

1999 No. 1994

VALUE ADDED TAX

**The Value Added Tax (Sport, Sports Competitions and
Physical Education) Order 1999**

Approved by the House of Commons

<i>Made - - - -</i>	<i>14th July 1999</i>
<i>Laid before the House of Commons</i>	<i>20th July 1999</i>
<i>Coming into force</i>	<i>1st January 2000</i>

The Treasury, in exercise of the powers conferred on them by sections 31(2) and 96(9) of the Value Added Tax Act 1994^(a) 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 1999 and shall come into force on 1st January 2000 and shall have effect in relation to supplies made on or after that date.

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. In Items 2 and 3 and Notes (1), (2) and (3) for the words “a non-profit making body” there shall be substituted “an eligible body”.

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

“(2A) Subject to Notes (2C) and (3), in this Group “eligible body” means a non-profit making body which—

- (a) is precluded from distributing any profit it makes, or is allowed to distribute any such profit by means only of distributions to a non-profit making body;
- (b) applies in accordance with Note (2B) any profits it makes from supplies of a description within Item 2 or 3; and
- (c) is not subject to commercial influence.

(2B) For the purposes of Note (2A)(b) the application of profits made by any body from supplies of a description within Item 2 or 3 is in accordance with this Note only if those profits are applied for one or more of the following purposes, namely—

- (a) the continuance or improvement of any facilities made available in or in connection with the making of the supplies of those descriptions made by that body;

(b) the purposes of a non-profit making body.

(2C) In determining whether the requirements of Note (2A) for being an eligible body are satisfied in the case of any body, there shall be disregarded any distribution of amounts representing unapplied or undistributed profits that falls to be made to the body's members on its winding-up or dissolution.”.

5. After Note (3) there shall be inserted–

“(4) For the purposes of this Group a body shall be taken, in relation to a sports supply, to be subject to commercial influence if, and only if, there is a time in the relevant period when–

- (a) a relevant supply was made to that body by a person associated with it at that time;
- (b) an emolument was paid by that body to such a person;
- (c) an agreement existed for either or both of the following to take place after the end of that period, namely–
 - (i) the making of a relevant supply to that body by such a person; or
 - (ii) the payment by that body to such a person of any emoluments.

(5) In this Group “the relevant period”, in relation to a sports supply, means–

- (a) where that supply is one made before 1st January 2003, the period beginning with 14th January 1999 and ending with the making of that sports supply; and
- (b) where that supply is one made on or after 1st January 2003, the period of three years ending with the making of that sports supply.

(6) Subject to Note (7), in this Group “relevant supply”, in relation to any body, means a supply falling within any of the following paragraphs–

- (a) the grant of any interest in or right over land which at any time in the relevant period was or was expected to become sports land;
- (b) the grant of any licence to occupy any land which at any such time was or was expected to become sports land;
- (c) the grant, in the case of land in Scotland, of any personal right to call for or be granted any such interest or right as is mentioned in paragraph (a) above;
- (d) a supply arising from a grant falling within paragraph (a), (b) or (c) above, other than a grant made before 1st April 1996;
- (e) the supply of any services consisting in the management or administration of any facilities provided by that body;
- (f) the supply of any goods or services for a consideration in excess of what would have been agreed between parties entering into a commercial transaction at arm's length.

(7) A supply which has been, or is to be or may be, made by any person shall not be taken, in relation to a sports supply made by any body, to be a relevant supply for the purposes of this Group if–

- (a) the principal purpose of that body is confined, at the time when the sports supply is made, to the provision for employees of that person of facilities for use for or in connection with sport or physical recreation, or both;
- (b) the supply in question is one made by a charity or local authority or one which (if it is made) will be made by a person who is a charity or local authority at the time when the sports supply is made;
- (c) the supply in question is a grant falling within Note (6)(a) to (c) which has been made, or (if it is made) will be made, for a nominal consideration;

- (d) the supply in question is one arising from such a grant as is mentioned in paragraph (c) above and is not itself a supply the consideration for which was, or will or may be, more than a nominal consideration; or
- (e) the supply in question—
 - (i) is a grant falling within Note (6)(a) to (c) which is made for no consideration; but
 - (ii) falls to be treated as a supply of goods or services, or (if it is made) will fall to be so treated, by reason only of the application, in accordance with paragraph 9 of Schedule 4, of paragraph 5 of that Schedule.

(8) Subject to Note (10), a person shall be taken, for the purposes of this Group, to have been associated with a body at any of the following times, that is to say—

- (a) the time when a supply was made to that body by that person;
- (b) the time when an emolument was paid by that body to that person; or
- (c) the time when an agreement was in existence for the making of a relevant supply or the payment of emoluments,

if, at that time, or at another time (whether before or after that time) in the relevant period, that person was an officer or shadow officer of that body or an intermediary for supplies to that body.

(9) Subject to Note (10), a person shall also be taken, for the purposes of this Group, to have been associated with a body at a time mentioned in paragraph (a), (b) or (c) of Note (8) if, at that time, he was connected with another person who in accordance with that Note—

- (a) is to be taken to have been so associated at that time; or
- (b) would be taken to have been so associated were that time the time of a supply by the other person to that body.

(10) Subject to Note (11), a person shall not be taken for the purposes of this Group to have been associated with a body at a time mentioned in paragraph (a), (b) or (c) of Note (8) if the only times in the relevant period when that person or the person connected with him was an officer or shadow officer of the body are times before 1st January 2000.

(11) Note (10) does not apply where (but for that Note) the body would be treated as subject to commercial influence at any time in the relevant period by virtue of—

- (a) the existence of any agreement entered into on or after 14th January 1999 and before 1st January 2000; or
- (b) anything done in pursuance of any such agreement.

(12) For the purposes of this Group a person shall be taken, in relation to a sports supply, to have been at all times in the relevant period an intermediary for supplies to the body making that supply if—

- (a) at any time in that period either a supply was made to him by another person or an agreement for the making of a supply to him by another was in existence; and
- (b) the circumstances were such that, if—
 - (i) that body had been the person to whom the supply was made or (in the case of an agreement) the person to whom it was to be or might be made; and
 - (ii) Note (7) above were to be disregarded to the extent (if at all) that it would prevent the supply from being a relevant supply, the body would have fallen to be regarded in relation to the sports supply as subject to commercial influence.

(13) In determining for the purposes of Note (12) or this Note whether there are such circumstances as are mentioned in paragraph (b) of that Note in the case of any supply, that Note and this Note shall be applied first for determining whether the person by whom the supply was made, or was to be or might be made, was himself an intermediary for supplies to the body in question, and so on through any number of other supplies or agreements.

(14) In determining for the purposes of this Group whether a supply made by any person was made by an intermediary for supplies to a body, it shall be immaterial that the supply by

that person was made before the making of the supply or agreement by reference to which that person falls to be regarded as such an intermediary.

(15) Without prejudice to the generality of subsection (1AA) of section 43, for the purpose of determining—

- (a) whether a relevant supply has at any time been made to any person;
- (b) whether there has at any time been an agreement for the making of a relevant supply to any person; and
- (c) whether a person falls to be treated as an intermediary for the supplies to any body by reference to supplies that have been, were to be or might have been made to him,

references in the preceding Notes to a supply shall be deemed to include references to a supply falling for other purposes to be disregarded in accordance with section 43(1)(a).

(16) In this Group—

“agreement” includes any arrangement or understanding (whether or not legally enforceable);

“emolument” means any emolument (within the meaning of the Income Tax Acts) the amount of which falls or may fall, in accordance with the agreement under which it is payable, to be determined or varied wholly or partly by reference—

- (i) to the profits from some or all of the activities of the body paying the emolument; or
- (ii) to the level of that body’s gross income from some or all of its activities;

“employees”, in relation to a person, includes retired employees of that person;

“grant” includes an assignment or surrender;

“officer”, in relation to a body, includes—

- (i) a director of a body corporate; and
- (ii) any committee member or trustee concerned in the general control and management of the administration of the body;

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

“sports land”, in relation to any body, means any land used or held for use for or in connection with the provision by that body of facilities for use for or in connection with sport or physical recreation, or both;

“sports supply” means a supply which, if made by an eligible body, would fall within Item 2 or 3.

(17) For the purposes of this Group any question whether a person is connected with another shall be determined in accordance with section 839 of the Taxes Act (connected persons)(a).”.

14th July 1999

Jim Dowd
Clive Betts
Two of the Lords Commissioners of Her
Majesty’s Treasury

(a) 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).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order applies to services supplied on or after 1st January 2000. It amends Group 10 of Schedule 9 to the Value Added Tax Act 1994 (c. 23) (the Act). Group 10 was amended by the Value Added Tax (Sport, Sports Competitions and Physical Education) Order 1998 (S.I. 1998/764) (the original Order) which was made on 17th March 1998. The original Order was not approved as required by section 97(3) of the Act and ceased to have effect after 24th April 1998.

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 (O.J. 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 amends Items 2 and 3 and Notes (1), (2) and (3) of the group by substituting “an eligible body” for the references to “a non-profit making body” so that supplies which would otherwise fall to be exempt by virtue of Items 2 and 3 will only do so if they are made by an eligible body.

Article 4 of the Order inserts Notes (2A), (2B) and (2C). Note (2A) defines an “eligible body”. An eligible body is a non-profit making body which is not subject to commercial influence and which cannot distribute any profit which it makes otherwise than to a non-profit making body unless the distribution is made to a member of the body upon the dissolution or winding up of that body. An eligible body must also (except upon dissolution or winding up) use any profits made from supplies exempted by Items 2 and 3 for the continuance or improvement of any facilities made available in connection with those supplies or apply them to a non-profit making body. This implements the first indent of Article 13A(2)(a) of the Sixth VAT Directive.

Article 5 inserts Notes (4) to (17) which attach conditions and provide definitions for the exclusion from exemption of supplies which are made by bodies which are subject to commercial influence. These Notes 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. They also 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.

Note (4) to the group defines the circumstances in which a body will be considered to be subject to commercial influence and which will lead to the loss of exemption from VAT. This is where there is a time in the relevant period when a person who is associated with the body has made certain defined supplies to it or received an emolument from the body or has arranged to make such supplies or to receive an emolument from the body after the end of the relevant period.

Note (5) defines the relevant period in connection with supplies made by the body before 1st January 2003 and in connection with supplies made on or after that date.

Note (6) defines the supplies which are relevant supplies for the purposes of the group.

Note (7) excludes from treatment as a relevant supply, a supply made by a body, whose principal purpose is to provide sports or physical recreation facilities for use by its employees. It also excludes from such treatment certain other supplies which are defined in that Note.

Note (8) describes the times when an officer or shadow officer of the body, or an intermediary, shall be taken to have been associated with a body.

Note (9) provides that a person shall also be taken to have been associated with a body at a time mentioned in Note (8) if he was connected with a person who, by virtue of that Note, is taken to have been so associated at that time.

Note (10) provides that subject to Note (11), a person shall not be taken to have been associated with a body at the times referred to in Note (8) if the only times when that person, or the person

connected with him, was an officer or shadow officer of the body occurred before 1st January 2000.

Note (11) provides that Note (10) will not apply where (but for that Note) a body would be treated as subject to commercial influence by virtue of, or anything done in pursuance of, an agreement entered into on or after 14th January 1999 and before 1st January 2000.

Notes (12) and (13) define the times when a person will be taken to have been an intermediary for supplies made to the body making a sports supply and when those Notes are to be applied to determine whether the person making a supply was an intermediary. Where appropriate, these Notes will determine the number of intermediaries between the body concerned and persons who are officers or shadow officers of that body or persons connected with them.

Note (14) provides that it is immaterial whether a supply made by an intermediary occurred before the supply or agreement by which that person falls to be regarded as an intermediary.

Note (15) provides that in the preceding Notes references to a supply include supplies which, for other purposes, fall to be disregarded by virtue of section 43(1)(a) of the Act.

Note (16) defines certain terms used in the Notes.

Note (17) provides that the question whether a person is connected with another will be determined in accordance with section 839 of the Taxes Act.

£2.00

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WO 5674 11/99 ON (MFK)