STATUTORY INSTRUMENTS

1977 No. 1796

VALUE ADDED TAX

The Value Added Tax (Special Provisions) Order 1977

Made - - - -	1*st November* 1977
Laid before the House of Commons -	10*th November* 1977
Coming into Operation	1*st January* 1978

The Treasury, in exercise of the powers conferred on them by sections 3(9), 6(3), 6(5), 14, 21(2) and 43(1) of the Finance Act 1972**(a)** as amended by the Finance Act 1977**(b)** hereby make the following Order:—

Citation and commencement

1. This Order may be cited as the Value Added Tax (Special Provisions) Order 1977 and shall come into operation on 1st January 1978.

Interpretation

2.—(1) The Interpretation Act 1889**(c)** shall apply for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

(2) In this Order—

"the Act" means the Finance Act 1972;

"aircraft mortgage" means a mortgage which is registered in accordance with the Mortgaging of Aircraft Order 1972**(d)** and by virtue of which an aircraft is made a security for a loan;

"business entertainment" means entertainment (including hospitality of any kind) provided by a taxable person in connection with a business carried on by him, but does not include the provision of anything for persons employed by the taxable person unless its provision for them is incidental to its provision for others;

for the purposes of the preceding paragraph, directors of a company or persons engaged in the management of a company shall be deemed to be persons employed by the company;

"caravan" includes a motor caravan but does not include a caravan of a description specified in Group 11 of Schedule 4 to the Act;

"finance agreement" means an agreement for the sale of goods whereby the property in those goods is not to be transferred until the whole of the price has been paid and the seller retains the right to repossess the goods;

(a) 1972 c. 41. **(b)** 1977 c. 36. **(c)** 1889 c. 63.
(d) S.I. 1972/1268 (1972 II, p. 3798).

"insurer" means a person permitted by section 2(1) and (2) of the Insurance Companies Act 1974**(a)** to effect and carry out contracts of insurance against risks of loss of or damage to goods;

"marine mortgage" means a mortgage which is registered in accordance with the Merchant Shipping Act 1894**(b)** and by virtue of which a boat (but not any share thereof) is made a security for a loan;

"motor cycle" includes a motor bicycle, motor tricycle or motor scooter (whether or not a sidecar is attached), a bicycle or tricycle with an attachment for propelling it by mechanical means and any mechanically propelled vehicle with three wheels capable of accommodating only one person;

"overseas customer", in relation to a taxable person, means:—

(*a*) any person who is not ordinarily resident nor carrying on a business in the United Kingdom and avails himself, or may be expected to avail himself, in the course of a business carried on by him outside the United Kingdom, of any goods or services the supply of which forms part of the taxable person's business; and

(*b*) any person who is not ordinarily resident in the United Kingdom and is acting, in relation to such goods or services, on behalf of an overseas customer as defined in paragraph (*a*) above or on behalf of any government or public authority of a country outside the United Kingdom;

"printed matter" includes printed stationery but does not include anything produced by typing, duplicating or photocopying;

"works of art", "antiques" and "collectors' pieces" mean the following goods—

(*a*) paintings, drawings and pastels, executed by hand;

(*b*) original engravings, prints and lithographs;

(*c*) original sculptures and statuary, in any material;

(*d*) antiques, of an age exceeding one hundred years, except pearls and loose gem stones;

(*e*) collections and collectors' pieces of zoological, botanical, mineralogical, anatomical, historical, archaeological, paleontological or ethnographic interest.

Revocation and Savings

3.—(1) The Orders set out in the Schedule to this Order are revoked.

(2) In so far as any requirement made or direction or permission given by the Commissioners or anything done under or for the purpose of the Orders revoked by this Order could have been made, given or done under or for the purpose of the corresponding provision of this Order, it shall not be invalidated by the revocation but shall have effect as if made, given or done under or, as the case may be, for the purpose of that corresponding provision.

(3) Anything begun under or for the purpose of an Order revoked by this Order may be continued under or, as the case may be, for the purpose of the corresponding provision of this Order.

(a) 1974 c. 49. **(b)** 1894 c. 60.

(4) Where any document used or required for the purpose of the tax refers to a provision of an Order revoked by this Order, such reference shall, unless the contrary intention appears, be construed as referring to the corresponding provision of this Order.

Relief for certain goods

4.—(1) Except as otherwise provided by the following paragraphs of this Article, Article 5 shall apply to the supply of any of the following goods by a taxable person, where he has acquired those goods in any of the circumstances set out in paragraph (2) of this Article—

(*a*) works of art, antiques and collectors' pieces;

(*b*) used motor cycles;

(*c*) used caravans;

(*d*) used boats and outboard motors;

(*e*) used electronic organs;

(*f*) used aircraft.

(2) The circumstances under which a taxable person has acquired any of the goods referred to in paragraph (1) of this Article are as follows:—

(*a*) a supply on which no tax was chargeable;

(*b*) a supply on which tax was chargeable in accordance with Article 5;

(*c*) a transaction which was treated by virtue of any Order under the Act as being neither a supply of goods nor a supply of services;

(*d*) in so far as the goods referred to in paragraph (1)(*a*) of this Article are concerned, an importation on which (whether by virtue of Article 6 of this Order or otherwise) no tax was chargeable.

(3) Article 5 does not apply to:—

(*a*) a supply which is a letting on hire;

(*b*) a supply if an invoice or similar document showing an amount as being tax or as being attributable to tax is issued in respect of the supply;

(*c*) any supply by a taxable person unless he keeps such records and accounts as the Commissioners may specify in a notice published by them for the purposes of this Order or may recognise as sufficient for those purposes.

5. Where this Article applies, tax shall be charged as if the supply of any of the goods referred to in Article 4(1) were for a consideration equal to the excess of—

(*a*) the consideration for which the goods are supplied, over

(*b*) the consideration for which the goods were acquired,

and accordingly shall not be charged unless there is such an excess.

Relief from tax on importation

6.—(1) This Article applies to—

(*a*) paintings, drawings and pastels executed by hand, original engravings, prints and lithographs, original sculptures and statuary, in any material, which were acquired by any person (otherwise than by his producing them or by succession on the death of the person producing them) before 1st April 1973;

(*b*) antiques, of an age exceeding one hundred years (except pearls and loose gem stones), collections and collectors' pieces of zoological, botanical, mineralogical, anatomical, historical, archaeological, paleontological or ethnographic interest.

(2) Tax shall not be chargeable on the importation of any goods to which this Article applies.

Disallowance of input tax

7. Where Article 5 applies to a supply, tax charged on the supply shall be excluded from any credit under sections 3 and 4 of the Act.

8. Where a taxable person constructing a building for the purpose of granting a major interest in it or in any part of it incorporates in any part of the building or its site which is used for the purposes of a dwelling goods other than materials, builder's hardware, sanitary ware or other articles of a kind ordinarily installed by builders as fixtures, tax charged on the supply or importation of the goods shall be excluded from any credit under sections 3 and 4 of the Act.

9. Tax charged on the supply to a taxable person of goods or services used by him for the purpose of business entertainment shall be excluded from any credit under sections 3 and 4 of the Act unless the entertainment is provided for an overseas customer of his and is of a kind and on a scale which is reasonable, having regard to all the circumstances.

Treatment of Transactions

10.—(1) Each of the following descriptions of transactions shall be treated as neither a supply of goods nor a supply of services—

(*a*) the disposal of any of the goods listed in Article 11 by a person who repossessed them under the terms of a finance agreement;

(*b*) the disposal of any of the goods listed in Article 11 by an insurer who acquired them in the settlement of a claim under a policy of insurance;

(*c*) the disposal of a boat by a mortgagee after he had taken possession thereof under the terms of a marine mortgage;

(*d*) the disposal of an aircraft by a mortgagee after he had taken possession thereof under the terms of an aircraft mortgage;

if, in each case, the goods so disposed of are in the same condition at the time of disposal as they were when they were repossessed, acquired or taken into possession, as the case may be, and if a supply of them in the United Kingdom by the person from whom in each case they were obtained would not have been chargeable with tax, or would have been chargeable with tax on less than the full value of such supply.

(2) Paragraph (1) of this Article shall not apply to reimported goods which were previously exported from the United Kingdom free of tax by reason of the zero-rating provisions of the Act or Regulations made thereunder, or to imported goods which have not borne tax in the United Kingdom.

11. The goods referred to in paragraphs (*a*) and (*b*) of Article 10(1) are as follows:—

(*a*) works of art, antiques and collectors' pieces;

(*b*) caravans;

(*c*) motor cycles;

(*d*) boats and outboard motors;

(*e*) electronic organs;

(*f*) aircraft.

12. The following descriptions of transactions shall be treated as neither a supply of goods nor a supply of services—

(*a*) the supply by a taxable person of all the assets of his business where the whole business is transferred as a going concern to another taxable person or a person who immediately becomes a taxable person as a result of the transfer;

(*b*) the supply by a taxable person, whose business consists in more than one separate concern, of all the assets of any part of his business, provided that such part—

(i) has been run as a separate concern with separate accounts, and

(ii) is transferred as a going concern to a taxable person or a person who immediately becomes a taxable person as a result of the transfer;

(*c*) the supply by a person, other than a taxable person, of all the assets of his business where the whole business is transferred as a going concern to any other person;

(*d*) the supply by a person, other than a taxable person, whose business consists in more than one separate concern, of all the assets of any part of his business, provided that such part—

(i) has been run as a separate concern with separate accounts, and

(ii) is transferred as a going concern to any other person.

13. The following description of transaction shall be treated as a supply of services and not as a supply of goods:—

the exchange of a reconditioned article for an unserviceable article of a similar kind by a person who regularly offers in the course or furtherance of his business to provide a reconditioning facility by that means.

Self-Supply

14.—(1) Where a person in the course or furtherance of any business carried on by him produces printed matter and the printed matter—

(*a*) is not supplied to another person or incorporated in other goods produced in the course or furtherance of that business; but

(*b*) is used by him for the purpose of a business carried on by him;

then, subject to paragraph (2) below, the printed matter shall be treated for the purposes of Part I of the Act as both supplied to him for the purpose of that business and supplied by him in the course or furtherance of that business.

(2) Paragraph (1) of this Article does not apply if—

(*a*) all the supplies made by that person in the United Kingdom in the course or furtherance of any business carried on by him are taxable supplies or are treated as taxable supplies by virtue of Regulations under sections 3 and 4 of the Act; or

(*b*) the value of the supplies falling to be treated as made by and to that person would not, if those were the only supplies made or to be made by that person, make him liable to be registered for value added tax pursuant to the provisions of Schedule 1 to the Act; or

(*c*) the Commissioners, being satisfied that the tax (if any) which would be attributable to the supplies after allowing for any credit under sections 3 and 4 of the Act would be negligible, have given, and have not withdrawn, a direction that the paragraph is not to apply.

(3) The preceding provisions of this Article shall apply in relation to any bodies corporate which are treated for the purposes of section 21 of the Act as members of a group as if those bodies were one person, but any printed matter which would fall to be treated as supplied to and by that person shall be treated as supplied to and by the representative member.

T. E. Graham,
David Stoddart,
Two of the Lords Commissioners
of Her Majesty's Treasury.

1st November 1977.

Article 3(1)

SCHEDULE

Orders Revoked	References
The Input Tax (Exceptions) (No. 1) Order 1972	S.I. 1972/1165 (1972 II, p. 3466)
The Input Tax (Exceptions) (No. 3) Order 1972	S.I. 1972/1167 (1972 II, p. 3469)
The Value Added Tax (Self-Supply) (No. 2) Order 1972	S.I. 1972/1169 (1972 II, p. 3473)
The Value Added Tax (Treatment of Transactions) (No. 1) Order 1972	S.I. 1972/1170 (1972 II, p. 3475)
The Value Added Tax (Works of Art, Antiques and Scientific Collections) Order 1972	S.I. 1972/1971 (1972 III, p. 5881)
The Value Added Tax (Television Rental) Order 1972	S.I. 1972/2023 (1972 III, p. 6001)
The Value Added Tax (Treatment of Transactions) (No. 2) Order 1973	S.I. 1973/326 (1973 I, p. 1134)
The Value Added Tax (Motor Cycles) Order 1973	S.I. 1973/328 (1973 I, p. 1138)
The Value Added Tax (Caravans) Order 1973	S.I. 1973/329 (1973 I, p. 1140)
The Value Added Tax (Treatment of Transactions) (No. 3) Order 1973	S.I. 1973/335 (1973 I, p. 1180)
The Value Added Tax (Treatment of Transactions) (No. 4) Order 1973, so far as it relates to works of art, antiques and collectors' pieces	S.I. 1973/336 (1973 I, p. 1182)
The Value Added Tax (Treatment of Transactions) (Supplementary) Order 1973	S.I. 1973/1308 (1973 II, p. 3959)
The Value Added Tax (Boats and Outboard Motors) Order 1975	S.I. 1975/745 (1975 II, p. 2758)
The Value Added Tax (Treatment of Transactions) (No. 1) Order 1975	S.I. 1975/1432 (1975 II, p. 4811)
The Value Added Tax (Electronic Organs) Order 1975	S.I. 1975/2004 (1975 III, p. 7409)
The Value Added Tax (Treatment of Transactions) (No. 2) Order 1975	S.I. 1975/2005 (1975 III, p. 7411)
The Value Added Tax (Aircraft) Order 1975	S.I. 1975/2006 (1975 III, p. 7413)
The Value Added Tax (Treatment of Transactions) (No. 3) Order 1975	S.I. 1975/2007 (1975 III, p. 7415)
The Value Added Tax (Self-Supply) (Amendment) Order 1977	S.I. 1977/1259 (1977 II, p. 3501)

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order consolidates, with minor drafting amendments, and revokes a number of existing Orders (listed in the Schedule) made under the Finance Act 1972 concerning the treatment for value added tax purposes of certain specified transactions and contains a new relieving provision in Article 12.

Article 3 contains savings provisions.

Articles 4, 5 and 7 contain provisions for charging tax subject to specified conditions, on the margin (i.e. the difference between the buying price and the selling price) on sales of original works of art, antiques, certain collectors' pieces and other specified used goods: and for disallowance of input tax deduction thereon.

Article 6 affords relief from tax on the importation of certain original works of art, antiques and certain collectors' pieces.

Article 8 disallows the deduction of input tax on certain goods incorporated in new dwelling accommodation which is built with a view to sale or long lease.

Article 9 disallows the deduction of input tax on business entertainment expenditure (other than that incurred in respect of overseas customers).

Articles 10 and 11 afford relief by removing from the scope of value added tax disposals by mortgagees, finance houses and insurers of boats and aircraft and by finance houses and insurers of certain works of art, antiques and certain collectors' pieces and other specified used goods which would otherwise be chargeable with tax even though the goods had previously borne tax.

Article 12 contains a new relieving provision which removes from the scope of the tax the transfer of a separate business as a going concern from a taxable person to another taxable person or from a non-taxable person to any other person.

Article 13 contains provisions for treating certain exchanges of reconditioned articles for similar unserviceable articles as a supply of services and not of goods.

Article 14 applies to the tax on certain self-supplies of stationery and other printed matter produced by an exempt or partly exempt person for his own use. Article 14(2)(*b*) contains amended provisions to relate the annual value of supplies above which the provisions operate to those specified in Schedule 1 to the Finance Act 1972, as amended by the Finance Act 1977.

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