



VALUE ADDED TAX ACT 1996

VALUE ADDED TAX ACT 1996 (AMENDMENT) ORDER 2011

Approved by Tynwald

15 February 2011

Coming into operation in accordance with article 2

The Treasury makes this Order under section 95(6) and 96 of the Value Added Tax Act 1996⁽¹⁾.

1 Title

This Order is the Value Added Tax Act 1996 (Amendment) Order 2011.

2 Commencement

(1) This Order comes into operation when it is approved by Tynwald.

(2) However, when it is approved this Order shall be deemed to have come into operation on 1 January 2011⁽²⁾.

3 Interpretation

In this Order, "the Act" means the Value Added Tax Act 1996.

4 Supplies of gas, heat and cooling

In section 9A of the Act (reverse charge on gas and electricity supplied by persons outside the Island and United Kingdom)—

(a) for subsection (5) substitute—

"(5) "Relevant goods" means—

(a) gas supplied through a natural gas system situated within the territory of a member State or any network connected to such a system;

(b) electricity; and

⁽¹⁾ 1996 c.1

⁽²⁾ Section 95(6) of the Value Added Tax Act 1996 allows for orders made under section 96 to be retrospective

- (c) heat or cooling supplied through a network.”; and
- (b) in the heading, for “and electricity” substitute “, electricity, heat or cooling”.

5 Amendment of section 24 of the Act

- (1) Section 24 of the Act (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 subsection (5) (goods or services used partly for business purposes) 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 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 purpose 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 subsection (6) insert—
 - “(6A) Regulations under subsection (6) may contain such supplementary, incidental, consequential and transitional provisions as appear to the Treasury to be necessary or expedient.”.
- (7) Omit subsection (7) (definition of “director” etc).
- (8) For the purposes of this article, 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 a 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 supply, acquisition or importation in question.

6 Amendment of section 26 of the Act

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

7 Amendment of Schedule 5 to the Act

(1) In paragraph 3 of Schedule 5 to the Act (matters to be treated as supply of goods or services), after “refrigeration” insert “or other cooling”.

- (2) In paragraph 5 of Schedule 5 to the Act (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 such 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.”.

- (3) For the purpose of this article—

“asset” means anything falling within any of sub-paragraphs (a) to (f) of paragraph 5(4A) of Schedule 5 to the Act (as inserted by paragraph (1) of this article);

“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 article 5(9).

8 Supplies of aircraft etc

- (1) Schedule 9 to the Act (zero-rating) is amended as follows.

- (2) In Note (A1) of Group 8 (Transport: definition of “qualifying aircraft” etc), for paragraph (b) substitute—

“(b) a “qualifying aircraft” is any aircraft which—

- (i) is used by an airline operating for reward chiefly on international routes; or

(ii) is used by a State institution and meets the condition in Note (B1).”.

(3) After that Note insert—

“(B1) The condition is that the aircraft—

(a) is of a weight of not less than 8,000 kilograms; and

(b) is neither designed nor adapted for use for recreation or pleasure.

(C1) In Note (A1)(b)—

“airline” means an undertaking which provides services for the carriage by air of passengers or cargo (or both);

“State institution” has the same meaning as in Part B of Annex X to the Council Directive 2006/112/EC⁽³⁾ on the common system of value added tax (transactions which member States may continue to exempt).”.

(4) The amendments made by this article have effect in relation to supplies made, and acquisitions and importations taking place, on or after 1 January 2011.

9 Postal services etc

(1) In Schedule 9 to the Act (zero-rating), in Group 8—

(a) in item 4 (transport of passengers), for “the United Kingdom Post Office” substitute “a universal service provider in the United Kingdom”; and

(b) after Note (5) insert—

“(5A) “Universal service provider” means a person who provides a universal postal service (within the meaning of the Postal Services Act 2000 (an Act of Parliament)⁽⁴⁾, or part of such a service in the United Kingdom.”.

(2) In Schedule 10 to the Act (exemptions), for Group 3 (postal services) substitute—

⁽³⁾ OJ L347, 11.12.2006, p.1

⁽⁴⁾ 2000 c.26 (of Parliament)

"GROUP 3 – POSTAL SERVICES

Item No.

1. The supply of public postal services by a universal service provider.
2. The supply of goods by a universal service provider which is incidental to the supply of public postal services by that provider.

Notes:

- (1) "Universal service provider" means—
 - (a) the Post Office; and
 - (b) a person who provides a universal postal service, or part of such a service,

in the Island.
- (2) Subject to the following notes, "public postal services", in relation to a universal service provider, means any public postal services which the provider is required to provide in the discharge of a duty imposed by statute.
- (3) Public postal services include postal services which the universal service provider provides to allow a person access to the provider's postal facilities, where such services are provided pursuant to an Act of Tynwald.
- (4) Services are not "public postal services" if—
 - (a) the price is not controlled by or set by the Post Office and the Department of Economic Development⁽⁵⁾; or
 - (b) any of the other terms on which the service is provided are freely negotiated.
- (5) But Note (4) does not apply if a duty requires the universal service provider to make the services available to people generally—
 - (a) in the case of the Post Office, where the price is not controlled by or set in accordance with Note (4)(a), at the same price;

⁽⁵⁾ Under section 13 of the Post Office Act 1993 (c.20) the Post Office may make a scheme for determining charges for postal services following consultation with the Department of Economic Development. Section 13(6) of that Act requires any such scheme to be laid before Tynwald as soon as may be possible after it is made.

(b) in the case of any other provider, where the price is not controlled by or under a section 12 licence, at the same price; or

(c) where terms are freely negotiated as mentioned in Note (4)(b), on those terms.

(6) In this Group—

“access point” means any box, receptacle or other facility provided by a universal service provider for the purpose of receiving relevant postal packets or any class of relevant postal packets, for onward transmission in connection with the provision of a universal postal service;

“permitted limits”, in relation to the dimensions of a postal packet, means the minimum and maximum dimensions laid down in the Convention and the Agreement concerning Postal Parcels adopted by the Universal Postal Union;

“postal facilities”, in relation to a universal service provider, means the resources and systems deployed by the provider, for the purposes of discharging—

(a) in the case of the Post Office, a duty imposed by statute; or

(b) in the case of any other provider, any duty to provide a universal postal service or part of such a service;

“postal services” means the service of conveying postal packets from one place to another by post, the incidental services of receiving, collecting, sorting and delivering such packets and any other service which relates to any of those services and which is provided in conjunction with any of them;

“relevant postal packets” means postal packets whose weight does not exceed 30 kilograms and whose dimensions fall within permitted limits; and

“section 12 licence” means a licence granted under section 12 of the Post Office Act 1993.

(7) For the purposes of this Group, a “universal postal service” is provided if—

(a) subject to paragraphs (d) and (e)—

- (i) at least one delivery of relevant postal packets is made every working day to the home or premises of every individual or other person in the Island or another identifiable point for the delivery of relevant postal packets; and
 - (ii) at least one collection of relevant postal packets is made every working day from each access point;
- (b) a service of conveying relevant postal packets from one place to another by post and the incidental services of receiving, collecting, sorting and delivering such packets are provided at affordable prices determined in accordance with a public tariff; and
 - (c) a registered post service is provided at such prices.

However—

- (d) the interruption, suspension or restriction of any service in cases of emergency; or
- (e) the conclusion with customers of individual agreements as to prices,

shall not be taken to preclude the provision of a universal postal service.

- (8) References to the provision of a universal postal service shall, in relation to a universal service provider who provides part of a universal postal service, be construed as references to the provision of that part of such a service.”.

10 **Amendment of Schedule 14 to the Act**

After paragraph 23 of Schedule 14 to the Act (Transitional provisions and savings) insert—

“Transitional provisions for amendments under Value Added Tax Act 1996 (Amendment) Order 2011 and Value Added Tax Act 1996 (Amendment) (No. 2) Order 2011

- 24 (1) The amendments made to section 9A by article 4 of the Value Added Tax Act 1996 (Amendment) Order 2011 have effect in relation to supplies made on or after 1 January 2011.

- (2) The amendments made to section 24 by article 5(2), (4) and (7) of the Value Added Tax Act 1996 (Amendment) Order 2011 are taken to have come into operation with effect from 1 January 2011 and apply in relation to VAT incurred by a taxable person on or after that date.
- (3) The amendments made to Schedule 5 by Article 7 of the Value Added Tax Act 1996 (Amendment) Order 2011 do not apply in relation to an asset in respect of which the person in question or any of the person's predecessors incurred VAT before 1 January 2011.
- (4) However, if 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) to the Act 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.
- (5) The amendments made by article 8 of the Value Added Tax Act 1996 (Amendment) Order 2001 to Group 8 of Schedule 9 have effect in relation to supplies made, and acquisitions and importations taking place, on or after 1 January 2011."

MADE

19th January 2011

Aime Cranie

Minister for the Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes various amendments to the Value Added Tax Act 1996⁽⁶⁾ ("the Act") analogous with those made to the corresponding United Kingdom law by means of the Finance (No. 3) Act 2010⁽⁷⁾.

Article 4 is concerned with changes made in respect of supplies of gas, heat and cooling. Section 9A of the Act is amended. Where a supply of heating or cooling is supplied through a network this will be subject to a reverse charge in the same way as previously applied to supplies of natural gas.

⁽⁶⁾ 1996 c.1

⁽⁷⁾ 2010 c.33 (of Parliament)

A consequential amendment is also made to paragraph 3 of Schedule 5 to the Act by article 7(1). This provides that a supply of cooling is treated as a supply of goods.

The changes made by articles 4 and 7(1) ensure that Island law complies with amendments made to the relevant Community legislation, the Principal VAT Directive⁽⁸⁾ by Council Directive 2009/162/EU⁽⁹⁾.

Article 5 makes various amendments to section 24 of the Act and, except for paragraphs (2) and (7), is concerned with supplies with both a business and non-business purpose and further limiting the ability of business to recover VAT on expenditure for private purposes—

- (a) paragraphs (2) and (7) repeal the redundant subsections (2) and (7);
- (b) paragraph (2) provides for VAT relating to non-business activities to be treated as input tax for the purposes of regulations being made under a new section 24(6)(e), to be inserted by paragraph (5);
- (c) paragraph (4) inserts new subsections (5A) and (5B), which are concerned with defining private use and the relevant assets affected; and
- (d) paragraph (6) inserts a new subsection (6A) concerned with regulations that may be made under subsection (6).

Article 6 amends section 26 of the Act to allow for regulations to be made under that section to contain consequential and transitional provisions where necessary.

Article 7, with the exception of paragraph (1), is, like article 4, concerned with changes necessary in respect of expenditure linked to assets with a private and business purpose. Amendments are made to Schedule 5 to the Act—

- (a) paragraph (2) inserts a new sub-paragraph (4A) into paragraph (4) of Schedule 5. This prevents the deemed taxable supply of services that would otherwise apply in relation to the private and non-business use of land and property, ships and aircraft; and
- (b) paragraph (3) contains various definitions necessary for the article.

The amendments made by articles 5 to 7 are principally concerned with ensuring that Island law complies with the requirements of Community law in Council Directive 2009/162/EU to restrict VAT recovery in relation to the private use of land and property-related expenditure from 1 January 2011, and complying with a judgment of the European Court of Justice involving interpretation of accounting for assets with both a business and private (non-economic) use. Council Directive 2009/162/EU also offered the option of

⁽⁸⁾ Council Directive 2006/112/EC (OJ L347, 11.12.2006, p.1)

⁽⁹⁾ OJ L10, 15.1.2010, p.14

allowing restriction of VAT recovery on other assets, and the UK and Island have opted to do so in relation to ships and aircraft.

Article 8 makes various amendments to Group 8 of Schedule 9 to the Act and is concerned with the criteria for the zero-rating of supplies of aircraft and associated supplies. The European Commission began infraction proceedings against the UK in 2008 on the grounds that its law in this area was not in conformity with Community law. The UK have accepted that this is the case and amended its law. The provisions in Island law, being based upon the corresponding ones in UK law, must be similarly adapted to meet the requirements of Community law.

In Group 8 of Schedule 9 to the Act, paragraph (b) of Note (A1) is substituted, and new Notes (B1), (B2) and (C1) inserted. The amendments replace a former definition of an aircraft that qualified for zero-rating (a "qualifying aircraft") – being one of not less than 8,000 kilograms in weight and not designed or adapted for recreation. The new definition requires a qualifying aircraft to be one used by an airline operating for reward chiefly on international routes. An alternative definition of a qualifying aircraft being of not less than 8,000 kilograms and used by a State institution remains unchanged.

Article 9 amends Group 8 of Schedule 9 to the Act and replaces Group 3 of Schedule 10 to the Act. The amendments are required following a European Court of Justice judgment against the UK and its application of EU law in relation to the VAT treatment of postal services⁽¹⁰⁾. As Island law in this area largely corresponds to that in the UK it too required amendment.

Paragraph (1) of article 9 amends item 4 of Group 8 of Schedule 9 to the Act, and inserts a new Note (5A). It updates reference to the eligible supply of zero-rated passenger transport made in conjunction with the supply of postal services in the UK.

Paragraph (2) of article 9 substitutes a new Group 3 in Schedule 10 to the Act. The overall effect of the new Group is to ensure restriction of VAT-exempt status to only eligible supplies made by a "universal service provider", i.e. the Post Office or someone licensed to provide equivalent services, and supplies incidental to those eligible supplies. The Notes to the Group contain various definitions, including those of a universal service provider and a "public postal service".

Article 10 amends Schedule 14 to the Act (Transitional provisions and savings) to provide for the transitional provisions and savings concerned with the amendments made by articles 4, 5, 7 and 8 of this Order.

⁽¹⁰⁾ R (*TNT (UK) Limited*) v *Commissioners of Revenue and Customs*, ECJ Case C-357/07

