STATUTORY INSTRUMENTS

2009 No. 1966

VALUE ADDED TAX

The Value Added Tax (Buildings and Land) Order 2009

Approved by the House of Commons

Made - - - -	*21st July 2009*
Laid before the House of Commons	*21st July 2009*
Coming into force - -	*1st August 2009*

The Treasury, in exercise of the power conferred by section 51(2) of the Value Added Tax Act 1994(**a**), make the following Order:

Citation, commencement and effect

1.—(1) This Order may be cited as the Value Added Tax (Buildings and Land) Order 2009 and comes into force on 1st August 2009.

(2) This Order has effect in relation to supplies made on or after 1st August 2009.

Amendment of Schedule 10 to the Value Added Tax Act 1994

2. Schedule 10 to the Value Added Tax Act 1994(**b**) is amended as follows.

3. In paragraph 3(4)(a) (meaning of "relevant associate"), for everything from "and" to the end, substitute—

"

(aa) where the body corporate 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,".

4. In paragraph 21 (real estate elections: elections to opt to tax land subsequently acquired), after sub-paragraph (12) insert—

"(13) For the purposes of this paragraph, the time at which a relevant interest in any building or land is acquired is—

(**a**) 1994 c. 23.
(**b**) Schedule 10 was substituted by S.I. 2008/1146.

(a) the time at which a supply is treated as taking place for the purposes of the charge to VAT in respect of the acquisition, or

(b) if there is more than one such time, the earliest of them.

(14) For the purposes of sub-paragraph (13)(a), any order under section 5(3)(c) that would otherwise have the effect that the acquisition in question is to be treated as neither a supply of goods nor a supply of services is to be disregarded.".

5.—(1) Paragraph 25 (revocation of an option: lapse of more than 20 years since option had effect) is amended as follows.

(2) In sub-paragraph (6)(b), for "as they" substitute "or time as they may".

(3) In sub-paragraph (7), after "day" insert "or time".

(4) For sub-paragraph (8) substitute—

"(8) The Commissioners may specify a day or time under sub-paragraph (6)(b) by reference to the happening of an event or the meeting of a condition.".

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(**a**) 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—

(**a**) 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.".

7.—(1) Paragraph 27(4) (exclusion of new building from effect of an option) is amended as follows.

(2) Before paragraph (a) insert—

"(za) be given before the end of the period of 30 days beginning with the day on which it is to have effect or such longer period as the Commissioners may in any case allow,".

(3) For paragraph (b) substitute—

"(b) state the time from which it is to have effect, and".

8.—(1) Paragraph 34 (other definitions etc) is amended as follows.

(2) At the end of sub-paragraph (2) insert "; but this is subject to sub-paragraph (2A)".

(3) After that sub-paragraph insert—

"(2A) For the purposes of this Part of this Schedule, a company is not connected with another company only because both are under the control of—

(a) the Crown,

(b) a Minister of the Crown,

(c) a government department, or

(d) a Northern Ireland department.

(2B) In sub-paragraph (2A) "company" and "control" have the same meaning as in section 839 of the Taxes Act(**a**).".

Dave Watts
Frank Roy

21st July 2009 — 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 2009, amends Schedule 10 ("the Schedule") to the Value Added Tax Act 1994 (c. 23) ("the Act") in relation to supplies made on or after that day.

Article 3 amends paragraph 3(4)(a) of the Schedule and inserts paragraph 3(4)(aa). The conditions which must be met in order for a body corporate to cease to be a relevant associate of an opter are amended. The requirement that no consideration remains unpaid in respect of a disposal of a relevant interest in the building or land concerned is replaced by the requirement that no supply for the purposes of the charge to VAT in respect of the disposal is yet to take place or would be yet to do so if one or more conditions were to be met.

(**a**) Section 96(1) of the Value Added Tax Act 1994 (c. 23) defines "the Taxes Act" as the Income and Corporation Taxes Act 1988 (c. 1).

Article 4 amends paragraph 21 of the Schedule by inserting new sub-paragraphs (13) and (14). Sub-paragraph (13) provides that the time when a relevant interest is treated as acquired for the purposes of the paragraph is the time at which a supply is treated as taking place for the purposes of the charge to VAT in respect of the acquisition and, if there is more than one such time, the acquisition is treated as taking place at the earliest of those times. Sub-paragraph (14) provides that sub-paragraph 13 has effect to determine the time of an acquisition even though the supply in question falls to be treated as neither a supply of goods nor services by virtue of an order under section 5(3)(c) of the Act.

Article 5 amends paragraph 25(6)(b) and (7) and substitutes paragraph 25(8) so that where an option is revoked pursuant to permission given by them, the Commissioners for Her Majesty's Revenue and Customs ("the Commissioners") may specify the day or time from which the revocation has effect and may specify that day or time by reference to the happening of an event or the meeting of a condition.

Article 6 substitutes paragraph 26 of the Schedule. Paragraph 26(1) provides that the revocation of an option to tax pursuant to paragraph 22(2) and (3) of Schedule 10 upon the making of a real estate election pursuant to paragraph 21 of that Schedule will not occur where condition A or B contained in paragraph 26(3) and (4) are met. Paragraph 26(2) provides that revocation of an option pursuant to paragraph 24 after 6 years have elapsed since an opter held a relevant interest in the land or building subject to the option does not occur where condition A or B or the condition C contained in paragraph 26(6) are met.

Article 7 inserts paragraph 27(4)(za) and substitutes paragraph 27(4)(b) of the Schedule to require that the notification by an opter of the exclusion of a new building from the effect of an option must, in addition to the other requirements of that paragraph, state the time from which the exclusion from the option has effect and be given to the Commissioners before the end of the period of 30 days beginning on the day on which the exclusion has effect or such longer period as the Commissioners allow.

Article 8 amends paragraph 34(2) of the Schedule and inserts paragraph 34(2A) and (2B) so that, when applying section 839 of the Income and Corporation Tax Act 1988 (c. 1), a company is not connected with another company for the purposes of Part 1 of the Schedule only because both are under the control of the Crown, a Minister of the Crown, a government department or a Northern Ireland Department.

A full and final Impact Assessment has not been produced for this instrument as a negligible impact on the private or voluntary sectors is foreseen.

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