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STATUTORY INSTRUMENTS

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**1995 No. 279**

**VALUE ADDED TAX**

**The Value Added Tax (Buildings and Land) Order 1995**

*Approved by the House of Commons*

<i>Made</i>	- - - -	<i>8th February 1995</i>
<i>Laid before the House of Commons</i>	- - - -	<i>8th February 1995</i>
<i>Coming into force</i>	- -	<i>1st March 1995</i>

The Treasury, in exercise of the powers conferred on them by section 51 of the Value Added Tax Act 1994(1) and of all other powers enabling them in that behalf, hereby make the following Order:

1. This Order may be cited as the Value Added Tax (Buildings and Land) Order 1995 and shall come into force on 1st March 1995.
2. Schedule 10 to the Value Added Tax Act 1994(2) shall be amended in accordance with articles 3 to 9 of this Order.
3. In paragraph 2—
  - (a) after sub-paragraph (2)(b) there shall be inserted the following—
    - “(c) a pitch for a residential caravan;
    - (d) facilities for the mooring of a residential houseboat.”;
  - (b) in sub-paragraph (7) after the words “31st July 1989” there shall be inserted “if”.
4. In paragraph 3—
  - (a) In sub-paragraph (3) for the words “parades, precincts and complexes divided into separate units” there shall be substituted “complexes consisting of a number of units grouped around a fully enclosed concourse”;
  - (b) for sub-paragraphs (4), (5) and (6) there shall be substituted the following—
    - “(4) Subject to sub-paragraph (5) below, an election under paragraph 2 above shall be irrevocable.
    - (5) Where—
      - (a) the time that has elapsed since the day on which an election had effect is—
        - (i) less than 3 months; or
        - (ii) more than 20 years;

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(1) 1994 c. 23.

(2) Schedule 10 was amended by the Value Added Tax (Buildings and Land) Order 1994 (S.I.1994/3013).

- (b) in a case to which paragraph (a)(i) above applies—
  - (i) no tax has become chargeable and no credit for input tax has been claimed by virtue of the election; and
  - (ii) no grant in relation to the land which is the subject of the election has been made which, by virtue of being a supply of the assets of a business to a person to whom the business (or part of it) is being transferred as a going concern, has been treated as neither a supply of goods nor a supply of services; and
- (c) the person making the election obtains the written consent of the Commissioners;

the election shall be revoked, in a case to which paragraph (a)(i) above applies, from the date on which it was made, and in a case to which paragraph (a)(ii) above applies, from the date on which the written consent of the Commissioners is given or such later date as they may specify in their written consent.

(6) An election under paragraph 2 above shall have effect after 1st March 1995 only if—

- (a) in the case of an election made before that date—
  - (i) it also had effect before that date; or
  - (ii) written notification of the election is given to the Commissioners not later than the end of the period of 30 days beginning with the day on which the election was made, or not later than the end of such longer period beginning with that day as the Commissioners may in any particular case allow, together with such information as the Commissioners may require;
- (b) in the case of an election made on or after that date—
  - (i) written notification of the election is given to the Commissioners not later than the end of the period of 30 days beginning with the day on which the election is made, or not later than the end of such longer period beginning with that day as the Commissioners may in any particular case allow, together with such information as the Commissioners may require; and
  - (ii) in a case in which sub-paragraph (9) below requires the prior written permission of the Commissioners to be obtained, that permission has been given.”;

(c) after sub-paragraph (7) there shall be inserted—

“(7A) In paragraph 2 above—

- (a) “houseboat” means a houseboat within the meaning of Group 9 of Schedule 8; and
- (b) a houseboat is not a residential houseboat if residence in it throughout the year is prevented by the terms of a covenant, statutory planning consent or similar permission.”;

(d) in sub-paragraph (9) after the word “unless” there shall be inserted “the conditions for automatic permission specified in a notice published by the Commissioners are met or”.

5. Paragraph 4 shall be deleted.

6. In paragraph 5—

(a) for sub-paragraph (1) there shall be substituted—

“(1) Paragraph 6 below shall apply—

- (a) on the first occasion during the period beginning with the day when the construction of a building or work within sub-paragraph (2) below is first planned and ending 10 years after the completion of the building or work on which a person who is a developer in relation to the building or work—
  - (i) grants an interest in, right over or licence to occupy the building or work (or any part of it) which is an exempt supply; or
  - (ii) is in occupation of the building, or uses the work (or any part of it) when not a fully taxable person (or, if a person treated under section 43 as a member of a group when the representative member is not a fully taxable person); or
- (b) if construction commenced before 1st March 1995 and the period referred to in paragraph (a) above has not then expired, on 1st March 1997; whichever is the earlier.”;
- (b) in sub-paragraph (2) after the words “sub-paragraph (3)” there shall be inserted “and (3A)”;
- (c) in sub-paragraph 3(a) after the words “1st August 1989” there shall be inserted “or after 28th February 1995”;
- (d) after sub-paragraph (3) there shall be inserted—
  - “(3A) A building or work which would, apart from this sub-paragraph, fall within sub-paragraph (2) above is not within that sub-paragraph if—
    - (a) construction of it was commenced before 1st March 1995 but had not been completed by that date; and
    - (b) the developer—
      - (i) makes no claim after that date to credit for input tax, entitlement to which is dependent upon his being treated in due course as having made a supply by virtue of paragraph 6 below; and
      - (ii) has made no such claim prior to that date; or
      - (iii) accounts to the Commissioners for a sum equal to any such credit that has previously been claimed.”;
- (e) in sub-paragraph (4)(a) after the words “supplies to, and” there shall be inserted “acquisitions and”;
- (f) in sub-paragraph (8)-(i) for the words “sub-paragraphs (1), (2) and (4) to (7)” there shall be substituted “sub-paragraphs (1), (2) and (3A) to (7)”;
- “(ii) after the words “1st January 1992” in paragraphs (a), (b) and (c) respectively there shall be inserted “and before 1st March 1995”;
- (g) in sub-paragraph (10) for the words “sub-paragraphs (4) to (7)” there shall be substituted “sub-paragraphs (3A) to (7)”.

7. In paragraph 6—

- (a) in sub-paragraph (7) for the words “sub-paragraphs (4) to (7)” there shall be substituted “sub-paragraphs (3A) to (7)”;
- (b) after sub-paragraph (8) there shall be added—
  - “(9) Where this paragraph applies by virtue of paragraph 5(1)(b) above it shall have effect as if—
    - (a) in sub-paragraph (1)—
      - (i) the words “(or any part of it)” were omitted; and

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- (ii) for the words “the last day” to “ready for occupation or use” there were substituted “1st March 1997”;
  - (b) in sub-paragraph (2)(a) the words “or to be made” and the words “to be made” were omitted;
  - (c) in sub-paragraph (2)(b) the words “or to be made” were omitted; and
  - (d) sub-paragraph (5) were omitted.”.
8. In paragraph 7 after the words “paragraph 6(1) above” there shall be inserted “(except where that paragraph applies by virtue of paragraph 5(1)(b))”.
9. In paragraph 9—
- (a) for the words “Notes (1) to (6) and Note (10)” there shall be substituted “Notes (1) to (6), (10), (12) and (19)”;
  - (b) for the words “Notes (1) and (2)” there shall be substituted “Notes (1), (1A), (2) and (15)”.

8th February 1995

*Tim Wood*  
*Derek Conway*  
Two of the Lords Commissioners of Her  
Majesty’s Treasury

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order amends Schedule 10 (Buildings and Land) to the Value Added Tax Act 1994 with effect from 1st March 1995.

Article 3(a) adds two further categories of property transaction specified in paragraph 2(2) which cannot be taxed under an election to waive exemption. These are a pitch for a residential caravan and the facilities for mooring a residential houseboat. Article 4(c) adds a new paragraph 3(7A) which further defines what is meant by a residential houseboat; article 9(a) incorporates the definition of residential caravan pitch by incorporating into Schedule 10 Note (19) to Group 5 of Schedule 8; and article 9(b) amends paragraph 9 so as to extend the term “mooring” to include anchoring or berthing, by incorporating into Schedule 10 Note (15) to Group 1 of Schedule 9.

Article 3(b) merely corrects an earlier drafting omission.

Article 4(a) modifies the provision in paragraph 3(3) which treats more than one building as a single building for the purposes of the election to waive exemption. It does so by deleting the words “parades, precincts and complexes divided into separate units” and replacing them with the narrower category “complexes consisting of a number of units grouped around a fully enclosed concourse”. This therefore increases the scope for electing to waive exemption on buildings on an individual basis as opposed to a single election covering several buildings.

Article 4(b) does three things. Firstly, it deletes the provision in paragraphs 3(4) and 3(5) which extend an election to waive exemption on agricultural land to all contiguous agricultural land in the same ownership.

Secondly, it inserts new paragraphs 3(4) and 3(5) which, with the Commissioners' approval, permit the revocation of an election to waive exemption within three months of it having effect, provided it has not been put into practical effect through the charging of VAT or the recovery of input tax, and provided that the property in question has not been sold with a business which is a going concern, or twenty or more years after it has had effect.

Thirdly, it amends paragraph 3(6) so that to have effect all elections to waive exemption must be notified in writing to the Commissioners within thirty days or such later time specified. Existing elections to waive exemption made before 1st March 1995 which did not at the time need to be notified are preserved under paragraph 3(6)(a).

Article 4(d) amends paragraph 3(9) so that, in certain circumstances to be described in a Notice issued by the Commissioners, prior permission to waive exemption is automatically given.

Article 5 deletes in its entirety paragraph 4 which in paragraphs 4(1) to 4(4) requires the first rent payment when an election to waive exemption is made to be apportioned, and in paragraph 4(5) contains a measure which ceased to have effect on 1st August 1993.

Articles 6, 7 and 8 amend paragraphs 5, 6 and 7 to gradually abolish the Developer's Self-Supply Charge.

Article 6 does two things. Firstly, in article 6(c) it amends paragraph 5(3)(a) so that any building or civil engineering work the construction of which commences after 28 February 1995 does not fall within the self-supply provisions in paragraphs 5 and 6.

Secondly, in articles 6(b) and 6(d) it adds a new paragraph 5(3A), which facilitates the removal from the Self-Supply Charge of any building or civil engineering work started before but still

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being constructed on 1st March 1995, provided that any input tax claimed on account of a Self-Supply Charge is repaid and no such input tax is claimed thereafter.

Thirdly, for all buildings and civil engineering works still within the scope of the Self-Supply Charge, article 6(a) amends paragraph 5(1) so as to create a final deemed self-supply on 1st March 1997. This includes buildings and civil engineering works still under construction where construction commenced before 1st March 1995 and the provisions in paragraph 5(3A) have not been applied.

Article 6(e) merely ensures that input tax on acquisitions from other EC member States is included when determining whether a person is a fully taxable person.

Articles 6(f) and 6(g) are consequential amendments to ensure that the provisions concerning the Self-Supply Charge on new buildings apply similarly to existing buildings which have been reconstructed, enlarged or extended.

Article 7 also contains a consequential amendment relating to existing buildings which have been reconstructed, enlarged or extended. It also adds a new paragraph 6(9) concerning the basis of the deemed Self-Supply Charge on 1st March 1997 for developments still in progress.

Article 8 amends paragraph 7 so that where a deemed self-supply on 1st March 1997 takes place, there having been no earlier self-supply, it will not be necessary for the person liable to the charge to notify his landlord, lessor or licensor of the fact for the purposes of item 1(b) of Group 1 of Schedule 9.

Article 9(a) amends paragraph 9 to reflect the revised Note numbering in Group 5 of Schedule 8.