
Changes to legislation: There are currently no known outstanding effects for the Finance (No. 3) Act 2010, SCHEDULE 8. (See end of Document for details)

SCHEDULES

SCHEDULE 8

Section 19

VALUE ADDED TAX: NON-BUSINESS USE OF BUSINESS ASSETS ETC

Input tax

- 1 (1) Section 24 of VATA 1994 (input tax and output tax) is amended as follows.
- (2) Omit subsection (3) (accommodation used for domestic purposes by company director etc).
- (3) In subsection (5) (goods or services used partly for business purposes), for the words after “other purposes” substitute “—
- (a) VAT on supplies, acquisitions and importations shall be apportioned so that so much as is referable to the taxable person's business purposes is counted as that person's input tax, and
 - (b) the remainder of that VAT (“the non-business VAT”) shall count as that person's input tax only to the extent (if any) provided for by regulations under subsection (6)(e).”
- (4) After that subsection insert—
- “(5A) For the purposes of subsections (1) and (5), a relevant asset held for the purposes of a business carried on or to be carried on by a taxable person is not, in any circumstances, to be regarded as used or to be used for the purposes of the business if, and to the extent that, it is used or to be used for that person's private use or the private use of that person's staff.
- (5B) In subsection (5A) “relevant asset” means—
- (a) any interest in land,
 - (b) any building or part of a building,
 - (c) any civil engineering work or part of such a work,
 - (d) any goods incorporated or to be incorporated in a building or civil engineering work (whether by being installed as fixtures or fittings or otherwise),
 - (e) any ship, boat or other vessel, or
 - (f) any aircraft.”
- (5) In subsection (6) (powers to make regulations), after paragraph (d) insert—
- “(e) in cases where an apportionment is made under subsection (5), for the non-business VAT to be counted as the taxable person's input tax for the purposes of any provision made by or under section 26 in such circumstances, to such extent and subject to such conditions as may be prescribed.”
- (6) After that subsection insert—

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“(6A) Regulations under subsection (6) may contain such supplementary, incidental, consequential and transitional provisions as appear to the Commissioners to be necessary or expedient.”

(7) Omit subsection (7) (definition of “director” etc).

(8) The amendments made by sub-paragraphs (2), (4) and (7) come into force on 1 January 2011 and apply in relation to VAT incurred by a taxable person on or after that date.

(9) For the purposes of sub-paragraph (8), the VAT “incurred” by a person in respect of an asset is—

- (a) VAT on the supply to the person of the asset,
- (b) VAT on the supply to the person of any goods or services the expenditure on which constitutes expenditure related to the asset,
- (c) VAT on the acquisition by the person from another member State of the asset or anything comprised in it, and
- (d) VAT paid or payable by the person on the importation of the asset or anything comprised in it from a place outside the member States;

and VAT within paragraphs (a) to (d) is incurred at the time of the supply, acquisition or importation in question.

2 In section 26 of VATA 1994 (input tax allowable under section 25), in subsection (4) for “and supplementary” substitute “, supplementary, consequential and transitional ”.

Non-business use of certain assets not to be treated as supply of services

3 (1) In paragraph 5 of Schedule 4 to VATA 1994 (matters to be treated as supply of goods or services), after sub-paragraph (4) (non-business use of business asset treated as supply of services) insert—

“(4A) Sub-paragraph (4) does not apply (despite paragraph 9(1)) to—

- (a) any interest in land,
- (b) any building or part of a building,
- (c) any civil engineering work or part of such a work,
- (d) any goods incorporated or to be incorporated in a building or civil engineering work (whether by being installed as fixtures or fittings or otherwise),
- (e) any ship, boat or other vessel, or
- (f) any aircraft.”

(2) This paragraph comes into force on 1 January 2011.

(3) This paragraph does not apply in relation to an asset in respect of which the person in question or any of that person's predecessors incurred VAT before 1 January 2011.

(4) But, where VAT is incurred by such a person before that date in respect of the asset, VAT incurred by such a person on or after that date in respect of the asset is not to be treated as referable to that person's business purposes by virtue of paragraph 5(4) and (6) of Schedule 4 to VATA 1994 if, and to the extent that, the asset is used or to be used for that person's private use or the private use of that person's staff, or more generally for purposes other than those of that person's business.

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(5) For the purposes of this paragraph—

“asset” means anything falling within any of paragraphs (a) to (f) of paragraph 5(4A) of Schedule 4 to VATA 1994 (as inserted by sub-paragraph (1) above);

“the person in question” means the person carrying on the business referred to in paragraph 5(4) of that Schedule;

“predecessor” has the same meaning as in paragraph 5 of that Schedule; and references to the VAT “incurred” by a person in respect of an asset are to be construed in accordance with paragraph 1(9).

Output tax charge where credit attributable to purported paragraph 5(4) supply

4 (1) Sub-paragraph (2) applies where—

- (a) a person carrying on a business or any of that person's predecessors has been allowed credit under sections 25 and 26 of VATA 1994 for input tax on the basis that the input tax is attributable to a thing done or to be done which is or would be a paragraph 5(4) supply,
- (b) some or all of that credit was allowed before 22 January 2010,
- (c) disregarding sub-paragraph (2), the thing done or to be done is not or would not be a paragraph 5(4) supply, and
- (d) the credit allowed as mentioned in paragraph (a) is not reversed in full.

(2) The thing done or to be done is to be treated for the purposes of VATA 1994 as if it were or would be a paragraph 5(4) supply.

(3) But sub-paragraph (2) does not confer on the person allowed credit as mentioned in sub-paragraph (1)(a) any entitlement to that credit under sections 25 and 26 of that Act.

(4) For the purposes of sub-paragraph (1) credit for input tax is “allowed” under sections 25 and 26 of VATA 1994 to the extent that the credit is claimed, and the claim is satisfied by one or more of the following—

- (a) the deduction of input tax under section 25(2) of that Act from any output tax that is due to the Commissioners;
- (b) a payment by the Commissioners in respect of the credit under section 25(3) of that Act;
- (c) the setting off of the credit against a sum payable to the Commissioners, whether under section 81(3) of that Act or section 130 of FA 2008 or otherwise.

(5) In this paragraph—

“paragraph 5(4) supply” means a supply under paragraph 5(4) of Schedule 4 to VATA 1994 (goods held or used for the purposes of a business which are put to private use etc);

“predecessor” has the same meaning as in paragraph 5 of that Schedule.

(6) This paragraph is to be treated as having always had effect.

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