
STATUTORY INSTRUMENTS

1999 No. 2833

VALUE ADDED TAX

**The Value Added Tax (Supplies of Goods where
Input Tax cannot be recovered) Order 1999**

<i>Made</i>	- - - -	<i>14th October 1999</i>
<i>Laid before the House of Commons</i>	- - - -	<i>15th October 1999</i>
<i>Coming into force</i>	- -	<i>1st March 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(1) and of all other powers enabling them in that behalf, hereby make the following Order:

Citation and commencement

1. This Order may be cited as the Value Added Tax (Supplies of Goods where Input Tax cannot be recovered) Order 1999 and shall come into force on 1st March 2000 in respect of supplies made on or after that date.

Supplies of goods where input tax cannot be recovered

2.—(1) Schedule 9 to the Value Added Tax Act 1994 shall be varied in accordance with paragraphs (2) and (3) of this article.

(2) In Part I there shall be inserted after the entry relating to Sport, sports competitions and physical education the following entry—

“Supplies of goods where input tax cannot be recovered Group 14”.

(3) In Part II after Group 13(2) there shall be added the following—

“GROUP 14—SUPPLIES OF GOODS WHERE INPUT TAX CANNOT BE RECOVERED

Item No.

1. A supply of goods in relation to which each of the following conditions is satisfied, that is to say—

(1) 1994 c. 23.
(2) Group 13 was inserted by S.I.1996/1256.

- (a) there is input tax of the person making the supply (“the relevant supplier”), or of any predecessor of his, that has arisen or will arise on the supply to, or acquisition or importation by, the relevant supplier or any such predecessor of goods used for the supply made by the relevant supplier;
- (b) the only such input tax is non-deductible input tax; and
- (c) the supply made by the relevant supplier is not a supply which would be exempt under Item 1 of Group 1 of Schedule 9 but for an election under paragraph 2 of Schedule 10.

Notes:

(1) Subject to Note (2) below, in relation to any supply of goods by the relevant supplier, the goods used for that supply are—

- (a) the goods supplied; and
- (b) any goods used in the process of producing the supplied goods so as to be comprised in them.

(2) In relation to a supply by any person consisting in or arising from the grant of a major interest in land (“the relevant supply”)—

- (a) any supply consisting in or arising from a previous grant of a major interest in the land is a supply of goods used for the relevant supply; and
- (b) subject to paragraph (a) above, the goods used for the relevant supply are any goods used in the construction of a building or civil engineering work so as to become part of the land.

(3) Subject to Notes (7) to (10) below, non-deductible input tax is input tax to which Note (4) or (5) below applies.

(4) This Note applies to input tax which (disregarding this Group and regulation 106 of the Value Added Tax Regulations 1995(3) (de minimis rule)) is not, and will not become, attributable to supplies to which section 26(2) applies.

(5) This Note applies to input tax if—

- (a) disregarding this Group and the provisions mentioned in Note (6) below, the relevant supplier or a predecessor of his has or will become entitled to credit for the whole or a part of the amount of that input tax; and
- (b) the effect (disregarding this Group) of one or more of those provisions is that neither the relevant supplier nor any predecessor of his has or will become entitled to credit for any part of that amount.

(6) The provisions mentioned in Note (5) above are—

- (a) Article 5 of the Value Added Tax (Input Tax) Order 1992(4) (no credit for input tax on goods or services used for business entertainment);
- (b) Article 6(5) of that Order (no credit for input tax on non-building materials incorporated in a building or site);
- (c) Article 7(6) of that Order (no credit for input tax on motor cars);
- (d) any provision directly or indirectly re-enacted (with or without modification) in a provision mentioned in paragraphs (a) to (c) above.

(3) S.I. 1995/2518.

(4) S.I. 1992/3222; Article 5 was amended by S.I. 1995/281.

(5) Article 6 was amended by S.I. 1995/281.

(6) Article 7 was amended by S.I. 1995/281 and S.I. 1995/1666.

(7) For the purposes of this Group the input tax of a person shall be deemed to include any VAT which—

- (a) has arisen or will arise on a supply to, or acquisition or importation by, that person; and
- (b) would fall to be treated as input tax of that person but for its arising when that person is not a taxable person.

(8) Subject to Note (9) below, the input tax that is taken to be non-deductible input tax shall include any VAT which—

- (a) is deemed to be input tax of any person by virtue of Note (7) above; and
- (b) would be input tax to which Note (4) or (5) above would apply if it were input tax of that person and, in the case of a person to whom section 39 applies, if his business were carried on in the United Kingdom.

(9) Non-deductible input tax does not include any VAT that has arisen or will arise on a supply to, or acquisition or importation by, any person of any goods used for a supply of goods (“the relevant supply”) if—

- (a) that VAT; or
- (b) any other VAT arising on the supply to, or acquisition or importation by, that person or any predecessor of his of any goods used for the relevant supply,

has been or will be refunded under section 33, 39 or 41.

(10) Input tax arising on a supply, acquisition or importation of goods shall be disregarded for the purposes of determining whether the conditions in Item No. 1(a) and (b) are satisfied if, at a time after that supply, acquisition or importation but before the supply by the relevant supplier, a supply of the goods or of anything in which they are comprised is treated under or by virtue of any provision of this Act as having been made by the relevant supplier or any predecessor of his to himself.

(11) In relation to any goods or anything comprised in any goods, a person is a predecessor of another (“the putative successor”) only if Note (12) or (13) below applies to him in relation to those goods or that thing; and references in this Group to a person’s predecessors include references to the predecessors of his predecessors through any number of transfers and events such as are mentioned in Notes (12) and (13).

(12) This Note applies to a person in relation to any goods or thing if—

- (a) the putative successor is a person to whom he has transferred assets of his business by a transfer of that business, or a part of it, as a going concern;
- (b) those assets consisted of or included those goods or that thing; and
- (c) the transfer of the assets is one falling by virtue of an Order under section 5(3) (or under an enactment re-enacted in section 5(3)) to be treated as neither a supply of goods nor a supply of services.

(13) This Note applies to a body corporate in relation to any goods or thing if—

- (a) those goods or that thing formed part of the assets of the business of that body at a time when it became a member of a group of which the putative successor was at that time the representative member;
- (b) those goods or that thing formed part of the assets of the business of that body corporate, or of any other body corporate which was a member of the same group as that body, at a time when that body was succeeded as the representative member of the group by the putative successor; or
- (c) those goods or that thing formed part of the assets of the putative successor at a time when it ceased to be a member of a group of which the body corporate in question was at the time the representative member.

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(14) References in Note (13) above to a body corporate's being or becoming or ceasing to be a member of a group or the representative member of a group are references to its falling to be so treated for the purposes of section 43.

(15) In Notes (11) to (13) above the references to anything comprised in other goods shall be taken, in relation to any supply consisting in or arising from the grant of a major interest in land, to include anything the supply, acquisition or importation of which is, by virtue of Note (2) above, taken to be a supply, acquisition or importation of goods used for making the supply so consisting or arising.

(16) Notes (1) and (1A) to Group 1 shall apply for the purposes of this Group as they apply for the purposes of that Group.”.

14th October 1999

Jim Dowd
Bob Ainsworth
Two of the Lords Commissioners of Her
Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order applies to supplies of goods made on or after 1st March 2000. It adds a new Group 14 to Schedule 9 of the Value Added Tax Act 1994 (1994 c. 23), enacting the exemption required by Article 13B(c) of Council Directive 77/388/EEC (O.J. L.145, 13.6.1977, p. 1). This exemption prevents double taxation on the supply of goods if no tax is deductible on the purchase, acquisition, importation or production of the goods, because they are used for making exempt transactions or because the tax is blocked by a specific exclusion.

Article 2(2) of the Order updates the Index contained in Part I of Schedule 9 for this new group.

Article 2(3) of the Order adds a new Group 14 to Schedule 9.

Item 1 of the new Group sets out the conditions for the relevant supplier to make an exempt supply of goods. Item 1(a) requires the relevant supplier, or a predecessor of his, to incur some input tax on the goods used to make this supply. The goods used to make a supply are defined in Notes (1) and (2). The “predecessor” of a “relevant supplier” is defined in Notes (11) to (14). Item 1(b) requires all of this input tax to be “non-deductible”, as defined in Notes (3) to (5). Item 1(c) ensures that the exemption in this Group does not override the more specific regime which applies to most interests in land (exemption under Group 1 of Schedule 9, subject to the supplier electing to waive exemption).

Note (1) defines “goods used”, and thereby, the input tax to be considered for the purposes of applying the exemption. The relevant supplier or his predecessor must incur input tax on either obtaining the goods that are being supplied, or obtaining other goods used as components in producing the goods being supplied.

Note (2) adapts this rule where the supply of goods is a supply of a major interest in land (other than a supply excluded by Item 1(c)). The relevant supplier or his predecessor must incur input tax on either acquiring a major interest in the land concerned, or on goods such as building materials which become incorporated within a newly constructed building or civil engineering work on the land.

Note (3) defines “non-deductible” input tax as input tax falling within either Note (4) or Note (5).

Note (4) defines non-deductible input tax on goods used to make exempt supplies. No part of the input tax may be deductible as attributable to supplies giving a right to input tax deduction, whether the right to deduction arises before or after the supply of goods under consideration. In particular, the exemption does not apply if treating this supply as taxable would give rise to an input tax entitlement such as where there has been an adjustment in respect of a capital item by virtue of Part XV of the Value Added Tax Regulations 1995. However, an input tax entitlement arising only from the operation of the “de minimis” rule in regulation 106 of the Value Added Tax Regulations 1995 is ignored.

Note (5) defines non-deductible input tax which UK law specifically excludes from credit. The input tax must be blocked solely as a result of one of the provisions in Note (6) applying. In particular, the exemption does not apply to sales of cars or other goods which are eligible for treatment under the second-hand margin scheme. The provisions are those excluding entitlement to input tax on goods used for business entertainment, goods (other than building materials) incorporated in a zero-rated building, and motor cars.

Note (7) defines input tax to include VAT incurred when the person concerned was not a taxable person (that is, not registered or liable to be registered for VAT). Note (8) extends the definition of “non-deductible input tax” accordingly.

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Note (9) ensures that the exemption cannot apply in cases where some or all of the VAT on the “goods used” for the supply in question has been recovered under the refund provisions for local authorities and similar bodies, government departments, or overseas traders.

Note (10) ensures that the exemption can apply where VAT was originally deducted on “goods used” for the supply in question, but those goods were later the subject of a self-supply for VAT purposes such as the self-supply of cars on which input tax was originally recovered, following a change of use.

Notes (11) to (14) ensure that the exemption can apply where the “goods used” to make the supply in question have been transferred as part of a transfer of a going concern, or a VAT group change has taken place after the input tax was incurred. Notes (11) and (12) ensure that a person (A) is a predecessor of another (B) where goods (or anything comprised in goods) are transferred from A to B as part of a transfer of a going concern which is not a supply for VAT purposes. Notes (11), (13) and (14) ensure that a person (A) is a predecessor of another (B) if A joins a group of bodies corporate which are treated as members of a group by virtue of section 43 of the Act, of which B is a representative member. These Notes also ensure that a person (A) is the predecessor of another (B) if the representative member of a VAT group changes from A to B, or if B leaves a VAT group of which A is a representative member.

Note (15) defines the phrase “anything comprised in goods” in the context of supplies of major interests in land.

Note (16) applies Notes (1) and (1A) to Group 1 of Schedule 9 to Group 14 so that grants of major interests in land include assignments, surrenders and reverse surrenders.