

2004 No. 1931

VALUE ADDED TAX

The Value Added Tax (Groups: eligibility) Order 2004

Made - - - - - 22nd July 2004

Laid before the House of Commons 22nd July 2004

Coming into force 1st August 2004

Approved by the House of Commons

The Treasury, in exercise of the powers conferred upon them by section 43AA(1) to (4) of the Value Added Tax Act 1994(a), hereby make the following Order:

Citation and commencement

1. This Order may be cited as the Value Added Tax (Groups: eligibility) Order 2004 and comes into force on 1st August 2004.

Modification regarding section 43A of the Value Added Tax Act 1994

2. A body corporate that is a specified body is eligible to be treated as a member of a group if, in addition to satisfying the conditions set out in section 43A(1)(b) of the Value Added Tax Act 1994 (“the Act”), it satisfies both the benefits condition and the consolidated accounts condition.

Specified bodies

3.—(1) A body corporate to which this article applies is a specified body for the purposes of this Order if it carries on a relevant business activity and—

- (a) the value of the group’s supplies in the year then ending has exceeded £10 million; or
- (b) there are reasonable grounds for believing that the value of the group’s supplies in the year then beginning will exceed that amount.

(2) For the purposes of determining the value mentioned in sub-paragraph (b) of paragraph (1), a body that is not a member of the group shall be deemed to be a member.

(3) Subject to paragraph (4), this article applies to a body corporate which, at any time when the relevant business activity is being carried on—

- (a) is not a wholly-owned subsidiary of a person who controls all of the other members of the group (or, where the person is or will be a member of the group, all of the other members apart from himself);

(a) 1994 c.23; section 43AA was inserted by section 20(1) of the Finance Act 2004 (c.12).
(b) Section 43A was inserted by paragraph 2 of Schedule 2 to the Finance Act 1999.

- (b) is managed, directly or indirectly, in respect of the business activity concerned, by a third party in the course or furtherance of a business carried on by him; or
 - (c) is the sole general partner of a limited partnership.
- (4) This article does not apply to—
- (a) a body corporate that controls all of the members of the group (or, where it is a member of the group, all of the members apart from itself);
 - (b) a body corporate whose activities another body corporate is empowered by statute to control;
 - (c) a body corporate whose only activity is acting as the trustee of a pension scheme; or
 - (d) a charity.
- (5) In this article—
- (a) a body corporate is a wholly-owned subsidiary of a person if it is a wholly-owned subsidiary of his within the meaning given by section 736 of the Companies Act 1985(a), or would be if the person were a company;
 - (b) in determining whether a body corporate is a wholly-owned subsidiary of a person, the membership of any excepted individual who is not acting on behalf of another person shall be disregarded;
 - (c) “pension scheme” means an occupational pension scheme established under a trust and “occupational pension scheme” has the meaning given by section 1 of the Pension Schemes Act 1993(b).

Relevant business activities

4.—(1) A business activity is a relevant business activity if it involves making one or more supplies of goods or services to one or more members of the group and—

- (a) those supplies are not incidental to that business activity;
 - (b) at least one of those supplies is or would be chargeable to VAT at a rate other than zero; and
 - (c) the representative member is not or would not be entitled to credit for the whole of the VAT on such supplies as fall within sub-paragraph (b) as input tax.
- (2) In determining for the purposes of paragraph (1) whether—
- (a) a body corporate makes any supplies to any members of the group;
 - (b) a supply would be chargeable to VAT at a rate other than zero;
 - (c) the representative member would not be entitled to credit for the whole of the VAT on the supply as input tax,

a body corporate that is a member of the group shall be deemed not to be a member.

The benefits condition

5.—(1) The benefits condition is satisfied unless more than 50% of the benefits of the relevant business activity accrue, directly or indirectly, to one or more third parties.

(2) For the purposes of paragraph (1), benefits that accrue to a person in his capacity as a member of a body corporate which controls all of the other members of the group (or, where the body is or will be a member of the group, all of the other members apart from itself) shall not be regarded as accruing to a third party.

- (3) The following are benefits of a business activity for the purposes of paragraph (1)—
- (a) profits (whether or not distributed);

(a) 1985 c.6; section 736 was substituted by section 144(1) of the Companies Act 1989 (c.40).
 (b) 1993 c. 48.

- (b) charges for managing the business activity (including charges for providing staff to manage it);
- (c) the amounts, if any, by which any other charges made to the body exceed the open market value^(a) of the goods or services concerned.

(4) For the purposes of paragraph (1), if there are no such benefits, the business activity shall be deemed to generate profits of £100.

The consolidated accounts condition

6.—(1) The consolidated accounts condition is satisfied if—

- (a) consolidated accounts prepared for a person who controls all of the other members of the group (or, where the person is or will be a member of the group, all of the other members apart from himself) would be required by generally accepted accounting practice to include accounts for the specified body as his subsidiary; and
- (b) consolidated accounts prepared for a third party would not be required by generally accepted accounting practice to include accounts for the specified body as his subsidiary.

(2) For the purpose of the application of paragraph (1) at a particular time—

- (a) the reference to consolidated accounts is a reference to consolidated accounts—
 - (i) for a period including that time, and
 - (ii) insofar as they relate to that time,
- (b) any principle of generally accepted accounting practice that permits accounts of a subsidiary undertaking to be excluded from a consolidation as being immaterial shall be disregarded;
- (c) the reference to consolidated accounts prepared for a person is a reference to consolidated accounts of a kind that could be prepared for him in accordance with generally accepted accounting practice, for which purpose it does not matter—
 - (i) whether accounts are actually prepared for him (whether for a particular period or at all), or
 - (ii) in particular, whether he is required to prepare accounts.

(3) In this article “generally accepted accounting practice”—

- (a) has the meaning given by section 50(1) of the Finance Act 2004^(b);
- (b) in relation to any time when that section does not have effect, has the meaning given by section 836A of the Income and Corporation Taxes Act 1988^(c).

Interpretation etc.

7.—(1) In determining—

- (a) the value of the supplies made by a body corporate that is the sole general partner of a limited partnership (a “general partner”);
- (b) whether a general partner is carrying on a relevant business activity;
- (c) whether the benefits condition is satisfied in relation to a general partner;
- (d) whether the consolidated accounts condition is satisfied in relation to a general partner,

articles 3(1) and (2), 4(1), 5 and 6 shall apply as if references to the body or specified body, as the case requires, are references to the limited partnership.

(2) A person is a third party for the purposes of this Order if—

^(a) Section 19(5) of the Value Added Tax Act 1994 defines “open market value”.

^(b) 2004 c.12.

^(c) 1988 c.1; section 836A was inserted by section 103(2) of the Finance Act 2002 (c.23).

- (a) he does not control the body corporate and all of the other members of the group;
- (b) a person who controls the body corporate and all of the other members of the group does not control him; and
- (c) he is not an excepted individual.

(3) An individual is an excepted individual if he is—

- (a) an employee or director of the body; or
- (b) where the body is a limited liability partnership, a member of the body.

(4) Any reference in this Order to “the group” is to the group of which the body corporate is a member or to which an application under section 43B(1) or (2)(a) of the Act relates, as the case may require.

(5) Any reference in this Order to a person controlling a body corporate includes a reference to his controlling the body together with one or more other individuals with whom he is carrying on a business in partnership.

22nd July 2004

Joan Ryan
Jim Murphy
Two of the Lords Commissioners
of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, which comes into force on 1st August 2004, modifies the conditions that certain bodies corporate must satisfy in order to be eligible to be members of VAT groups. Additional conditions will prevent certain suppliers from being in the same VAT group as their customers where third parties control the suppliers or receive most of the benefits of their activities.

Article 2 modifies the eligibility rules in section 43A of the Value Added Tax Act 1994 (“the Act”) by imposing additional conditions. If a body corporate is a “specified body” as defined in article 3, then it may only join a VAT group if, as well as satisfying the existing section 43A test of “control”, it meets the benefits condition (set out in article 5), and the consolidated accounts condition (set out in article 6).

Article 3 determines which bodies corporate are specified bodies. The body must be carrying on a “relevant business activity” (defined in article 4) and the group must have an annual turnover exceeding £10 million. Paragraphs (3) and (4) describe bodies corporate that are and are not capable of being specified bodies. Paragraph (5) defines expressions used in article 3.

Article 4 defines a relevant business activity as one that involves making reduced rate or standard-rated supplies (other than incidental supplies) to other VAT group members, where the group cannot fully recover VAT on such supplies as input tax. When applying this criterion to a body that is already a member of the VAT group, paragraph (2) deems it not to be a member.

Article 5 describes the benefits condition. By paragraph (1), this condition is not satisfied if more than 50% of the benefits generated by the relevant business activity accrue to third parties (defined in article 7). Paragraph (2) ensures that benefits accruing to persons in their capacity as shareholders of a body corporate that controls the whole VAT group are not regarded as accruing to third parties. Paragraph (3) defines what is meant by the benefits of a business activity. Paragraph (4) ensures that the benefits condition can be applied even if there are no benefits, by deeming profits of £100 to have been generated.

Article 6 sets out the consolidated accounts condition. The person controlling the VAT group must be required by “generally accepted accounting practice” to consolidate the body corporate as a subsidiary in its consolidated accounts. In addition, the body corporate must not be consolidated as a subsidiary in the consolidated accounts of a third party. Paragraph (2) requires certain assumptions to be made for this purpose. These assumptions concern, inter alia, the period for which accounts are prepared and they allow the test to be applied to persons who have not prepared accounts, or are not required to. Paragraph (3) defines generally accepted accounting practice by reference to definitions used for income and corporation tax purposes.

Article 7 contains interpretative and other provisions. Paragraph (1) applies where the specified body is the sole general partner of a limited partnership (one of the bodies article 3(3) provides is capable of being a specified body). It requires certain of the tests to be applied to the partnership, rather than the body. Paragraph (2) defines a third party as a person who does not control the whole VAT group, and is not controlled by a person who does. Paragraph (3) excludes certain individuals for this purpose. Paragraph (4) defines the “group” as the VAT group of which the body corporate is already a member, or which it has applied to join. Paragraph (5) ensures that the Order applies in the same way when the VAT group is controlled by a partnership.

A full regulatory impact assessment of the effect that this instrument will have on the costs of business is available from the House of Commons and House of Lords Libraries and from the Customs and Excise website: www.hmce.gov.uk. It can be found on this page of the website: <http://www.hmce.gov.uk/forms/graphics/tackling-vat-group-abuses-ria.pdf>.

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