



Amended by S.D. 448/97
Amended by S.D. 207/98
Amended by S.D. 657/99
Amended by S.D. 706/99
Amended by S.D. 810/01
Amended by S.D. 301/02
Amended by S.D. 388/02
Amended by S.D. 198/04
Amended by S.D. 892/04
Amended by S.D. 245/06

VALUE ADDED TAX AND OTHER TAXES ACT 1973

VALUE ADDED TAX (SPECIAL PROVISIONS) ORDER 1995

Laid before Tynwald

17 October 1995

Coming into operation

1 June 1995

In exercise of the powers conferred on the Treasury by sections 6(3) and (5), 8BA(4), 21(2) and 26A of the Value Added Tax and Other Taxes Act 1973^(a), and of all other powers enabling it in that behalf, the following Order is hereby made:-

Citation and commencement

1. This Order may be cited as the Value Added Tax (Special Provisions) Order 1995 and shall be deemed to have come into operation on 1st June 1995.

Interpretation

2. In this Order –

“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;

~~“insurer” means a person carrying on an insurance business for effecting and carrying 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 (Registration, etc.) Act 1993 of Parliament^(b) and by virtue of which a boat (but not any share thereof) is made a security for a loan;

“aircraft mortgage” means a mortgage which is registered in accordance with the Mortgaging of Aircraft Order 1972^(c), an Order made under section 16 of the Civil Aviation Act 1968 of Parliament^(d), and by virtue of which an aircraft is made security for a loan;

“the Act” means the Value Added Tax Act 1996^(e);

“the U.K. Act” means the Value Added Tax Act 1994^(f);

(a) 1973 c.1.
(b) 1993 c.22 (of Parliament).
(c) S.I. 1972/1268.
(d) 1968 c.61 (of Parliament).
(e) 1996 c.1.
(f) 1994 c.23 (of Parliament).

S.D. 706/99

“work of art” has the same meaning as in section 21 of the Act;

“antiques” means objects other than works of art or collectors’ items, which are more than 100 years old;

S.D. 706/99

“collector’s items” means any collection or collector’s piece falling within section 21(5) of the Act but excluding investment gold coins within the meaning of Note 1(b) and (c) to Group 14 of Schedule 10 to the Act;

“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 –

- (i) vehicles capable of accommodating only one person;
- (ii) vehicles which meet the requirements of Schedule 3 to the Road Vehicle (Construction, Equipment and Weights) Regulations 1998^(g) and are capable of carrying twelve or more seated persons;
- (iii) vehicles of not less than three tonnes unladen weight;
- (iv) vehicles constructed to carry a payload (the difference between a vehicle’s unladen weight (as defined in the Table to regulation 3(1) of the Road Vehicles (Maintenance and Use) Regulations 1998^(h)) and its maximum gross weight (as defined in that Table)) of one tonne or more;
- (v) caravans, ambulances and prison vans;
- (vi) 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;

S.D. 657/99

“second-hand goods” means tangible movable property that is suitable for further use as it is or after repair, other than motor cars, works of art, collectors’ items or antiques and other than precious metals and precious stones;

S.D. 301/02

~~“printed matter” includes printed stationery but does not include anything produced by typing, duplicating or photo-copying;~~

“auctioneer” means a person who sells or offers for sale goods at any public sale where persons become purchasers by competition, being the highest bidders.

Revocation

3. (1) The Value Added Tax (Horses and Ponies) Order 1983⁽ⁱ⁾ is hereby revoked.

^(g) S.D. No. 346/98.

^(h) S.D. No. 345/98.

⁽ⁱ⁾ G.C. No. 204/83.

(2) The Value Added Tax (Special Provisions) Order 1993^(j) is hereby revoked.

(3) The Value Added Tax (Special Provisions) (Amendment) Order 1995^(k) is hereby revoked.

Treatment of transactions

4. (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 described in paragraph (3) by a person who repossessed them under the terms of a finance agreement;
- (b) the disposal of any of the goods described in paragraph (3) by an insurer who has taken possession of them in settlement of a claim under a policy of insurance;
- (c) the disposal of a boat by a mortgagee after he has taken possession thereof under the terms of a marine mortgage;
- (d) the disposal of an aircraft by a mortgagee after he has 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 or taken into possession, as the case may be, and if a supply of them in the Island or the United Kingdom by a 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.

(1A) Paragraph (1)(a) shall not apply where adjustment, whether or not made under regulation 38 of the Value Added Tax Regulations 1996^(l), has taken account, or may later take account, of VAT on the initial supply under the finance agreement as a result of repossession and the goods delivered under that agreement were delivered on or after 1st September 2006.

(2) Paragraph (1) of this article shall not apply to reimported goods which were previously exported from the Island or the United Kingdom free of tax chargeable under Part I of the Act or tax chargeable under the U.K. Act by reason of the zero-rating provisions of either Act, or regulations made under either Act, or to imported goods which have not borne tax chargeable under either of those Acts in the Island or the United Kingdom.

(3) The goods referred to in subparagraphs (a) and (b) of paragraph (1) are as follows:

- (a) works of art, antiques and collectors' items;
- (b) second-hand goods.

5. (1) Subject to paragraph (2), there shall be treated as neither a supply of goods nor a supply of services the following supplies by a person of assets of his business –

- (a) their supply to a person to whom he transfers his business as a going concern where –

^(j) S.D. No. 64/93.
^(k) S.D. No. 321/95.
^(l) S.D. No. 194/96.

- (i) the assets are to be used by the transferee in carrying on the same kind of business, whether or not as part of any existing business, as that carried on by the transferor, and
 - (ii) in a case where the transferor is a taxable person, the transferee is already, or immediately becomes as a result of the transfer, a taxable person or a person defined as such in section 3(1) of the U.K. Act;
- (b) their supply to a person to whom he transfers part of his business as a going concern where –
- (i) that part is capable of separate operation,
 - (ii) the assets are to be used by the transferee in carrying on the same kind of business, whether or not as part of any existing business, as that carried on by the transferor in relation to that part, and
 - (iii) in a case where the transferor is a taxable person, the transferee is already, or immediately becomes as a result of the transfer, a taxable person or a person defined as such in section 3(1) of the U.K. Act.

(2) A supply of assets shall not be treated as neither a supply of goods nor a supply of services by virtue of paragraph (1) to the extent that it consists of –

- (a) a grant which would, but for an election which the transferor has made, fall within item 1 of Group 1 to Schedule 5 to the Act; or
- (b) a grant of a fee simple or customary fee simple which falls within paragraph (a) of item 1 of Group 1 of Schedule 5 to the Act,

S.D. 198/04 | unless the conditions contained in paragraph (2A) are satisfied.

(2A) The conditions referred to in paragraph (2) are that the transferee has, no later than the relevant date –

- (a) made an election in relation to the land which has effect on the relevant date and has given any written notification of the election required by paragraph 3(6) of Schedule 11 to the Act; and
- (b) notified the transferor that paragraph (2B) does not apply to him.

(2B) This paragraph applies to a transferee where –

- (a) the supply of the asset that is to be transferred to him would become, in relation to him, a capital item as described in regulation 113 of the Value Added Tax Regulations 1996 if the supply of that asset to him –
 - (i) were to be treated as neither a supply of goods nor a supply of services; or
 - (ii) were not so treated; and
- (b) his supplies of that asset will, or would fall, to be exempt supplies by virtue of paragraph 2(3A) of Schedule 11 to the Act.

S.D. 198/04

(3) In paragraph (2) of this article –

“election” means an election having effect under paragraph 2 of Schedule 5A to the Act;

“relevant date” means the date upon which the grant would have been treated as having been made or, if there is more than one such date, the earliest of them;

“transferor” and “transferee” include a relevant associate of either respectively as defined in paragraph 3(8) of Schedule 5A to the Act.

(4) There shall be treated as neither a supply of goods nor a supply of services the assignment by an owner of goods comprised in a hire-purchase or conditional sale agreement of his rights and interest thereunder, and the goods comprised therein, to a bank or other financial institution.

6. 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 of his business to provide a reconditioning facility by that means.

7. The following description of transaction shall not be treated as the acquisition of goods from a member State –

the removal of goods to the Island or the United Kingdom in pursuance of a supply to a taxable person, made by a person in a member State, where tax on that supply is to be accounted for and paid in a member State by reference to the profit margin on the supply by virtue of the law of that member State corresponding to section 26A of the Act and any Orders made thereunder.

8. The following description of transaction shall be treated as neither a supply of goods nor a supply of services –

the removal of goods to the Island or the United Kingdom in pursuance of a supply to a person, made by a person in a member State where tax on that supply is to be accounted for and paid in a member State by reference to the profit margin on the supply by virtue of the law of that member State corresponding to section 26A of the Act and any Orders made thereunder.

9. The following description of transaction shall be treated as neither a supply of goods nor a supply of services –

services in connection with a supply of goods provided by an agent acting in his own name to the purchaser of the goods the consideration for which is taken into account by virtue of article 12(6) in calculating the price at which the agent obtained the goods.

10. The following description of transactions shall be treated as neither a supply of goods nor a supply of services –

services in connection with the sale of goods provided by an auctioneer acting in his own name to the vendor or the purchaser of the goods the consideration for which is taken into account by virtue of article 12(7) in calculating the price at which the auctioneer obtained (or as the case may be) sold the goods.

Self supply

~~11. (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), 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) the person is a fully taxable person;~~

~~(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 tax pursuant to the provisions of Schedule 1 to the Act; or~~

~~(c) the Treasury, 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) For the purposes of paragraph (2)(a), a person is a fully taxable person if the only input tax of his to which he is not entitled to credit at the end of any prescribed accounting period or longer period is input tax which is excluded from any credit under section 3 of the Act by virtue of any Order made under sub-section (9) of that section.~~

~~(4) 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.~~

Relief for certain goods

12. (1) Without prejudice to article 13 and subject to complying with such conditions as the Treasury may direct in a notice published by it for the purposes of this Order or may otherwise direct and subject to paragraph (4), where a person supplies goods of a description in paragraph (2), of which he took possession in any of the circumstances set out in paragraph (3), he may opt to account for the tax chargeable on the supply on the profit margin on the supply instead of by reference to its value.

(2) The supplies referred to in paragraph (1) are supplies of –

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

(b) second-hand goods.

(3) The circumstances mentioned in paragraph (1) are –

- (a) that the taxable person took possession of the goods pursuant to –
 - (i) a supply in respect of which no tax was chargeable under Part I of the Act or under the U.K. Act;
 - (ii) a supply on which tax was chargeable on the profit margin in accordance with paragraph (1) or a corresponding provision made under the U.K. Act or a corresponding provision of the law of a member State;
 - (iii) a de-supplied transaction, other than an article 5 transaction;
 - (iv) subject to paragraph (3A), an article 5 transaction;
 - (v) (if the goods are a work of art) a supply to the taxable person by, or an acquisition from a member State by him from its creator or his successor in title;
- (b) (if the goods are a work of art, an antique or a collectors' item) that they were imported by the taxable person himself.

S.D. 448/97

S.D. 388/02

S.D. 448/97

(3A) An article 5 transaction does not fall within paragraph (iv) of paragraph (3)(a) unless the taxable person has a relevant predecessor in title.

(4) A taxable person –

- (a) may not opt under paragraph (1) where –
 - (i) the supply is a letting on hire;
 - (ii) an invoice or similar document showing an amount as being tax or as being attributable to tax is issued in respect of the supply;
 - (iii) the supply is of an air gun unless the taxable person is registered for the purposes of the Firearms Act 1947^(m); or
 - (iv) the supply is of goods which are being disposed of in the circumstances mentioned in article (4)(1)(a), (b), (c) or (d) but which is not disregarded by virtue of that article;
- (b) may only exercise the option under paragraph (1) in relation to supplies of –

S.D. 207/98

- (i) works of art of which he took possession in the circumstances mentioned in paragraph (3)(a)(v), or
- (ii) works of art, antiques or collectors' items of which he took possession in circumstances set out in paragraph (3)(b),

if at the same time he exercises the option in relation to the other.

(5) Subject to paragraph (6), for the purposes of determining the profit margin –

- (a) the price at which goods were obtained shall be calculated as follows –

^(m) XVI, p.586.

- (i) (where the taxable person took possession of the goods pursuant to a supply) in the same way as the consideration for the supply would be calculated for the purposes of the Act;
- (ii) (where the taxable person is a sole proprietor and the goods were supplied to him in his private capacity) in the same way as the consideration for the supply to him as a private individual would be calculated for the purposes of the Act;
- (iii) (where the goods were a work of art which was acquired from a member State by the taxable person pursuant to a supply to him by the creator of the item or his successor in title) in the same way as the value of the acquisition would be calculated for the purposes of the Act plus the tax chargeable on the acquisition;
- (iv) (where the goods are a work of art, an antique or a collectors' item which the taxable person has imported himself) in the same way as the value of the goods for the purposes of charging tax on their importation would be calculated for the purposes of the Act plus any VAT chargeable on their importation;
- (v) (where the taxable person took possession of the goods pursuant to a de-supplied transaction, other than an article 5 transaction) by taking the price he paid pursuant to the transaction;
- (vi) (where the taxable person took possession of the goods pursuant to an article 5 transaction) by taking the price at which his relevant predecessor in title obtained the goods;

S.D. 388/02

(b) the price at which goods are sold shall be calculated in the same way as the consideration for the supply would be calculated for the purposes of the Act;

~~(c) in relation to any goods, a person is the predecessor of another for the purposes of this article if –~~

- ~~(i) that other person is a person to whom he has transferred assets of his business by a transfer of that business, or a part of it, as a going concern;~~
- ~~(ii) those assets consisted of or included those goods; and~~
- ~~(iii) the transfer of the assets is one falling by virtue of an Order made or having effect as if made under section 5(3) of the Act, or under the corresponding provisions of the U.K. Act, to be treated as neither a supply of goods nor a supply of services;~~

S.D. 388/02

~~and the reference in sub-paragraph (a) to a person's predecessors includes a reference to the predecessors of his predecessors through any number of transfers.~~

(6) Subject to paragraph (7), where the taxable person is an agent acting in his own name the price at which the goods were obtained shall be calculated in accordance with paragraph (5)(a), but the selling price calculated in accordance with paragraph (5)(b) shall be increased by the amount of any consideration payable to the taxable person in respect of services supplied by him to the purchaser in connection with the supply of the goods.

(7) Instead of calculating the price at which goods were obtained or supplied in accordance with paragraph (6) an auctioneer acting in his own name may –

S.D. 810/01

- (a) calculate the price at which they were obtained by deducting from the successful bid the amount of the commission payable to him under his contract with the vendor for the sale of the goods;
- (b) calculate the price at which they were supplied by adding to the successful bid the consideration for any supply of services by him to the purchaser in connection with the sale of the goods,

in either (or both) cases excluding the consideration for supplies of services that are not chargeable to tax.

S.D. 207/98

(8) Where a taxable person opts under paragraph (1) in respect of goods of which he took possession in the circumstances set out in paragraph (3)(a)(v) and (b), the exercise of the option shall –

- (a) be notified by him to the Treasury in writing;
- (b) have effect from the date of that notification or such later date as may be specified therein;
- (c) subject to paragraph (9), apply to all supplies of such goods made by the taxable person in the period ending 2 years after the date on which it first had effect or the date on which written notification of its revocation is given to the Treasury, whichever is the later.

(9) Notwithstanding paragraph (8)(c) a taxable person may elect to account for tax chargeable on any particular supply of such goods by reference to the value of that supply.

(10) For the purposes of this article –

“article 5 transaction” means a transaction which is a de-supplied transaction by virtue of a provision of article 5 or a corresponding provision made under the U.K. Act;

“de-supplied transaction” means a transaction which was treated by virtue of any Order made or having effect as if made under section 5(3) of the Act or under the corresponding provisions of the U.K. Act as being neither a supply of goods nor a supply of services.

S.D. 388/02

(11) For the purposes of this article a person is a relevant predecessor in title of a taxable person if –

- (a) he is the person from whom the taxable person took possession of the goods and himself took possession of them in any of the circumstances described in paragraph (3), but not pursuant to an article 5 transaction; or
- (b) where the goods have been the subject of a succession of two or more article 5 transactions (culminating in the article 5 transaction to which the taxable person was a party), he was a party to one of those transactions and himself took possession of the goods in any of the circumstances described in paragraph (3), but not pursuant to an article 5 transaction.

Global accounting

13. (1) Subject to complying with such conditions as the Treasury may direct in a notice published by it for the purposes of this Order or may otherwise direct, and subject to paragraph (2), a taxable person who has opted under article 12(1) may account for tax on the total profit margin on goods supplied by him during a prescribed accounting period, calculated in accordance with paragraph (3), instead of the profit margin on each supply.

(2) Paragraph (1) does not apply to supplies of –

- (a) motor vehicles;
- (b) aircraft;
- (c) boats and outboard motors;
- (d) caravans and motor caravans;
- (e) horses and ponies;
- (f) any other individual items whose value calculated in accordance with article 12(5)(a), exceeds £500.

S.D. 706/99 (3) The total profit margin for a prescribed accounting period shall be the amount (if any) by which the total selling price is calculated in accordance with paragraph (4), exceeds the total purchase price calculated in accordance with paragraph (5).

(4) For the purposes of paragraph (3) the total selling price shall be calculated by aggregating for all goods sold during the period the prices (calculated in accordance with article 12(5) or (6) as appropriate) for which they were sold.

(5) For the purposes of paragraph (3) the total purchase price shall be calculated by aggregating for all goods obtained during the period the prices (calculated in accordance with article 12(5)) at which they were obtained and adding to that total the amount (if any) carried forward from the previous period in accordance with paragraph (6).

(6) If in any prescribed accounting period the total purchase price calculated in accordance with paragraph (5) exceeds the total selling price, the excess amount shall be carried forward to the following prescribed accounting period for inclusion in the calculation of the total purchase price for that period.

Made this 13th day of September 1995

Signed by D J Gelling
Minister for the Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order enables the Island to allow taxable persons to continue to calculate VAT by reference to the profit margin on certain goods and also to extend this facility to other goods, all of which become subject to conditions. One of these conditions is that goods supplied under the margin scheme are always taxable in the EC country of origin and thus the normal VAT rules for intra-EC transactions do not apply.

The Order revokes and re-enacts, with amendments, the provisions of the Value Added Tax (Horses and Ponies) Order 1983 (G.C. 204/83), the Value Added Tax (Special Provisions) Order 1993 (S.D. 64/93) (the 1993 Order) and the Value Added Tax (Special Provisions) (Amendment) Order 1995 (S.D. 321/95).

Article 2 re-enacts, with amendments, article 2 of the 1993 Order and defines the wider range of goods made eligible for the margin scheme.

Article 4 re-enacts, with amendments, article 4 of the 1993 Order. It extends the range of goods (which will have borne VAT on an earlier transaction) the disposal of which by mortgagees, finance houses and insurers are excluded from the scope of tax.

Article 5 re-enacts article 5 of the 1993 Order. It excludes from the scope of VAT, in certain circumstances, the transfer of assets of a business, on the transfer of a going concern of the business or of a part of the business which is capable of separate operation.

Article 6 re-enacts article 6 of the 1993 Order. It treats certain exchanges of re-conditioned articles for similar unserviceable articles as a supply of services, and not a supply of goods.

Article 7 is a new provision which excludes from the scope of the tax acquisitions from a member State of goods removed to the Island in pursuance of a supply to a taxable person made by a person in a member State where VAT on that supply is to be accounted for and paid in that member State on the profit margin.

Article 8 is a new provision which excludes from the scope of the tax the removal of goods to the Island in the circumstances described in article 7 by providing that such a removal is to be treated as neither a supply of goods nor a supply of services.

Article 9 is a new provision which excludes from the scope of tax services in connection with a supply of goods provided by an agent acting in his own name to the purchaser where the consideration for those services is taken into account in calculating the profit margin on the supply of the goods.

Article 10 is a new provision which excludes from the scope of the tax services in connection with a sale of goods provided by an auctioneer acting in his own name to the purchaser or the vendor where the consideration for those services is taken into account in calculating the profit margin on the sale of the goods.

Article 11 re-enacts article 7 of the 1993 Order. Its effect is that, in certain circumstances, where a person who is not a fully taxable person produces printed matter for use in his business (otherwise than by way of supplying them or incorporating them in other goods), the printed matter is to be treated as both supplied to him and by him.

Article 12 re-enacts, with amendments, article 8 of the 1993 Order. It allows taxable persons to opt to use the margin scheme in the circumstances and for the range of goods provided for in the above directives. It sets out how the profit margin on margin scheme supplies is to be calculated and provides variations from the normal rules for agents, and auctioneers in particular, who act in their own names. It also sets out how the option to use the scheme is to be exercised.

Article 13 enables taxable persons who have opted to use the scheme under article 12 to choose a simplified system of accounting for certain goods, whereby VAT is calculated on the profit margin between the total purchase price and total selling price (terms defined in the article) in each accounting period.