

## SCHEDULES

### SCHEDULE 36

#### VAT: PLACE OF SUPPLY OF SERVICES ETC

##### PART 1

###### AMENDMENTS COMING INTO FORCE IN 2010

- 1 VATA 1994 is amended as follows.
- 2 In section 6(14A) (time of supply), omit “In relation to any services of a description specified in an order under section 7(11),”.
- 3 (1) Section 7 (place of supply) is amended as follows.
  - (2) In subsection (1), omit “or services”.
  - (3) Omit subsection (10).
  - (4) In subsection (11), omit “or services” (in each place).
  - (5) In the heading, insert at the end “**of goods**”.
- 4 After that section insert—

##### “7A Place of supply of services

- (1) This section applies for determining, for the purposes of this Act, the country in which services are supplied.
- (2) A supply of services is to be treated as made—
  - (a) in a case in which the person to whom the services are supplied is a relevant business person, in the country in which the recipient belongs, and
  - (b) otherwise, in the country in which the supplier belongs.
- (3) The place of supply of a right to services is the same as that in which the supply of the services would be treated as made if made by the supplier of the right to the recipient of the right (whether or not the right is exercised); and for this purpose a right to services includes any right, option or priority with respect to the supply of services and an interest deriving from a right to services.
- (4) For the purposes of this Act a person is a relevant business person in relation to a supply of services if the person—
  - (a) is a taxable person within the meaning of Article 9 of Council Directive [2006/112/EC](#),
  - (b) is registered under this Act,

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- (c) is identified for the purposes of VAT in accordance with the law of a member State other than the United Kingdom, or
    - (d) is registered under an Act of Tynwald for the purposes of any tax imposed by or under an Act of Tynwald which corresponds to value added tax,

and the services are received by the person otherwise than wholly for private purposes.
  - (5) Subsection (2) has effect subject to Schedule 4A.
  - (6) The Treasury may by order—
    - (a) amend subsection (4),
    - (b) amend Schedule 4A, or
    - (c) otherwise make provision for exceptions from either or both of the paragraphs of subsection (2).
  - (7) An order under subsection (6) may include incidental, supplemental, consequential and transitional provision.”
- 5 (1) Section 8 (reverse charge on supplies received from abroad) is amended as follows.
- (2) For subsections (1) and (2) substitute—
- “(1) Where services are supplied by a person who belongs in a country other than the United Kingdom in circumstances in which this subsection applies, this Act has effect as if (instead of there being a supply of the services by that person)—
- (a) there were a supply of the services by the recipient in the United Kingdom in the course or furtherance of a business carried on by the recipient, and
  - (b) that supply were a taxable supply.
- (2) Subsection (1) above applies if—
- (a) the recipient is a relevant business person who belongs in the United Kingdom, and
  - (b) the place of supply of the services is inside the United Kingdom,
- and, where the supply of the services is one to which any paragraph of Part 1 or 2 of Schedule 4A applies, the recipient is registered under this Act.”
- (3) After subsection (4) insert—
- “(4A) Subsection (1) does not apply to services of any of the descriptions specified in Schedule 9.”
- (4) In subsection (5), for “add to, or vary, Schedule 5” substitute “amend subsection (4A) by altering the descriptions of services specified in that subsection”.
- (5) Omit subsection (6).
- (6) In subsection (7)—
- (a) for “add to or vary Schedule 5” substitute “amend subsection (4A)”, and
  - (b) for “addition to or variation of that Schedule” substitute “amendment of that subsection”.
- (7) In subsection (8)—

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- (a) for “addition to or variation of that Schedule” substitute “amendment of subsection (4A)”, and
- (b) for “the Schedule” substitute “that subsection”.

6 For section 9 substitute—

**“9 Place where supplier or recipient of services belongs**

- (1) This section has effect for determining for the purposes of section 7A (or Schedule 4A) or section 8, in relation to any supply of services, whether a person who is the supplier or recipient belongs in one country or another.
- (2) A person who is a relevant business person is to be treated as belonging in the relevant country.
- (3) In subsection (2) “the relevant country” means—
  - (a) if the person has a business establishment, or some other fixed establishment, in a country (and none in any other country), that country,
  - (b) if the person has a business establishment, or some other fixed establishment or establishments, in more than one country, the country in which the relevant establishment is, and
  - (c) otherwise, the country in which the person’s usual place of residence is.
- (4) In subsection (3)(b) “relevant establishment” means whichever of the person’s business establishment, or other fixed establishments, is most directly concerned with the supply.
- (5) A person who is not a relevant business person is to be treated as belonging in the country in which the person’s usual place of residence is.
- (6) In this section “usual place of residence”, in relation to a body corporate, means the place where it is legally constituted.”

7 (1) Section 43 (groups of companies) is amended as follows.

- (2) In subsection (2A)—
  - (a) in paragraph (a), for “falling within Schedule 5” substitute “to which section 7A(2)(a) applies made”, and
  - (b) in paragraph (c)—
    - (i) omit “falling within paragraphs 1 to 8 of Schedule 5”, and
    - (ii) insert at the end “and section 7A(2)(a) applied to the supply”.
- (3) In subsection (2D)—
  - (a) in paragraph (c)—
    - (i) omit “falling within paragraphs 1 to 8 of Schedule 5”, and
    - (ii) insert at the end “and section 7A(2)(a) applied to the supply”, and
  - (b) in the words after the paragraphs, for “falling within that Schedule,” substitute “to which section 7A(2)(a) applies.”
- (4) In subsection (2E)(b), for “there are services falling within paragraphs 1 to 8 of Schedule 5 which, if used by the transferor for making supplies falling within that

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Schedule,” substitute “there is a supply to which section 7A(2)(a) applies of services which, if used by the transferor for making such a supply,”.

- 8 (1) Section 96 (interpretation) is amended as follows.
- (2) In subsection (1), after the definition of “regulations” insert—
- ““relevant business person” has the meaning given by section 7A(4);”.
- (3) In subsection (8), omit “(subject to any provision made under section 8(6))”.
- 9 Section 97(4)(a) (orders subject to requirement of Parliamentary approval after making), after “5(4)” insert “, 7A(6)”.
- 10 Section 97A(1) (place of supply orders: transitional provision), for “on or after 17th March 1998 under section 7(11)” substitute “under section 7A(6)”.
- 11 After Schedule 4 insert—

“SCHEDULE  
4A

Section 7A

PLACE OF SUPPLY OF SERVICES: SPECIAL RULES

**PART 1**

GENERAL EXCEPTIONS

**Services relating to land**

- 1 (1) A supply of services to which this paragraph applies is to be treated as made in the country in which the land in connection with which the supply is made is situated.
- (2) This paragraph applies to—
- (a) the grant, assignment or surrender of any interest in or right over land,
  - (b) the grant, assignment or surrender of a personal right to call for or be granted any interest in or right over land,
  - (c) the grant, assignment or surrender of a licence to occupy land or any other contractual right exercisable over or in relation to land (including the provision of holiday accommodation, seasonal pitches for caravans and facilities at caravan parks for persons for whom such pitches are provided and pitches for tents and camping facilities),
  - (d) the provision in an hotel, inn, boarding house or similar establishment of sleeping accommodation or of accommodation in rooms which are provided in conjunction with sleeping accommodation or for the purpose of a supply of catering,
  - (e) any works of construction, demolition, conversion, reconstruction, alteration, enlargement, repair or maintenance of a building or civil engineering work, and

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- (f) services such as are supplied by estate agents, auctioneers, architects, surveyors, engineers and others involved in matters relating to land.
- (3) In sub-paragraph (2)(c) “holiday accommodation” includes any accommodation in a building, hut (including a beach hut or chalet), caravan, houseboat or tent which is advertised or held out as holiday accommodation or as suitable for holiday or leisure use.
- (4) In sub-paragraph (2)(d) “similar establishment” includes premises in which there is provided furnished sleeping accommodation, whether with or without the provision of board or facilities for the preparation of food, which are used by, or held out as being suitable for use by, visitors or travellers.

### **Passenger transport**

- 2 (1) A supply of services consisting of the transportation of passengers (or of any luggage or motor vehicles accompanying passengers) is to be treated as made in the country in which the transportation takes place, and (in a case where it takes place in more than one country) in proportion to the distances covered in each.
- (2) For the purposes of sub-paragraph (1) transportation which takes place partly outside the territorial jurisdiction of a country is to be treated as taking place wholly in the country if—
  - (a) it takes place in the course of a journey between two points in the country (whether or not as part of a longer journey involving travel to or from another country), and
  - (b) the means of transport used does not (except in an emergency or involuntarily) stop, put in or land in another country in the course of the journey between those two points.
- (3) For the purposes of sub-paragraph (1) a pleasure cruise is to be regarded as the transportation of passengers (so that services provided as part of a pleasure cruise are to be treated as supplied in the same place as the transportation of the passengers).
- (4) In sub-paragraph (3) “pleasure cruise” includes a cruise wholly or partly for education or training.

### **Hiring of means of transport**

- 3 (1) A supply of services consisting of the short-term hiring of a means of transport is to be treated as made in the country in which the means of transport is actually put at the disposal of the person by whom it is hired.  
But this is subject to sub-paragraphs (3) and (4).
- (2) For the purposes of this Schedule the hiring of a means of transport is “short-term” if it is hired for a continuous period not exceeding—
  - (a) if the means of transport is a vessel, 90 days, and
  - (b) otherwise, 30 days.
- (3) Where—

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- (a) a supply of services consisting of the hiring of a means of transport would otherwise be treated as made in the United Kingdom, and
- (b) the services are to any extent effectively used and enjoyed in a country which is not a member State,

the supply is to be treated to that extent as made in that country.

(4) Where—

- (a) a supply of services consisting of the hiring of a means of transport would otherwise be treated as made in a country which is not a member State, and
- (b) the services are to any extent effectively used and enjoyed in the United Kingdom,

the supply is to be treated to that extent as made in the United Kingdom.

**Cultural, educational and entertainment services etc**

- 4 (1) A supply of services to which this paragraph applies is to be treated as made in the country in which the services are physically carried out.
- (2) This paragraph applies to the provision of—
- (a) services relating to cultural, artistic, sporting, scientific, educational, entertainment or similar activities (including fairs and exhibitions), and
  - (b) ancillary services relating to such activities, including services of organisers of such activities.

**Restaurant and catering services: general**

- 5 (1) A supply of services to which this paragraph applies is to be treated as made in the country in which the services are physically carried out.
- (2) This paragraph applies to the provision of restaurant services and the provision of catering services, other than the provision of services to which paragraph 6 applies.

**EC on-board restaurant and catering services**

- 6 (1) A supply of services consisting of
- (a) the provision of restaurant services, or
  - (b) the provision of catering services,
- on board a ship, aircraft or train in connection with the transportation of passengers during an intra-EC passenger transport operation is to be treated as made in the country in which the relevant point of departure is located.
- (2) An intra-EC passenger transport operation is a passenger transport operation which, or so much of a passenger transport operation as,—
- (a) has as the first place at which passengers can embark a place which is within the EC,
  - (b) has as the last place at which passengers who embarked in a member State can disembark a place which is within the EC, and

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- (c) does not include a stop at a place which is not within the EC and at which passengers can embark or passengers who embarked in a member State can disembark.
- (3) “Relevant point of departure”, in relation to an intra-EC passenger transport operation, is the first place in the intra-EC passenger transport operation at which passengers can embark.
- (4) A place is within the EC if it is within any member State.
- (5) For the purposes of this paragraph the return stage of a return passenger transport operation is to be regarded as a separate passenger transport operation; and for this purpose—
  - (a) a return passenger transport operation is one which takes place in more than one country but is expected to end in the country in which it begins, and
  - (b) the return stage of a return passenger transport operation is the part of it which ends in the country in which it began and begins with the last stop at a place at which there has not been a previous stop during it.

### **Hiring of goods**

- 7 (1) Where—
- (a) a supply of services consisting of the hiring of any goods other than a means of transport would otherwise be treated as made in the United Kingdom, and
  - (b) the services are to any extent effectively used and enjoyed in a country which is not a member State,
- the supply is to be treated to that extent as made in that country.
- (2) Where—
- (a) a supply of services consisting of the hiring of any goods other than a means of transport would otherwise be treated as made in a country which is not a member State, and
  - (b) the services are to any extent effectively used and enjoyed in the United Kingdom,
- the supply is to be treated to that extent as made in the United Kingdom.

### **Telecommunication and broadcasting services**

- 8 (1) This paragraph applies to a supply of services consisting of the provision of—
- (a) telecommunication services, or
  - (b) radio or television broadcasting services.
- (2) In this Schedule “telecommunication services” means services relating to the transmission, emission or reception of signals, writing, images and sounds or information of any nature by wire, radio, optical or other electromagnetic systems, including—
- (a) the related transfer or assignment of the right to use capacity for such transmission, emission or reception, and

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(b) the provision of access to global information networks.

(3) Where—

(a) a supply of services to which this paragraph applies would otherwise be treated as made in the United Kingdom, and

(b) the services are to any extent effectively used and enjoyed in a country which is not a member State,

the supply is to be treated to that extent as made in that country.

(4) Where—

(a) a supply of services to which this paragraph applies would otherwise be treated as made in a country which is not a member State, and

(b) the services are to any extent effectively used and enjoyed in the United Kingdom,

the supply is to be treated to that extent as made in the United Kingdom.

## PART 2

### EXCEPTIONS RELATING TO SUPPLIES MADE TO RELEVANT BUSINESS PERSON

#### **Electronically-supplied services**

9 (1) Where—

(a) a supply of services consisting of the provision of electronically supplied services to a relevant business person would otherwise be treated as made in the United Kingdom, and

(b) the services are to any extent effectively used and enjoyed in a country which is not a member State,

the supply is to be treated to that extent as made in that country.

(2) Where—

(a) a supply of services consisting of the provision of electronically supplied services to a relevant business person would otherwise be treated as made in a country which is not a member State, and

(b) the services are to any extent effectively used and enjoyed in the United Kingdom,

the supply is to be treated to that extent as made in the United Kingdom.

(3) Examples of what are electronically supplied services for the purposes of this Schedule include—

(a) website supply, web-hosting and distance maintenance of programmes and equipment,

(b) the supply of software and the updating of software,

(c) the supply of images, text and information, and the making available of databases,

(d) the supply of music, films and games (including games of chance and gambling games),



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- (e) the supply of political, cultural, artistic, sporting, scientific, educational or entertainment broadcasts (including broadcasts of events), and
  - (f) the supply of distance teaching.
- (4) But where the supplier of a service and the supplier's customer communicate via electronic mail, this does not of itself mean that the service provided is an electronically supplied service for the purposes of this Schedule.

### PART 3

#### EXCEPTIONS RELATING TO SUPPLIES NOT MADE TO RELEVANT BUSINESS PERSON

##### **Intermediaries**

- 10 (1) A supply of services to which this paragraph applies is to be treated as made in the same country as the supply to which it relates.
- (2) This paragraph applies to a supply to a person who is not a relevant business person consisting of the making of arrangements for a supply by or to another person or of any other activity intended to facilitate the making of such a supply.

##### **Transport of goods: general**

- 11 (1) A supply of services to a person who is not a relevant business person consisting of the transportation of goods is to be treated as made in the country in which the transportation takes place, and (in a case where it takes place in more than one country) in proportion to the distances covered in each.
- (2) For the purposes of sub-paragraph (1) transportation which takes place partly outside the territorial jurisdiction of a country is to be treated as taking place wholly in the country if—
- (a) it takes place in the course of a journey between two points in the country (whether or not as part of a longer journey involving travel to or from another country), and
  - (b) the means of transport used does not (except in an emergency or involuntarily) stop, put in or land in another country in the course of the journey between those two points.
- (3) This paragraph does not apply to a transportation of goods beginning in one member State and ending in another (see paragraph 12).

##### **Intra-Community transport of goods**

- 12 A supply of services to a person who is not a relevant business person consisting of the transportation of goods which begins in one member State and ends in another is to be treated as made in the member State in which the transportation begins.

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### **Ancillary transport services**

- 13 (1) A supply to a person who is not a relevant business person of ancillary transport services is to be treated as made where the services are physically performed.
- (2) “Ancillary transport services” means loading, unloading handling and similar activities.

### **Valuation services etc**

- 14 A supply to a person who is not a relevant business person of services consisting of the valuation of, or carrying out of work on, goods is to be treated as made where the services are physically performed.

### **Electronic services**

- 15 A supply consisting of the provision by a person who belongs in a country which is not a member State (other than the Isle of Man) of electronically supplied services (as to the meaning of which see paragraph 9(3) and (4)) to a person (“the recipient”) who—
- (a) is not a relevant business person, and
  - (b) belongs in a member State,
- is to be treated as made in the country in which the recipient belongs.

### **Other services provided to recipient belonging outside EC**

- 16 (1) A supply consisting of the provision to a person (“the recipient”) who—
- (a) is not a relevant business person, and
  - (b) belongs in a country which is not a member State (other than the Isle of Man),
- of services to which this paragraph applies is to be treated as made in the country in which the recipient belongs.
- (2) This paragraph applies to—
- (a) transfers and assignments of copyright, patents, licences, trademarks and similar rights,
  - (b) the acceptance of any obligation to refrain from pursuing or exercising (in whole or in part) any business activity or any rights within paragraph (a),
  - (c) advertising services,
  - (d) services of consultants, engineers, consultancy bureaux, lawyers, accountants, and similar services, data processing and provision of information, other than any services relating to land,
  - (e) banking, financial and insurance services (including reinsurance), other than the provision of safe deposit facilities,
  - (f) the provision of access to, and of transport or transmission through, natural gas and electricity distribution systems and the provision of other directly linked services,

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- (g) the supply of staff,
  - (h) the letting on hire of goods other than means of transport,
  - (i) telecommunication services (as to the meaning of which see paragraph 8(2)),
  - (j) radio and television broadcasting services, and
  - (k) electronically supplied services (as to the meaning of which see paragraph 9(3) and (4)).”
- 12 Omit Schedule 5 (services supplied where received).
- 13 In Article 5 of the Value Added Tax (Tour Operators) Order 1987 ([S.I. 1987/1806](#))
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- (a) omit paragraph (1), and
  - (b) in paragraph (2) after “treated” insert “for the purposes of this Act”, and treat that article as made under section 7A(6)(c) of VATA 1994 (inserted by paragraph 4).
- 14 (1) The powers contained in section 7A(6) of VATA 1994 (inserted by paragraph 4) may be exercised at any time on or after the day on which this Act is passed.
- (2) The amendments made by paragraph 7 come into force on 1 January 2010; but the references in section 43 of VATA 1994 (as amended by that paragraph) to a supply to which section 7A(2) of that Act applies includes a supply of services falling within paragraphs 1 to 8 of Schedule 5 made before that date.
- (3) Subject to that, the amendments made by this Part have effect in relation to supplies made on or after 1 January 2010.