

*Order made by the Treasury, laid before the House of Commons under section 97(3) of the Value Added Tax Act 1994 for approval by a resolution of that House within twenty-eight days beginning with the day on which the Order was made, subject to extension for periods of dissolution, prorogation or adjournment for more than four days.*

---

STATUTORY INSTRUMENTS

---

**1998 No. 764**

**VALUE ADDED TAX**

**The Value Added Tax (Sport, Sports Competitions  
and Physical Education) Order 1998**

*Made - - - - 17th March 1998*

*Laid before the House of*

*Commons - - - - 17th March 1998*

*Coming into force*

*in accordance with article 1*

The Treasury, in exercise of the powers conferred on them by sections 31(2) and 96(9) of the Value Added Tax Act 1994(1) and of all other powers enabling them in that behalf, hereby make the following Order:

1. This Order may be cited as the Value Added Tax (Sport, Sports Competitions and Physical Education) Order 1998 and shall apply to any supply of services made on or after 18th March 1998, save that article 4 shall apply to any supply of services made on or after 1st January 1999.

2. Group 10 (Sport, Sports Competitions and Physical Education) of Schedule 9 to the Value Added Tax Act 1994 shall be varied as follows.

3. After Note (2) there shall be inserted—

“(2A) For the purposes of this group a body shall not be treated as a non-profit making body if it is subject to commercial direction.”.

4. After Note (2A) there shall be inserted—

“(2B) For the purposes of this group a non-profit making body means any body which—

- (a) is precluded from distributing, and does not distribute, any profit it makes; and
- (b) applies any profits made from supplies of a description within items 2 and 3 to the continuance or improvement of the facilities made available by means of the supplies.”.

5. After Note (3) there shall be added the following—

“(4) A body is subject to commercial direction if the body has—

- (a) received a relevant supply from a relevant person during the relevant period relating to that supply;
- (b) entered into any agreement, arrangement or understanding (whether or not legally enforceable) to receive a relevant supply from a relevant person after the time of making the sports supply in question;
- (c) paid an emolument to a relevant person during the relevant period relating to that emolument; or
- (d) entered into any agreement, arrangement or understanding (whether or not legally enforceable) to pay an emolument to a relevant person after the time of making the sports supply in question.

(5) For the purposes of Note (4) above—

“relevant supply” means—

- (a) the grant of—
  - (i) any interest in or right over land,
  - (ii) any licence to occupy land, or
  - (iii) in relation to land in Scotland, any personal right to call for or be granted any such interest or right,if the land in question is used for or in connection with the provision of sport or physical recreation activities by the body making the sports supply;
- (b) the provision of any facilities which are used for or in connection with the provision of sport or physical recreation activities by the body making the sports supply;
- (c) the management or administration of such facilities; or
- (d) any other supply of goods or services for a consideration which is greater than that which would be payable in money if it were a commercial transaction conducted at arms length;

“relevant person” means a person who is, or is connected with, an officer or shadow officer of the body making the sports supply or who is, or is connected with an intermediary during any part of the relevant period which relates to a relevant supply received or to be received, or to an emolument paid or to be paid;

“relevant period” means—

- (a) in relation to a supply which falls within paragraph (a) of the descriptions of relevant supply contained in this Note, a period which commences on 1st April 1996 and ends at the time of the making of the sports supply in question; and
- (b) in relation to any emolument and in relation to any other relevant supply, a period of three years immediately preceding the time of the making of the sports supply in question;

“sports supply” means a supply which would be such as is described in item 2 or 3 if it were made by a non-profit making body;

“emolument” means any salary, fee, wage, perquisite, or profit whatsoever.

(6) Any question whether a person is connected with another shall be determined in accordance with section 839 of the Taxes Act<sup>(2)</sup> at the earlier of—

- (a) the time when a relevant supply is made or an emolument is paid; and
- (b) the time when any agreement, arrangement or understanding is made if the time of the making of the sports supply in question precedes the time of the relevant supply or payment of the emolument concerned.

(7) For the purposes of Note (5) above—

“grant” includes an assignment or surrender;

“officer” includes a director or any committee member, secretary or manager concerned in the management or administration of the body;

“shadow officer” means a person in accordance with whose directions or instructions the members or officers of a body are accustomed to act;

“intermediary” means a person who, not being the body making the sports supply in question, has—

- (a) received; or
- (b) entered into any agreement, arrangement or understanding (whether or not legally enforceable) to receive, after the time of the making of the sports supply in question,

a relevant supply from a person who, during any part of the relevant period which relates to the relevant supply received or to be received by the body making the sports supply, is or is connected with an officer or shadow officer of the body making the sports supply or who is or is connected with an intermediary.”

*Graham Allen*

*Jim Dowd*

Two of the Lords Commissioners of Her Majesty's Treasury

17th March 1998

---

(2) Section 96(1) of the Value Added Tax Act 1994 defines “the Taxes Act” to mean the Income and Corporation Taxes Act 1988 (c. 1).

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

---

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order applies to services supplied on or after 18th March 1998 and introduces a definition of “non-profit making body” into Group 10 of Schedule 9 to the Value Added Tax Act 1994 (c. 23). Group 10 exempts from VAT certain supplies relating to competitions and sports and physical education. This group implements Article 13A(1)(m) of EC Directive 77/388/EEC (OJ L145, 13.6.1977, p. 1) (the Sixth VAT Directive), which requires member States to exempt supplies of sporting services by non-profit making bodies, but to tax such supplies made by commercial bodies.

Article 3 of the Order inserts Note (2A) which provides that a body shall not be treated as a non-profit making body if it is subject to commercial direction.

Article 4 inserts Note (2B) to the Group which defines a “non-profit making body”. Note (2B) applies to services which are supplied on or after 1st January 1999. It limits exemption to supplies by bodies which cannot and do not distribute any profit which they make and use any profits made from their sporting activities for the continuance or improvement of the related sporting facilities. This implements the first indent of Article 13A(2)(a) of the Sixth VAT Directive.

Article 5 inserts Notes (4) to (7) which attach conditions and provide definitions to the exclusion from exemption of supplies which are made by bodies which are subject to commercial direction. These Notes, which apply to services supplied on or after 18th March 1998, implement the obligation in the preamble to Article 13A(1) of the Sixth VAT Directive for member States to make the grant of exemption subject to conditions for the purpose of preventing evasion, avoidance or abuse. They also implement the second indent of Article 13A(2)(a) of the Sixth VAT Directive, which permits member States to limit exemption to supplies by bodies managed and administered on an essentially voluntary basis by persons who have no direct or indirect interest, either themselves or through intermediaries, in the results of the activities concerned.

Note (4) to the Group defines the circumstances in which a body will be considered to be subject to commercial direction and which will lead to the loss of exemption from VAT. This is where the body has arranged to purchase certain defined supplies from, or to pay emoluments to, an officer, shadow officer, intermediary or connected person.

Note (5) defines the type and time of the supplies and emoluments and the commercial relationship between the club and its officers, the intermediary or the connected person, in relation to which Note (4) will cause the loss of exemption.

Note (6) adopts the definition for “connected persons” used in Section 839 of the Income and Corporation Taxes Act 1988 and provides for the time of the connection to which Note (4) applies.

Note (7) defines an “officer” or “shadow officer” of the club and an “intermediary” for the purposes of the definition of “relevant person” in Note (5).