Statutory Document No. 014/11

VALUE ADDED TAX ACT 1996

VALUE ADDED TAX ACT 1996 (AMENDMENT) (No. 2) ORDER 2011

Approved by Tynwald 15th March 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) (No. 2) 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 Output tax where credit attributable to purported paragraph 5(4) supply

After paragraph 9 of Schedule 5 to the Act add—

"10 (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 the Act 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;

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(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

Price 95 pence

Price Band: A

(c) disregarding sub-paragraph (2), the thing done or to be done is not or would not be a paragraph 5(4) supply;

(d) the credit allowed as mentioned in sub-paragraph (a) is not reversed in full.

(2) The thing done or to be done is to be treated for the purposes of the Act 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 the Act.

(4) For the purposes of sub-paragraph (1) credit for input tax is allowed under sections 25 and 26 of the Act 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 the Act from any output tax that is due to the Treasury;

(b) a payment by the Treasury in respect of the credit under section 25(3) of the Act; or

(c) the setting off of the credit against a sum payable to the Treasury, whether under section 81(3) of that Act or section 130 of the Finance Act 2008 of Parliament (as it has effect in the Island)[3] or otherwise.

(5) In this paragraph—

"paragraph 5(4) supply" means a supply under paragraph 5(4) of Schedule 5 to the Act (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.".

5 **Effect of paragraph 10 of Schedule 5 to the Act**

Paragraph 10 of Schedule 5 to this Act, is to be treated as having always had effect.

[3] 2008 c.9 (of Parliament), applied in the Island by SD 638/08

MADE

19th January 2011

Minister for the Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends Schedule 5 to the Value Added Tax Act 1996 to make changes analogous to those made to the corresponding United Kingdom law by means of the Finance (No. 3) Act 2010[4].

Article 4 adds new paragraph 20 to Schedule 5 (Matters to be treated as supplies of goods or services) necessary to ensure that taxpayers who applied the *Lennartz* accounting method in a manner now held to be incorrect by the European Court of Justice[5] and who choose not to take the option of unwinding instances of incorrect *Lennartz* accounting shall continue to account for VAT on subsequent deemed supplies of non-economic use, as they would have done previously using the *Lennartz* accounting and when they used the method to recover input tax.

In the new paragraph 10—

(a) sub-paragraph (1) defines the circumstances when sub-paragraph (2) would apply, and sub-paragraph (2) provides that the deemed supply "incorrectly" arising from the non-economic use of an asset shall be treated as if made pursuant to paragraph 5(4) of Schedule 5 to the Act – thus ensuring that the business continues to account for VAT on such supplies;

(b) sub-paragraph (3) is intended to ensure that supplies affected by the preceding paragraphs do not in themselves create a legal entitlement to input tax recovery, so that the incorrect *Lennartz* regime is not extended to future costs incurred on the asset;

(c) sub-paragraphs (4) and (5) contain various definitions.

The amendments made by this Order, together with amendments made previously by the Value Added Tax Act 1996 (Amendment) Order 2011[6], 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

(4) 2010 c.33 (of Parliament)
(5) In *Vereniging Noordelijke Land – en Tuinbouw Organisatie v Staatssecretaris van Financien*, ECJ Case C-515/07
(6) SD ?

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 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 5 provides that the new paragraph 10 of Schedule 5 is to be treated as always having had effect to ensure that, where a taxpayer has opted to continue *Lennartz* accounting in relation to non-economic use of an asset, VAT is due in respect of such use both before and after the coming into effect of this Order.