STATUTORY INSTRUMENTS

2008 No. 2547

VALUE ADDED TAX

The Value Added Tax (Finance) (No. 2) Order 2008

Approved by the House of Commons

Made - - - - 29th September 2008

Laid before the House of Commons 29th September 2008

Coming into force in accordance with Article 1

The Treasury, in exercise of the powers conferred by sections 31(2) and 96(9) of the Value Added Tax Act 1994(**a**), make the following Order.

Citation and commencement

1.—(1) This Order may be cited as the Value Added Tax (Finance) (No. 2) Order 2008.

(2) This Order shall come into force as follows—

(a) article 2 on 30th September 2008; and

(b) the remainder on 1st October 2008.

Revocation of Order

2. The Value Added Tax (Finance) Order 2008(**b**) is revoked.

Variation to Group 5 of Schedule 9 to the Value Added Tax Act 1994

3.—(1) Group 5(**c**) of Schedule 9 to the Value Added Tax Act 1994 (exemptions: finance) is varied as follows.

(2) For item 9 substitute—

"**9.** The management of—

(a) an authorised open-ended investment company; or

(b) an authorised unit trust scheme; or

(c) a Gibraltar collective investment scheme that is not an umbrella scheme; or

(d) a sub-fund of any other Gibraltar collective investment scheme; or

(e) an individually recognised overseas scheme that is not an umbrella scheme; or

(f) a sub-fund of any other individually recognised overseas scheme; or

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(**a**) 1994 c. 23.
(**b**) S.I. 2008/1892.
(**c**) Group 5 was varied by S.I. 1997/510, S.I. 2001/3649 and S.I. 2003/1569; there are other amending instruments but none is relevant.

(g) a recognised collective investment scheme authorised in a designated country or territory that is not an umbrella scheme; or

(h) a sub-fund of any other recognised collective investment scheme authorised in a designated country or territory; or

(i) a recognised collective investment scheme constituted in another EEA state(**a**) that is not an umbrella scheme; or

(j) a sub-fund of any other recognised collective investment scheme constituted in another EEA state.".

(3) For item 10 substitute—

"**10.** The management of a closed-ended collective investment undertaking.".

(4) For Note (6) substitute—

"(6) For the purposes of this Group—

"authorised open-ended investment company" and "authorised unit trust scheme" have the meaning given in section 237(3) of the Financial Services and Markets Act 2000(**b**);

"closed-ended collective investment undertaking" means an undertaking in relation to which the following conditions are satisfied—

(a) its sole object is the investment of capital, raised from the public, wholly or mainly in securities; and

(b) it manages its assets on the principle of spreading investment risk; and

(c) all of its ordinary shares (of each class if there is more than one) or equivalent units are included in the official list maintained by the Financial Services Authority pursuant to section 74(1) of the Financial Services and Markets Act 2000; and

(d) all of its ordinary shares (of each class if there is more than one) or equivalent units are admitted to trading on a regulated market situated or operating in the United Kingdom;

"collective investment scheme" has the meaning given in section 235 of the Financial Services and Markets Act 2000;

"Gibraltar collective investment scheme" means—

(a) a collective investment scheme to which section 264 of the Financial Services and Markets Act 2000 applies pursuant to an order made under section 409(1)(d) of that Act; or

(b) a collective investment scheme to which the Financial Services and Markets Act 2000 applies pursuant to an order made under section 409(1)(f) of that Act;

"individually recognised overseas scheme" means a collective investment scheme declared by the Financial Services Authority to be a recognised scheme pursuant to section 272 of the Financial Services and Markets Act 2000;

"recognised collective investment scheme authorised in a designated country or territory" means a collective investment scheme recognised pursuant to section 270 of the Financial Services and Markets Act 2000;

"recognised collective investment scheme constituted in another EEA state" means a collective investment scheme which is recognised pursuant to section 264 of the Financial Services and Markets Act 2000;

"regulated market" has the meaning given in section 103(1) of the Financial Services and Markets Act 2000(**a**);

(**a**) "EEA state" is defined in Schedule 1 to the Interpretation Act 1978 (c. 30) as amended by section 26(1) of the Legislative and Regulatory Reform Act 2006 (c. 51).

(**b**) 2000 c. 8.

"sub-fund" means a separate part of the property of an umbrella scheme that is pooled separately;

"umbrella scheme" means a collective investment scheme under which the contributions of the participants in the scheme and the profits or income out of which payments are to be made to them are pooled separately in relation to separate parts of the scheme property.".

(5) After Note (6) insert—

"(6A) A collective investment scheme, or sub-fund, that is not for the time being marketed in the United Kingdom is to be treated as not falling within item 9(c) to (j) if—

(a) it has never been marketed in the United Kingdom, or

(b) less than 5% of its shares or units are held by, or on behalf of, investors who are in the United Kingdom.".

(6) Omit Notes (8) and (9).

Dave Watts
Alan Campbell

29th September 2008 — Two of the Lords Commissioners of Her Majesty's Treasury

(**a**) Amended by paragraphs 1, 11(1) and (2) of Schedule 15 to the Companies Act 2006 (c. 46); paragraph 11(2) will come into force on a day to be appointed.

EXPLANATORY NOTE

(This note is not part of the Order)

Article 2 of this Order comes into force on 30th September 2008 and revokes the Value Added Tax (Finance) Order 2008 (S.I. 2008/1892) ("the Finance Order"). The Finance Order varies Group 5 of Schedule 9 to the Value Added Tax Act 1994 (c. 23) ("the Act") to modify and clarify the scope of the Group in its application to the management of special investment funds. The Finance Order was to have come into force on 1st October 2008.

The remainder of this Order comes into force on 1st October 2008 and varies Group 5 of Schedule 9 to the Act to modify and clarify the scope of the Group in its application to the management of special investment funds.

Article 135(1)(g) of the Principal VAT Directive (Council Directive 2006/112 EC, OJ No L 347, 11.12.06, p1) requires member States to exempt from VAT the management of special investment funds as defined by the member State in question.

Group 5 of Schedule 9 to the Act exempts from VAT certain supplies relating to finance. Article 3 of this Order substitutes new items 9 and 10 and Note (6) and inserts Note (6A) into the Group.

Item 9, as amplified by Notes (6) and (6A), exempts the management of an authorised unit trust scheme within the meaning given in section 237(3) of the Financial Services and Markets Act 2000 (c. 8) ("FSMA"). It also exempts the management of certain collective investment schemes or sub-funds of umbrella schemes which are recognised pursuant to sections 264, 270 or 272 of FSMA or to an order made pursuant to section 409(1)(d) or (f) of that Act. The management of such schemes or sub-funds is excluded from the exemption if they have never been marketed in the United Kingdom or are not for the time being marketed in the United Kingdom and less than 5% of their shares or units are held by, or on behalf of, investors who are in the United Kingdom. Item 9 also exempts the management of an authorised open-ended investment company within the meaning given in section 237(3) of FSMA.

Item 10 exempts the management of a closed-ended collective investment undertaking as defined in Note (6) by reference to an undertaking's investment objectives and official listing and trading of its shares or equivalent units.

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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