
STATUTORY INSTRUMENTS

2009 No. 1966

The Value Added Tax (Buildings and Land) Order 2009

Amendment of Schedule 10 to the Value Added Tax Act 1994

6. For paragraph 26 (revocation of an option under paragraph 22(2) or (3) or 24: anti-avoidance) substitute—

“26.—(1) Sub-paragraphs (2) and (3) of paragraph 22 (revocation of option to tax where a real estate election is made) do not apply if condition A or B is met.

(2) Paragraph 24 (lapse of option to tax) does not apply if condition A, B or C is met.

(3) Condition A is that—

(a) the opter, or a relevant associate of the opter, disposes of a relevant interest in the building or land before the relevant time, and

(b) at the relevant time, a supply for the purposes of the charge to VAT in respect of the disposal—

(i) is yet to take place, or

(ii) would be yet to take place if one or more conditions (such as the happening of an event or the doing of an act) were to be met.

(4) Condition B is that—

(a) the opter is a body corporate that was, at any time before the relevant time, treated under sections 43A to 43D(1) as a member of a group (“the group”), and

(b) before the relevant time, a relevant associate of the opter in relation to the building or land ceased to be treated under those sections as a member of the group without at the same time meeting the conditions in sub-paragraph (5).

(5) A person (“A”) meets the conditions in this sub-paragraph if—

(a) A has no relevant interest in the building or land,

(b) where A has disposed of such an interest, it is not the case that a supply for the purposes of the charge to VAT in respect of the disposal—

(i) is yet to take place, or

(ii) would be yet to take place if one or more conditions (such as the happening of an event or the doing of an act) were to be met, and

(c) A is not connected with any person who has a relevant interest in the building or land where that person is the opter or another relevant associate of the opter.

(6) Condition C is that the opter is a body corporate and, at the relevant time, a relevant associate of the opter in relation to the building or land—

(1) Section 43A was inserted by the Finance Act 1999 (c. 16), section 16 and Schedule 2, paragraph 2; section 43AA was inserted by the Finance Act 2004 (c. 12), section 20(1); sections 43B and 43C were inserted by the Finance Act 1999 (c. 16), section 16 and Schedule 2, paragraph 2 and amended by the Finance Act 2004 (c. 12), section 20(4); section 43D was inserted by the Finance Act 2004 (c. 12), section 20(2).

- (a) is treated under sections 43A to 43D as a member of the same group as the opter, and
 - (b) holds a relevant interest in the building or land or has held such an interest at any time within the previous 6 years.
- (7) In this paragraph—

“relevant interest in the building or land” means an interest in, right over or license to occupy the building or land (or any part of it);

“the relevant time”, in relation to any option to tax, means the time from which the option would (but for this paragraph) have been treated as revoked as a result of paragraph 22(2) or (3) or 24;

“opter” means the person who exercised the option to tax in question.”.