



Finance Act 2004

2004 CHAPTER 12

PART 2

VALUE ADDED TAX

19 Disclosure of VAT avoidance schemes

- (1) Schedule 2 (which relates to the disclosure of schemes for the avoidance of value added tax) has effect.
- (2) Subsection (1) and that Schedule—
 - (a) come into force on the passing of this Act, so far as is necessary for enabling the making of any orders or regulations by virtue of that Schedule, and
 - (b) otherwise, come into force on such day as the Treasury may by order made by statutory instrument appoint.

20 Groups

- (1) After section 43A of the Value Added Tax Act 1994 (c. 23) (groups: eligibility) insert—

“43AA Power to alter eligibility for grouping

- (1) The Treasury may by order provide for section 43A to have effect with specified modifications in relation to a specified class of person.
- (2) An order under subsection (1) may, in particular—
 - (a) make provision by reference to generally accepted accounting practice;
 - (b) define generally accepted accounting practice for that purpose by reference to a specified document or instrument (and may provide for the reference to be read as including a reference to any later document or instrument that amends or replaces the first);

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- (c) adopt any statutory or other definition of generally accepted accounting practice (with or without modification);
 - (d) make provision by reference to what would be required or permitted by generally accepted accounting practice if accounts, or accounts of a specified kind, were prepared for a person.
- (3) An order under subsection (1) may also, in particular, make provision by reference to—
- (a) the nature of a person;
 - (b) past or intended future activities of a person;
 - (c) the relationship between a number of persons;
 - (d) the effect of including a person within a group or of excluding a person from a group.
- (4) An order under subsection (1) may—
- (a) make provision which applies generally or only in specified circumstances;
 - (b) make different provision for different circumstances;
 - (c) include supplementary, incidental, consequential or transitional provision.”
- (2) After section 43C of that Act insert—

“43D Groups: duplication

- (1) A body corporate may not be treated as a member of more than one group at a time.
 - (2) A body which is a member of one group is not eligible by virtue of section 43A to be treated as a member of another group.
 - (3) If—
 - (a) an application under section 43B(1) would have effect from a time in accordance with section 43B(4), but
 - (b) at that time one or more of the bodies specified in the application is a member of a group (other than that to which the application relates),
 the application shall have effect from that time, but with the exclusion of the body or bodies mentioned in paragraph (b).
 - (4) If—
 - (a) an application under section 43B(2)(a) would have effect from a time in accordance with section 43B(4), but
 - (b) at that time the body specified in the application is a member of a group (other than that to which the application relates),
 the application shall have no effect.
 - (5) Where a body is a subject of two or more applications under section 43B(1) or (2)(a) that have not been granted or refused, the applications shall have no effect.”
- (3) In section 43(1) of that Act (effect of treatment as group) for “sections 43A to 43C” substitute “sections 43A to 43D”.

- (4) In section 43B(1), (2)(a), (5)(a) and (5)(b) and section 43C(3)(b) of that Act (groups: applications for membership and termination of membership) for “under section 43A(1)” substitute “by virtue of section 43A”.
- (5) In section 97(4) of that Act (orders, &c.: affirmative resolution) after paragraph (c) insert—
 - “(ca) an order under section 43AA(1) if as a result of the order any bodies would cease to be eligible to be treated as members of a group;”.

21 Reverse charge on gas and electricity supplied by persons outside UK

- (1) After section 9 of the Value Added Tax Act 1994 (c. 23) insert—

“9A Reverse charge on gas and electricity supplied by persons outside the United Kingdom

- (1) This section applies if relevant goods are supplied—
 - (a) by a person who is outside the United Kingdom,
 - (b) to a person who is registered under this Act,for the purposes of any business carried on by the recipient.
 - (2) The same consequences follow under this Act (and particularly so much as charges VAT on a supply and entitles a taxable person to credit for input tax) as if—
 - (a) the recipient had himself supplied the relevant goods in the course or furtherance of his business, and
 - (b) that supply were a taxable supply.
 - (3) But supplies which are treated as made by the recipient under subsection (2) are not to be taken into account as supplies made by him when determining any allowance of input tax in his case under section 26(1).
 - (4) In applying subsection (2) the supply of relevant goods treated as made by the recipient shall be assumed to have been made at a time to be determined in accordance with regulations prescribing rules for attributing a time of supply in cases to which this section applies.
 - (5) “Relevant goods” means gas supplied through the natural gas distribution network, and electricity.
 - (6) Whether a person is outside the United Kingdom is to be determined in accordance with an order made by the Treasury.”
- (2) This section has effect in relation to supplies made on or after 1st January 2005.

22 Use of stock in trade cars for consideration less than market value

- (1) The Value Added Tax Act 1994 (c. 23) is amended as follows.
- (2) In Schedule 6 (valuation: special cases) after paragraph 1 (supply to connected person at less than market value etc) insert—
 - “1A (1) Where—

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- (a) the value of a supply made by a taxable person for a consideration is (apart from this sub-paragraph) less than its open market value,
 - (b) the taxable person is a motor manufacturer or motor dealer,
 - (c) the person to whom the supply is made is—
 - (i) an employee of the taxable person,
 - (ii) a person who, under the terms of his employment, provides services to the taxable person, or
 - (iii) a relative of a person falling within sub-paragraph (i) or (ii) above,
 - (d) the supply is a supply of services by virtue of sub-paragraph (4) of paragraph 5 of Schedule 4 (business goods put to private use etc),
 - (e) the goods mentioned in that sub-paragraph consist of a motor car (whether or not any particular motor car) that forms part of the stock in trade of the taxable person, and
 - (f) the supply is not one to which paragraph 1 above applies,
- the Commissioners may direct that the value of the supply shall be taken to be its open market value.
- (2) A direction under this paragraph shall be given by notice in writing to the person making the supply, but no direction may be given more than 3 years after the time of the supply.
- (3) A direction given to a person under this paragraph in respect of a supply made by him may include a direction that the value of any supply—
- (a) which is made by him after the giving of the notice, or after such later date as may be specified in the notice, and
 - (b) as to which the conditions in paragraphs (a) to (f) of sub-paragraph (1) above are satisfied,
- shall be taken to be its open market value.
- (4) In this paragraph—
- “motor car” means any motor vehicle of a kind normally used on public roads which has three or more wheels and either—
- (a) is constructed or adapted solely or mainly for the carriage of passengers, or
 - (b) has to the rear of the driver’s seat roofed accommodation which is fitted with side windows or which is constructed or adapted for the fitting of side windows,
- but does not include any vehicle excluded by sub-paragraph (5) below;
- “motor dealer” means a person whose business consists in whole or in part of obtaining supplies of, or acquiring from another member State or importing, new or second-hand motor cars for resale with a view to making an overall profit on the sale of them (whether or not a profit is made on each sale);
- “motor manufacturer” means a person whose business consists in whole or in part of producing motor cars including producing motor cars by conversion of a vehicle (whether a motor car or not);

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“relative” means husband, wife, brother, sister, ancestor or lineal descendant;

“stock in trade” means new or second-hand motor cars (other than second-hand motor cars which are not qualifying motor cars within sub-paragraph (6) below) which are—

- (a) produced by a motor manufacturer or, as the case may require, supplied to or acquired from another member State or imported by a motor dealer, for the purpose of resale, and
- (b) intended to be sold—
 - (i) by a motor manufacturer within 12 months of their production, or
 - (ii) by a motor dealer within 12 months of their supply, acquisition from another member State or importation, as the case may require,

and such motor cars shall not cease to be stock in trade where they are temporarily put to a use in the motor manufacturer’s or, as the case may be, the motor dealer’s business which involves making them available for private use.

- (5) The vehicles excluded by this sub-paragraph are—
 - (a) vehicles capable of accommodating only one person;
 - (b) vehicles which meet the requirements of Schedule 6 to the Road Vehicles (Construction and Use) Regulations 1986 and are capable of carrying twelve or more seated persons;
 - (c) vehicles of not less than three tonnes unladen weight (as defined in the Table to regulation 3(2) of the Road Vehicles (Construction and Use) Regulations 1986);
 - (d) vehicles constructed to carry a payload (the difference between—
 - (i) a vehicle’s kerb weight (as defined in the Table to regulation 3(2) of the Road Vehicles (Construction and Use) Regulations 1986), and
 - (ii) its maximum gross weight (as defined in that Table)),
of one tonne or more;
 - (e) caravans, ambulances and prison vans;
 - (f) vehicles constructed for a special purpose other than the carriage of persons and having no other accommodation for carrying persons than such as is incidental to that purpose.
- (6) For the purposes of this paragraph a motor car is a “qualifying motor car” if—
 - (a) it has never been supplied, acquired from another member State, or imported in circumstances in which the VAT on that supply, acquisition or importation was wholly excluded from credit as input tax by virtue of an order under section 25(7) (as at 17th March 2004 see article 7 of the Value Added Tax (Input Tax) Order 1992); or
 - (b) a taxable person has elected under such an order for it to be treated as such.
- (7) The Treasury may by order amend any of the definitions in this paragraph.”.

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- (3) In section 83(v) (appeal to tribunal with respect to any direction under paragraph 1 or 2 of Schedule 6 etc) after “paragraph 1” insert “, 1A”.
- (4) In section 97 (orders, rules and regulations) in subsection (4) (orders to which the House of Commons affirmative procedure in subsection (3) applies) after paragraph (e) insert—
 - “(f) an order under paragraph 1A(7) of Schedule 6;”.
- (5) The amendment made by subsection (2) applies in relation to any use or availability for use on or after the appointed day (whatever the date of the directions mentioned in paragraph 5(4) of Schedule 4 to the Value Added Tax Act 1994 (c. 23)).
- (6) In subsection (5) “the appointed day” means such day as the Treasury may by order made by statutory instrument appoint.