



VATUPDATE



COVID-19 throws up new set of challenges for us all

Our experts explore some of the latest developments in the complex world of VAT

Accountants everywhere are on lockdown and working remotely whenever possible, but our work continues. Not every business is closed or folding and our primary role as trusted adviser has undoubtedly been reinforced – we are still the go-to people when small businesses and the self-employed need help.

The message we at the ICPA are sending to you is we will continue to help you to keep your clients up-to-date and aware. That's why this issue is important and that's why it's important that you find the time to read it – that's what professionals do and

that's what is expected of you. You know that the ICPA will do everything we can to help you.

In this issue there is the warning about VAT deferral and Direct Debits, so please don't let your clients get caught out. We have the latest from HMRC on our old friend MTD and, guess what, spreadsheets are still featured. There's also a timely reminder that the apparently new, cuddly and lovable HMRC will not always be like this as they update their advice on dishonest conduct!

Tony Margaritelli, Chairman, ICPA

MTD to date: the good, the bad and the ugly

HMRC has published a progress report on its flagship Making Tax Digital (MTD) online reporting regime, with more than 1.4m businesses already signed up to the scheme.

The research shows that firms that have fully automated are seeing some benefits, but those with a hybrid approach are finding the transition more challenging.

HMRC said more than 4m VAT returns had been submitted successfully using MTD-compatible

software (by 9 March 2020). More than 83% of eligible businesses have signed up to the service and 95% of those successfully made their first return through the service on time.

For monthly filers, whose first return was due by 7 June, more than 91% have now signed up. Some £41bn of payments and over £13bn in repayments have successfully flowed through the MTD regime.

HMRC said "the vast majority" of businesses and agents have proved able to meet the requirements of the first phase of MTD, but concedes that for a small number the transition has proved more challenging. Some agents have reported

issues setting up their agent services account (ASA) and acting on behalf of their clients for MTD.

While HMRC has taken action to address this, it recognises there is still more to do and intends to continue its

engagement with agent professional bodies.

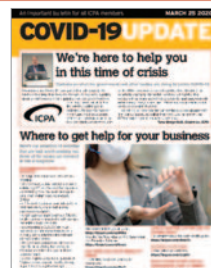
Several agents and businesses reported that at busy times the API did not work. HMRC's analysis shows that there

are no issues with the API, but that

there are issues with those APIs being consumed/processed by HMRC's own internal systems.

This appears to be the business/agent as if HMRC has not received the submission. HMRC is, as a matter of urgency, enhancing and rebalancing systems to prevent this failure reoccurring.

In its overview, HMRC also says that some businesses and agents have incurred more costs than expected in making the transition to digital filing, and there is some evidence that while the initiative has prompted development of a thriving software market, businesses can find it difficult to select the best option for



The ICPA has produced a special guide to help you through the current crisis. You can access it at www.icpa.org.uk

VAT bills are deferred, so cancel that DD

The government has deferred all VAT payments due between now and the end of June, but businesses paying the tax by direct debit will have to cancel it or the money will leave the account.

As part of the government's response to the COVID-19 pandemic, no VAT registered business will have to make a VAT payment normally due with their VAT return to HMRC until 30 June. Income tax payments due in July 2020 under the Self Assessment system will be deferred to January 2021.

Chancellor Rishi Sunak said: "To help businesses pay people and keep them in work, I am deferring the next quarter of VAT payments."

The VAT deferral will apply from 20 March 2020 until 30 June 2020, and will happen automatically, with no application process. Taxpayers will be given until the end 31 March 2021 tax year to pay any liabilities that accumulate during the deferral period.

VAT refunds and reclaims will be paid by the government as normal.

• For the latest information and advice go to <https://tinyurl.com/yx247sum>

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MTD: the good, bad and ugly

Continued from page 1

their requirements and may be unaware of free packages.

MTD for VAT was extensively piloted, which HMRC said helped to identify and resolve some issues that could have had an impact on large volumes of customers.

However, there were others that surfaced only as numbers using the service increased after April 2019. For example, some businesses filed returns for incorrect (later) dates. Others joined the service but then sent their returns through the old VAT portal.

Since the MTD VAT service went live in April 2019 there have been a small number of periods of unplanned downtime due to technical issues.

However, over 94% of returns due in January 2020 were received in time for January 2020's filing deadline, despite one of the temporary outages falling on the day of the filing deadline.

HMRC has plans to further improve the overall performance and reliability of the services. In the short term, this means additional server capacity and special support teams that will be online and monitoring the entire VAT services platform to ensure zero impact through the VAT submission period.

The report suggests a more fundamental IT upgrade by mid-2020 should help to secure a more permanent improvement in service reliability.

MTD for VAT

Separate HMRC research looked at whether MTD for VAT has changed how people keep records for VAT purposes, whether these changes have reduced scope for error in VAT submissions,

and ultimately, whether MTD for VAT can deliver additional tax revenue.

The research involved 60 in-depth face-to-face interviews with small businesses mandated to join MTD for VAT in October and November 2019, the majority of which had processes involving manual input and calculations and keeping physical copies of records.

The report identified three categories of response: those who fully automated; those who partially automated; and those who used bridging software purely to make MTD-compliant submissions.

Those with full digital links reported reduced scope for error, potentially leading to additional tax revenue and both partially and fully automated businesses felt returns were more accurate, miscalculation errors were reduced, and they were able to correct errors quickly and easily.

However, those using bridging software tended to lack confidence and capability in using technology and so were frustrated with the changes caused by MTD.

This meant they were either too fatigued to check thoroughly, increasing the chance of a mistake, or were fearful of consequences, so took extra time and care.

There was thus no overall change in behaviour for these processes. These

businesses felt that digitally linking calculations and figures from their spreadsheets onto software was an unnecessary step.

They could not see any benefit to their business, such as time and cost savings and seemed unaware of how the software could help them remain compliant after the 'soft landing' period for MTD.

HMRC said this group needs more support and better communication, arguing that they need to be made aware of the simplicity and time saving that is possible if they migrate to full digital links.



‘Review VAT food rules’

A leading tax body is urging the government to revisit the VAT rules around food as the UK prepares to leave the EU. The Association of Taxation Technicians (ATT) described VAT on food and drink as “overly complex”.

The Chancellor announced in the recent Budget that he intends to use ‘new freedoms’ when the Brexit transition period ends on 1 January 2021 to scrap the so called ‘tampon tax’ (the 5% rate of VAT on women’s sanitary products). The ATT is highlighting the opportunity to reduce the inconsistencies in other areas of VAT.

Michael Steed, Co-Chair of the ATT Technical Steering Group, said: “We encourage the government to take the opportunity posed by the UK leaving the EU to take another look at how we apply VAT to food and drink.

“Many of the rules for food and drink derive from the old Purchase Tax regime, which was replaced with VAT when the UK joined the EU in 1973. As a result, they are often

out of date and difficult to apply in the modern world.

“This has led in the past to the Tax Tribunal having to consider such intriguing questions as whether Jaffa Cakes are a cake or a biscuit, and whether Pringles are crisps or not. The decisions in these cases often throw up results which sound utterly ridiculous to the average person.”



For example, chocolate flavoured Nesquik attracts zero VAT while strawberry or banana flavoured varieties are subject to the standard rate of 20%. And a gingerbread man with chocolate eyes attracts zero VAT, but one with chocolate trousers attracts VAT at the standard rate of 20%.

Steed added: “The end of the Brexit transition period at the end of 2020 presents an opportunity for the Government to consult on ways to modernise and rationalise the VAT rules on food and drink. A clearer, more up-to-date set of rules would reduce confusion, and save both businesses and HMRC the time and costs associated with arguments over VAT treatment.”

Taxpayer not 'careless'

The FTT has found that a taxpayer in difficult circumstances was not 'careless'; and another case goes up in smoke. Thanks to RossMartin for these articles

In *Udlaw Limited v HMRC* [2020] TC07548, the First Tier Tribunal (FTT) found that a VAT penalty for 'careless' inaccuracies was not 'careless'.

- The appellant supplied Furnished Holiday Lettings of mobile homes at a holiday park and retained 20% of sales paid as commission to an agency, resulting in an understated output tax liability of £24,933.
- The appellant hired a bookkeeper and external accountants to assist and audit the business's financial operations.
- HMRC queried why the applicant had not noticed differences between the VAT account sales and the audited annual accounts sales. HMRC assessed a Penalty for Error of 15% of the understated amount on the basis of the inaccuracy of returns and failing to take reasonable care.
- The appellant argued reasonable excuse for the errors including her mother's death, her father's failing health and death, and her brother's stroke in the period in question. This had made her rely heavily on accountants and the bookkeepers employed to handle VAT and accounting issues.
- The appellant appealed to the FTT.

The FTT concluded that the appellant had taken reasonable care



in completing her returns in the light of her special circumstances. The appeal was allowed.

COMMENT

Penalties may be charged on inaccurate returns that are either as a result of not taking reasonable care or deliberate carelessness. Should these factors result in an understatement of tax, a false or inflated statement of a loss or a false or inflated claim to repayment of tax penalties can be applied.

Whilst a penalty cannot be dismissed simply because it is harsh, taxpayers should resist penalties if there is no evidence of not taking reasonable or deliberate care. Appeals for penalties are done within 30 days of the date on the notice of penalty assessment.

No VAT registration for illegal tobacco

In *Kendrick v HMRC* [2020] TC 07515, the First Tier Tribunal (FTT) held that tobacco 'retail' did not breach the VAT registration threshold, as alleged by HMRC. Christopher Kendrick should not have had to register for VAT.

- The appellant was selling illegally imported tobacco.
- Between 2009–2013, HMRC seized a number of tobacco packages either addressed or belonging to Kendrick.
- HMRC made a best judgement assessment of the sales and concluded that Mr Kendrick reached the VAT registration threshold on 8 January 2010. He should have registered for VAT from 1 March 2010. HMRC issued a VAT assessment for



£220,000 and charged a penalty of a similar amount.

- Kendrick admitted that he had sold some illegally imported tobacco to friends and family but claimed he did not breach the VAT registration threshold.
- Kendrick appealed to the FTT.

Based on the evidence provided, the FTT was satisfied that Mr Kendrick did not reach the VAT registration threshold by 31 January 2010 and hence should not have been registered for VAT from 1 March 2010. His appeal was allowed.

It was observed that Kendrick may have breached the threshold at a later date and HMRC may consider taking subsequent action against him.

COMMENT

This case highlights that even illegal transactions are subject to VAT. Charging VAT on illegal transactions might give the impression that HMRC benefits from criminal activities. HMRC's viewpoint is that if illegal transactions are not subject to VAT, traders in illegal goods will benefit as their products will be 20% cheaper than their competitors'.

UK opens coronavirus VAT postponement helpline

The UK's HMRC has launched a telephone support line for businesses and the self-employed concerned about meeting VAT payment deadlines due to the coronavirus Covid-19 outbreak.

For those UK taxpayers who are unable to pay VAT on time due to coronavirus, HMRC will discuss specific circumstances to explore:

- agreeing an instalment arrangement.
- suspending debt collection proceedings.
- cancelling penalties and interest where the taxpayer has administrative difficulties contacting or paying HMRC immediately.

Dishonest conduct penalties explained

Here's some advice from the HMRC website

HMRC has issued a factsheet containing information about VAT dishonest conduct penalties. The advice was issued because HMRC uncovered a VAT irregularity to which VAT dishonest conduct penalties may apply. "We now need to establish whether there was dishonest conduct," HMRC said. So here are the highlights of the factsheet, in HMRC's own words.

VAT dishonest conduct penalties apply to:

- any VAT irregularity involving dishonest conduct for periods before the introduction of the 'new' penalties shown below.
- the evasion of VAT by failure to submit a VAT return.– this applies to periods before and after the introduction of the 'new' penalties.

NEW PENALTIES

New penalties are for:

- inaccuracies in VAT returns due from 1 April 2009.
- failure to notify an under-assessment of VAT for returns due from 1 April 2009 – where there is dishonest conduct, VAT dishonest conduct penalties may also apply, but we will never charge both penalties together.
- failure to register for VAT for returns due from 1 April 2010.
- VAT wrongdoings for returns due from 1 April 2010.

You can find more information about new penalties in the compliance checks series of factsheets. Details of how you can get a copy of these are given below.

WHAT WE MEAN BY 'DISHONESTY'

Dishonesty is where a person does something or fails to do something that would be regarded as dishonest according to the ordinary standards of reasonable and honest people.

HOW HMRC WORKS OUT THE AMOUNT OF THE DISHONEST CONDUCT PENALTY

The penalty will be a percentage of one of the following:

- the difference between any VAT that you have under-declared or over-claimed (or tried to under-declare or over-claim) and the correct amount of VAT.
- the VAT that you declared late because of your failure to submit your return.

When working out the penalty we start with the maximum possible penalty, which can be 100% of the VAT. We then consider whether to reduce the penalty.

WHAT YOU CAN DO TO REDUCE ANY DISHONEST CONDUCT PENALTY

The amount we can reduce the penalty by will depend on:

- disclosure – whether you tell us everything we need to know about what is wrong.

- co-operation – how well you co-operate with us throughout the compliance check.

The more you help us to get your VAT affairs up-to-date, the larger the reduction may be to the penalty.

Disclosure: We can normally reduce the penalty by up to 40% for an early and full disclosure. If you do not tell us that anything is wrong until near the end of the check, we will give you very little or no reduction for disclosure. The size of the reduction will depend on the individual circumstances.

Co-operation: We can reduce the penalty by up to 40% for good co-operation. Good co-operation includes:

- letting us have the information we need quickly.
- agreeing to meet us if we believe this will help us with our check.
- answering our questions as fully and correctly as possible.

If you delay giving us the information we need or give us misleading answers and generally obstruct our check, we will give you little or no reduction for co-operation.

IF YOU'VE DELIBERATELY DONE SOMETHING WRONG

We may carry out a criminal investigation with a view to prosecution if you've deliberately done something wrong, such as:

- given us information that you know is not true, whether verbally or in a document.
- dishonestly misrepresented how much tax you owe, or claimed payments you're not entitled to.

MANAGING SERIOUS DEFAULTERS

If you deliberately got your tax affairs wrong, and we find this during the check, we may monitor your tax affairs more closely. We have an enhanced monitoring programme called 'managing serious defaulters'. For more information read factsheet CC/FS14, 'Managing serious defaulters'. Go to www.gov.uk and search for 'CC/FS14'.

WHEN A COMPANY OFFICER MAY HAVE TO PAY SOME, OR ALL OF A COMPANY'S DISHONEST CONDUCT PENALTY

A company officer may have to pay some or all of the company's penalty, if the penalty is due to their conduct. If the company pays the penalty, we will not ask the individual officers to pay.

A company officer is a director, shadow director, company secretary or manager of a company, or a member of a limited liability partnership.

INTEREST AND SURCHARGES FOR PAYING VAT LATE

If you pay any VAT after the original date it was due, we will charge you interest. You may also have to pay a late payment surcharge.

HOW WE TELL YOU ABOUT A PENALTY

We will tell you how much the penalty is and how we have worked

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it out. If there is anything about the penalty that you do not agree with, or if you think there is any information we have not already taken into account, you should tell us straightaway.

After taking account of anything you have told us, we will then send you a penalty assessment notice showing the amount due.

If you disagree: If there is something that you do not agree with, you should tell us. If we make a decision that you can appeal against we will write to you to explain the decision and tell you what to do if you disagree. You will usually have three options; within 30 days you can:

- send new information to the officer you have been dealing with and ask them to take it into account.
- have your case reviewed by an HMRC officer who has not been involved in the matter.
- arrange for your appeal to be heard by an independent tribunal, who will decide the matter.

Whichever you choose, you may also be able to ask for an HMRC specialist officer to act as a neutral facilitator to help resolve the dispute. This process is known as Alternative Dispute Resolution (ADR). ADR is only available for disputes relating to some of the taxes and other areas that we administer. The officer dealing with your check will tell you if ADR is available for the matter that you are disputing.

Go to www.gov.uk and search 'HMRC1' and 'CC/FS21' to find more information about:

- appeals and reviews in factsheet HMRC1, 'HM Revenue and Customs decisions – what to do if you disagree'.
- ADR in factsheet CC/FS21, 'Alternative Dispute Resolution'.

YOUR RIGHTS WHEN WE ARE CONSIDERING PENALTIES

The European Convention on Human Rights gives you certain important rights. If we are considering penalties, we will tell you. We will also tell you that these rights apply and ask you to confirm that you understand them. These rights are that:

- if we ask you any questions to help us decide whether to charge you a penalty, you have the right not to answer them – the amount of help that you give us when we are considering penalties is entirely a matter for you to decide.
- when deciding whether to answer our questions, you may want to get advice from a professional adviser – particularly if you do not already have one.
- if you disagree with us about the tax or any penalties we believe are due, you can appeal – if you appeal about both tax and penalties, you have the right to ask for both appeals to be considered together.
- you have the right to apply for funded legal assistance for dealing with any appeal against certain penalties.
- you are entitled to have the matter of penalties dealt with without unreasonable delay.

MORE DETAILS

You can find full details about these rights in factsheet CC/FS9 'The Human Rights Act and penalties'. Go to www.gov.uk and search 'CC/FS9'.

- This factsheet is one of a series. For the full list of the factsheets in our compliance checks series go to www.gov.uk and search 'factsheets'.

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Changes of VAT rules for call of stock arrangements between the UK and EU member states was announced in the recent Budget. Here's what HMRC had to say on its website

WHO IS LIKELY TO BE AFFECTED?

Businesses sending or receiving goods between the UK and Member State (MS) of the EU in advance of the goods being 'called off' for delivery (call-off stock).

GENERAL DESCRIPTION OF THE MEASURE

This measure implements changes required by Council Directive (EU) 2018/1910 to simplify the VAT treatment of call-off stock moved from the UK to another MS or vice-versa. The changes permit a supplier in the State of origin to remove call-off stock to storage in another State, the destination State, without accounting for VAT on the transaction at that time. The supplier and customer will account for the supply and acquisition when the goods are called-off. This avoids the need for the supplier to register for VAT in the destination State.

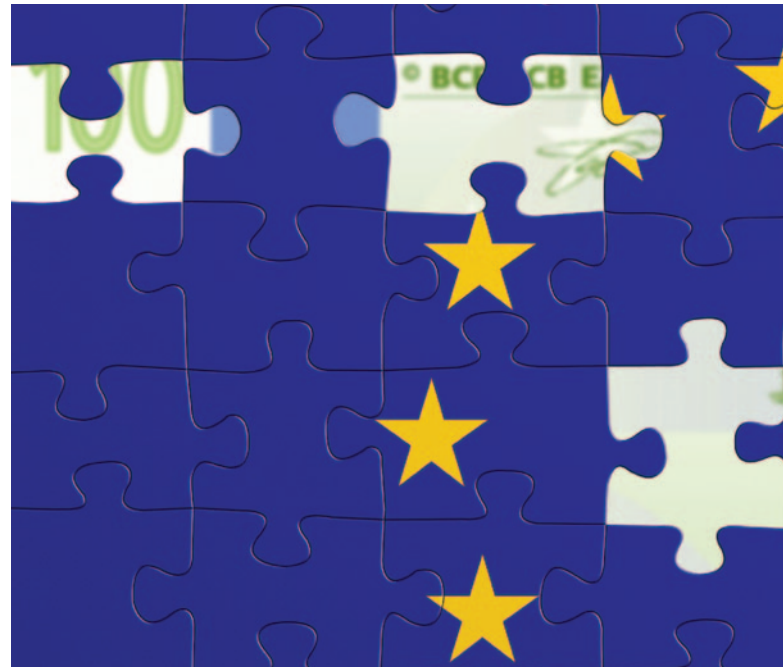
The purpose of the changes is to simplify the VAT rules for 'call-off' stock and avoids the requirement for the supplier to register in the destination State.

BACKGROUND TO THE MEASURE

On 4 December 2018, the European Council adopted the VAT 'quick fixes' legislative package to harmonise and simplify certain rules and exemptions for cross-border supplies of goods with the aim of improving the VAT system for the taxation of trade between EU Member States.

These changes are contained in Council Directive (EU)

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2018/1910 which amends the Principal VAT Directive 2006/112/EC and MS of the EU and the UK were obliged to implement them by 1 January 2020.

Additional requirements are set out in the Council Implementing Regulation (EU) 2018/1912, which is directly applicable in the UK.

DETAILED PROPOSAL

Operative date: The measure, which has a retrospective element, applies to goods removed from a MS of the EU to UK (or vice versa) on or after 1 January 2020.

Current law: There is no explicit reference in current legislation to call-off stock transactions. Current UK law makes provision in relation to intra-community supplies in sections 6, 7, 10, 11, 12, 13, 30, 65, 66 and 69 of the Value Added Tax Act 1994 (the VAT Act), Schedule 4 to the VAT Act and regulations 21, 22 and 22B of the Value Added Tax Regulations 1995 (the VAT Regulations).

Proposed revisions: Following the UK's departure from the EU, we have now entered a transition period which lasts until 31 December 2020. During the transition period we are obliged under EU law to implement the Directive or risk substantial fines.

The position after the transition period will be determined by the outcome of negotiations on our Future Economic partnership with the EU.

The draft legislation for the new call off stock arrangements was published on 31 December 2019:

- new Schedule 4B of the VAT Act ("Schedule 4B") contains conditions for the call off stock simplification to apply. The simplification delays the accounting for an intra-EU supply of call-off stock until the stock is called off by the customer.
- provided that certain conditions are met, the supplier will make a supply of the call-off stock in the State of origin when the customer calls-off the stock in the destination State. The customer will make a corresponding acquisition of the goods in the destination State at that time. The supplier will not make a supply of the goods in the destination State and will not, therefore, be required to register for

VAT in the destination State by reason of such a supply. The customer will account for acquisition tax.

- Schedule 4B also contains provisions dealing with the consequences of certain events occurring after the goods arrive in the destination State, including the supplier's failure to make a supply of the call-off stock to the intended customer within the 12 month period, the substitution of a different intended customer, and the return of the goods to the origin State.
- amendments to section 69(1) of the VAT Act create a penalty where a customer in the UK in call-off stock arrangements fails to make the required record of transactions in a call-off stock register.
- amendments to section 69(2) of the VAT Act create a penalty where a supplier of call-off stock in the UK or a customer in call-off stock arrangements in the UK fails to preserve the records kept in a call-off stock register.
- new regulation 22ZA of the VAT Regulations requires suppliers of call-off stock to include information relating to specified events in an EC Sales List, and sets out the related requirements.
- amendments to regulation 21 and 22B of the VAT Regulations 1995 consequential on the insertion of new regulation 22ZA.

There will be no obligation on suppliers to structure transactions so as to meet the conditions, but where a supplier does so, the supplier and customer must account for VAT in accordance with the legislation and comply with the legislation's other requirements. Businesses which dispatch goods in circumstances which do not meet the conditions should continue to apply the current VAT accounting rules for EU cross-border transactions.

SUMMARY OF IMPACTS

This measure is expected to have a negligible impact on the Exchequer and is not expected to have any significant economic impacts. It is expected to have a negligible impact on an estimated amount of less than 100 businesses by making changes to UK VAT law through simplifying the rules for UK/EU supplies of call-off goods.

There are likely to be one-off costs of setting up the required records and familiarisation of the rules. Ongoing costs will could include keeping additional records and providing extra information to HMRC on the EC Sales List. Customer experience is expected to stay broadly the same as businesses are not obliged to arrange operational structures to meet the conditions of the new legislation. There is expected to be no impact on civil society organisations.

HMRC will need to update IT systems to accommodate the revised EC Sales List submissions, at an estimated cost of £2,122,000. It is not expected that there will be any additional staff costs.

OTHER IMPACTS

There is no impact in respect of:

- carbon assessment.
- sustainable development.
- wider environment impact; health impact assessment.
- climate and fuel poverty targets.
- air quality targets.
- rural proofing.
- privacy impact.
- competition impact.

Other impacts have been considered and none have been identified.

MONITORING AND EVALUATION

This measure will be monitored through information collected from tax returns and receipts, and through communication with affected taxpayer groups.

FURTHER ADVICE

If you have any questions about this measure contact Peter Bennet on 03000 585559, or email peter.bennet@hmrc.gov.uk.

Here are some sample questions from accountants submitted to our help desk concerning VAT issues

PCP agreements explained

Question: My client is looking to buy a commercial vehicle and the dealer is offering either an HP agreement or a personal contract purchase (PCP) agreement. I understand there can be differing implications for VAT recovery depending upon the type of agreement. Please could you clarify?

Answer: This is a common question due to the proliferation of different types of financing for vehicles. HMRC's Supply and Consideration manual (<https://tinyurl.com/v73p9pq>) distinguishes between a supply of goods, such as a traditional hire purchase arrangement and a supply of services. The guidance references the legislation – paragraph 1(2)(b) Schedule 4 VAT Act 1994 which states: "If the possession of goods is transferred ... under agreements which expressly contemplate that the property also will pass at some time in the future (determined by, or ascertainable from, the agreements but in any case not later than when the goods are fully paid for)... then it is... a supply of goods".

In simple terms, therefore, a hire purchase agreement expressly contemplates that title will pass at the end of the term of the agreement, whereas lease agreements, with large balloon payments, for example, may equally end with the lessee walking away from the agreement. This is explored further in VATSC10172: "Some final payments, or payments due at the end of the term of the agreements, are referred to as option payments. These payments are often very small such that it is very unlikely that the customer would not make the payment. In these circumstances, it is clear at the outset of the contract that in the normal course of events title will pass. Therefore there is a supply of goods at the outset."

The importance of this distinction between a supply of goods and a supply of services is the impact on the timing of VAT recovery. In a supply of goods, the VAT is chargeable and therefore recoverable at the outset and the VAT invoice/finance agreement should show the VAT as a "lump sum" amount payable upfront and the monthly finance payment should be net of any VAT. Conversely, in a supply of leasing services, the VAT is chargeable and therefore recoverable on each periodic payment and a VAT schedule should be provided by the finance company detailing these payments.

So far so straightforward you may think, until presented with a PCP arrangement where multiple options are available to the lessee and the option payment is substantial. Could it be reasonably argued that ownership will pass in the normal course of events? This was considered in the CJEU case Mercedes Benz Financial Services, but here the issue at stake was the time of supply for the lessor. But equally, conclusions can be drawn for input tax recovery. HMRC issued Revenue & Customs Brief 01/19 (<https://tinyurl.com/yxgd2l2b>) and updated their guidance at VATSC10172.

The Court arrived at the conclusion that a judgment must be made by the supplier at the outset of the contract as to what the customer, acting as a rational economic actor, would do when entitled to exercise the option. If the customer could profitably sell the asset for more than the cost of the final optional payment, then if they act rationally it can be expected that they will buy the asset. However, if the optional payment is expected to be the approximate open market value of the asset (or more) at the time the option

must be exercised, then the customer may equally choose to purchase the asset or return it. Under such circumstances, it is not the case that in the normal course of events title is to pass.

As such the correct treatment of PCP contracts will depend on the level at which the final optional payment is set:

- If at the start of the contract, it is set at or above the anticipated market value of the goods, it is a supply of leasing with VAT on each installment;
- If at the start of the contract, it is set below the anticipated market value, such that a rational customer would buy the asset when they exercise the option, it is a supply of goods with a separate supply of finance. VAT is due on the supply of goods in full at the outset and the finance is exempt from VAT.

Consequently, the timing of VAT recovery will depend on the type of agreement and the lessee should be directed by the lessor's treatment.

Security deposits: the issues

Question: My client, a newly VAT registered limited company, hires out plant and machinery to UK construction companies. They have introduced charging a security deposit when the customer collects the goods, which is refunded on their safe return. There have been times where the goods have been found to be damaged on return, therefore the client only refunds a part of the deposit or the deposit is taken in full. What is the liability of this payment?

The client also charges a 20% deposit as an advance payment in order to secure the future hire of goods. Occasionally customers cancel their order or do not show up by the time specified that they will be held until, and in these situations, the client keeps the deposit. Is there any output tax to declare on this?

Answer: A security deposit does not represent consideration for a supply and therefore does not create a tax point. This is because the payment is to be returned in full to the customer for the safe return of the goods hired. If the goods are not returned in their original state or in accordance with the terms in the contract and your client decides to retain the security deposit,

whether in full or in part, the money retained is outside the scope of VAT as a compensation payment. The customer has breached the terms of the contract by damaging the goods.

A deposit paid to secure a piece of equipment would create a tax-point, as this is advance consideration for that supply as per section 6(4) of VATA1994. A tax point arises when a VAT invoice is issued or a payment is received prior to the service being completed.

If the order is then cancelled, this may be a breach of contract so the monies originally taken can be treated as compensation, or it may be that the customer has the right to cancel, and because no supply takes place, the cancellation charge is outside the scope of VAT. Output tax accounted for on receipt of the deposit can then be reversed.

For further information regarding deposits please refer to the following in HMRC's internal manuals, VATSOS5120 and VATSC53600.



World turns to VAT cuts in face of COVID-19 threat

Countries around the world are turning to emergency tax breaks to support their stuttering economies under the coronavirus (COVID-19) threat. VAT global measures already announced are below, and which Avalara is configuring into its VAT/GST reporting and calculation offerings to ensure users receive filing and payment benefits.

- Cyprus 31 March, update – delays VAT payments until 10 November 2020.
- UK 31 March, update – confirms delays for payments-on-account. Delays MTD for VAT phase 2. MOSS VAT excluded from three-month VAT holiday. Foreign businesses entitled to payment holiday. Taxpayers on Direct Debits must cancel them if they wish to take advantage of the VAT holiday. HMRC is deferring all VAT payments until June 2020. Any deferred VAT is then due by 31 March 2021. Returns must still be filed.
- Philippines 31 March, has delayed March VAT filings.
- UK Jersey 31 March, postpones GST payments March to May.
- Taiwan 31 March, postponed VAT payments for March to May.
- Sri Lanka 31 March, pushes back February and March VAT payments.
- Bolivia 31 March, reduces Transaction Tax for three months.
- Sweden 30 March, updated confirmed new dates for late penalty and interest fine easements on VAT payments for up to one year.
- Belgium: 30 March, update – accelerated VAT credit payments. VAT filings and payment delays on coronavirus crisis concerns.
- Greece 30 March, update 2019 sales listing delayed. Deferred VAT must be repaid by end of Aug 2020.
- Tunisia 30 March, VAT credit accelerations.
- Malaysia 30 March, service tax changes.
- Norway 29 March, reduced VAT rate cut further from 1 April. Deferred VAT payments.
- Canada 29 March, Federal GST delays; Quebec delays sales tax return till 30 June; Saskatchewan sales tax postponements; Ontario allows some filing reliefs, but none for HST. Manitoba joins British Columbia in offering delays on provincial sales taxes. The federal government has already suspended audits.
- Russia 29 March, tax payment deferrals for all small businesses, but not extended to VAT.
- Uganda 29 March, postpones VAT compliance requirements.
- Colombia 29 March, delays filings and payments for certain sectors.
- Guatemala 29 March, allows late VAT returns.
- Pakistan 28 March, delays sales tax filings and payments.
- Lithuania 28 March, has confirmed VAT payment delays or write-offs of up to one year.



- Slovenia 28 March, VAT payment delays on application.
- New Zealand 27 March, limited help for businesses on Goods & Services Tax.
- Slovakia 27 March, clarifying already announced different payment and returns delays.
- Ireland 27 March, update confirmation that automatic payment delays only for businesses <€3m turnover. Others must apply to the Revenue. Returns must still be filed on time.
- Finland 27 March, update – an extra three-month VAT extension has been offered with reduced interest charges. Only on application.
- Nigeria 27 March, is delaying the VAT returns deadline.
- Hungary 27 March, Hungary has delayed the update of its live invoice reporting schema from 1 April until 1 July 2020. VAT payment delays on application and payment of admin fee.
- France 27 March, VAT credit repayments will be accelerated. But VAT returns are still due on time.
- Austria 27 March, annual VAT return deadline extend to 31 August. Austria has already implemented a VAT payment and penalty deferral application scheme.
- Croatia 26 March, offers three-month VAT payment deferral and long-term repayment schedule.
- Poland 26 March, has delayed March Intrastat filings. It is offering a VAT payment delay with no interest charges. Poland has delayed the extension of SAF-T VAT reporting.
- Kenya 26 March, cuts VAT from 16% to 14% 1 April.
- Uruguay 25 March, provides VAT filing and payments delays.
- Argentina 25 March, updates tax help for COVID-19.
- Spain 24 March, Canary Island is postponing VAT returns. Mainland Spain had closed its tax offices from 15 March for face-to-face meetings. There were changes to filing deadlines, too.
- Chile 24 March, provides VAT payment break until end of June for small enterprises.
- Turkey: 24 March, offers VAT return and filing delays. Cuts VAT on domestic flights and hotel accommodation.
- Latvia 24 March offers tax payment delays and speedy VAT credit refunds.
- Israel: 24 March, update on late filings for bi-monthly filers.
- Iceland 24 March, offers delayed VAT payments until 2021. Hotel tax withdrawn until end of 2021.
- Brazil 24 March, suspends tax audits and eases import rules.
- India 24 March, provides delays to GST filings.
- Estonia 23 March, is to provide a VAT payment holiday until 1 May. But further easements are promised.
- Ukraine 23 March, will not charge late interest on VAT payments until after May 2020.
- Netherlands 23 March, Customs confirms no enforcement of non-EU importer of record rules. Taxpayers in difficulties because of the current crisis may apply for a three-month or longer VAT payment holiday.
- Malta 23 March, VAT payment holidays for March and April.
- Switzerland 23 March, offers VAT and customs payment holiday until the end of 2020.
- Germany 22 March, businesses may apply for VAT payment postponement until 31 Dec 2020.
- 21 March, four-month VAT payment delay.

Consultation on HMRC Charter closes in May

HMRC is to update its charter, which sets out the standards of behaviour and values that it aspires to when interacting with taxpayers. The consultation on it runs until 15 May 2020. This extract was taken from HMRC's website

BACKGROUND

HMRC deals with the tax and payments affairs of almost every business and individual in the UK. HMRC's Charter is a legal requirement under the Finance Act 2009 section 92.

The legislation states that the charter 'must include standards of behaviour and values to which Her Majesty's Revenue and Customs will aspire when dealing with people in the exercise of their functions'.

Legislation also says the charter must be reviewed regularly and revisions published. The last charter review was completed in August 2015.

WHY IS HMRC REVIEWING THE CHARTER NOW?

HMRC began work to review the charter in September 2019. Our ambition is for the revised charter to set out more clearly the experience that we want to deliver to our customers.

This approach supports the recommendation made by the Loan Charge Review in December 2019 that HMRC's Charter be reviewed 'to set higher expectations of performance during interactions with members of the public and ensure that staff are offered training on how to deliver it'.

This charter review also supports recommendations from the House of Lords Economic Affairs Committee report 'The Powers of HMRC: Treating Taxpayers Fairly' in December 2018. This report recommended that 'the Charter is amended to clarify HMRC's responsibilities towards unrepresented taxpayers including that issues are clearly set out, legislation is explained and rights to review and appeals are made accessible'.

HOW HMRC HAS REVIEWED THE CHARTER

Over the past three months we have reviewed HMRC's Charter using various methods including:

- reviewing existing insight, such as HMRC's annual customer surveys, on what matters most to customers.
- researching other customer charters and customer promises in organisations that are similar to HMRC.
- holding face-to-face round table events where our people, including employees and customers, worked together to discuss the current charter and tell us what is most important to them.
- consulting with internal forums and external stakeholder forums across HMRC.
- discussing our charter ambition and obligations at HMRC's Customer Experience Committee, which replaced the Charter Committee in autumn 2018.



PROPOSALS FOR A REVISED CHARTER

HMRC has drafted a revised charter which it would now like to put to public consultation. The revised draft charter aims to take account of views we have received so far for example that the revised charter:

- is short and direct with simple, accessible language.
- embodies or represents HMRC's values: we are professional, we act with integrity, we show respect and we are innovative.
- is more focussed on HMRC's commitments to customers, while not losing sight of customers' obligations to HMRC.

MEASURING OUR PERFORMANCE AGAINST THE CHARTER

The Customer Experience Committee assists the Commissioners of HMRC in their statutory obligation to report each year, through the Charter Annual Report, on the extent to which HMRC has demonstrated the standards of behaviour and values included in the charter.

We are examining our measurement framework as part of the overall charter review and would welcome views on how best to measure performance against the revised charter during this consultation.

WAYS TO RESPOND IN THE CONSULTATION PROCESS

The consultation period will run from now to Friday 15 May 2020. We welcome comments on any aspect of the revised draft charter and, or how HMRC uses its charter.

The list below may help you to structure your feedback:

- do you think the draft charter sets the right standards for HMRC's service to customers?
- to what extent do you feel the draft charter sets out the areas which are most important to customers when interacting with HMRC?
- how you would like to see HMRC measure and monitor how it is performing against the charter, including how it can best listen to feedback and take action on areas for improvement?

Email your views to: HMRC.Charter@hmrc.gov.uk, or write to: HMRC Charter Team, Customer Insight and Design Directorate, 9th Floor, 10 South Colonnade, Canary Wharf, London E14 5AB

COVID-19: world turns to VAT cuts

Continued from page 9

- Saudi Arabia 21 March, delays VAT payments by three months.
- Japan 20 March, update has abandoned temporary Consumption Tax rate reduction from 10% to 5%. It has already delayed filing deadlines and payments by two months until May for individuals and not corporations.
- Bulgaria no relief on VAT filings deadlines.
- EU VAT reclaims: delays to deadlines across Europe.
- Moldova: VAT rate cut for COVID crisis.
- Luxembourg: has granted speedy VAT credit refunds, and no fines on late filings.
- Denmark: delays on VAT for small and large businesses.
- Portugal: VAT payment deferment for smaller taxpayers.
- Italy Update: has suspended payments for large businesses until later this month. Smaller enterprises are delayed longer until 30 June. Non-resident taxpayers must still meet 30 April filing deadline.
- Jersey is to allow late Goods & Sales Tax payments.
- Czech Republic issues limited VAT measures for businesses.
- Romania introduces accelerated VAT credits.
- Australia is offering speedy credits on Goods & Services liabilities.
- EU Commission has suggested countries provide VAT payment holidays, and act in unison. It has also relaxed the state-aid rules, which would permit VAT measures benefiting only specific

businesses or sectors.

- Costa Rica has provided a three-month VAT payment deferment for taxpayers from 15 March.
- Georgia is doubling funding for company VAT credit refunds.
- Jamaica plans to cut its General Consumption Tax from 16.5% to 15%.
- China has cut VAT on medical services, catering and accommodation services, sundry personal services (e.g. hairdressing, laundry), and public transport. There is also a cut on masks and protective clothing. VAT has also been reduced from 3% to 1% on the cash accounting scheme for small businesses until the end of May.
- South Korea has cut VAT taxes for small businesses, given tax boosts for consumers replacing their cars early, and provided tax deductions on personal credit card spend.
- Vietnam is proposing cutting VAT for restaurants, hotels, and transport and tourism companies. It is also considering a five-month delay on VAT payments by businesses.
- Indonesia has said it will waive 10% consumption taxes on hotels and restaurants in Bali and nine other tourist destinations for the next three months. It will also grant postponements of payments of import VAT for businesses, and offer accelerated VAT credit repayments for manufacturers.
- Thailand has exempted face masks from import VAT and reduced time waiting for VAT refunds to 15 days.

Thanks to Avalara for this article. See <https://www.avalara.com>



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