

Margin scheme — taxable dealers. VATA s. 10A, s. 12B(3) (in part) and s. 12C(5) (in part)

87.—(1) In this section—

“agricultural machinery” means machinery or equipment (1)) which has been used by a flat-rate farmer for the purpose of that farmer’s Annex VII activity in circumstances where any tax charged on the supply of that machinery or equipment to the farmer would have been deductible by him or her if he or she had elected to be an accountable person at the time of that supply of the machinery or equipment to the farmer;

“antiques” means any of the goods specified in paragraph 24 of Schedule 3 or in paragraph 3 of Schedule 5;

“collectors’ items” means any of the goods specified in paragraph 2 of Schedule 5;

“margin scheme” means the special arrangements for the taxation of supplies of margin scheme goods;

“margin scheme goods” means any works of art, collectors’ items, antiques or second-hand goods supplied within the Community to a taxable dealer—

(a) by a person (other than a person referred to in paragraph (c)) who was not entitled to deduct, under Chapter 1 of Part 8, any tax in respect of the person’s purchase, intra-Community acquisition or importation of those goods where that person is neither—

(i) an accountable person who acquired those goods from a taxable dealer who applied the margin scheme to the supply of those goods to that accountable person, nor

(ii) an accountable person who acquired those goods from an auctioneer) who applied the auction scheme) to the supply of those goods to that accountable person,

(b) by a person in another Member State who was not entitled to deduct, under the provisions implementing Articles 167, 173, 176 and 177 of the VAT Directive, in that Member State, any value-added tax referred to in that Directive in respect of that person’s purchase, intra-Community acquisition or importation of those goods, or

(c) by another taxable dealer who has applied the margin scheme to the supply of those goods or applied the provisions implementing Articles 4 and 35, first subparagraph of Article 139(3) and Articles 311 to 325 and 333 to 340 of the VAT Directive, in another Member State to the supply of those goods,

and also includes goods acquired by a taxable dealer as a result of a disposal of goods by a person to the taxable dealer where that disposal was deemed not to be a supply of goods in accordance with section 20 (3);

“means of transport” means motorised land vehicles with an engine cylinder capacity exceeding 48 cubic

centimetres or a power exceeding 7.2 kilowatts, vessels exceeding 7.5 metres in length and aircraft with a take-off weight exceeding 1,550 kilogrammes, which are intended for the transport of persons or goods, other than agricultural machinery, and vessels and aircraft of the kind referred to in paragraph 4(2) of Schedule 2;

“precious metals” means silver (including silver plated with gold or platinum), gold (including gold plated with platinum), and platinum, and all items which contain any of those metals when the consideration for the supply does not exceed the open market price) of the metal concerned;

“precious stones” means diamonds, rubies, sapphires and emeralds, whether cut or uncut, when they are not mounted, set or strung;

“profit margin” means the profit margin in respect of a supply by a taxable dealer of margin scheme goods and—

(a) subject to paragraph (b)—

(i) shall be deemed to be inclusive of tax, and

(ii) shall be an amount which is equal to the difference between the taxable dealer’s selling price for those goods and the taxable dealer’s purchase price for those goods,

(b) shall be deemed to be nil in any case where the purchase price is greater than the selling price;

“purchase price”, in relation to an acquisition of margin scheme goods, means the total consideration, including all taxes, commissions, costs and charges whatsoever, payable by a taxable dealer to the person from whom that taxable dealer acquired those goods;

“second-hand goods” means any tangible movable goods which are suitable for further use either as they are or after repair, including means of transport and agricultural machinery, purchased or acquired on or after 1 January 2010, but not including works of art, collectors’ items, antiques, precious metals and precious stones;

“selling price” means the total consideration which a taxable dealer becomes entitled to receive in respect of or in relation to a supply of margin scheme goods, including all taxes, commissions, costs and charges whatsoever and value-added tax (if any) payable in respect of the supply;

“taxable dealer”—

(a) means an accountable person who in the course or furtherance of business, whether acting on the person’s own behalf, or on behalf of another person pursuant to a contract under which commission is payable on purchase or sale, purchases or acquires or applies for the purpose of his or her business margin scheme goods or the goods referred to in subsection (4)(a)(ii) and (iii), with a view to resale, or imports the goods referred to in subsection (4)(a)(i), with a view to resale, and

(b) includes a person supplying financial services of the kind specified in paragraph 6(1)(e) of Schedule 1 who acquires or purchases margin scheme goods for the purpose of the supply thereof as part of an agreement of the kind referred to in section 19 (1)(c),

and, for the purposes of this interpretation, a person in another Member State shall be deemed to be a taxable dealer where, in similar circumstances, that person would be a taxable dealer in the State under this section;

“works of art” means any of the goods specified in paragraph 18(2) or 23 of Schedule 3 or in paragraph 1 of Schedule 5.

(2) Subject to and in accordance with this section, a taxable dealer may apply the margin scheme to a supply of margin scheme goods.

(3) Where the margin scheme is applied to a supply of goods, the amount on which tax is chargeable on the supply in accordance with section 3 (a) or (c) is, notwithstanding Chapter 1 of Part 5, the profit margin less the amount of tax included in the profit margin.

(4)(a) Subject to paragraph (b) and to such conditions (if any) as may be specified in regulations, a taxable dealer may, notwithstanding subsection (2), opt to apply the margin scheme to all that dealer's supplies of any of the following as if they were margin scheme goods:

(i) a work of art, collector's item or antique which the taxable dealer imported;

(ii) a work of art which has been supplied to the taxable dealer by its creator or the creator's successors in title; or

(iii) a work of art which has been supplied to the taxable dealer by an accountable person other than a taxable dealer, where the supply to that dealer is of the kind referred to in section 48 (1)(c).

(b) Where a taxable dealer opts to apply the margin scheme in accordance with paragraph (a), the option shall be for a period of not less than 2 years from the date when that option was exercised.

(5) Where a taxable dealer exercises the option in accordance with subsection (4), in respect of the goods specified in subsection (4)(a)(i), then, notwithstanding the definition of “purchase price” in subsection (1), the purchase price for the purposes of determining the profit margin in relation to a supply of those goods shall be an amount equal to the value of those goods for the purposes of importation determined in accordance with section 53 increased by the amount of any tax payable in respect of the importation of those goods.

(6) Subject to subsection (7) and notwithstanding Chapter 1 of Part 8, a taxable dealer who exercises the option in respect of the supply of the goods specified in subsection (4)(a) shall not be entitled to deduct any tax in respect of the purchase or importation of those goods.

(7) Where a taxable dealer exercises the option in accordance with subsection (4), the dealer may,

notwithstanding subsection (4)(b), in respect of any individual supply of the goods specified in subsection (4)(a), opt not to apply the margin scheme to that supply, and in such case the right to deduction of the tax charged on the purchase, intra-Community acquisition or importation of those goods shall, notwithstanding Chapter 1 of Part 8, arise only in the taxable period in which the dealer supplies those goods.

(8)(a) In this subsection—

“aggregate margin”, in respect of a taxable period—

(i) subject to paragraph (ii), means an amount which is equal to the difference between the taxable dealer’s total turnover in that taxable period from supplies of low value margin scheme goods, to which the same rate of tax applies, less the sum of that taxable dealer’s purchase prices of low value margin scheme goods to which that rate of tax applies to the supply thereof, in that taxable period,

(ii) in any case where the sum of such purchase prices of that dealer is in excess of such total turnover, means an amount which shall be deemed to be nil (and, in any such case, subject to and in accordance with regulations (if any), the amount of the excess shall be carried forward and added to the sum of that dealer’s purchase prices for low value margin scheme goods for the purposes of calculating that dealer’s aggregate margin for the immediately following taxable period);

“low value margin scheme goods” means margin scheme goods where the purchase price payable by the dealer for each individual item is less than €635.

(b) Notwithstanding subsection (3) but subject to and in accordance with regulations (if any)—

(i) where a taxable dealer acquires low value margin scheme goods in job lots or otherwise, the amount of tax due and payable in respect of the dealer’s supplies of low value margin scheme goods shall, in respect of a taxable period, be the amount of tax included in that dealer’s aggregate margin, or margins, for that period and the amount of tax in each aggregate margin shall be determined by the formula—

B

$A \times B + 100$

where—

A is the aggregate margin for the taxable period in question, and

B is the percentage rate of tax chargeable in relation to the supply of those goods,

and

(ii) where the taxable dealer referred to in subparagraph (i) makes supplies in any taxable period which are subject to different rates of tax, that taxable dealer shall calculate separate aggregate margins for that taxable period in respect of the supplies at each of the relevant rates.

(c) Subject to and in accordance with regulations (if any), where a taxable dealer supplies a low value margin scheme good for an amount in excess of €635, then—

(i) notwithstanding the definition of “low value margin scheme goods” in paragraph (a), the supply of that good shall be deemed not to be a supply of a low value margin scheme good,

(ii) in determining the aggregate margin for the taxable period in which the supply occurs, the dealer shall deduct the purchase price of that good from the sum of the dealer's purchase prices of low value margin scheme goods for that period, and

(iii) the purchase price of that good shall be used in determining the profit margin in relation to the supply of that good.

(9) Notwithstanding Chapter 2 of Part 9, a taxable dealer shall not, in relation to any supply to which the margin scheme has been applied, indicate separately the amount of tax chargeable in respect of the supply on any invoice or other document in lieu thereof issued in accordance with that Chapter.

(10) Where the margin scheme is applied to a supply of goods dispatched or transported from the State to a person registered for value-added tax in another Member State, then, notwithstanding paragraph 1(1) of Schedule 2, section 46 (1)(b) shall not apply unless such goods are of a kind specified elsewhere in that Schedule.

(11) Notwithstanding section 30, where the margin scheme is applied to a supply of goods dispatched or transported, the place of supply of those goods shall be deemed to be the place where the dispatch or transportation begins.

(12) Where a taxable dealer applies the margin scheme to a supply of goods on behalf of another person pursuant to a contract under which commission is payable on purchase or sale, the goods shall be deemed to have been supplied by that other person to the taxable dealer when that taxable dealer supplies those goods.

(13) Notwithstanding paragraph 12 of Schedule 1, where an accountable person acquires goods to which the margin scheme has been applied and the person subsequently supplies those goods, that paragraph shall not apply to that supply unless the goods consist of—

(a) motor vehicles within the meaning of section 60 (1) which that person acquired other than—

(i) as stock-in-trade,

(ii) for the purposes of a business which consists in whole or in part of the hiring of motor vehicles,
or

(iii) for use, in a driving school business, for giving driving instruction,

or

(b) goods used by that person solely in the course of an exempted activity.

(14)(a) Where a means of transport which is a motor vehicle within the meaning of section 60 (1) is declared for registration to the Revenue Commissioners in accordance with section 131 of the Finance Act 1992 by a taxable dealer on the dealer's own behalf and on which deductibility in accordance with Chapter 1 of Part 8 has been claimed by that dealer, then—

(i) that means of transport shall be treated for the purposes of this Act as if it were removed from stock-in-trade,

(ii) such removal is deemed to be a supply of that means of transport by that taxable dealer for the purposes of section 19 (1)(f), and

(iii) for the avoidance of doubt, the amount of tax chargeable in respect of that supply is the amount referred to in paragraph (b)(ii)(II) and accordingly is not included in any amount which the taxable dealer is entitled to deduct in accordance with section 59 (2)(k).

(b) At the time when a taxable dealer supplies to another person a means of transport which is deemed to have been previously supplied in accordance with paragraph (a) or section 12B(11)(a) of the repealed enactment then—

(i) that means of transport is deemed to have been re-acquired by the dealer as a margin scheme good immediately before the supply to that person, and

(ii) for the purpose of the calculation of the profit margin in relation to that supply, the purchase price of the means of transport is deemed to be the sum of—

(I) the amount on which tax was chargeable on the supply of that means of transport to the dealer,

(II) the tax which was chargeable on the supply referred to at clause (I), and

(III) the vehicle registration tax accounted for by the dealer in respect of the registration of that means of transport.