
STATUTORY INSTRUMENTS

2004 No. 779

VALUE ADDED TAX

The Value Added Tax (Special Provisions) (Amendment) Order 2004

<i>Made</i>	- - - -	<i>17th March 2004</i>
<i>Laid before the House of Commons</i>	- - - -	<i>17th March 2004</i>
<i>Coming into force</i>	- -	<i>18th March 2004</i>

The Treasury, in exercise of their powers conferred upon them by section 5(3) of the Value Added Tax Act 1994⁽¹⁾ hereby make the following Order:

1. This Order may be cited as the Value Added Tax (Special Provisions) (Amendment) Order 2004 and shall come into force on 18th March 2004.

2. The Value Added Tax (Special Provisions) Order 1995⁽²⁾ shall be amended in accordance with the following articles.

3. In article 5(2) for the words “the transferee has made an election in relation to the land concerned which has effect on the relevant date and has given any written notification of that election required by paragraph 3(6) of Schedule 10 to the Act, no later than the relevant date”⁽³⁾ substitute “the conditions contained in paragraph (2A) below are satisfied”.

4. After article 5(2) insert—

“(2A) The conditions referred to in paragraph (2) above are that the transferee has, no later than the relevant date—

(a) made an election in relation to the land which has effect on the relevant date and has given any written notification of the election required by paragraph 3(6) of Schedule 10 to the Act; and

(b) notified the transferor that paragraph (2B) below does not apply to him.

(2B) This paragraph applies to a transferee where—

⁽¹⁾ 1994 c. 23.

⁽²⁾ S.I. 1995/1268; article 5 was amended by S.I. 1998/760; there are other amending instruments but none are relevant.

⁽³⁾ Article 2(1) of S.I. 1995/1268 provides that references to “the Act” are references to the Value Added Tax Act 1994.

Status: This is the original version (as it was originally made).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

- (a) the supply of the asset that is to be transferred to him would become, in relation to him, a capital item as described in regulation 113 of the Value Added Tax Regulations 1995⁽⁴⁾ if the supply of that asset to him—
 - (i) were to be treated as neither a supply of goods nor a supply of services; or
 - (ii) were not so treated; and
- (b) his supplies of that asset will, or would fall, to be exempt supplies by virtue of paragraph 2(3AA) of Schedule 10 to the Act.”⁽⁵⁾.

John Heppell

Nick Ainger

Two of the Lords Commissioners of Her Majesty’s Treasury

17 March 2004

⁽⁴⁾ S.I. [1995/2518](#); the relevant amending instrument is S.I. [1997/1614](#).

⁽⁵⁾ Paragraph 2(3AA) was inserted by section 37(2) of the Finance Act [1997 \(c. 16\)](#) and amended by S.I. [1999/593](#) and [2004/778](#); regulation 2(1) of S.I. [1995/2518](#) provides that references to “the Act” are references to the Value Added Tax Act 1994.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order which comes into effect on 18 March 2004 amends article 5(2) of the Value Added Tax (Special Provisions) Order 1995 (S.I. 1995/1268 amended by S.I. 1968/760; there are other amending instruments but none are relevant) (“the principal Order”).

Where the requirements of article 5(2) of the principal Order are fulfilled, a transfer of property comprising land (including a building) as a going concern will not be treated as a supply for VAT purposes.

Generally, supplies of land are exempt from VAT. By virtue of paragraph 2(1) of Schedule 10 to the Value Added Tax Act 1994 (paragraph 2(1) was amended by S.I. 1994/3013) (“the Act”) a person may elect to waive exemption for such supplies. This has the effect of making these supplies taxable. Until now, for a transfer of land to be treated in accordance with article 5(2) of the principal Order, a transferee was required to make an election to waive exemption in relation to it to have effect (and notify it to the Commissioners of Customs and Excise of his election), before the transaction occurred. In addition to this, a transferee must now notify a transferor that he will not be making supplies of the property transferred that will be exempt by virtue of paragraph 2 (3AA) of Schedule 10 to the Act notwithstanding his election to waive exemption (Paragraph 2(3AA) was inserted by section 37 of the Finance Act 1997 and amended by S.I. 1999/593 and 2004/778).

Article 1 provides for the commencement of this Order.

Article 3 makes a consequential amendment to article 5(2) of the principal Order arising from the insertion of paragraphs (2A) and (2B) by article 4 of this Order.

The new article 5(2A) of the principal Order contains the two conditions that must be met by a transferee before a transfer of the land can be treated as neither a supply of goods nor a supply of services. The conditions are that, before the transfer:

(1) he has elected to waive exemption that has effect before the transfer and notified it to the Commissioners of Customs and Excise; and

(2) he has notified the transferor that article 5(2B) does not apply to him.

The new article 5(2B) applies to a transferee if both of the following apply:

(1) the land transferred to him would, in relation to him, fall to be a capital item-whether the transfer to him is treated as neither a supply of goods nor a supply of services, or otherwise; and

(2) his supplies of that land will, or would fall, to be exempt supplies by virtue of paragraph 2(3AA) of Schedule 10 to the Act.

A full regulatory impact assessment has not been produced for this instrument as it has negligible impact on the costs of business, charities or voluntary bodies.