods or services within paragraph 3(1), the consideration for the grant of the right,but does not include any amount in respect of VAT.

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- (3) A supply within paragraph 2(1), or a grant of a right within paragraph 3(1), is related to another such supply or grant if they are both made as part of the same scheme.
- (4) “Scheme” includes any arrangements, transaction or series of transactions.

#### *Financing*

- 7 (1) This paragraph applies for the purposes of condition C in paragraphs 2 and 3.
- (2) A payment is financed by a person if, directly or indirectly, the person—
- (a) provides funds to enable the person to whom the supply is made to make the whole or part of the payment (whether the funds are provided before or after the payment is made),
  - (b) procures the provision of such funds by another person,
  - (c) provides funds for discharging (in whole or in part) any liability that has been or may be incurred by any person for or in connection with raising funds to enable the person to whom the supply is made to make the payment, or
  - (d) procures that any such liability is or will be discharged (in whole or in part) by another person.
- (3) In sub-paragraph (2) the references to providing funds for a purpose are to—
- (a) making a loan of funds that are or are to be used for that purpose,
  - (b) providing a guarantee or other security in relation to such a loan,
  - (c) providing consideration for the issue of shares or other securities issued wholly or partly for raising those funds,
  - (d) providing consideration for the acquisition by any person of any such shares or securities, or
  - (e) any other transfer of assets or value as a consequence of which any of those funds are made available for that purpose.

#### *Connected persons*

- 8 Section 839 of ICTA (connected persons) applies for the purposes of this Schedule.

#### *Receipt of payments*

- 9 In this Schedule a reference to receipt of a payment by the person making a supply or granting a right (however expressed) includes a reference to receipt by a person to whom a right to receive it has been assigned.

#### *Power to change relevant conditions*

- 10 (1) The Treasury may by order amend this Part of this Schedule by adding, modifying or omitting relevant conditions.
- (2) An order under this paragraph—
- (a) may make different provision for different cases, and
  - (b) may make incidental or consequential amendments of this Schedule.

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*Supplies treated as taking place before 31 March 2009*

- 11 In relation to supplies treated as taking place before 31 March 2009, this Schedule has effect as if—
- (a) paragraphs 2(5), 3(5) and 6 (condition B) and all references to condition B were omitted,
  - (b) in paragraph 2(6) (condition C), the words “or a person connected with the supplier” were omitted, and
  - (c) in paragraph 3(6) (condition C), the words “or a person connected with the grantor” were omitted.

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