Introduction

OVERVIEW

2-000 Overview

Value added tax (VAT) was introduced in the United Kingdom on 1 April 1973 shortly after the UK joined the European Economic Community (EEC). VAT is the common tax of the Community, and is intended (eventually) to apply in the same manner in each member state.

VAT is rarely understood properly and causes problems to large and small businesses alike.

The aim of this publication is to provide people in the business world and their advisers with a general understanding of the operation of the tax, and to help them to deal with it in the context of the businesses within which they work. It is intended to provide a basic reference work on VAT, and to assist in grasping its principles and in applying them to the circumstances which arise in practice. It also seeks to identify some of the common danger areas and to suggest ways of dealing with these.

VAT is a complex tax far short of the simple book-keeping tax that it was said to be in 1972. Throughout the publication are flowcharts designed to assist in understanding the concepts and identifying critical decision points.

2-010 What does Brexit mean for VAT?

Every member of the European Union ('EU') has VAT. It is a condition of membership. Consequently, Britain will have VAT until it leaves the EU.

After leaving the EU, the UK is not bound to have VAT. It could abolish it. If this were to happen, the UK would be going against a worldwide trend, as VAT has spread to countries outside the EU. This is because VAT raises a lot of money.

In the UK, VAT raises about 17% (£120bn) of government revenue. As it is collects so much tax for the Exchequer, is difficult to believe any government will get rid of it. It seems more likely that VAT will continue in the UK even after the UK leaves the EU.

Like all EU members, the UK must have VAT laws which are consistent with the over-arching EU laws. The EU laws set parameters within which the UK is free to change the rates of VAT and to alter to some extent how it applies. The parameters were agreed by the EU VAT committee, in which the UK played a very active role.

After Brexit the UK should be able to amend in any way it likes the VAT laws applying in the UK. For example, after leaving the EU the UK will unilaterally be able to apply zero-rate VAT to feminine hygiene products. However, life may not be so simple.

Trading with businesses in other EU countries has never been simpler. This is due to the Single Market. What happens about this will be a major part of the leaving settlement agreed with the EU.

Some third party countries have access to the Single Market (e.g. Norway and Switzerland). However, this comes at a price. Examples include monetary fees, free movement of people, etc. Further, the EU normally insists that the third country has VAT conditions. Without this, there will not an agreement and the third country will not get access to the Single Market.

The time allocated for reaching an exit settlement with the EU is two years. The two years start from when the UK formally applies to leave. The formal application is made under art. 50 of EU law. To date, the UK has not lodged the formal application.

Whilst the UK is negotiating an exit agreement, VAT is unlikely to change significantly. There are some good reasons for thinking this.

The exit negotiations will be very involved and most probably fraught whilst both sides struggle to get the best deal. Making changes to UK VAT laws during this period, which infringe EU legislation, could be likely to antagonise the other countries and make some very difficult negotiations even tougher.

OUTLINE OF VALUE ADDED TAX

2-050 Application

VAT is charged on taxable supplies of goods and services made in the UK, where these are made in the course of business. It is also charged on imports of goods into the UK from outside the European Community (EC), on the acquisition of goods from elsewhere in the EC and on some imports of services.

Businesses which make taxable supplies are obliged to register with Her Majesty's Revenue and Customs (HMRC), the government department which controls the tax. Registered businesses are often referred to as traders, although the term includes businesses which would not generally be regarded as trades (e.g. a practising solicitor is normally regarded as being engaged in a profession rather than a trade, but in VAT terms would be called a trader).

Indirect Tax Reporter: ¶1-100

2-080 Records and returns

Each registered trader is obliged to keep a record of the supplies which he makes in the course of any business carried on by him, and of the VAT due on them. He must also keep a record of VAT incurred on supplies to him, and on his imports and acquisitions.

He must then complete a periodical VAT return, and submit this to HMRC with a remittance for any tax due for the period. Returns are normally due quarterly, although some traders complete monthly or annual returns.

The trader must enter on his VAT return the totals of supplies made by him and of supplies (and imports and acquisitions) which he has obtained for the purposes of his business. He must also enter on it the total VAT due on the supplies and acquisitions which he has made, and the amount incurred on supplies to him and on imports and acquisitions. He may set the VAT incurred by him against the VAT due on his own supplies. The VAT which he is due to pay to HMRC is the difference between the two. If the VAT due on his own supplies is less than the VAT which he has incurred, he receives a repayment from HMRC.

Example: periodical VAT return

Henrietta is a consultant and makes quarterly VAT returns. Her records for the last three months show that she has made supplies with a value of £8,000, plus VAT (at 20%) of £1,600. She has incurred VAT of £175 on various expenses, and has also purchased a computer for £2,500 plus £500 VAT.

Her VAT return for the quarter will show:

	£
VAT due on supplies made	1,600.00
Less: VAT incurred on supplies obtained (£175 + £500)	(675.00)
Net amount due to HMRC	925.00

It will be noted from the above example that VAT can be reclaimed in respect of capital equipment purchased, as well as on day-to-day running expenses.

Indirect Tax Reporter: ¶4-620

2-110 Outputs and inputs

The supplies which a trader makes are referred to as his outputs, and the VAT due on them is called output tax. The supplies which the trader uses are referred to as inputs, and the VAT on them (and on imports and acquisitions which the trader receives) is called input tax.

This nomenclature sometimes causes confusion, because the associated money flows seem to go the wrong way. When a trader makes a sale, there is an output, as goods or services flow out of the business, and this leads to money flowing into the business. The best way to think about this is to remember that VAT is technically a tax on the supply, which flows out, not on the income which results from it. Indeed, it will be seen at 3-160 that a supply can arise without any associated flow of money.

When a trader makes an acquisition of goods from elsewhere in the EC he becomes liable to pay output tax on it, but simultaneously obtains the right to treat that tax as input tax. Thus, an acquisition is both an output and an input.

Indirect Tax Reporter: ¶1-450

2-140 Evidence for input tax deduction

As might be imagined, HMRC are unwilling to allow credit for input tax based on the unsupported word of the trader. Consequently, the law provides for evidence to be generated in respect of each supply which takes place.

Taxable supplies

A trader who makes a taxable supply to another trader is obliged to prepare and issue a VAT invoice in respect of the transaction. This is a document (usually in the form of an invoice) which provides details of the transaction, the parties involved and the amount of VAT accountable on the supply. If the customer wishes to reclaim the VAT on the transaction, he must retain the VAT invoice as evidence of the VAT and be able to produce it to HMRC if requested.

As the details on the invoice provide HMRC with details of the supplier, they are in a position to verify that the VAT shown has been accounted for by him. This introduces an element of self-policing into the system.

Importations from outside the EC

A trader who pays VAT on the importation of goods from outside the EC must obtain the relevant HMRC document, which acts as the supporting evidence for his subsequent claim for its deduction as input tax. If a trader claims input tax without holding the related HMRC import certificate (form C79), the claim will almost certainly be denied when discovered by HMRC. It follows that staff engaged on the purchase side of the business need to be able to identify the relevant documentation and to withhold payment for supplies received until it has been provided.

Acquisitions from other member states

A trader who becomes liable to account for VAT on goods bought from elsewhere in the EC (such purchases are called *acquisitions*) must hold a VAT invoice issued by his supplier, citing the UK trader's VAT registration number and providing other details, such as the value of the supply. This, combined with returns of intra-EC trade, enables the revenue authorities to carry out cross-checking exercises to satisfy themselves that VAT is being properly accounted for.

Indirect Tax Reporter: ¶19-000

2-170 VAT chargeable

VAT is charged on taxable supplies. It is worth considering the types of supply which may be made in the course of business, and also whether it is possible to receive money without making a supply.

The UK has one main positive rate of VAT, the standard rate.

From 4 January 2011	20%
1 January 2010 to 3 January 2011	17.5%
1 December 2008 to 31 December 2010	15%
Prior to 30 November 2008	17.5%

There is also a lower rate of 5%. If a UK trader makes a supply, then VAT is due at the standard rate unless the supply is specifically relieved from VAT (or subjected to the 5% lower rate). In very broad terms, this means that VAT is due on sales made, and on the gift of business assets or free use of business assets for non-business purposes.

2-230 Partial exemption

A trader who makes only exempt supplies cannot register for VAT, and so cannot obtain credit for input tax paid on his business expenses. A trader who makes only taxable supplies can reclaim all of his input tax (except that incurred on business entertaining, etc.).

Special rules are needed in the case of a trader who makes both taxable supplies and exempt supplies (referred to as a partially exempt trader), in order to prevent distortion of competition between him and a trader who makes similar exempt supplies but no taxable supplies.

In principle, a partially exempt trader can reclaim in full any input tax incurred in relation to the making of taxable supplies, and cannot reclaim any input tax incurred in relation to the making of his exempt supplies. Input tax paid on supplies used both for the purposes of his taxable supplies and for the purposes of his exempt supplies must be apportioned between the two activities, and only the part relating to the taxable supplies made can be reclaimed.

The initial input tax deduction for certain expenditure on land, buildings, civil engineering works, ships, boats, aircraft and computer equipment must be reviewed by reference to the use of the assets over a review period of five or ten years (see 7-760).

The detailed application of these general rules, and the different ways of apportioning input tax between the types of activity, is a complex area covered in the 'Input Tax Recovery' division at 6-000ff.

2-260 Retail schemes

In principle, the VAT system relies upon traders issuing tax invoices for the supplies which they make. Copies of these are used as the prime accounting document in calculating the liability of a trader to account for output tax. The originals, when supplies are made to other registered traders, constitute the evidence required to substantiate a claim to deduct input tax.

Clearly it would be ridiculous to expect all retailers to issue tax invoices for all supplies made, however small. Because this would be impossible, special schemes are available to enable retailers to account for VAT without keeping a detailed record of each individual transaction.

Each retail scheme is based on a daily record of gross sales. The gross sales are recorded VAT inclusive. The gross sales at each rate of VAT are multiplied by the relevant VAT fraction to calculate the tax due.

Example: the VAT fraction

Harry only sells standard rated goods. His gross sales which include VAT at 20% are £1,000. The VAT fraction when the standard rate is 20% is $^{1}/_{6}$ or $^{20}/_{120}$. The tax included in Harry's sales of £1,000 is £166.66 (i.e. £1,000 multiplied by $^{1}/_{6}$).

Things become more complex where a retailer sells goods liable to tax at a number of different rates. The retailer must select one or other of the retail schemes which are available to him to work out his VAT liability. These schemes provide various ways of estimating how much of his takings represents supplies taxable at the standard rate. Some schemes work from a detailed record of purchases for resale, with or without adjustment for expected mark-ups. Another depends upon an analysis of takings at the point of sale, usually by the use of a multi-total till.

Detailed rules for each of the retail schemes are published by HMRC. Whichever scheme is in use, these rules must be followed accurately.

Retail schemes are covered in more detail at 16-000.

2-290 Second-hand goods scheme

A special scheme is available for most goods traded between the business and private sectors, other than certain precious metals and gem stones. A dealer who has bought goods from a private individual (so cannot recover input tax on the purchase) can charge VAT, when he re-sells them, on the difference between the purchase price and the selling price.

The second-hand goods scheme is covered at 16-430ff.

Indirect Tax Reporter: ¶48-625

2-360 Review of the system for control and enforcement

VAT is administered by Her Majesty's Revenue and Customs.

The system of VAT registration is online. Businesses registering for VAT must complete and submit the relevant registration forms online.

Following registration, the trader is issued with a VAT Registration Certificate which states the VAT Registration number and indicates when the first VAT return is to be submitted. The VAT Central Unit will periodically issue VAT returns to the trader.

VAT returns with the related payment must be submitted online to HMRC by the end of the month following the accounting period concerned.

Failure to submit returns – or related payments – on time makes the trader liable to incur a penalty. The trader is responsible for completing the returns correctly. See 9-370.

HMRC periodically check that a trader is dealing with VAT correctly. The checks are usually made by officers from a VAT office who may ask that a questionnaire be completed, inspect the books and records and may visit the business. See 9-660.

These officers visit the trader's premises to inspect the VAT records to satisfy themselves that VAT is being accounted for correctly. Such visits are referred to as assurance visits and may be combined with a visit to inspect other taxes. The intervals between assurance visits vary considerably, depending upon the size and type of business and the trader's own record of compliance (or non-compliance) with the VAT accounting requirements. Very large businesses are likely to have frequent visits, while smaller businesses may be visited only at intervals of several years. Visits can also be triggered by changes of pattern becoming apparent from the VAT returns submitted by the trader.

If an assurance visit reveals that the trader has under-declared his VAT liabilities, an assessment will normally be issued to collect the tax. The trader may also become liable to pay interest and penalties in respect of the under-declaration. Where under-declarations arise because of dishonesty on the part of the trader, rather than because of errors, penalties may be due either under the civil law or under criminal law. In the latter case, a dishonest trader may also be imprisoned.

Indirect Tax Reporter: ¶3-500

WHY VAT CAUSES PROBLEMS

2-430 General

Some of the main reasons why businesses find themselves with VAT problems – and often with large unexpected tax bills – are as follows:

- misunderstanding of concepts (2-460);
- disregard by decision makers (2-490);
- disregard by administrators (2-520);
- cumulative effect (2-550); and
- enforcement techniques (2-580).

It is worth giving brief consideration to each of these factors. The first is one which this publication specifically addresses; the next two illustrate

the usefulness and importance of acquiring some understanding of VAT; and the last two give an indication of the growing importance of dealing correctly with VAT from the outset.

2-460 Misunderstanding of concepts

The concepts used in VAT are different from those of commerce and accounting, and from those of other taxes such as income tax and corporation tax (which at least bear some passing resemblance to commercial concepts). If VAT is thought of as a sales tax then it will be difficult to understand its concepts and will lead to risk in business dealings.

VAT is not a tax on profits or on income. It rarely distinguishes between transactions of a capital nature and those of a revenue nature. And it is not, in principle, a tax on sales. It affects organisations which seek to make a profit (such as trading companies), and those which do not (such as charities), without distinction.

The basic concept of VAT is that of 'supply', and this concept is unique to VAT.

Indirect Tax Reporter: ¶5-650

2-490 Disregard by decision makers

There is a tendency to regard VAT as a fact of life about which nothing can be done. As a result, the men and women who make the decisions affecting the operation of a business frequently ignore VAT in reaching their decisions. It is assumed that any VAT aspects will automatically work their way through, and that commercial decisions are 'VAT-neutral'. In fact, this is often not the case, and the cost of ignoring VAT can be very large.

Many decision makers are accustomed to considering or taking advice on the direct tax consequences of their decisions, but do not treat VAT in the same way. This is a pity, since the VAT at stake can often be much greater than any income tax or corporation tax involved.

Decision makers who ignore direct taxes are often rescued from the tax consequences by the ability of their tax advisers to neutralise any damage by the judicious use of various claims and elections which can be made after the event. For VAT, this is rarely possible, and the VAT aspects need to be considered in advance. This means that VAT, much more than other taxes, needs to be brought into the ordinary business planning process.

Another unusual aspect of VAT is that it directly affects the relationships between the parties to commercial contracts. For most taxes, it is only relations between each party and the revenue authorities which are affected by the tax legislation.

Example

Harry contracts to sell goods to Agnes for £8,000. The contract does not mention VAT. The VAT law provides that, where a supply is made for a consideration in money, the price includes VAT. Thus, Harry must account for VAT at 20% out of the £8,000 which he receives from Agnes. This will cost him £1,333.33 (being 1/6 of £8,000).

If Harry had thought about VAT, he might have contracted to supply the goods for £8,000 plus VAT. Then, he would have received £9,600 from Agnes and would have had £8,000 left after paying £1,600 of VAT (VAT at 20%).

2-520 Disregard by administrators

Because VAT is a tax levied on individual transactions, compliance with the VAT legislation requires that the accounting and book-keeping systems of each business cope correctly with VAT from the level of individual transactions. This has an interesting, but harmful, effect on the way in which VAT is perceived.

Book-keeping functions are traditionally carried out by relatively low grade staff. It is the matters resulting from the assembly of the detailed information, such as appraising the performance of the business or ascertaining the residual profits liable to direct taxes, which tend to be dealt with by highly trained staff. The nature of VAT is such that much of the administration relating to it must be carried out by the junior staff who do the routine bookkeeping. This often results in the tax itself being regarded as a simple and straightforward matter, of no concern to senior administrative staff. Consequences which flow from this are:

(1) this perception of VAT transmits itself to the people making the decisions for the business;

(2) because the tax is thought to be straightforward, the book-keeping staff may not receive adequate training, either in dealing with routine compliance matters or in identifying occasions when special attention is needed;

(3) no senior member of staff takes specific responsibility for monitoring the overall VAT position of the business, or for advising the decision makers on the VAT aspects of proposed actions; and

(4) because there is no real monitoring of the VAT position by senior administrators, mistreatments of routine transactions may continue for years and build up into substantial unexpected liabilities.

Although these matters are couched in terms of a large business, with several levels of staff, they apply in much the same way to small businesses. In these cases, much of the accounting function may be carried out by an outside firm of accountants, but again it is common for much of the VAT work to be carried out by junior staff.

Indirect Tax Reporter: ¶101

2-550 Cumulative effect

Most businesses make large numbers of similar transactions. If a quantity of article X is sold today, a further quantity of article X will be sold tomorrow. Usually, the VAT treatment will not be reconsidered on each sale. Whatever treatment was adopted for the first one is likely to be followed for all the subsequent sales.

The effect of this is that, if the first sale was treated wrongly, this initial mistake will automatically be carried through to all of the future sales. Eventually, it will be discovered (usually by HMRC). When this happens, the initial mistake on what was probably a minor transaction may have accumulated into a major liability.

There are many occasions when the VAT treatment of a transaction is far from clear. Carrying on business without checking and confirming the VAT treatment is as absurd as ordering components without first finding out the price of them. But it is often done.

Indirect Tax Reporter: ¶101

2-580 Enforcement techniques

The differences between the nature of VAT and of other taxes lead inevitably to differences in the way it is enforced.

VAT is levied at the level of individual transactions. It is self-assessed. Reliefs from VAT are to some extent based on documentation received from other businesses. It is also structured in such a way that there are opportunities for individuals to extract money from the tax authorities, and the criminal fraternity have shown no reluctance to avail themselves of these opportunities. Because of these factors, the tax authorities take a far keener interest in the detailed documentation relating to transactions (such as invoices) than is traditional for direct taxes.

VAT officers visit the premises of the business from time to time, or ask for the books and records of the business to be sent to them, in order that they may examine the detailed records of the business to verify the liability as shown on the returns. The frequency of such assurance visits varies

depending on the nature and size of the business. A very small business may not have a visit for several years, while very large businesses can have VAT officers on the premises for most of the time. Long intervals between visits can pose a problem for small businesses. Such businesses generally have fewer resources to cope with the complexities of VAT, so there can be several years' worth of errors to be corrected following a visit (subject to the four-year cap on errors). There is also a natural tendency to take the benefit of the doubt when preparing VAT returns. When the VAT officer finds that there is no doubt, and that tax is due, a hefty liability has often accumulated as a result of a succession of small errors.

This does not mean that large businesses obtain any special protection from the frequency of visits made to them. An assurance visit does not in itself give rise to any agreement of liability. So errors missed at one visit may be picked up at a subsequent one.

As with all taxes, there are a series of penalties in place for businesses that fail to register at the correct time, make errors on returns, fail to pay tax which is due or similar. Failure to comply with the VAT legislation is very costly.

Indirect Tax Reporter: ¶57-800

SOURCES OF LAW AND PRACTICE

2-650 Legislation: statutes and directives

The main VAT legislation is contained in VATA 1994. In addition there is a large body of statutory instruments made under powers contained in the Value Added Tax Act and other statutes. In some areas, and particularly concerning imports of goods, customs and excise legislation (such as the *Customs and Excise Management Act* 1979) has effect for VAT purposes.

The UK law on VAT derives from EC law, notably the Sixth Directive on VAT. Under the Treaty of Rome, the Government is obliged to enact the UK law in such a way as to implement the provisions contained in the European directives and regulations. Consequently, it is sometimes possible to refer to the EC legislation for guidance on the interpretation of the UK law. Furthermore, if the UK law fails to implement the EC law, the citizen is entitled to rely on the EC law where it has direct effect in the UK.

The First and the Sixth VAT Directives were replaced by Directive 2006/112, which came into effect on 1 January 2007.

The new Directive can be found at www.eur-lex.europa.eu following the directions for access to European law.

Legislation: Directive 77/388 of 17 May 1977 (OJ 1977 L145/1); Directive 2006/112 was adopted on 28 November 2006 and came into force on 1 January 2007

Indirect Tax Reporter: ¶2-000

2-680 Finance and tax tribunal

When a dispute arises between a trader and HMRC, the trader may appeal to a tribunal. The decisions are on the public record. These provide important guidance as to the effects of the legislation. Some of these cases have been the subject of appeal to the higher courts in the UK, and also of referrals to the Court of Justice of the European Union, providing further guidance. In addition, decisions of the Court of Justice of the European Union on matters referred to it from other member states can be of relevance.

The contact details are at 1-737.

There is also an alternative dispute resolution for small and medium-sized businesses. This is operated by HMRC and is more informal than a formal appeal. It has proven to be a very successful way of resolving disputes.

Other Material: www.financeandtaxtribunals.gov.uk

Indirect Tax Reporter: ¶61-300

Adjudicator investigates complaints

HMRC appointed an external adjudicator to investigate complaints made against them. The adjudicator is not part of HMRC's management structure. Certain complaints can be referred to the adjudicator's office without charge. The office can investigate complaints about the way HMRC deal with cases, including where HMRC have exercised their discretionary power, for example, requests for time to pay. The adjudicator also considers complaints about attitude, incompetence, errors and delays.

Excluded matters

The adjudicator does not usually consider:

(1) appeals about matters of VAT law and liability, and thus cases which are appealable to a tribunal are outside the adjudicator's remit;

(2) cases once they are before the criminal courts, although the adjudicator can consider any matters raised subsequently which could not have been considered by the courts; and

(3) complaints which have been investigated by the Parliamentary Ombudsman.

Registration and deregistration

REGISTRATION

8-000 Introduction to registration

Businesses making UK supplies

Persons carrying on businesses of making taxable supplies in the United Kingdom (often referred to as traders) are generally obliged to register with Her Majesty's Revenue and Customs. However, not everyone who makes taxable supplies by way of business is forced to register. If the volume of taxable supplies is below certain registration limits, set out at *Hardman's Tax Rates and Tables* 18-080 or Key Data 1-140, then the trader is not obliged to register for VAT.

A trader who wishes to register, but is not obliged to register, can apply for registration. If HMRC (or, on appeal, a Tax Tribunal) are satisfied that the trader is carrying on a business and either makes taxable supplies already or intends to do so in the future, then the trader is entitled to registration. Similarly, registration can also be obtained by a person with a UK business establishment who makes (or intends to make) supplies overseas which would be taxable if made in the UK.

Internal market – special rules

There are special rules requiring registration of UK businesses and other organisations receiving acquisitions of goods from elsewhere in the EC. There are also rules requiring businesses involved in distance selling to the UK or supplying telecommunication services to the UK to register. See 8-430, 8-530 and 8-640.

This section sets out the main rules on registration under each of these heads, the time limits therefore, and various other matters concerned with registration.

Indirect Tax Reporter: ¶5-050

8-010 Scope of registration and person registered

When a person is registered for VAT, the registration covers all of that person's business activities and, in the case of a partnership, covers activities of other partnerships having the same partners (see 3-720 and 3-740). This is because it is the partners themselves who are registered for VAT rather than the partnership as such.

Although a change in partners does not trigger a new registration, merely an amendment to the register, a change from a partnership to a sole trader, or vice versa, does involve a new registration and all of the formalities of deregistration and notification of liability to register must be observed.

In the case of a group of companies for which group treatment has been obtained, the registration of the representative member of the group covers the activities of all of the companies within the group (17-080ff.).

In the case of a company organised in divisions, it is possible to arrange for each division to be entered in the register so that separate returns can be submitted but there is still, in principle, a single registration covering all of the divisions.

A club, association, etc. is registered in its own name. Responsibility for meeting VAT obligations rests with its president, chairman, treasurer, etc. or, if none, its committee or, if none, with every member.

Legislation: VATA 1994, s. 46(1) and (3); *Value Added Tax Regulations* 1995 (SI 1995/2518), reg. 8

Other Material: Notice 700, para. 6.1.4

Indirect Tax Reporter: ¶43-135

REGISTRATION – UK SUPPLIES

8-040 Taxable turnover

The rules for determining whether a trader's business is sufficiently large to make registration mandatory are based upon the trader's taxable turnover. This refers to the amount of the trader's taxable supplies (including zero-rated supplies) in a given period. Consequently, it is not a measure of the size of the trader's business in terms of the net income which can be derived from it, but a measure of the volume of supplies which are made to others.

Example: turnover versus profit

Smith is a self-employed window cleaner. She employs no staff and her total annual sales are £12,000. Her net annual profit is £10,000.

Jones runs a shop. His annual sales are £60,000. By the time he has paid for the goods which he sells and covered his overheads, his net annual profit is also £10,000.

Although Smith and Jones have equivalent businesses in terms of the income which they derive from them, Smith's is only one-fifth the size of Jones's in terms of turnover.

Because the limits are based on turnover, their application is to some extent uneven as between different types of business. Differences can also arise depending on how activities are organised. For instance, consider two labour only building subcontractors, each with annual sales of £50,000. Neither of them is obliged to register for VAT. But if they choose to go into partnership, their combined turnover will exceed the turnover limit (see 8-070) and they will be obliged to register.

Strictly speaking, turnover for VAT includes all taxable supplies made in the course of a business, except that supplies of goods which are capital assets of the business may be ignored in determining whether the turnover limits have been reached. However, capital supplies of land which are taxable at the standard rate may not be ignored.

Example: computation of turnover

Newman is a self-employed debt collector with turnover (for the year to 30 April 2015) of £65,000. He sells his van for £9,000 and buys a new one. Although the sale of the van is a taxable supply, Newman can leave it out of his turnover for VAT registration purposes, so he does not need to register for VAT.

If Newman disposed of commercial property which was under three years old or subject to an option to tax it would be 'turnover' for VAT purposes.

Legislation: VATA 1994, Sch. 1, para. 1(7) and (8)

Other Material: Notice 700/1, para. 2.3

Indirect Tax Reporter: ¶43-002

8-070 Turnover limits: general

Broadly speaking, a person is liable to register for VAT in respect of UK supplies if he makes taxable supplies and his taxable turnover has exceeded the historic turnover limit, or there are reasonable grounds for believing that it will exceed the future turnover limit which applies where

many months after the year-end before he sees them and works out the turnover.

Turnover needs to be monitored monthly. In practice, this generally means that it needs to be done by the trader rather than by his accountant. The accountant who leads his client to believe otherwise may be doing him a disservice.

Legislation: VATA 1994, Sch. 1, para. 5

Other Material: Notice 700/1, para. 4

Indirect Tax Reporter: ¶43-150

8-160 Turnover limit: future

If a trader makes taxable supplies and there are reasonable grounds for supposing that his taxable supplies in the next 30 days alone will exceed the annual turnover limit, he becomes liable to register for VAT. He must then notify HMRC of his liability to register (see 8-220 below).

Because of this requirement, it is not sufficient for a trader to monitor the turnover which he has achieved, and register after he has exceeded the historic turnover limit for the first time. He must constantly look forward and register if it seems likely that he will exceed the turnover limit in the future (this should not be too difficult, given the high amount of anticipated turnover for a 30-day period).

Legislation: VATA 1994, Sch. 1, para. 1(1)(b)

Other Material: Notice 700/1, para. 3.3

Indirect Tax Reporter: ¶43-155

8-190 Notification: future turnover

A person who becomes liable to register for VAT because of anticipated turnover for a future period of 30 days must notify HMRC of this by, at the latest, the end of the 30-day period. They must then register him from the start of 30 days or, if agreed by HMRC and by the trader, from some earlier date. In practice, this may often mean that almost immediate notification is necessary.

Legislation: VATA 1994, Sch. 1, para. 6

Other Material: Notice 700/1, para. 4.2

Indirect Tax Reporter: ¶43-155

8-220 Registration procedure

When a person becomes liable to register for VAT, he must notify HMRC of this fact. In doing this, he is obliged to use the online registration system. In addition, if the trader is a partnership, full details of all the partners must be given.

A trader who makes zero-rated supplies and wishes to apply for exemption from registration on that ground (see 8-290 below) can indicate this fact in a box provided on the form for this purpose.

Online registrations

Most applications for registration may be completed online. The exceptions which must be done by post are as follows:

- exception from registration 8-290;
- 'distance selling' to UK customers 8-550;
- acquisition of goods from other EU countries 8-430;
- sale of goods following input tax claim by overseas trader 8-410;
- farmer's flat-rate scheme 16-850;
- registration for divisions or business units.

Other Material: www.hmrc.gov.uk/news/news011112.htm; Notice 700/2, para. 8.1

Paper applications

The completed application form should be submitted to the Registration Unit (see Key Data 1-705).

Forms VAT 1, VAT 1W and VAT 2 may be obtained from the National Advice Service or printed from HMRC's website.

Welsh-speaking traders can, if they prefer, use form VAT 1W instead of form VAT 1. This is the equivalent form but printed in Welsh. It is not clear whether this facility is available generally, or only in Wales.

See flowcharts 8-980 and 8-995.

Legislation: Value Added Tax Regulations 1995 (SI 1995/2518), reg. 5(1)

Other Material: *www.hmrc.gov.uk/news/news011112.htm*

Indirect Tax Reporter: ¶43-175

8-230 Voluntary registration

A trader who already makes taxable supplies, but is not obliged to register for VAT by reason of either the historic or future turnover limits, can still seek registration if he wishes to do so. Provided that the trader can satisfy HMRC that taxable supplies are being made in the course of business, they are obliged to make the registration.

The application for registration by a trader seeking voluntary registration should be made in the same way as a trader who is obliged to register (see 8-220 above). The only differences are that the voluntary registrant does not have to submit his application by a particular day and that he will find it easier to send a covering letter explaining his business need for registration. In most cases, this is a matter of saying that taxable supplies are being made, and the trader wishes to recover input tax.

Although HMRC are not obliged to allow a voluntary registration to have retrospective effect, they are normally prepared to do so. However, as a matter of policy, they do not allow retrospection in excess of four years. Once an agreement is reached to back-date a registration, the date cannot be subsequently altered (see 8-390).

Planning considerations

A business making taxable supplies to other taxable businesses will generally be better off if it registers for VAT, even if its turnover is not such as to make this mandatory. This enables it to recover input tax on its costs, while the output tax which it charges can be recovered by its customers.

A new business supplying the general public may often wish to defer registration, and it is possible to make considerable supplies free of VAT before registration becomes mandatory (see 8-070). Care may sometimes be needed to avoid permanent loss of input tax on services acquired before registration (see 6-660).

Where there are genuine taxable supplies made in the course of business and the trader wishes to be registered for VAT, HMRC must register the trader if application for registration is made. This can be exploited by small businesses which make essentially exempt supplies. If the business also makes some taxable supplies, the trader can insist on registration. If input tax attributable to the exempt supplies falls below the partial exemption de minimis limit (see 7-520), the whole of the trader's input tax can be recovered.

Legislation: VATA 1994, Sch. 1, para. 9(a)

Other Material: Notice 700/1, para. 3.9 *Should I be registered for VAT?*

Indirect Tax Reporter: ¶43-225

8-260 Intending trader registration

A person who does not yet make taxable supplies, but intends to do so, can also apply to be registered for VAT. Such a person will typically have started business already but still be at the stage of developing products or markets, so that taxable supplies have yet to be made.

If HMRC (or a Tax Tribunal) are satisfied that taxable supplies are intended to be made, they must allow such a registration. In reaching a decision, they will tend to look for such things as the existence of business premises or of firm orders for the ultimate product. The more evidence which can be produced of a genuine taxable business activity, the better.

Provided that there is a genuine intention to make taxable supplies by way of business, input tax recovered under an intending trader registration can be retained even if the proposed venture proves abortive and no supplies are actually made.

HMRC have guidelines for the required evidence that will establish firstly, that there is a business and secondly, that the trader intends to make taxable supplies.

The evidence could include the following:

- copies of invoices, for example from an accountant or business adviser;
- details of efforts made to secure finance for the project;
- details of any contracts for supply or receipt of goods or services;
- details of actual or proposed advertising;
- details of any application for planning permission; and
- business plan or minutes of meetings or the like.

HMRC will examine this evidence to determine that the supplies to be made will be taxable supplies, not exempt supplies. Thus, they will be specially vigilant where the business will be making supplies of land and property. They will need to be satisfied that the relevant supplies will be taxable, not exempt.

It should be noted that the intention of making taxable supplies confers a right of registration, and consequent input tax recovery, even if the business has in fact failed, and the prospect of making supplies has vanished, by the time HMRC consider the case.

A trader who has not yet made any taxable supplies, and so is seeking registration as an intending trader, must indicate the expected annual value of taxable supplies, and when these may commence.

HMRC are reviewing the level of evidence required for an 'intending trader' in the light of the assessment of risk posed by making VAT registration easier.

Legislation: VATA 1994, Sch. 1, para. 9(b)

Cases: *Rompelman v Minister van Financiën* (Case 268/83) (1985) 2 BVC 200,157; *Merseyside Cablevision Ltd* (1987) 3 BVC 596; *Intercommunale voor Zeewaterontzilting (INZO) (in liquidation) v Belgium* (Case C-110/94) [1996] BVC 326; *Finanzamt Goslar v Breitsohl* (Case C-400/98) [2000] ECR I-4321

Other Material: Notice 700/1, para. 3.9

Indirect Tax Reporter: ¶43-250

8-290 Exception from registration

A trader who makes only zero-rated supplies can, if he wishes, apply to be excepted from registration even though his taxable turnover exceeds the registration limits. This allows a trader who would only be reclaiming tax from the revenue, not paying tax into it, to escape from the administrative requirements of VAT registration. The cost to him is the input tax which he would otherwise be able to reclaim.

In fact, exception from registration can be sought by a trader who makes some standard-rated supplies, if most of his supplies are zero-rated. Such exception may well be granted if it appears likely that the trader will generally be reclaiming VAT rather than paying it over.

HMRC can withdraw exception from registration at any time. In addition, a trader who is granted exception from registration is obliged to give notification, within 30 days, of any material change in the nature of the supplies which he makes, or of any material alteration in any calendar quarter in the proportion of his taxable supplies which are zero-rated. A trader excepted from registration therefore takes on significant obligations to monitor the potential VAT position, over and above those faced by a below limits unregistered trader.

Legislation: VATA 1994, Sch. 1, para. 14(1)–(3)

Other Material: Notice 700/1, para. 3.11

Indirect Tax Reporter: ¶43-025

8-320 Overseas supplies, etc.

A trader established in the UK can also be registered for VAT without making any UK taxable supplies. This applies if the trader:

(1) makes supplies outside of the UK which would be taxable if made within the UK; or

(2) makes supplies in bonded warehouse which would otherwise be taxable (since these supplies are deemed to take place outside the UK, and so fall within (1) above).

Such a trader can apply to HMRC to be registered for VAT (but is not obliged to register).

A trader who makes no taxable supplies, but does make exempt financial supplies to overseas customers in respect of which input tax is deductible (see 6-420, 14-400) may register in order to recover input tax.

Legislation: VATA 1994, s. 18 and Sch. 1, para. 10

Indirect Tax Reporter: ¶43-275

8-350 Previous owner's turnover

There is a special rule for determining taxable turnover for the purposes of the registration limits where a business has been taken over as a going concern. In determining whether the new owner is liable to be registered for VAT, he is deemed to have made the taxable supplies of that business before the transfer as well as after it. Thus, he has to count the previous owner's turnover as well as his own in checking whether he has reached the turnover limits.

This rule applies only if the person who previously carried on the business was himself a taxable person.

There is no provision to enable the new owner of the business to discover the turnover of the previous owner.

Note that the carrying over of the previous owner's turnover position needs to be borne in mind when the trade of a company is transferred under ICTA 1988, s. 343, particularly given the need for the successor company to register for VAT and the penalties for delay in this.

Legislation: VATA 1994, s. 49(1)(a)

Other Material: Notice 700/1, para. 3.8

Indirect Tax Reporter: ¶43-775; ¶54-155

8-380 Effective date of late registration

A person who becomes liable to register for VAT may not realise this until some time later (in some cases, years later). Where this happens, the liability to be registered will still have existed from the proper time. Furthermore, the trader will (unknowingly) have been a taxable person throughout, since a taxable person is defined as one who makes taxable supplies and either is or is required to be registered.

This applies even if, after the liability to register came about, the person's turnover dropped so that deregistration could have been obtained, and even if the person could have applied not to be registered on grounds of low anticipated turnover. This is because it is a prerequisite for such deregistration or non-registration that HMRC are satisfied that future supplies are likely to be below the deregistration limit, and they cannot have been so satisfied without being provided with the relevant information.

In order to reflect this position, the registration of such a person will be made with retrospective effect to the proper registration date. He will be required to account for any output tax which has become due from that effective registration date. By the same token, he can reclaim input tax arising from then, provided that he holds the necessary evidence for reclaiming the tax.

Apart from the tax itself, a person registering late may be liable to a penalty for late registration. It should also be noted that there is no relief from the tax liability merely because customers would have been able to reclaim any tax charged to them. See 10-100.

Legislation: VATA 1994, s. 3(1) and Sch. 1, para. 1(3), 4(1)

Other Material: Notice 700/1, para. 4

Indirect Tax Reporter: ¶43-149

8-390 Incorrect registration date

When the wrong registration date is obtained because of an error made when completing the application, HMRC may use their general care and management powers to allow a change. They state that they will only do this if, when completing the original application, the applicant applied to be registered earlier than they needed to be, a genuine error was made when completing the original application, the business requests the change before the due date for submitting the first return and returns the original VAT registration certificate.

If HMRC make an error when processing the application for registration, they 'can or must correct' the mistake.

In appeals about this, tribunals have a supervisory role only. They are limited to considering 'whether HMRC … acted in a way in which no reasonable panel of Commissioners could have acted or whether … (HMRC) … have taken into account some irrelevant matter or have disregarded something to which they should have given weight'.

When registering voluntarily, the chosen registration date may not normally be altered later. HMRC's explanation for this is that 'when the trader applied for registration he had the opportunity to negotiate his EDR (effective date of registration) then and the legislation does not allow this date to be changed retrospectively'.

Within a month of receiving the registration certificate, a trader registering voluntarily applied for an earlier registration date in order to recover pre-trading input tax. HMRC refused to backdate the registration. At appeal, the First-tier Tribunal acknowledged that HMRC's decision was consistent with their normal policy for dealing with applications like this. The tribunal also found that the appellant 'had not understood the adverse implications of what he was doing'. The ruling of the tribunal was that HMRC should reconsider the matter because 'the applicant's genuine error never came to the attention of the registration officer and, in that respect, he or she failed to take account of what we see to be a relevant consideration in determining whether there were mitigating circumstances'.

Legislation: VATA 1994, Sch. 1, para. 9

Cases: *John Dee Ltd v C & E Commrs* [1995] BVC 125; *Lead Asset Strategies (Liverpool) Ltd* [2009] TC 00090; *Cambrian Hydro Power Ltd* [2012] TC 02423

Other Material: HMRC Manual at VATREG25350 and 25400

Indirect Tax Reporter: ¶43-184

8-400 Overseas business trading in the UK

An overseas business making taxable sales in the UK must register for VAT. Such businesses can no longer avoid VAT registration because their taxable sales in the UK are below the VAT registration threshold.

The obligation to register for VAT is triggered by the first sale made in the UK.

Common examples of businesses affected by this measure are overseas market traders who sell at UK markets and Southern Ireland services providers like plumbers and builders who do work in Northern Ireland.

Example

O'Leary is a Southern Ireland firm of plumbers. They are registered in Southern Ireland for VAT. For many years they have done some work in Northern Ireland. Normally the sales in Northern Ireland are not more than £10,000 per annum.

Until 1 December 2012, O'Leary has no obligation to register for UK VAT because the value of taxable sales in Northern Ireland is well below the UK VAT registration threshold. Due to the withdrawal of the VAT threshold for overseas businesses making taxable supplies in the UK, O'Leary must register for VAT from the date of its first taxable supply in Northern Ireland after 1 December 2012.

Legislation: VATA 1994, Sch. 1 (introduced by FA 2012)

Other Material: HMRC Brief 31/12; Notice 700/1, para. 9

8-410 Registration – overseas traders selling UK goods

There are special provisions requiring UK registration by traders established outside the UK who make UK supplies of goods on which input tax has been, or will be, reclaimed under the special provisions for overseas traders (see 6-740), regardless of the turnover limits and regardless of whether the goods concerned are capital assets.

Legislation: VATA 1994, Sch. 3A

Other Material: Notice 700/1, para. 7

Indirect Tax Reporter: ¶43-045

REGISTRATION – ACQUISITIONS OF GOODS FROM OTHER EC COUNTRIES

8-430 Introduction to acquisitions of goods from other EC countries

There is a possible liability to register by an organisation not registered for VAT in the UK which acquires goods from EC suppliers. The effect of registration is to bring these acquisitions into the UK VAT net, instead of that of the other EC countries concerned, and prevents substantial 'VAT rate shopping' between member states.

This provision applies not only to (exempt) businesses, but also to clubs, associations, bodies corporate and unincorporated associations acquiring goods for non-business activities.

If the value (net of VAT) of intra-EC acquisitions by a 'person' since 1 January of a calendar year exceeds the acquisitions limit (see *Hardman's Tax Rates and Tables* 18-080 or Key Data 1-140), the 'person' becomes liable to register for VAT.

The effects of registration are:

(1) the overseas supplier can zero-rate its supplies, quoting the organisation's UK VAT registration number on its invoice; and

(2) the UK organisation becomes liable to account for UK VAT on its acquisitions from elsewhere in the EC (see 3-240).

This liability to register is illustrated in the flowchart at 8-960.

Other Material: Notice 700/1, para. 7

Indirect Tax Reporter: ¶64-300

8-450 Persons affected

Businesses which are already registered for VAT are already obliged to account for VAT on acquisitions of goods from elsewhere in the EC.

The liability to register in respect of acquisitions is therefore of importance to persons not already registered, or liable to be registered, for UK VAT. The liability to register applies to:

(1) any person carrying on a business; and

(2) a body corporate, club, association, organisation or unincorporated body carrying on a non-business activity.

Where such a person acquires goods from a taxable person in another member state, and the place of acquisition is the UK, the transaction counts for acquisition tax purposes.

Legislation: VATA 1994, s. 3, 10(3)(a) and Sch. 3

Other Material: Notice 700/1, para. 7.1

Indirect Tax Reporter: ¶64-300

8-470 Acquisitions limit

A person becomes liable to register in respect of acquisitions from elsewhere in the EC if:

(1) at the end of any month, the value of acquisitions from the previous 1 January to the month end exceeds the annual acquisitions limit (see *Hardman's Tax Rates and Tables* 18-080 or Key Data 1-140); or

(2) at any time, there are reasonable grounds for believing that the value of acquisitions in the following 30 days will exceed the annual acquisitions limit.

The value of acquisitions for this purpose is reckoned exclusive of any overseas VAT charged. Acquisitions of new means of transport, and of excise goods, are ignored as there are alternative provisions rendering these liable to UK VAT (see 5-400).

A person who becomes liable to register because of past acquisitions has 30 days from the end of the month in which the limit was exceeded in which to notify HMRC, and they must register him from the end of the month following that in which the limit was exceeded (or a mutually agreed earlier date).

A person who becomes liable to register because of anticipated acquisitions must notify HMRC of this before the end of the 30-day period concerned, and they must register him from the beginning of that period (or a mutually agreed earlier date).

Where a taxable person becomes liable to register in respect of zero-rated acquisitions, he may apply for exemption from registration.

Legislation: VATA 1994, Sch. 3, para. 8

Other Material: Notice 700/1, para. 7.2

Indirect Tax Reporter: ¶64-300

8-490 Voluntary registration

It is also possible to register voluntarily in respect of acquisitions, or intended acquisitions, regardless of the amounts involved. This may be advantageous either because the rates of VAT are higher in the supplier countries, or as a matter of administrative convenience where it is expected that the registration thresholds will in any case be exceeded before long.

HMRC may impose conditions on such a voluntary registration.

Legislation: VATA 1994, Sch. 3, para. 4

Other Material: Notice 700/1, para. 7.3

Indirect Tax Reporter: ¶64-300

8-510 Ceasing registration

Persons registered solely because of the level of acquisitions must deregister if the acquisitions cease. They may also deregister when the value of acquisitions falls below the registration threshold. However, this is subject to the following conditions:

(1) they have not exceeded the acquisitions threshold in the previous calendar year; and

(2) they are able to satisfy HMRC that they will not exceed the threshold in the current year.

Voluntary registrations may not be cancelled for at least two years. The registration cannot be cancelled until 1 January following the second anniversary of the registration date.

Legislation: VATA 1994, Sch. 3, para. 6 and 7

Other Material: Notice 700/11, para. 4

Indirect Tax Reporter: ¶43-940

REGISTRATION – DISTANCE SELLING TO THE UK

8-530 General

As discussed at 3-920(6), a trader established elsewhere in the EC can become liable to register for VAT in the UK in respect of sales of goods to UK customers who are not registered for VAT. The place where such supplies are deemed to be made is then the UK, and the overseas supplier must account for VAT accordingly.

The distance selling registration provisions apply to a person who makes relevant supplies, being supplies of goods which involve the removal of the goods to the UK from another member state, and their acquisition in the UK by a person who is not a taxable person.

The rules governing liability to register as a distance seller are illustrated in the flowchart at 8-970.

Legislation: VATA 1994, Sch. 2, para. 10

Other Material: Notice 700/1, para. 6

Indirect Tax Reporter: ¶43-030

8-550 Distance selling limit

A person who is not otherwise liable to register for VAT becomes liable to register on a day when the total value of his relevant supplies to the UK since the previous 1 January exceed the distance selling threshold (see *Hardman's Tax Rates and Tables* 18-080 or Key Data 1-140).

The value of relevant supplies for this purpose is reckoned exclusive of any overseas VAT charged.

Notification must be made to HMRC within 30 days from the time when the liability to register arose, and they must register him with effect from the day when the liability arose (or from a mutually agreed earlier date).

Legislation: VATA 1994, Sch. 2, para. 1(1) and 3

Other Material: Notice 700/1, para. 6

Indirect Tax Reporter: ¶43-030

8-570 Excise goods

A person who makes such supplies of excise goods (i.e. goods liable to a duty of excise, such as tobacco products, alcoholic beverage, petrol, etc.) becomes liable to register as soon as such supplies are made. There is no turnover limit for excise goods.

The same notification and registration rules apply as for registration when the turnover limit is exceeded.

Legislation: VATA 1994, Sch. 2, para. 1(3)

Other Material: Notice 700/1, para. 6.6

Indirect Tax Reporter: ¶63-280

8-590 Voluntary registration

A person belonging in another member state who has elected to treat his UK distance sales as taking place outside that state becomes liable to register in the UK when he makes such a supply.

The same notification and registration rules apply as for the other categories of distance selling registration.

A person intending to make an election to treat his UK distance sales as made outside his own member state, or who has made such an election, and intending to make distance sales to the UK, may request registration as a distance seller, and HMRC may impose conditions on such a registration. However, if the person also qualifies for voluntary registration as a UK intending trader or as a person making supplies outside the UK and having a business establishment in the UK, he will be registered under VATA 1994, Sch. 1 rather than Sch. 2.

A person who has registered on the basis of an intended election, or intended distance sales to the UK, must notify HMRC within 30 days of the intended election or sales taking place (VATA 1994, Sch. 2, para. 5(2) and (3)).

Legislation: VATA 1994, Sch. 2, para. 1(2) and 4

Other Material: Notice 700/1, para. 6.8

Indirect Tax Reporter: ¶43-030

8-610 Ceasing registration

A person ceases to be registrable if a position arises where he is neither obliged, nor able, to register under any of the UK VAT provisions, taking each separately. He must notify HMRC of this within 30 days of ceasing to be registrable.

A person who ceases to be liable to be registered may have his registration cancelled, provided he is not liable to be registered under other provisions. Also, HMRC may cancel the registration of a person who has registered voluntarily, and who has failed to make the intended election or supplies, or has breached any conditions imposed.

Legislation: VATA 1994, Sch. 2, para. 5(1) and (4), 6 and 7

Other Material: Notice 700/11, para. 4.1

Indirect Tax Reporter: ¶43-930

8-620 Registration of UK suppliers in other member states

A UK trader making distance sales to other member states, but not compulsorily registered there, can make elections similar to those mentioned in 8-590 above. Distance sales to the other member states concerned are then treated as made in those member states and not in the UK.

Such an election must be notified to HMRC within 30 days before the date on which the first supply under it is to be made, and the trader must within 30 days of making that first supply provide documentary evidence of having notified the other member state of the election. If the election is subsequently withdrawn, the trader must notify HMRC of this within 30 days before the first supply intended following such withdrawal. However, the withdrawal cannot take effect before 1 January which is, or follows, the second anniversary of making the first supply under the election.

A trader voluntarily electing to treat distance sales to another member state as being made in that state is, therefore, bound by that election for a period of two to three years.

Legislation: VATA 1994, s. 7(5); *Value Added Tax Regulations* 1995 (SI 1995/2518), reg. 98

Other Material: Notice 725, para. 6.5

Indirect Tax Reporter: ¶43-046

REGISTRATION – SUPPLIERS OF ELECTRONIC, TELECOMMUNICATION AND BROADCASTING SERVICES

8-623 Introduction

From 1 January 2015, two registration schemes are available throughout the EU. There is one for EU suppliers, known in the UK as the 'Union Scheme', and another for non-EU suppliers, known in the UK as the 'Non-union Scheme'. The purpose of both schemes is to allow suppliers to register in one EU state and use the registration to account for all EU supplies of electronic, telecommunication and broadcasting services. The schemes are known as Mini One Stop Shop ('MOSS'). See 8-973 for the flowchart dealing with this.

8-625 Special scheme for EC suppliers – the Union Scheme

Mini One Stop Shop ('MOSS') allows suppliers established in the EU to register in one EU state to account for tax due on supplies of electronic, telecommunication and broadcasting services. Using this registration, they may account for VAT chargeable on supplies made to non-business customers belonging anywhere in the EU. If they do not do this, they will have to register in each EU state in which they have non-business customers.

Businesses registering under this scheme will make a single VAT return declaring the tax charged in each state to which they supply these services and the rate applicable in the state concerned. In practicable terms, the return will show a breakdown of sales between states and the tax in each state.

This scheme came into operation with effect from 1 January 2015.

Principle conditions

MOSS registrations are only available to businesses supplying the following services:

- telecommunications and/or broadcasting services; and
- electronically supplied services (see 5-800).

MOSS registrations are voluntary, but a business with a MOSS registration must use it for all relevant supplies. It may not be used for supplies to some EU countries but not others.

Another restriction is that MOSS registrations are not available for business-to-business supplies. MOSS registrations are available only to businesses supplying any of the above services to non-business customers.

The non-business customers must not be in the same country as the supplier. MOSS registrations are for businesses supplying the above services to non-business customers in a country in which the supplier does not have a business establishment.

Example

A UK firm, Promiscuous, supplies broadcasting services to businesses and private homes in several EU states. Promiscuous has its head office in the UK and also has fixed establishments in France and Germany.

Promiscuous is not entitled to use a MOSS registration to account for VAT on supplies to business customers. Due to having fixed establishments there, Promiscuous may not use MOSS to account for VAT on supplies to non-businesses customers in France and Germany.

Promiscuous is entitled to use MOSS to account for VAT on supplies to non-business customers in EU states other than UK, France and Germany.

Businesses may have only one MOSS registration. They may not have MOSS registrations in two or more EU states although, if entitled to a MOSS registration in more than one EU country, the business may choose in which country it has its MOSS registration.

UK businesses trading below registration threshold

When a UK business which is not VAT-registered, supplies electronically supplied services to non-business persons in another EU state, 'VAT' on these sales must be accounted for as detailed above. Like VAT-registered businesses, they have an obligation to account for 'VAT' in the member state in which their customer is located. Also, they must obtain a UK VAT registration if they want to obtain a MOSS registration. However, by concession, these businesses need not account for VAT on their UK sales.

The concession by which a UK business which is not VAT-registered may obtain a MOSS registration and not have to account for VAT on their UK sales was announced in December 2014. HMRC describe the concessions as follows:

> 'These simplified VAT registration arrangements will only be available to you if:
>
> - you are a UK-based supplier of digital services
> - you wish to use the VAT MOSS
> - your UK taxable turnover is below the UK-VAT registration threshold ...
>
> ... If you make taxable supplies of digital services to customers in other EU member states, and your UK taxable turnover is below the UK VAT registration threshold, you may use the VAT MOSS to account for the VAT due in other EU member states but you do not need to account for and pay VAT on sales to your UK customers.
>
> In these circumstances, you must:
>
> - apply for UK VAT registration (see below)
> - restrict any VAT refund claims you submit to HMRC to amounts directly attributable to your cross-border EU sales activities on which you will be accounting for VAT through MOSS (see Reclaiming VAT on your expenses and purchases below) ...'

It must not be overlooked that when UK taxable sales exceed the registration threshold, VAT must be accounted for on these sales.

Filing returns

Returns are filed with the country granting the MOSS registration. The returns will be three-monthly based upon calendar quarters. They must be submitted within 20 days of the end of the calendar quarter.

MOSS returns are a means of paying output tax on relevant cross-border sales. Input tax may not be claimed through the returns.

Output tax and net sales must be declared for each EU state to which relevant supplies were made. It is not also necessary to declare these sales on an EC sales list.

VAT groups

A VAT group may have only one MOSS registration. This will be allocated to the group's representative member. However, any EU country in which the VAT group has a fixed establishment is excluded from the MOSS registration. Instead, a local VAT registration must be arranged in the EU country where there is a fixed establishment.

Compliance matters

Necessary adjustments following the submission of a return must be made by correcting the original return rather than by an adjustment on a current return. Corrections may be made up to three years from the end of the quarter. Later adjustments to the tax due to a particular EU country may be possible by contacting that country direct and if the local time limit for making adjustment is longer than three years.

VAT MOSS records must be retained for ten years. The ten-year period applies annually rather than quarterly and runs from 31 December.

Tax authorities may cancel a MOSS registration when a business infringes the legal conditions imposed on users. When this is done, the business is banned for two years from having another MOSS registration.

Legislation: VATA 1994, Sch. 3BA as inserted by FA 2014

Other Material: HMRC's publication the '*Place of supply of digital services and VAT Mini One Stop Shop (MOSS) Guidance*', www.hmrc.gov.uk/posmoss/index.htm; HMRC Brief 46/14; HMRC Brief 4/16 VAT MOSS – Simplifications for businesses trading below the VAT registration threshold

Indirect Tax Reporter: ¶13-500

8-630 Special scheme for non-EC suppliers – the Non-union Scheme

Supplies of telecommunication, broadcasting and other electronic services by non-EC businesses to EC consumers are taxable in the EC. Normally, this would involve such suppliers needing to register in each member state.

Land, property and construction

LAND, PROPERTY AND CONSTRUCTION

15-000 Introduction

This section provides an overview of the application of VAT as it affects the construction, alteration and repair of buildings and the sale and letting of land and buildings.

Property and construction is a notoriously difficult and complex area of VAT, and businesses will be well advised to take professional advice before undertaking even the simplest of property-related transactions. The purpose of this section is to provide a general introduction to the subject, and is a guide to the factors that must be taken into consideration when dealing with property transactions and developments.

It is necessary to consider property transactions and construction services separately.

15-020 Introduction to land transactions

Transactions in land are normally exempt from VAT unless specifically standard- or zero-rated. Certain transactions may be converted to standard-rated supplies by use of the 'option to tax' provisions. The reduced rate of VAT does not apply to land transactions.

15-040 Meaning of land

'Land' is regarded as including buildings, structures, natural objects attached to the land, etc. so long as they remain attached. It may include water covered areas such as riverbeds. An interest in land or a right over land is a legal interest such as the freehold, a lease or tenancy, or a right to remove minerals from it.

Case: *Fonden Marselisborg Lystbådehavn v Skatteministeriet* (Case C-428/02) [2007] BVC 808

Other Material: Notice 742, para. 2.1

15-060 Transactions in land

Land transactions include the grant, assignment or surrender of:

(1) any interest in land;

(2) any right over land; or

(3) any licence to occupy land.

As a matter of principle, a right to call for, be granted or surrender such an interest, right or licence is itself an interest in land, and so capable of falling within the exemption. However, in Scotland such a personal right is not considered to be a right over land, and the legislation therefore makes specific provision bringing such a right within the exemption.

Some supplies falling within these categories are excluded from the exemption (see below).

Major interest

A major interest means a freehold interest or a lease or a tenancy for a term exceeding 21 years. In Scotland, 'freehold interest' is replaced by the interest of the proprietor of the dominum utile or in the case of land not held on feudal tenure, the estate or interest of the owner.

Legislation: VATA 1994, s. 96(1)

Indirect Tax Reporter: ¶33-155

Licence to occupy land

The exemption does not extend to all licences relating to land, but only to a licence to occupy the land.

A licence to occupy land is a licence falling short of a legal interest in the land. It must relate primarily to occupation of the property, rather than to doing something else which happens to involve going on to the land, and it must be possible to identify the land concerned.

HMRC's interpretation of 'licence to occupy land'

According to HMRC there is a licence to occupy land when a 'licensee is granted right of occupation' of:

- a defined area of land (land includes buildings);
- for an agreed duration;
- in return for payment; and

- has the right to occupy that area as owner and to exclude others from enjoying that right.

All four conditions must be met.

Characteristics of a 'licence to occupy land'

In *Sinclair Collis Ltd v C & E Commrs*, Sinclair Collis Ltd provided, operated and maintained cigarette vending machines for the sale of cigarettes in public houses, clubs and the like. Sinclair Collis could select the site for the machines and under the agreement the site owner could not unreasonably refuse permission for any change of siting. The agreement was for a period of two years during which time Sinclair Collis had the right to install and operate the machines which remained the property of Sinclair Collis.

In 1996, HMRC decided that these agreements should be exempt under the Sixth Directive (now Directive 2006/112). Sinclair Collis appealed saying that the supplies were taxable. The VAT and Duties Tribunal agreed with Sinclair Collis; this was overturned by the High Court. The Court of Appeal subsequently agreed with the High Court and so Sinclair Collis appealed to the House of Lords. The House of Lords sent a reference for a preliminary ruling to the ECJ asking if such an agreement was capable of amounting to the letting of immovable property within the meaning of art. 13(B)(b).

The ECJ found that:

> 'it is settled that the fundamental characteristic of the letting of immovable property for the purposes of art. 13(B)(b) of the Sixth Directive (now Directive 2006/112 art. 135(1)(l), 135(2) lies in conferring on the person concerned, for an agreed period and for payment, the right to occupy property as if that person were the owner and to exclude any other person from enjoyment of that right (see to that effect Goed Wonen para. 55 and *C & E Commrs v Cantor Fitzgerald International* [2002] BVC 9).'

Thus, the arrangement between Sinclair Collis and the site owners was not the letting of immovable property. There were no rights of possession or control to Sinclair Collis other than those expressly set out in the agreement between the parties.

Hairdressers

Following the Budget 2012, *Finance Act* 2012 included a measure that all hairdresser 'rent-a-chair' agreements be subject to VAT from 1 October 2012. The measure included the letting of a 'whole floor, separate rooms or clearly defined area' when the lessor also provides 'hairdressing services' to the lessee. For these purposes, hairdressing services means providing 'a hairdresser's assistant or cashier, the

booking of appointments, the laundering of towels, the cleaning of the facilities … the making of refreshments and other similar services'.

Consideration for the supply

The manner in which the consideration for the supply is calculated does not affect the nature of the supply made. For instance, in one case involving the grant of a concession to operate shops, the consideration for which was calculated as a percentage of sales from those shops, it was held that the substantive supply made amounted to a licence to occupy land and so was exempt. Great care is needed in the case of such supplies to ascertain exactly what rights, etc. are granted.

Legislation: Directive 2006/112, art. 135(1)(l), 135(2); VATA 1994, Sch. 9, Grp. 1, item 1(ma)

Cases: *British Airports Authority v C & E Commrs* [1976] 1 BVC 97; *Quaife* [1983] 2 BVC 208,010; *Sinclair Collis Ltd v C & E Commrs* [2003] BVC 374

Other Material: Notice 742, para. 2.5; VAT Information Sheet 13/12 *VAT: Hairdressers Chair Rental*

Indirect Tax Reporter: ¶33-185

15-080 Variations of leases

The variation of a lease may result in it being regarded as having been surrendered and a new lease granted. This is a very complex area of land law and professional advice should be sought in respect of the specific variation being made and the consideration being given. The VAT liability of consideration paid by a tenant to a landlord for the variation of the terms of a lease will follow that of any rent due under the lease.

If the correct analysis is that there has been a surrender of the existing lease and the grant of a new lease, then whether there is a VAT liability on the grant of the new lease depends upon whether an election to waive the exemption has been made.

Other Material: Notice 742, para. 10.5

Indirect Tax Reporter: ¶34-775

15-100 Inducements, reverse premiums and reverse assignments

Offering an inducement to a prospective tenant to take a lease may be a supply of services by the prospective tenant to the landlord. The service supplied is not the grant of an interest in land. A reverse premium is where

a landlord pays a tenant in order to induce the tenant to enter into a lease of the landlord's property.

HMRC's policy concerning 'lease obligations, to which tenants are normally bound' is as follows:

> 'There will be a taxable supply only where payment is linked to benefits a tenant provides outside normal lease terms. However, merely putting such a benefit as an obligation in a lease will not mean it ceases to be a taxable supply.'

A tenant may provide 'benefits … outside normal lease terms' by agreeing to make improvements/refurbishments to the property or by 'acting as anchor tenant'. Improvements/refurbishments may be 'carrying out building work to improve the property …' or carrying out fitting-out work or refurbishment works for which the landlord has responsibility and is paying the tenant to undertake.

HMRC's views on reverse assignments is as follows:

> 'A reverse assignment is where a tenant pays a person in order to induce that person to take an assignment of the existing lease.
>
> *Mirror Group* and *Cantor Fitzgerald International* were both references from the High Court under Article 177 of the EC Treaty (now Article 234) to the ECJ for preliminary rulings on points of law that involved property deals. The cases were not joined although the ECJ issued the rulings on the same day and both of the cases involved Article 13B(b) of the Sixth Directive.

The facts

Mirror Group entered into an agreement with Olympia & York Canary Wharf Ltd (in administration), whereby a total of about £12m plus VAT could be paid to Mirror Group. Part of this payment would be as an inducement to take a lease and part as an inducement to take up an option for leases. The sum of £6.5m was deposited in an account so that when the current leases ended and Mirror Group had to enter into new leases, the money, or part of the money, would be released.

Prior to the transactions, Mirror Group had no interest in the land.

Cantor Fitzgerald International agreed to take over a lease on some property from Wako International (Europe) Limited (Wako) in return for a payment of £1.5m.

Prior to the transaction, Cantor Fitzgerald had no interest in the property.

The problem

Were these payments liable to VAT or were they exempt under Article 13B(b)?

The law

Article 6 of the Sixth VAT Directive states that any transaction that does not constitute a supply of goods is a supply of services and that services may include "obligations to refrain from an act or to tolerate an act or situation".

Article 13B(b) of the Sixth VAT Directive allows the letting or leasing of immovable property to be an exempt supply.

The rulings

In the case of the payments to Mirror Group, it was decided that neither payment constituted consideration for supplies under Article 13B(b). It was not specified exactly what supplies were actually made by Mirror Group. It was sufficient for the ECJ to rule that the supplies were not exempt under this legislation because Mirror Group did not have an interest in the land prior to the transactions.

In the second case, it was ruled that the acceptance for a consideration of an assignment of the lease of a property in this situation was not exempt because again Cantor Fitzgerald did not have an interest in the land prior to the transaction.

These cases must be distinguished from the situation in *Lubbock Fine*. Neither Mirror Group nor Cantor had any interest in the land. Lubbock Fine was in possession of a lease and thus had an interest in land at the start of proceedings.'

See flowcharts 15-490, 15-530 and 15-550.

Legislation: Directive 2006/112, art. 135(1)(l), 135(2)

Cases: *Lubbock Fine & Co v C & E Commrs* (Case C-63/92) [1993] BVC 287; *Mirror Group plc v C & E Commrs* (Case C-409/98) [2002] BVC 16; *Cantor Fitzgerald International v C & E Commrs* (Case C-108/99) [2002] BVC 9

Other Material: Notice 742, Pt. 10

Indirect Tax Reporter: ¶34-800

15-120 Release of restrictive covenants

The release of a restrictive covenant over land involves the grant of an interest in or right over the land, and so the supply made is exempt from VAT unless the supplier has opted for taxation.

Other Material: Notice 742, para. 10.6

Indirect Tax Reporter: ¶37-675

15-140 Joint ownership

The legal position where property is owned jointly is far from being clear. This has not mattered unduly in the past, when land transactions have generally been exempt or zero-rated for VAT purposes. The introduction of standard rating for many property transactions, and particularly the option for taxation, means that VAT must now be brought into consideration where property is owned jointly.

It is also necessary to consider the position where there is a difference between the legal ownership of land (i.e. the names on the deeds) and the beneficial ownership. This deems a 'grant', etc. to be made by the person to whose benefit the consideration for the grant, etc. accrues.

The 'person to whom the benefit accrues' was considered in *Abbey National v C & E Commrs* [2005] BVC 331. The High Court endorsed the view that 'accrues' may be interpreted as a right to receive rental income. Thus, for VAT purposes the 'beneficial owner', and the person who must account for VAT, is the person to whom the proceeds accrue.

HMRC normally want joint owners to register as a partnership. This may be a convenient solution for VAT purposes but the joint owners should be sure that they are registering 'as if they were a partnership' rather than as an actual partnership in order to avoid prejudicing their position for other purposes.

If the theoretical difficulties of joint ownership are recognised in advance, they can often be resolved by agreeing a suitable treatment with HMRC. Where the joint owners are on good terms, this is usually the best practical solution, and avoids the cost of litigation.

In the case of joint owners who are at odds with each other, this sort of solution may not be available. It seems likely to be this sort of case which will lead to litigation to resolve (or confuse) the technical position.

Legislation: VATA 1994, Sch. 10, para. 40

Case: *Abbey National v C & E Commrs* [2005] BVC 331

Other Material: Notice 742, Pt. 7; HMRC Manuals at VATLP04200 and VATREG09150

Indirect Tax Reporter: ¶33-150

15-160 Zero-rated supplies of buildings

Introduction

In order to qualify for zero-rating, the transaction must involve the first grant of a major interest in a new dwelling, relevant residential building or building for charitable use. Further restrictions apply in respect of substantially reconstructed listed buildings.

When the major interest is a lease, zero-rating only applies to the premium payable or, where there is no premium payable, to the first rent payment.

Checklist

Within each category, there are certain conditions and reservations. Anyone dealing with potentially zero-rated land transactions should check the following carefully:

(1) the required grant of a major interest is made by the appropriate person;

(2) that a new dwelling, relevant residential building or building for charitable use is being created; and

(3) the required certificate is obtained for relevant residential buildings or buildings for charitable use.

In the case of a building for relevant residential or charitable use, the supplier must hold a certificate of use issued by the customer, before the supply is made, in order to qualify for zero-rating.

See flowcharts 15-570, 15-590 and 15-610.

What is 'new'

'New' is not defined in the legislation.

For the purposes of the zero-rating schedule, a 'new' building may be created by the following:

- the creation of an entire building;
- the demolition, or almost complete demolition, of an existing building and the erection of another building;

- an enlargement to an existing building to the extent that the enlargement creates an additional dwelling or dwellings;
- certain annexes to buildings used for charitable purposes;
- conversion of a non-residential building;
- renovation of a disused residential building; and
- a substantially reconstructed protected building.

Indirect Tax Reporter: ¶33-327; ¶33-605

The creation of an entirely new building

This is self-evident. If there has been a building on the site, it should have been demolished to ground level although any cellars, basement or concrete base may have been retained.

The demolition, or almost complete demolition, of an existing building and the erection of another building

The complete demolition of an existing building is self-evident. However, there are occasions when a building is not completely demolished. In such instances, a single facade, or double facade on a corner site, may be retained where it is a condition of the planning permission granted. Any demolition work should have been completed before work on the new structure started.

The façade of a building is 'the face or front of a building ... It is not simply a wall of a building'. This is the conclusion reached by the First-tier Tribunal in the case of *Reeves*.

In *Clarke*, a condition of the planning consent was that certain walls had to be retained. The amount to be retained was such that the rebuild was not a 'new' building. In the event the wall to be retained fell down and had to be rebuilt. The First-tier Tribunal disregarded this. They ruled that what matters is the amount to be retained under the terms of the planning permission. The Trustees of the Eaton Mews Trust were successful in showing that although the planning permission did not specify that a certain wall was to be retained, it did refer to the plans showing the retained wall submitted with the application. The tribunal accepted that this was 'planning permission'.

Legislation: VATA 1994, Sch. 8, Grp. 5, Note (18)

Cases: *Clark* [2010] UKFTT 258 (TC); [2010] TC 00552; *Trustees of the Eaton Mews Trust* [2012] UKFTT 249 (TC); [2012] TC 01943

Other Material: Notice 708, para. 3.2.3

An enlargement to an existing building to the extent that the enlargement creates an additional dwelling or dwellings

This would include situations where, for example, a flat is constructed on top of an existing building or a semi-detached dwelling is constructed using a wall of an existing building as the party wall. It is essential that the existing building is enlarged or extended and not merely rearranged. If the existing building is a residential building, the new dwelling must be wholly within the extension, that is, not the conversion of an attic or similar.

Legislation: VATA 1994, Sch. 8, Grp. 5, Note (16)(b)

Other Material: Notice 708, para. 3.2.4

Certain annexes to buildings used for charitable purposes

The whole annex must be intended for a relevant charitable purpose (see below). The annex must be capable of functioning independently although may share supplies of power and water with the main building. The new structure must neither be the main entrance to the existing building nor must the existing building provide the main entrance to the annex.

The legislation is clear about what may not be zero-rated. The President of the VAT Tribunals once described this as follows:

> 'The scheme … is to exclude *(from zero rating)* … a series of building works. Note (16) deal with these in descending order of their degree of integration with the existing building. Conversions, reconstructions and the alterations of existing buildings, the most closely integrated, are excluded. Enlargements of existing buildings are then excluded, the word "enlargement" connoting structural work producing an overall increase in size or capacity. The word "extension" in relation to an existing building refers, we think, to building work which provides an additional section or wing to that existing building; the degree of integration is one stage less than with enlargements. Then come "annexes" which, as a matter of principle, are also excluded. The term annexe connotes something that is adjoined but either not integrated with the existing building or of tenuous integration. Annexes intended for use solely for relevant charitable purposes are re-instated into the zero-rated class … only if they are capable of functioning independently from the existing building and if both the main access to the annexe is not via the existing building and the main access to the existing building is not via the annexe. Otherwise all annexes are excluded from zero-rating.'

It follows from this that a structure 'can only get within the zero-rating provisions if … the new structure is an "annexe" as distinct from an extension or enlargement and, if so, that the annexe satisfies the (the other) conditions for zero-rating'.

There is no statutory definition of annex (or extension) for these purposes. Whether something is an annex (or extension) is normally a matter of fact and degree based upon what was there before and after the construction was carried out. The decision must be made based upon the following:

> '… the answer must be given after an objective examination of the physical characters of the building or buildings at the two points in time, having regard (inter alia) to similarities and differences in appearance, the layout, the uses for which they are physically capable of being put and the functions which they are physically capable of performing. The terms of planning permissions, the motives behind undertaking the works and the intended or subsequent actual use are irrelevant, save possibly to illuminate the potential for use inherent in the building or buildings.'

In a case about whether or not the new works could function independently, the First-tier Tribunal said as follows:

> 'In order to function independently we consider the new structure on the present facts would have to have certain characteristics. It would need its own independent access, heating and lighting, hot and cold running water and toilet facilities. It could then function independently of the existing building.'

Legislation: VATA 1994, Sch. 8, Grp. 5, Note (16)(c) and (17)

Cases: *Macnamara* [1999] BVC 4,092; *Colchester Sixth Form College* [2000] BVC 2,095; *Cantrell (t/a Foxearth Lodge Nursing Home) v C & E Commrs* [2003] BVC 196; *Gateshead Jewish Nursery* [2014] TC 03807; *Reeves* [2016] TC 04980

Other Material: Notice 708, para. 3.2.5

Conversion of a non-residential building

In order to qualify as a non-residential building, the existing structure must never have been designed or adapted for use as a dwelling, a number of dwellings or relevant residential purpose.

Care must be taken when dealing with the conversion of a building that has been or is part non-residential and part residential. Incorporation of a residential part with what was a non-residential area of the building into a dwelling may result in that dwelling not being a 'new' dwelling. Blom-Cooper indicates that where a building is already part residential, the conversion of the non-residential part could not be treated as 'converting … a non-residential part of a building' unless the result of that conversion was to create an additional dwelling or dwellings.

HMRC have stated that they do not consider that the CA decision concerning Jacobs, a DIY housebuilder has any impact in similar situations where a developer converts a mixed-use building into dwellings and the number of dwellings post conversion is greater than that pre-conversion.

VATA 1994, Sch. 8, Grp. 5, items 1(b) and 3(a) restrict the zero-rating to dwelling(s) derived from the conversion of the non-residential part. They are maintaining their policy that where developers are concerned the zero-rate will not apply to any dwelling that utilises any part of the original residential part of the building.

The Upper Tribunal has decided to follow these principles. In joined cases involving the conversion of a public house and an old village shop into two semi-detached dwellings, the Upper Tribunal said as follows:

> '... the Court of Appeal in Jacobs has held that ... It sometimes happens that a building comprising some commercial space of the ground floor and a large number of small flats on the floors above is converted into a building comprising a large flat on the ground floor and then a smaller number of larger flats on the upper floors, the small flats having been knocked together to create more spacious dwellings. In that situation Jacobs holds that even though the ground floor flat ... is entirely made up of the former non-residential part of the building, it is excluded from zero-rating by the application of Note (9). One must count up all the dwellings in the converted part of the building (including dwellings made up of former residential space), not just the dwellings made up of the former non-residential part ...'

In summary, zero-rating only applies to conversions which create additional dwellings and then only to the dwelling(s) created wholly from non-residential parts of the building.

Legislation: VATA 1994, Sch. 8, Grp. 5, items 1(b) and 3(a) and Note (9)

Cases: *C & E Commrs v Blom-Cooper* [2003] BVC 415; *R & C Commrs v Jacobs* [2005] BVC 690; *R & C Commrs v Languard New Homes Ltd; DD & DM MacPherson v R & C Commrs* [2017] BVC 522

Other Material: Notice 708, para. 5.3

Renovation of a disused residential building

A building that was once either designed or adapted as a residential building may be brought back into the housing stock. In order to be within the scope of the zero-rating schedule, it must have been constructed more than ten years before the grant of the major interest and no part of it used as a dwelling or for a relevant residential purpose during these ten years.

A developer can zero-rate his sale of a renovated house provided the sale takes place after the dwelling has been empty, or not used as a dwelling, for ten years. This means a developer who does renovation work before the building has been empty for ten years may still zero-rate his sale provided the renovated home has been an empty dwelling for ten years when he sells it. It is the developer's responsibility to hold proof that their claim for input tax can be verified. HMRC will accept evidence which,

on the balance of probabilities, shows that the building has been an empty home for at least ten years. The evidence can include electoral roll and council tax data, information from utilities companies, evidence from empty-property officers in local authorities, or information from other reliable sources. If a developer holds a letter from an empty-property officer certifying that a home has been empty for ten years or will have been empty for ten years at the time of sale, no other evidence is needed. If an empty-property officer is unsure about the length of time a home has been empty, he should write with his best estimate and HMRC may then call for other supporting evidence.

Legislation: VATA 1994, Sch. 8, Grp. 5, Note (7)

Other Material: Notice 708, para. 5.3.2

'Substantially reconstructing' a listed building

The supply by the owner of a protected qualifying building (i.e. a dwelling, relevant residential purpose building, or a building used solely for a charitable purpose) of a major interest in it is zero-rated if the supplier has substantially reconstructed the building.

A protected building is only 'substantially reconstructed' when:

> 'the reconstructed building incorporates no more of the original building (that is to say, the building as it was before the reconstruction began) than the external walls, together with other external features of architectural or historic interest.'

See flowchart 15-610.

Legislation: VATA 1994, Sch. 8, Grp. 6, item 1

Case: *Cheltenham College Enterprises Ltd* [2010] TC 00429

Other Material: Notice 708, Pt. 10

Indirect Tax Reporter: ¶34-200

15-170 Qualifying buildings

Zero-rating depends upon the building being of a certain type. Its design and intended use are all important.

There are occasions when a building may qualify for zero-rating under two categories. For example, a building may qualify as a dwelling and also as a relevant residential property. When this is so, HMRC accept 'a taxpayer is free to rely on either provision to achieve zero-rating for their building'.

Other Material: VAT Information Sheet 02/14

Qualifying buildings

Dwelling

A building is designed as a dwelling or a number of dwellings where, in relation to each dwelling, the following conditions are satisfied:

- the dwelling consists of self-contained living accommodation;
- there is no provision for direct internal access from the dwelling to any other dwelling or part of a dwelling;
- the separate use or disposal of the dwelling is not prohibited by the terms of any covenant, statutory planning consent or similar provision; and
- statutory planning consent has been granted in respect of that dwelling and its construction or conversion has been carried out in accordance with that consent.

A dwelling includes a garage constructed at the same time for occupation with it. However, it does not include a house whose occupation throughout the year is prevented by the terms of tenure or of a planning permission, covenant, etc.

The Upper Tribunal has concluded that 'separate use' means 'separate from' and that the purpose of this condition is 'to prevent zero-rating unless the new subsidiary dwelling could, in accordance with planning permission, be used independently'. That the new structure may be used as for and as a 'separate household' is not sufficient.

'Separate use' may not be allowed by the planning consent. In a case involving a new flat, it was sufficient to deny zero-rating. The offending condition in the planning consent read as follows:

> 'The ... flat shall be ancillary to the residential use of *(the existing dwelling)* ... and shall not be occupied other than by visiting friends and members of the family of the occupier of (*the existing dwelling*) ... To ensure that ... (*the flat*) ... remains as ancillary accommodation to and dependent upon (*the existing dwelling*) ...'

'Separate ... disposal' was considered in a case in which a restrictive covenant allowed the owner to grant short tenancies. The owner maintained that separate disposal was not prohibited as they were able to grant short tenancies. In deciding against the appellant, the First-tier Tribunal said as follows:

> '... The question still remains as to whether the 'separate ... disposal of the dwelling' is prohibited ... assuming the ability to grant successive short tenancies of it. That leads to an examination of the meaning of the word 'disposal' in the context of Note (2)(c) ...

> ... if someone had granted a twelve month lease of their house, it would not generally be said that they had 'disposed' of it. The fact that they might grant a number of successive twelve month leases would not change that ...
>
> ... in our view, the granting of a lease of the house for a period of twelve months or less (or even a succession of such grants) would not amount to a 'disposal' for the purposes of Note (2)(c) ...'

The necessary planning consent must be in order when the work is done. It is not sufficient to obtain planning consent retrospectively.

In a case in which the appropriate planning consent was obtained retrospectively, the First-tier Tribunal (FTT) said as follows:

> 'The statutory language in Note (5), item 2(d) of Schedule 8 to VATA speaks of planning consent being 'granted', not 'being in effect'. The Tribunal asks itself the simple question, when was the planning permission granted?
>
> ... The appellant was granted planning permission to have retrospective effect from the commencement of the works but he was not granted planning permission ... When the work was carried out ...'

The FTT ruled that the retrospective planning consent was not effective for VAT purposes.

Finally, the First-tier Tribunal concluded that when considering the definition of a dwelling 'all four conditions ... must be satisfied at the same time'. The tribunal went on to say:

> 'The Tribunal consider that a dwelling does not exist until building works have been completed ...; and accept that one is only able to determine whether or not a building 'consists' of a self-contained living accommodation if the completed building does in fact have self-contained living accommodation ...
>
> ... the condition is that the construction or conversion has been carried out in accordance with consent can be determined only when the building is complete ...'

Permitted development rights

Due to permitted development rights, full planning consent is not always required when converting a non-residential building to one or more dwellings. Without suitable evidence that the conversion was covered by the permitted development rights, HMRC will not accept the conversion was lawful. If unlawful, the residential unit created by the work is not a dwelling for VAT purposes. To prove the conversion is lawful under the permitted development rights, HMRC require affected persons to hold some documentary evidence as follows:

> 'HMRC will continue to require evidence to be produced that the work is lawful in order for the zero or reduced rate of VAT to apply or for a claim to be eligible

under the DIY House Builder Scheme. Where the builder, developer or DIY House Builder Scheme claimant establishes that the conversion is covered by a PDR and individual SPC is not required, they must be able to evidence it by at least one of the following:

(a) written notification from the LPA advising of the grant of prior approval;

(b) written notification from the LPA advising that prior approval is not required; or

(c) evidence of deemed consent (i.e. evidence that you have written to the LPA and your confirmation that you have not received a response from them within 56 days) and evidence that the development is a permitted development. This will include all of the following (where the documents have been created), plans of the development, evidence of the prior use of the property (e.g. evidenced by its classification for business rates purposes etc.), confirmation of which part of the planning legislation is relied upon for the development and a lawful development certificate where one is already held.

Developments carried out under a PDR must still meet the appropriate building standards. Should any circumstances arise where building control is not required, evidence from the local authority confirming this should be provided.'

Several buildings

The phrase 'a building designed as a dwelling' was interpreted very narrowly by HMRC. They read this to mean that a dwelling could only be one building. This often caused problems for a person constructing new dwellings or converting non-residential buildings into dwellings.

HMRC revised its policy in August 2016. It is now as follows:

'In order to be eligible for the zero-rate, the buildings must meet all the following tests:

- the development must meet the conditions of a 'building designed as a dwelling' and to this end 'building' can mean more than one building;
- all buildings must be constructed or converted under a single project and under a single consent, if a new dwelling that is made up of more than one building is constructed in stages, we will view subsequent stages as annexes to the original building, which will not benefit from the zero-rate unless the buildings are on the same site;
- the stages are completed with no unreasonable delay between them; and
- none of the buildings are occupied until all the stages are complete ...'

Live/work units

Planning permission was obtained to convert one of two adjacent barn-like buildings to a dwelling. The barns were not connected and had been used for the purposes of a small business.

The planning application was to convert the two barns to a 'live/work unit'. Consent was obtained to convert one to a dwelling and for the other to remain as an office. This consent was subject to several conditions. Condition 6 was that 'the workshop/office ... shall only be used/operated by the occupiers of the dwelling ...'.

When the work was completed, the owners submitted a claim under the DIY Housebuilder scheme. HMRC rejected it on the grounds that 'separate use of the dwelling was prohibited' by the Condition 6 mentioned above. The owners appealed.

The First-tier Tribunal allowed the appeal but HMRC appealed to the Upper Tribunal. The Upper Tribunal found that Condition 6 was not a prohibition on separate use and dealt with the issue of separate disposal. The Upper Tribunal ruled as follows:

'... On its own, the term "live/work unit" as it is used in the planning application or in the planning permission does not clearly indicate that it is intended that the two buildings could not be used separately ... Instead, Condition 6 says that the workshop/office shall only be used/operated by the occupiers of the dwelling ...

46. In our view, the effect of the presence of Condition 6 in the permission is that the permission must be construed as restricting the persons who can lawfully use the workshop/office but also as contemplating that it might not be used. The effect of the permission is therefore that a person who occupies the building must be able to use the workshop but need not use it, but that a person who uses the workshop must occupy the dwelling.

47. ... We also have to consider whether the separate disposal of the dwelling is prohibited. The permission does not do so in clear terms nor by implication ... the separate disposal of the dwelling would convey to the purchaser a building which could be used only as a live/work facility, that is to say a place where the occupier could both live and work. Without ownership of the workshop, the use of the building without the right to use the workshop would be problematic. Thus the value of the dwelling on its own could be very small. However that effect is not a prohibition on separate disposal but merely a disincentive to separate disposal.

48. Accordingly, we conclude that neither the description of the development as a live/work unit nor the terms of Condition 6 prohibited the separate use or disposal of the dwelling.'

'Extra care' accommodation

'Extra care' accommodation is commonly 'self-contained flats, houses, bungalows or maisonettes that are sold or let with the option for the occupant to purchase varying degrees of care to suit his or her needs as and when they arise'. These are often built in the grounds of care homes and similar establishments.