The Complete Charity VAT Handbook

4th edition

Update: 22 May 2020 by Alastair Hardman of Sayer Vincent

This update to The Complete Charity VAT Handbook includes key changes to VAT law, cases and practice since the book was issued and should be read in conjunction with the book itself. The book and update should be taken as guidance only and are not a substitute for professional or legal advice.

COVID-19 related VAT measures

For COVID-19 specific VAT measures, see:
6.4.16 Temporary zero-rating relief for supplies of personal protective equipment
8.5.7 Extended time limit for notifying an option to tax
9.4.1 Extended time limits for the export of goods from the UK
9.5.6 Temporary import VAT exemption for medical goods and equipment for use during the COVID-19 pandemic
9.6.11 Extended time limits for the removal of goods from the UK
12.6.2 Deferring VAT payments
12.6.2 Extension to the digital links deadline for MTD for VAT
12.8.3 Extended period for appealing against an HMRC tax decision

Contents

2 Registration and deregistration 3
2.1 VAT REGISTRATION 3
2.1.1 VAT Registration and De-registration Thresholds 3
2.1.7 Pre-registration VAT 4
2.2 VAT GROUPS 4
2.2.1 VAT grouping conditions 4
3 Recovering VAT 4
3.1 VAT RECOVERY PRINCIPLES 4
3.2 METHODS 5
3.3 GENERAL RECOVERY ISSUES 5
3.3.2 Partial exemption frameworks 5
3.3.10 Pension schemes 5
3.3.13 Foreign and specified supplies 5
3.3.15 Theatres and other performance venues 5
4 Business and non-business activities 6
4.1 BASIC RULES 6
4.1.2 Test 1. The transaction must be a supply 6
4.1.3 Test 2. It must be a supply of goods or of services 7
4.1.5 UK law business tests 7
4.1.7 EU law economic activity test 7
4.1.8 Public bodies 7
4.2 EXCEPTIONS 8
4.2.6 Car leasing schemes 8
4.3 NON-BUSINESS ACTIVITIES 8
4.3.1 Grants, donations, contributions and subsidies 8
4.3.4 Contracts 8
4.3.7 Subsidies directly linked to the price of a supply 8
4.3.22 Non-returnable deposits 8
5 Exempt activities 8
5.1 EDUCATION AND VOCATIONAL TRAINING 8
5.1.1 Eligible body 8
5.1.5 Supplies closely related to the above 9
5.2 HEALTH AND WELFARE 9
5.2.1 Medical care by a registered medical professional 9
5.2.4 Welfare services 9
5.3 CULTURAL SERVICES 10
5.3.4 The British Film Institute case 10
5.4 SPORTS AND PHYSICAL EDUCATION 10
5.4.1 Services closely linked to sport or physical education 10
5.4.2 Eligible body 10
5.5 SUBSCRIPTIONS TO PUBLIC INTEREST BODIES 11
5.5.5 Associations for the advancement of knowledge or the fostering of professional expertise 11
5.5.7 Other public interest bodies 11
5.6 COST SHARING GROUPS 11
5.6.1 Cost sharing group conditions 11

5.7 FUNDRAISING EVENTS 12
5.7.6 Meaning of event 12
6 Zero and reduced rates 12
6.1 INTRODUCTION TO ZERO-RATING 12
6.1.1 Meaning of charity 12
6.2 ZERO-RATED SUPPLIES TO CHARITIES 12
6.2.1 Access works for disabled persons 12
6.2.3 Advertising services 12
6.2.4 Aids for disabled persons 12
6.2.12 Motor vehicles 13
6.4 GENERAL ZERO-RATED SUPPLIES 13
6.4.1 Books and printed matter 13
6.4.2 Caravans 13
6.4.9 Passenger transport 13
6.4.10 Prescription goods 13
6.4.16 Temporary zero-rating relief for personal protective equipment 14
6.5 REDUCED-RATE SUPPLIES 14
6.5.4 Energy-saving materials 14
7 Fundraising 14
7 Fundraising 14
7.12 CORPORATE SPONSORSHIP 14
8 Property 14
8.3 PROPERTY VAT RELIEFS 14
8.3.2 Qualifying new buildings 14
8.4 LEASES AND LETTINGS 14
8.4.4 Service and other charges 14
8.4.5 Active v. passive lets 15
8.4.6 Letting rooms for events and meetings 15
8.5 OPTION TO TAX 15
8.5.5 Land and buildings covered 15
8.5.7 Notification requirements 15
8.6 PROPERTY TERMS 15
8.6.3 Qualifying and non-qualifying buildings 15
8.6.8 'Village hall or similarly' 15
8.6.9 Relevant residential purpose 16
8.6.10 Dwellings 16
8.6.11 Annexes 16
9 International aspects of VAT 16
9.1 INTRODUCTION 16
9.1.1 Territories of the UK and EU 16
9.2 RECOVERING FOREIGN VAT 16
9.2.1 EU VAT Refund Scheme 16
9.3 CROSS-BORDER GOODS INTRODUCTION 17
9.3.2 EORI number 17
9.4 Exports 17
9.4.1 Selling goods 17
9.5 IMPORTS 17
9.5.5 Payment of import VAT 17
9.5.6 Import VAT exemptions 17
9.6 INTRA-EU TRANSFERS OF GOODS 18
9.6.1 Acquisitions 18
9.6.10 Zero-rating removals 18
9.6.11 Extended time limits for removal of goods from the UK 18
9.6.20 Consignment and call-off stock 18
9.7 CROSS-BORDER SERVICES INTRODUCTION 18
9.7.3 B2B and B2C 18
9.7.6 Cross-border VAT groups 18
9.7.8 Use and enjoyment overrides 19
9.8 PLACE OF SUPPLY OF SERVICES RULES 19
9.8.2 Services related to land 19
9.8.3 B2B Event admissions 19
9.8.4 B2C services relating to cultural, artistic, sporting, scientific, educational, entertainment or similar activities 19
9.8.5 B2C IP rights, advertising, consultancy, etc. 19
9.8.6 Electronically supplied services 19
9.8.7 Broadcasting and telecoms services 19

9.9 THE MINI ONE STOP SHOP (MOSS) **20**
9.9.1 MOSS scheme principles 20
9.9.2 UK registration 20
9.9.5 Determining customer location 20
10 VAT special schemes **20**
10.1 CAPITAL GOODS SCHEME **20**
10.1.3 Capital items 20
10.1.11 Disposal of a capital item 20
10.2 TOUR OPERATORS' MARGIN SCHEME (TOMS) **21**
10.2.2 Scope of the TOMS 21
10.2.5 Calculating the margin – UK rules 21
10.3 PUBLIC BODIES **21**
10.3.1 Section 33 refund bodies 21
10.3.2 Government departments and health authorities 21
10.4 MUSEUMS AND GALLERIES REFUND SCHEME **21**
10.6 CHARITY VAT REFUND SCHEME **21**
10.14 ABUSIVE SCHEMES **21**
10.14.1 The Halifax case 21
10.15 LISTED AND HALLMARKED SCHEMES **21**
10.15.4 Disclosure of VAT avoidance schemes (DASVOIT) 21
10.16 DOMESTIC REVERSE CHARGES **22**
10.16.1 Construction services 22
10.16.3 Renewable energy certificates and guarantees of origin 22
11 Other topics **22**
11.1 SUPPLIES OF STAFF **22**
11.1.2 Employment businesses 22
11.2 AGENCY SUPPLIES **22**
11.2.4 Disbursements 22
11.5 TRANSFER OF A BUSINESS AS A GOING CONCERN **22**
11.5.1 TOGC conditions 22
12 Operational aspects **23**
12.2 RECORD-KEEPING **23**
12.6 THE VAT RETURN **24**
12.6.2 Submission of VAT returns and payment of VAT 24
12.7 THE EC SALES LIST **25**
12.8 Dealing with HMRC **25**
12.8.3 The Tax Tribunal 25
12.11 SAGE 50 T-CODES **26**
12.11.4 Cross-border T-codes 26

2 Registration and deregistration

2.1 VAT REGISTRATION

2.1.1 VAT Registration and De-registration Thresholds

April 2017 VAT registration threshold. On 1 April 2017 the VAT Registration Threshold was increased to £85,000 and the de-registration threshold to £83,000. In Budget 2017, the government announced that the VAT registration and de-registration thresholds would be frozen, whilst the government carries out a review of the threshold.

March 2018 Call for evidence on the VAT registration threshold. The government launched a call for evidence on the VAT registration threshold. Questions asked included: does the high threshold limit growth? Possible simplifications were also discussed, such as submitting 6 monthly or annual VAT returns and payments, a threshold for turnover over 2 years and a variable rate of VAT for low turnovers (as in Finland) or different thresholds for different sectors (as in Ireland and France).

November 2018 Call for evidence - responses The responses did not present a clear solution to the problems surrounding the VAT registration threshold. The government said it will continue to monitor and evaluate the design of the threshold and simplification schemes. The government said it will also look again at the possibility of introducing a smoothing mechanism once the terms of EU exit are clear. In the meantime the government has frozen the VAT registration threshold at £85,000 for a further two years.

2.1.7 Pre-registration VAT

Revenue & Customs Brief 16/16: VAT recovery on pre-registration asset purchases. For non-Capital Goods Scheme assets, VAT can be recovered in full (subject to the normal VAT recovery rules) on assets purchased up to 4 years before registration. There is no reduction for use of the asset in the pre-registration period.

2.2 VAT GROUPS

2.2.1 VAT grouping conditions

July 2015. Laurentia & Minerva CJEU. The CJEU's decision was that EU states can only (i) block non-legal persons from joining a VAT group and (ii) insist on a relationship of parent / subsidiary between group entities, if such measures are necessary and appropriate in order to prevent abuse or to combat tax avoidance. However a taxpayer may not invoke VAT grouping rights by direct effect.

November 2019. With effect from 1 November 2019, individuals and partnerships (but not charitable trusts) are able to form a VAT group with controlled companies as long as the individual or partnership is established in the UK or has a fixed establishment in the UK.

3 Recovering VAT

3.1 VAT RECOVERY PRINCIPLES

October 2015 Sveda CJEU. Sveda, a commercial business, constructed a 'Baltic mythology recreational path' whose construction was 90% grant funded by the government on the condition it was made available free of charge for five years. For Sveda the path was a means of attracting visitors with a view to providing them with goods and services, such as souvenirs, food and drinks, access to attractions and paid-for bathing. Was the VAT incurred in constructing the path recoverable? The CJEU decided that in the circumstances a direct and immediate link to taxed transactions was established and consequently, the VAT was recoverable

July 2016 Gemeente Woerden CJEU – sale at below cost. A local authority constructed two buildings, reclaimed almost all of the VAT, and then sold the freehold as a taxable supply for 10% of cost to a Foundation which let the buildings out partly for free and partly commercially. The VAT authority refused the local authority full VAT deduction on construction, on the basis that either (i) the building was supplied below cost or (ii) it was sub-let by the tenant partly for free. The CJEU decided full deduction was due. The use by the tenant is irrelevant and the CJEU stated: 'it follows from the case-law of the Court that if the supply price is lower than the cost price, the deduction cannot be limited in proportion to the difference between the supply price and the cost price, even if the supply price is considerably lower than the cost price, unless it is purely symbolic (see, to that effect, *Commission* v *France*, 50/87)'

September 2017 Iberdrola CJEU. Iberdrola constructed holiday apartments, however they could not be connected to the sewerage system without refurbishment of the local authority's sewerage pumping station. The question is whether Iberdrola could reclaim the VAT incurred on the refurbishment works. The CJEU has decided that Iberdrola could, 'in so far as the services do not exceed that which is necessary to allow Iberdrola to carry out its taxable output transactions and where their cost is included in the price of those transactions'.

July 2019 Cambridge University CJEU – VAT recovery on investment manager fees. The CJEU has decided that VAT incurred in managing CU's endowment fund is not recoverable as the investment management services are directly attributable to the non-business activity of operating the fund. The University's endowment fund is made up of donations and endowments. Proceeds from the fund are used to support all of the University's activities. The CJEU has decided that in managing the fund, the University is not a taxable person acting as such, on the basis of the Tolsma decision (Mr Tolsma, in soliciting donations was not acting as a taxable person).

August 2019 Frank A Smart Ltd Supreme Court – VAT incurred in generating non-business income. FASL is a farming business operating from a farm in Scotland. Between 2004 and 2015 Scottish farmers were entitled to a tradeable agricultural subsidy ('single farm payments' or SFPs) paid by the Scottish Government. The SFPs were non-business income paid in respect of the acreage of qualifying land held, however the SFPs were tradeable as taxable supplies. FASL purchased, as a standard-rated supply, 34,477 SFP units, in addition to receiving its own entitlement of 194 units. FASL also acquired leases of qualifying land on seasonal lets. FASL did not cultivate or stock this land and typically the landlord could stock or cultivate the land, provided that the ground was kept to the qualifying standards. The question was whether FASL could reclaim the VAT incurred in purchasing the SPFs. HMRC argued that FASL acquired the units to generate the receipt of SFPs, which was a form of investment income that was outside the scope of VAT. The Supreme Court, in a unanimous decision, rejected HMRC's position and decided the VAT was recoverable on the basis FASL was, on the facts, acting as a taxable person in purchasing the SFP units.

Lord Hodge added the following guidance for HMRC on fundraising costs:

'**The task for HMRC**. I recognise that a claim for deduction which depends on the future behaviour of the taxable person, such as the claim in this case, may create practical difficulties for HMRC in administering the VAT system

fairly and, in particular, in avoiding unwarranted repayments of VAT. But it is an established part of the VAT system that a taxable person is entitled to an immediate deduction of the VAT which it has paid ... It is also well-established that a taxable person can claim to deduct as input tax VAT which it has paid on the acquisition of goods or services although it will not use those goods and services as components of taxable transactions immediately… The recognition that fundraising costs may, where the evidence permits, be treated as general overheads of a taxable person's business means that the taxable person must be able to provide objective evidence to support the connection between the fundraising transaction and its proposed economic activities. The taxpayer also needs to maintain adequate banking arrangements and records to vouch the later use of the funds so raised to demonstrate its entitlement to deduct and to retain the deduction, if investigated'.

3.2 METHODS

July 2019 Simplification of partial exemption and the Capital Goods Scheme. HMRC launched a call for evidence on possible ways to simplify partial exemption. Suggestions include:
(1) No HMRC approval required for partial exemption special methods (PESMs) but the taxpayer must make a declaration that the PESM is fair & reasonable
(2) either increase the de-minimis £7,500 limit or abolish it
(3) revise the Capital Goods Scheme thresholds (£250,000/£50,000)
(4) remove computers from the Capital Goods Scheme.
To date, no changes to the law have resulted from this.

3.3 GENERAL RECOVERY ISSUES

3.3.2 Partial exemption frameworks

September 2019 Partial exemption framework for government departments. HMRC has added a new partial exemption framework for government departments. There are now five partial exemption frameworks for: Higher Education institutions, housing associations, insurance business, NHS bodies and government departments.

3.3.10 Pension schemes

April 2015 Revenue & Customs Brief 8/15: VAT recovery on defined benefit pension fund costs – tripartite contracts. Following Revenue & Customs Brief 43/14, in which HMRC accepted an employer can deduct VAT incurred on defined benefit pension fund management costs if the employer (amongst other conditions) contracts and pays for the services, HMRC have now updated that guidance in respect of tripartite contracts. HMRC accept employers can deduct VAT where a tripartite contract is in place that meets six conditions. But, as previously, if the employer pays the service provider and recharges the fund, that recharge is subject to VAT.

3.3.13 Foreign and specified supplies

December 2015 Revenue & Customs Brief 22/15: Changes to VAT regulations following Credit Lyonnais. In Credit Lyonnais the CJEU decided that income of foreign establishments must be excluded when calculating partial exemption recovery rates under the standard-method. This brief explains the technical detail of how this decision will be implemented in VAT Regulation 1995, including for special methods, with effect for VAT years beginning on or after 1 January 2016.

February 2019 Morgan Stanley CJEU. A French branch of a UK bank makes taxable supplies of financial service in France under a French option to tax for financial services. It also provides services to the UK head office which the UK head office uses to make mixed taxable and exempt supplies in the UK. How should the French branch reclaim French VAT incurred on the mixed use services provided to the UK and residual French VAT incurred on its general overheads? The CJEU specified two different turnover based formulae.

3.3.15 Theatres and other performance venues

New section. There are many court and tribunal cases that involve charities and others that supply VAT exempt admissions, for example, theatres, opera houses, dance and music venues. Such suppliers usually make VAT exempt supplies of admission but also make taxable supplies of goods and services, for example supplies of food and drink, programme sales, memorabilia, sponsorship, sales of recordings, touring fees etc.

In Mayflower Theatre Trust ([2006] EWCA Civ 116) HMRC argued that Mayflower's production inputs (costs of buying in third party productions) were attributable solely to the VAT exempt admissions and hence the VAT incurred was wholly irrecoverable. However the Court of Appeal rejected HMRC's position and decided that the production inputs were also used to make taxable supplies of production related programmes.

In Revenue & Customs Brief 45/07, issued following the Mayflower decision, HMRC accepted that theatres that receive single supplies of production services from touring companies, that include material essential for the printing of programmes, may treat the production inputs as residual. However HMRC's position was that a fair apportionment for production inputs would be [(total programme income) / (programme income plus box office sales)] x 100%, and if necessary, theatres must apply a standard method override on this basis (see 3.2.8).

In Garsington Opera ([2009] UKFTT 77 (TC)), Garsington argued its production inputs had a direct and immediate link not only to exempt admissions, but also to taxable supplies of corporate sponsorship, touring (supplies of the

production to an outside concert hall), programmes, CDs, sales of intellectual property rights in own productions and the occasional supplies of production props and equipment. The Tribunal found for Garsington having identified a direct and immediate link between the production costs and both the exempt admission and the taxable supplies in issue.

In Revenue & Customs Brief 65/09 HMRC announced it would not appeal the Garsington decision, and accepted that production specific sponsorship, touring and recording fees also had a direct and immediate link to production inputs and could be included in the standard method override calculation.

July 2015 North of England Zoological Society First Tier Tax Tribunal. Chester Zoo charges VAT exempt admission fees but also makes substantial taxable sales of catering, merchandise, transport and animal encounters (keeper for the day etc.). It treats animal costs as residual and recovers VAT via the standard method. HMRC accept animal costs are residual on the basis they are used for the exempt admissions and taxable animal encounters. However HMRC considered it unfair to include catering and retail sales in the apportionment and demanded a standard method override. HMRC's approach was rejected. The animal costs have a direct and immediate link to the catering and retail sales.

April 2020 Royal Opera House Covent Garden Upper Tier Tax Tribunal. The Upper Tier Tax Tribunal has decided that supplies of catering to opera goers do not have a direct and immediate link to production costs. However supplies of admission, supplies of performance specific programmes, sales of performance recordings and production specific commercial venue hire do have a direct and immediate link to the production inputs.

4 Business and non-business activities

4.1 BASIC RULES

4.1.2 Test 1. The transaction must be a supply

November 2016 Baštová CJEU – meaning of consideration, prize money. Ms Baštová operated a racing stables which also housed some of her own race horses. She received prize money (owner's prizes and trainer's prizes). Is the prize money consideration for a supply of services to the race provider. Answer no, on Tolsma grounds.

January 2019 EC v Austria CJEU – meaning of supply, artists' resale royalties. Austria charges artists' royalties on the resale of physical works of art (goods) to VAT. EU law requires artists of such works to be paid a royalty on every resale as a percentage of the sales proceeds. The decision is that the artist isn't supplying services to the seller in return for the royalty, so the royalty is outside the scope of VAT. The CJEU distinguishes this from sales of reproduction rights (e.g. in written works) which are subject to VAT and rejects Austria's argument that artists' resale royalties represent an increase in consideration for the original supply.

January 2017 SAWP CJEU – meaning of supply, rights holders' levies Under Polish law producers and importers of recording and reproduction devices and blank media are required to pay a levy not exceeding 3% to collective management organisations which then distribute the proceeds to authors, performers and other rights holders. The question is whether this levy is subject to VAT. The decision is that it is not, on the basis it is not consideration for a specific supply of services by the rights holders, but is instead compensation for the harm resulting for those rights holders from the reproduction of their protected works without their authorisation.

June 2017 National Car Parks Upper Tier Tax Tribunal – meaning of consideration, overpayment. If a coin operated parking meter does not give change, and if the parker decides to overpay rather than find the change (or pay by some other means), is any excess paid further consideration for the right to park or a voluntary payment that is outside the scope of VAT? The Upper Tier Tax Tribunal has decided the consideration is what is actually paid for the supply, not what might have been paid. This decision overrules the 2012 First tier Tax Tribunal decision in King's Lynn and West Norfolk Council.

August 2017 HMRC policy on off street parking overpayments. Following the Upper Tier Tax Tribunal decision in NCP, HMRC now regards all payments, including overpayments, for off street parking as standard-rated and the 2012 First tier Tax Tribunal decision in King's Lynn Borough Council as wrongly decided.

May 2019 National Car Parks Court of Appeal – car parking ticket overpayments. The Court of Appeal has agreed with the Upper Tier Tax Tribunal that overpayments made for parking tickets issued by ticket machines that do not offer change are part of the consideration for the taxable supply of parking rights and VAT standard-rated.

June 2019 IO CJEU – acting independently, trustee honoraria. IO is a trustee of a Netherlands housing association. He is paid a fixed salary of €14,912 per year and the issue is whether this is subject to VAT. The trustee is not an employee of the trust, even though his salary is taxed as employment income. The CJEU has

decided that the trustee does make a business supply of services to the Foundation however he does not do so independently, and so IO's fee is outside the scope of VAT.

4.1.3 Test 2. It must be a supply of goods or of services

October 2017 Mercedes Benz Financial Services CJEU. A car purchased on HP is a supply of goods, the VAT is payable when the goods are handed over. The lease of a car without transfer of ownership is a supply of services, the VAT is payable when invoiced. MBFS provides an agility option under which total discounted lease instalments amount to 60% of the market value, with the remaining 40% payable as an optional balloon payment. 50% of customers take the option. Are the instalments for a supply of goods or of services? The CJEU has decided it will be a supply of goods if the only economically rational choice is to take the purchase option.

4.1.5 UK law business tests

September 2016 Longridge on Thames, Court of Appeal. The Court of Appeal has accepted HMRC's argument that in EC v Finland, the CJEU set out a 'general rule' under which a supply generating activity is business if it is permanent. This rule can then either be rebutted or there are exceptions in particular circumstances. However this decision is now overtaken by the Court of Appeal's decision in Wakefield College, see below.

May 2018. Wakefield College, Court of Appeal. This is Wakefield's appeal against a 2016 Upper Tier Tax Tribunal decision. The Court of Appeal has rejected Wakefield's appeal, but in doing so, has relied on the CJEU decision in Gemeente Borsele (see below). The judgement lists seven factors that indicated the subsidised fees are business income. It also explains there is an English / French translation problem with the CJEU's Finland decision (and many others). The UK version uses the terms 'consideration' and 'remuneration' interchangeably but the French version makes clear a distinction between 'la retribution' (consideration = for a supply) and 'contre un remuneration' (remuneration = for a business supply).

4.1.7 EU law economic activity test

May 2016 Gemeente Borsele CJEU – meaning of business activity A Netherlands local authority provided transport for school pupils and charged parents a contribution based on the distance travelled and parental income. Only a third of parents had to pay and their contributions covered 3% of the service's cost. The CJEU has decided the parental contributions are not business income for the local authority. The CJEU has set out the tests to be applied and then applied them to the facts of the case. The CJEU first makes clear that there is a two stage test:

1. the 'supply for consideration test': Are the parental contributions consideration for a supply of goods or services?
2. the 'supply for remuneration test' If yes, are they remuneration for Gemeente Borsele? This is equivalent to the UK case law business activity test

For test 2, the CJEU, stated 'in order to determine whether a service is supplied 'in return for remuneration' so that the activity in question is to be classified as an economic activity, all the circumstances in which it is supplied have to be examined … Comparing the circumstances in which the person concerned supplies the services in question with the circumstances in which that type of service is usually provided may therefore be one way of ascertaining whether the activity concerned is an economic activity … Other factors, such as, inter alia, the number of customers and the amount of earnings, may be taken into account along with others when that question is under consideration'.

4.1.8 Public bodies

January 2017 NRA Ireland CJEU – meaning of 'would lead to significant distortions of competition'
Public bodies are precluded from being treated as non-taxable persons where their treatment as non-taxable persons would lead to significant distortions of competition. The significant distortions of competition 'must be evaluated by reference to the activity in question, as such, without that evaluation relating to any particular market, and by reference not only to actual competition, but also to potential competition, provided that the possibility of a private operator entering the relevant market is real and not purely hypothetical. The purely theoretical possibility of a private operator entering the relevant market, which is not borne out by any matter of fact, any objective evidence or any analysis of the market, cannot be assimilated to the existence of potential competition'.

March 2018 NTN CJEU – meaning of public body. NTN was set up to manage a local authority's housing, roads, parks and other assets under a contract with the local authority. The question is whether NTN acts as a public body in performing the contract. The CJEU sets out the factors that must be considered and concludes that in NTN's case, the answer is no. One of the essential factors is whether the body has powers conferred by public law. NTN did not have any such powers.

4.2 EXCEPTIONS

4.2.6 Car leasing schemes

June 2019 Northumbria NHS Trust Upper Tier Tax Tribunal. The Trust leases cars to its own employees and to employees of other NHS trusts under a salary sacrifice scheme. The issue is whether the Trust can reclaim the VAT incurred in leasing cars to its own employees under s41(3) and whether the recovery is blocked at 50%. The decision is that this is a commercial car leasing scheme operated by the Trust carried on in competition with commercial schemes and is a business activity for the Trust. However as a result of the de-supply order for employee car leasing schemes, it isn't seen as a supply for VAT purposes and isn't seen as a business activity and so the VAT is eligible for reclaim under s41(3) . The 50% blocking order is inoperative as it only applies to input tax. HMRC has appealed this decision.

4.3 NON-BUSINESS ACTIVITIES

4.3.1 Grants, donations, contributions and subsidies

January 2018 HMRC Grant v consideration factors. The HMRC internal VAT guidance on grants has been substantially rewritten. Changes include new grant v consideration factors, guidance on how they should be applied and commentary on grant v consideration case law.

4.3.4 Contracts

May 2017 Healthwatch Hampshire First tier Tax Tribunal – VAT status of a local authority advocacy contract. HH is a non-charitable joint venture company formed by three charities. HH took on a contract with Hampshire County Council for the provision of services relating to advocacy, public and patient involvement, information, signposting and advice. The services are sub-contracted to the three charities as taxable supplies. The issue is whether the Hampshire County Council contract is within the scope of VAT, with HMRC arguing it is not. The decision, on the basis of the Court of Appeal's decision in Longridge on Thames (the rebuttable presumption approach), is that it is.

August 2017 HMRC does not accept the First Tier Tax Tribunal's recent decision that Hampshire Healthwatch's activities are within the scope of VAT, but does not intend to appeal.

January 2018 HMRC has written to Healthwatch organisations, rejecting the First tier Tax Tribunal's decision in Healthwatch Hampshire to the effect the Healthwatches supply taxable services to the Clinical Commissioning Groups, and inviting any who disagree to appeal its decision.

4.3.7 Subsidies directly linked to the price of a supply

October 2019 C GMBH & CeG CJEU – subsidies directly linked to a supply. C and CeG are two agricultural producer co-operatives. They each have an autonomous operational fund into which the EU and the members contribute equal shares. Members order agricultural machinery and the invoices are paid by the co-ops with the co-ops then invoicing the member for 50% or 75% of their share of the cost, plus VAT. The operational fund pays the rest. The German government argues the operational fund contributions are subsidies directly linked to the price of a supply and subject to VAT. The CJEU has agreed with the German government.

4.3.22 Non-returnable deposits

April 2016 Air France-KLM & BritAir SAS CJEU – payments for unfulfilled supplies. The question referred is - when an airline ticket is sold in advance of use, is VAT chargeable on the ticket payment even if the customer does not show up at boarding or if a ticket expires without use? Answer: yes, the supply is of the right to performance, the chargeable event is performance but a prepayment is subject to VAT when paid. In addition, compensation paid to a franchisee for no shows and expired tickets was consideration for those supplies of rights to performance.

Revenue & Customs Brief 13/18: Change to the VAT treatment of retained payments and deposits. On the basis of the CJEU decisions in KLM and Firin OOD, with effect from 1 March 2019 suppliers should treat payments and part payments for unfulfilled taxable supplies as within the scope of VAT and HMRC will not refund any VAT accounted for.

5 Exempt activities

5.1 EDUCATION AND VOCATIONAL TRAINING

5.1.1 Eligible body

December 2018 Revenue & Customs Brief 11/18: Eligible body changes for higher education. Sch 9 group 6 Note 1(c)(i) (definition of eligible body for England and Wales higher education institutions) is to be amended as a result of changes to the regulation of Higher and Further Education in England. For Higher Education, eligible body status will be limited to bodies registered with the Office for Students in the Approved fee cap category. Welsh, Scottish and NI HE providers will be unaffected. FE providers are unaffected though the definition of FE provider in England will change.

July 2019 Revenue & Customs Brief 5/19: Education eligible bodies: approved fee cap status. With effect from 1 August 2019 the list of education eligible bodies in note 1(c)(i) was amended to restrict eligible body status to bodies registered with the Office for Students with Approved (fee cap) status.

5.1.5 Supplies closely related to the above

May 2017 Brockenhurst College CJEU – services closely related to education. The CJEU has decided that supplies of catering by catering students and of admission to performances by performing arts students are exempt from VAT as supplies closely related to the College's VAT exempt supplies of education. The decision is on the basis of the Horizon College case.

July 2017 Loughborough Students' Union First Tier Tax Tribunal – sales in student shops Claim that LSU's sales of stationery and art materials to students are closely related to education and as such exempt. Rejected.

September 2017 VATEDU53400 HMRC policy following Brockenhurst College. HMRC will accept student supplies are closely related if the underlying education is a business supply, the activity is student-led and essential to their education, and the activity does not have the purpose of generating additional income in direct competition with commercial enterprises. In particular, the services must not be offered to the general public through advertising, including over the internet, and the costs of providing the supplies to the general public must clearly exceed any income generated from that activity.

5.2 HEALTH AND WELFARE

5.2.1 Medical care by a registered medical professional

August 2015 City Fresh Services First Tier Tax Tribunal – exemption of medical care by sub-contractors. CF is a company set up by two dentists who also operate as a partnership (CDP). CDP had a dental contract with an NHS Trust. CDP sub-contracted its performance to CF. HMRC argued CF's supply to CPD was not of exempt medical services but of staff. The tribunal rejects this. The supply from CF to CDP is the same as the supply from CDP to the NHS Trust and as such exempt.

July 2019 Belgisch Syndicaat van Chiropraxie CJEU – medical professions and medicinal products. This is a referral from Belgian professional bodies for chiropractors, osteopaths and plastic surgeons, questioning whether the Belgian exemption for supplies of professional medical services can exclude persons who do not work in a state regulated profession (Answer: states cannot though they do have powers to restrict the exemption) and whether for reduced rating purposes states may make a distinction between medicinal products and devices provided in the context of therapeutic treatments versus exclusively aesthetic treatments (Answer: states can distinguish).

September 2019 Peters CJEU – services of clinical chemists and laboratory physicians. German law says that for the purposes of the VAT exemption, medical care must involve a confidential relationship between the supplier and the person being treated, which is absent for the services of clinical chemists and laboratory physicians. However the CJEU has decided there is no need for medical care to involve a confidential relationship between the supplier and the person being treated.

5.2.4 Welfare services

June 2016 Sport Academies Ltd First Tier Tax Tribunal – children's sports coaching. Is a privately run children's holiday playscheme providing sports coaching by sports coaches 'care or protection of children and young persons'? The First Tier Tax Tribunal has decided that this is taxable sports coaching and not the care or protection of children and young persons.

September 2018 YMCA Birmingham & Ors First Tier Tax Tribunal – housing related support services. Appeal by four YMCAs who provide general housing related support services to young people who are either homeless or at risk of homelessness. The young people are in housing association accommodation and the services are designed to enable them to live independently. The First Tier Tax Tribunal has found these are exempt welfare services as all the recipients are distressed and they have undergone appropriate assessment. Includes definitions of 'distressed', 'instruction', and 'designed to promote physical or mental welfare'.

February 2019 The Learning Centre Romford and LIFE Services Upper Tier Tax Tribunal – supplies of unregulated care by private welfare providers. LCF and LIFE are private (for profit) providers of offsite adult day care services that are not regulated in England and Wales but are regulated in Scotland and Northern Ireland. The question is whether the UK has breached fiscal neutrality by treating the same supply differently in different parts of the UK. The Upper Tier Tax Tribunal has decided that the UK has not breached fiscal neutrality as the state regulation of a service is a permissible distinction to make for the welfare services exemption, as accepted by the CJEU in Kingscrest. HMRC has appealed this decision to the Court of Appeal.

June 2019 Cheshire Centre for Independent Living First Tier Tax Tribunal – welfare exemption, payroll service. CCIL provides a payroll service for disabled persons who have opted to employ a personal carer via their personal care budget. The payroll service is tailored to the needs of the disabled customers who would be unable

to use the services of commercial payroll bureaux. HMRC had initially accepted that payroll services provided by the Glasgow Centre for Independent Living were closely linked to welfare services but then changed their view. The First Tier Tax Tribunal has rejected HMRC's approach and decided they are closely linked on the basis of the four step test for closely linked services used in Brockenhurst. HMRC has appealed this decision.

September 2019 Lilas Graham Trust First Tier Tax Tribunal – residential parenting skills assessment service. LGT runs a residential assessment centre where parenting capabilities are assessed. Referrals are made by social workers under child protection legislation. LGT provides the parents with guidance and the social workers with assessment reports. LGT argue this is not a service directly connected to the care or protection of children as the service is for the parent and local authority. HMRC argue the supply is a VAT exempt welfare service. Decision – though there is no care it is the protection of specific children. Distinguished from PACT (assessment of potential adopters) on the basis PACT assessed all potential adopters and there was no direct link to a specific child, whereas LGT only assesses parents of specific children at risk.

November 2019 RSR Sports First Tier Tax Tribunal – care or protection, holiday playschemes. RSR is a private OFSTED regulated provider of after school clubs, pre and post school childcare ('active care') and holiday playschemes for children. HMRC accept that the active care is VAT exempt childcare but argue the holiday schemes are more activity focused and excluded from exemption on the basis of the Sports Academy case (see above). The First Tier Tax Tribunal has decided this is VAT exempt childcare as the childcare is the predominant benefit from the perspective of the average parent. The First Tier Tax Tribunal distinguished the situation from Sports Academy on the basis in Sports Academy the children were coached in sports by specialist sports coaches, in this case games and sport activities take place but they are supervised by childcare qualified staff.

5.3 CULTURAL SERVICES

5.3.4 The British Film Institute case

February 2017 British Film Institute CJEU – the scope of the cultural exemption. The CJEU has decided that member states are permitted to determine the types of cultural activity that qualify for VAT exemption. This is because this is the literal interpretation of the wording of the legislation, that was the historic intention, and a narrow interpretation should apply. Whilst the exemptions are independent concepts of EU law whose purpose is to avoid divergences across the EU, the EU legislature may confer on the Member States the task of defining certain terms of an exemption.

5.4 SPORTS AND PHYSICAL EDUCATION

5.4.1 Services closely linked to sport or physical education

February 2015 VAT information sheet 01/15: Bridport claims. Instructions from HMRC to member golf clubs (and other eligible sports bodies) on how to make claims for over-paid VAT on green fees following the ECJ's decision in Bridport & W Dorset Golf Club.

December 2015 Berkshire Golf Club First Tier Tax Tribunal – unjust enrichment, corporate purchases and VAT recovery on maintenance costs. This is a test case involving four golf clubs regarding: 1. unjust enrichment on reclaiming VAT on green fees (90% refund due), 2. the VAT statuses of corporate events and green fees paid for by companies (standard-rated), 3. The VAT status of sales to tour operators (standard-rated), and 4. Whether taxable supplies of corporate days, tee advertising or buggy hire render course maintenance costs residual (answer: yes).

May 2016 Revenue & Customs Brief 10/16: Bridport claims & unjust enrichment. HMRC has accepted the First Tier Tax Tribunal decision in Berkshire Golf Club and will now accept claims for overpaid VAT as a result of the CJEU decision.

May 2016 VAT information sheet 01/15: Bridport claim. HMRC guidance on making Bridport claims, including the VAT treatment of corporate events, supplies to tour operators, buggy hire, advertising, sponsorship, coaching and competition fees.

November 2017 English Bridge Union CJEU – is bridge a sport? The answer is no. Sport, for the purposes of the VAT exemption for services closely connected to sport and physical education, must include a more than negligible physical element. Likely to apply also to chess (unless the game involves moving giant chess pieces, in which case there is likely to be a more than negligible physical element).

5.4.2 Eligible body

November 2016 St Andrew's College Bradfield Upper Tier Tax Tribunal: Sporting exemption - distribution of profits. A charity's two trading subsidiaries supply sporting services and gift aid profits to the parent charity under deeds of covenant. For the sports exemption, eligible bodies include a body that is 'allowed to distribute any such profit by means only of distributions to a non-profit making body'. The Upper Tier Tax Tribunal has agreed with the First Tier Tax Tribunal that a deed of covenant is not enough, for this requirement to be met there must be a restriction on distribution in each subsidiary's governing documents.

July 2017 LB Ealing CJEU – supplies of sports facilities by public bodies. The CJEU has decided that UK law is ultra-vires in applying a distortion of competition requirement to preclude public bodies from being eligible sports bodies, when the same requirement is not applied to other types of sports eligible body. The CJEU did not address the question of whether the UK could impose a global ban on public bodies on the basis of distortion of competition, rather than having to establish distortion of competition in each individual case.

January 2018 Revenue & Customs Brief 6/17: VAT treatment of sports facilities supplied by local councils. HMRC has accepted the CJEU decision in LB Ealing that UK law is wrong to preclude public bodies from the sporting exemption. HMRC policy is now that local authorities may choose whether to exempt (under EU law) or standard-rate (under UK law), but they must do so consistently across all their sports facilities.

5.5 SUBSCRIPTIONS TO PUBLIC INTEREST BODIES

5.5.5 Associations for the advancement of knowledge or the fostering of professional expertise

August 2016 Association of Graduate Careers Advisory Services First Tier Tax Tribunal – membership subscriptions. The question is whether AGCAS's subscriptions are VAT exempt as subscriptions to an association, the primary purpose of which is the fostering of professional expertise (item 1(c)) or as subscriptions to a body which has objects in the public domain and of a philanthropic or civic nature (item 1(e)). The First Tier Tax Tribunal rejects both arguments.

5.5.7 Other public interest bodies

November 2015 United Grand Lodge of England Upper Tier Tax Tribunal – meaning of philanthropic body. This is an appeal by UGLE against a First Tier Tax Tribunal decision that its aims were not all of a "philosophical, philanthropic or civic nature" (February 2014) and as such subscriptions did not qualify for exemption. The Upper Tier Tax Tribunal has dismissed the appeal on the basis there was no flaw in the First Tier Tax Tribunal's reasoning and it came to a conclusion it was entitled to reach.

March 2016 Shanklin Conservative Club First Tier Tax Tribunal – meaning of political body and ESC 3.35. SCC is a non-profit making club with premises in Shanklin, Isle of Wight. The dispute is whether or not its membership subscriptions are wholly or partly exempt on the basis it is a political membership body. The First Tier Tax Tribunal agrees the club has some political aims but these are no longer the main aims of the club being largely a social club. The club also claimed partial exemption via ESC 3.35 however the First Tier Tax Tribunal rejected jurisdiction over this and suggested an appeal to the HMRC Adjudicator.

May 2016 Halle Concerts Society First Tier Tax Tribunal – philanthropic body. The subscriptions provide voting rights, an annual report, various publications, priority booking for Halle concerts and season tickets, and assorted other benefits. The decision is that the subscription is a single business supply that falls within the philanthropic exemption. The parties had agreed to defer any consideration of the cultural exemption until after the CJEU BFI decision.

5.6 COST SHARING GROUPS

5.6.1 Cost sharing group conditions

May 2017 EC v Luxembourg CJEU – cost sharing groups and overheads. The long awaited (since 2012) decision on whether VAT exempt Cost Sharing Group supplies to a member can be used partly for the member's taxable activity. The answer is no, but the CJEU suggests that an apportionment may be possible, on the basis of the proportion of use by the member for its VAT exempt and non-business activities.

September 2017 AVIVA CJEU – Cost Sharing Groups, insurance. The CJEU has decided that only the 'article 132' public interest exemptions (care, education, culture, sport etc.) are capable of being supported by a Cost Sharing Group. This excludes the general exemptions such as those in article 135 for insurance, financial services and supplies of immoveable property (though see below for housing related Cost Sharing Groups).

March 2018 Revenue & Customs Brief 02/18: Changes to cost sharing groups. Three changes took place with effect from 22 March 2018 with transitional measures for those affected
(a) Cost Sharing Groups are limited to the public interest VAT exemptions and non-business activities, though housing association Cost Sharing Groups will be allowed to carry on for the time being whilst HMRC consider these
(b) Cost Sharing Group membership will be limited to UK members
(c) HMRC will not allow any uplifts, such as required by transfer pricing rules, fees must be on an exact reimbursement basis and this must be evidenced
(d) HMRC are also considering the directly necessary test and the 85% rule in light of the Luxembourg decision and will make a further announcement on this and the housing association issue.

August 2018 Revenue & Customs Brief 10/18: Cost Sharing Groups and apportionment of exemption. In the CJEU Luxembourg decision the CJEU suggested that apportionment of the Cost Sharing Group's supplies between exempt and standard-rated may be possible where the Cost Sharing Group's supplies are used for mixed taxable and non-taxable activities. HMRC has accepted this. If applicable, members will have to

communicate their recovery rates to the Cost Sharing Group in order for the Cost Sharing Group to be able to apportion, even if the member is unregistered. This policy is effective from 15 August 2018 however Cost Sharing Groups could continue to exempt supplies under the old HMRC approach until 31 December 2018. New pages have been added to the Cost Sharing Exemption (CSE) manual dealing with apportionment of Cost Sharing Group supplies where the member uses the supply for mixed taxable and non-taxable activities.

April 2019 European Commission: Review of the VAT exemption for financial and insurance services. In light of the CJEU decision that Cost Sharing Groups cannot be used by providers of financial and insurance services, the European Commission is considering extending the cost sharing exemption to these. It is also examining the rationale behind the VAT exemption for financial and insurance services and whether it should be continued. Some EU states have an option to tax financial and insurance services but this is at the discretion of the state. One option under consideration would be to make this at the discretion of the supplier of financial or insurance services.

September 2019 Revenue & Customs Brief 8/19: Cost Sharing Groups for housing associations. HMRC has decided housing associations can form Cost Sharing Groups provided five conditions are all met. These include no uplift on shared costs within the Cost Sharing Group and within any VAT group involved.

5.7 FUNDRAISING EVENTS

5.7.6 Meaning of event

July 2018 Loughborough Students' Union & Ors First Tier Tax Tribunal – fundraising events. Decision that regular (weekly) and occasional (annual) student events put on by four student unions do not qualify for the fundraising exemption. The regular events are not fundraising events (either because they are not events or because there are more than 15) and most of the occasional events are so similar to the regular events they are not fundraising events either. The Judge accepts that Bournemouth's Fresher, Graduation and Summer Balls are fundraising events and promoted as such, however there is actual commercial competition for these events so they also fail exemption. The case considers the compatibility of UK law with EU law and concludes that the UK requirements on the purpose and number of events are compatible but not the promotional requirement.

6 Zero and reduced rates

6.1 INTRODUCTION TO ZERO-RATING

6.1.1 Meaning of charity

April 2016 Isle of Man charities Finance Act 2016 updated the definition of charity for VAT purposes only to include charities subject to the jurisdiction of the High Court of the Isle of Man. This has retrospective effect to 1 April 2012 as the legislative intent is put beyond doubt that charities subject to the jurisdiction of the High Court of the IoM are capable of qualifying for UK VAT reliefs for charities.

October 2019 Eynsham Cricket Club Upper Tier Tax Tribunal. The charity VAT reliefs have not been available to a CASC since 1 April 2009. Before then a CASC was capable of being a charity however this was blocked when s5 Charities Act 2006 came into force on 1 April 2009. S5 Charities Act 2006 (now s1(1) Charities Act 2011) states 'A registered sports club established for charitable purposes is to be treated as not being so established, and accordingly cannot be a charity'.

6.2 ZERO-RATED SUPPLIES TO CHARITIES

6.2.1 Access works for disabled persons

September 2019 Revenue & Customs Brief 7/19: VAT on lost space for adapting bathrooms and toilets. HMRC clarification of policy on zero-rating works to restore space lost as a result of installing or adapting an accessible toilet or bath facilities. Relief is limited to the building costs of restoring lost space and excludes any supply of facilities, fixtures or fittings in the restored space, unless the facilities restore facilities previously available in the lost space. The changes can be backdated to the later of 4 December 2014 and the usual 4 years.

6.2.3 Advertising services

October 2019 HMRC policy on social media advertising. HMRC has sent the Charity Tax Group a letter setting out its position on the VAT statuses of various types of targeted social media advertising. The key distinction is whether or not the recipient is targeted using some form of personal address such as an IP address, email address, phone number or postal address.

6.2.4 Aids for disabled persons

June 2016 Iansyst First Tier Tax Tribunal – zero-rating, equipment designed solely for use by a handicapped person. The First Tier Tax Tribunal has allowed the zero-rating of a mobile phone with pre-installed software for persons with visual impairments and for persons with dyslexia.

October 2017 HMRC VRDP16000 Computer and other electronic devices. HMRC has accepted the judgement of the First Tier Tax Tribunal in Iansyst Ltd that assistive technology systems based on off-the-shelf computing equipment (including laptops, tablets and mobile phones) with pre-installed assistive software can be zero-rated when supplied to disabled people for their domestic or personal use. The view has been taken that such systems as a whole have been "designed solely for use by disabled people", and thus come within the scope of Schedule 8, Group 12, Item 2(g).

6.2.12 Motor vehicles

March 2017 Zero-rating of adapted motor vehicles. Schedule 21 FA2017 amends the rules for zero-rating adapted motor vehicles with effect for supplies on or after 1 April 2017. Only one vehicle per disabled person in every three years can be zero-rated (with exceptions), the disabled person must provide a zero-rating certificate and zero-ratings must be notified to HMRC by suppliers. The legislation also replaces the term 'handicapped person' with 'disabled person' throughout the zero-rating legislation.

April 2017 VAT1615A: Zero-rating of adapted motor vehicles. With effect from 1 April 2017 disabled persons purchasing adapted motor vehicles, and charities purchasing adapted motor vehicles for disabled persons, must complete a VAT1615A eligibility declaration and give to the vehicle supplier. The supplier must in turn submit a completed VAT1617A information return to HMRC. The definition of adapted is changed to mean 'substantially and permanently adapted'. This excludes minor and easily reversible adaptations

6.4 GENERAL ZERO-RATED SUPPLIES

6.4.1 Books and printed matter

June 2015 HMRC revised policy on zero-rating and direct mail. HMRC has revised VAT Notice 700/24 on direct mail services and confirmed the concession to zero-rate direct mail services ended on 31 July 2015. HMRC's revised position is broadly that design and print services can be zero-rated and this can include the printing of direct mail packs. However if delivery or analysis / manipulation of customer data is included in the package, then the package becomes standard-rated. HMRC accept the printer can arrange delivery as agent of Royal Mail.

July 2015 Revenue & Customs Brief 10 2015: VAT - direct marketing services using printed matter. This brief sets out HMRC's transitional policy on direct mail supplies.

December 2016 Revenue & Customs Brief 17/16: Zero-rating of colouring and dot-to-dot books. HMRC will accept colouring and dot to dot books are zero-rated if they are suitable and held out for sale to children under the age of 18 years

May 2020. With effect from 1 May 2020, the zero-rate applies to supplies of e-books, e-booklets, e-brochures, e-pamphlets, e-leaflets, e-newspapers, e-journals and e-periodicals (including e-magazines) as well as electronic versions of children's picture and painting books. However it excludes e-maps, e-charts, e-topographic plans, e-music (manuscript) and any e-publication that is wholly or predominantly devoted to advertising or to audio or video content.

6.4.2 Caravans

December 2015 Change to the zero-rating of caravans VATA sch 8 group 9 zero-rates a caravan which meets various conditions one of which is that it must be manufactured to BS 3632/2005. The BS standard was replaced by BS 3632/2015 with effect from 1 December 2015

6.4.9 Passenger transport

August 2018 Jigsaw Medical Services Upper Tier Tax Tribunal –ambulances and wheelchair spaces The question is whether the ambulances would be designed or adapted to carry not less than 10 passengers but for any wheelchair spaces. The ambulances can carry 7 or 8 passengers with one passenger in a wheelchair and one on a stretcher. The First Tier Tax Tribunal found they could be adapted to carry 10 or more by removing the wheelchair and stretcher spaces and cupboards and fitting seats and so qualified for zero-rating. However the Upper Tier Tax Tribunal has decided this is not the correct test, what matters is how many seats could be added by removing the wheelchair space alone. As this does not bring the capacity to 10 or more, transport in them does not qualify for zero-rating (but does qualify for VAT exemption)

June 2019 Revenue & Customs Brief 3/19 VAT Zero-rating of transport of disabled passengers. Statement of HMRC policy on how to determine if a passenger carrying vehicle is 'designed or adapted to carry not less than 10 passengers', and how to do this when space is given up for wheelchairs.

6.4.10 Prescription goods

April 2019 Pearl Chemists First Tier Tax Tribunal – zero-rating of prescriptions. In the UK, UK, EU and EEA registered doctors can issue prescriptions. But in UK VAT law, only prescriptions issued by UK registered health professionals can be zero-rated. Does this breach fiscal neutrality – yes. However the First Tier Tax Tribunal finds itself unable to remedy the defect in UK law as parliament's clear intention is that only prescriptions issued by UK

registered health professionals can be zero-rated. The result is that prescriptions issued by doctors who are not registered in the UK cannot be zero-rated.

October 2019 Meaning of registered health professional. Following the Peal Chemists decision HMRC is consulting on extending the list of health professionals who may issue zero-rated prescriptions. The proposal is to extend this to EEA registered health professionals up to the date of Brexit and 'approved country health professionals' with effect from Brexit.

March 2020. Revenue & Customs Brief 2/20. With effect from 1 April 2020 prescriptions issued by all qualified EEA health professionals will qualify for zero-rating. After 31 December 2020, the Department of Health and Social Care will maintain a list of 'approved countries' and only those who are suitably qualified to prescribe from these countries will be able to continue to do so in the UK

6.4.16 Temporary zero-rating relief for personal protective equipment

In response to the COVID-19 pandemic, the government has introduced a temporary zero-rating relief for supplies of personal protective equipment (PPE) recommended for use in connection with protection from infection with coronavirus in guidance published by Public Health England.

The zero-rating relief applies to supplies made between 1 May 2020 and 31 July 2020

Qualifying PPE is that recommended for use by Public Health England in its guidance dated 24 April 2020 titled 'Guidance, COVID-19 personal protective equipment (PPE)'. This includes supplies made from existing stock.

Products covered by the zero rate include:

- disposable gloves
- disposable plastic aprons
- disposable fluid-resistant coveralls or gowns
- surgical masks – including fluid-resistant type IIR surgical masks
- filtering face piece respirators
- eye and face protection – including single or reusable full face visors or goggles

6.5 REDUCED-RATE SUPPLIES

6.5.4 Energy-saving materials

October 2019 VAT: changes to the reduced rate for energy-saving materials. Changes effective from 1 October 2019. Wind and water turbines are excluded. The reduced rating is limited to the labour element where the cost of materials exceeds 60%. However this restriction does not apply where:
(1) the customer is aged 60 or over or is in receipt of certain benefits, or
(2) the supply is to a relevant housing association, or
(3) the building in which the ESMs are installed is used solely for a relevant residential purpose

7 Fundraising

7 Fundraising

7.12 CORPORATE SPONSORSHIP

January 2019 Updated VAT Notice 701/41 Sponsorship. Changes include: naming an event after a private individual or 'entities' will not generally create a benefit, neither will displaying logos of government agencies or charitable foundations, nor will giving sponsors exclusive or priority booking rights where HMRC is satisfied that there's no actual benefit in accessing these rights, and that they merely secure the sponsor's income for the charity.

8 Property

8.3 PROPERTY VAT RELIEFS

8.3.2 Qualifying new buildings

December 2017 VAT Information Sheet 07/17: Zero-rating of construction services. Clarification of HMRC policy on the meanings of 'demolished to ground level', 'façade', 'corner façade' and 'retained as a condition of statutory planning consent or similar'

8.4 LEASES AND LETTINGS

8.4.4 Service and other charges

September 2018 Revenue & Customs Brief 06/18 & VAT Information Sheet 07/18: VAT exemption for service charges. Under a 1994 Extra Statutory Concession landlords of mixed estates of freeholders and tenants can exempt common service charges made to all residents irrespective of occupancy status. However the concession is limited to service charges made by landlords and does not apply to supplies by property

management companies, who HMRC see as supplying property management services to the landlord, even if charged to the resident. Property management companies must correct their treatment from 1 November 2018.

8.4.5 Active v. passive lets

October 2016 Kati Zombory-Moldova Upper Tier Tax Tribunal – hire of stalls at event. KZM organises outdoor antique fairs and sells stalls, some inside a marquee and some outside. Inside stalls are provided with tables and chairs but outside stalls are a demarcated area of land. The Upper Tier Tax Tribunal has decided that the supply of all types of stall is more than a passive right to occupy land as KZM is obliged to put on the event, which is enough to make all lets active.

8.4.6 Letting rooms for events and meetings

May 2017 Blue Chip Hotels Upper Tier Tax Tribunal – hire of a room for a wedding ceremony. The First Tier Tax Tribunal decided that the supply of a room for a wedding ceremony was not an exempt licence to occupy partly on the basis the general public cannot be excluded from a wedding ceremony. The Upper Tier Tax Tribunal has rejected this analysis, the inability to exclude the general public does not in itself prevent the letting from being exempt. However there is significant added value provided by the licence to hold wedding ceremonies and in the Upper Tier Tax Tribunal's view this alone means the letting is active and not passive.

8.5 OPTION TO TAX

8.5.5 Land and buildings covered

December 2018 Land and Property Liaison Group VAT status of a right to light. Clarification of HMRC's position on the sale of a right to light. HMRC's position is that if A and B own plots of land and A sells it right to light over B's land, A is selling a right that belongs to its own land – that land's right to light over B's land. Hence what matters is whether or not A has opted to tax its own land.

8.5.7 Notification requirements

September 2018 Rowhildon First Tier Tax Tribunal – belated notification of an option to tax. In June 2016 the directors made a decision to purchase an opted property and minuted the decision to purchase but not to opt as it was company policy always to opt properties that were opted to tax by the vendor. It completed the online VAT 1614A which was dated 1 July, kept a copy and posted to HMRC, however HMRC never received the form. It later asked HMRC to agree to backdating to 1 July, however HMRC refused on the basis there was no proof of posting nor of a decision to opt made on or before 1 July. The First Tier Tax Tribunal disagreed – HMRC should have accepted the evidence the VAT 1614A form was completed on 1 July as evidence of a decision to opt and of posting.

December 2018 V**AT Notice 742A: Authorised signatories for an option to tax**. HMRC has added a new section setting out who in an organisation may notify an option to tax. For a company it is a director or the secretary, for a trust, a trustee, for a partnership a partner. Other persons can be authorised by an authorised person and HMRC provide a model authorisation letter.

June 2019 Land and Property Liaison Group: Notifying an option to tax. HMRC's position is that for a VAT group, the person who signs an option to tax notification form (1614A or 1614H) should be an authorised signatory for the company that has an interest in the land being opted. HMRC's position is also that the same authorisation rules apply to the other VAT 1614 forms.

May 2020.Changes to notifying an option to tax land and buildings during the COVID-19 pandemic. HMRC has temporarily extended the time limit within which an option to tax must be notified to HMRC to 90 days from the date the decision to opt was made. This applies to decisions made between 15 February and 30 June 2020. Notifications should be emailed to optiontotaxnationalunit@hmrc.gov.uk.

8.6 PROPERTY TERMS

8.6.3 Qualifying and non-qualifying buildings

December 2017 VAT Information Sheet 07/17: Zero-rating of construction services. HMRC policy on the meanings of 'demolished to ground level', 'façade', 'corner façade' and 'retained as a condition of statutory planning consent or similar'.

July 2016 Changes to VAT Notice 708 Buildings and construction. HMRC has accepted a hospice can zero-rate the purchase of a relevant residential purpose (RRP) building 'as long as that hospice provides some residential accommodation, such as beds for patients'.

8.6.8 'Village hall or similarly'

November 2015 New Deer Community Association Upper Tier Tax Tribunal – village halls. This is New Deer's appeal against the First Tier Tax Tribunal decision (December 2014) that only the meeting room / kitchen area of its new sports pavilion qualified for zero-rating on the basis only those areas had the necessary multi-purpose functionality. The Upper Tier Tax Tribunal has agreed with this conclusion, and in the process also

decided the building does not have to be owned or controlled by the local community and does not have to have a multi-purpose hall, though both of these are factors in favour if present.

August 2016 Caithness Rugby Club Upper Tier Tax Tribunal – who must control a village hall? HMRC's appeal against a decision of the First Tier Tax Tribunal is on the basis there must be community direction and control of the village hall, and as the clubhouse in question is under the direction and control of a ruby club committee, it does not qualify. The Upper Tier Tax Tribunal has rejected this. Direction and control by the local community is not essential, but is a relevant factor.

8.6.9 Relevant residential purpose

August 2017 Revenue & Customs Brief 2/17: Care homes and hospitals – RRP zero-rating. HMRC now accepts that the construction of a care home is not excluded from RRP zero-rating on the basis any provision of clinical care makes it similar to a hospital. When determining whether an institution is a care home or a hospital, HMRC will consider whether there is provision for a person to be in residence for a lengthy period.

8.6.10 Dwellings

May 2016 Revenue & Customs Brief 9/16: Residential conversions under permitted development rights. Clarification of the meaning of 'designed as a dwelling' where planning consent is not required and works are carried out under permitted development rights. PDRs are a national grant of planning permission for particular types of development as set out in the legislation. HMRC will require evidence the work is covered by a PDR.

September 2016 Revenue & Customs Brief 13/16: Dwelling formed from more than one building. Following the Catchpole case HMRC now accepts that a dwelling can comprise more than one building. But to qualify for zero-rating or reduced rating, all buildings must be constructed or converted under a single project and under a single consent.

May 2018 Summit Electrical Installations Upper Tier Tax Tribunal – zero-rating, construction of student flats. Sale of the flats is not prohibited but occupation is restricted to full time students of Leicester and De Montfort universities. The First Tier Tax Tribunal decided separate use was not prohibited as the case law is this means use separate to the use of some other land and there is no such restriction here. The Upper Tier Tax Tribunal has agreed with the First Tier Tax Tribunal.

8.6.11 Annexes

September 2018 Roman Catholic Diocese of Westminster First Tier Tax Tribunal – RCP annexes and heating systems.
At the time of completion the annexe had a heating system which relied on a boiler situated in the church (it was later moved to the annexe) but with a controller located in the annexe. The First Tier Tax Tribunal has decided it is where the heating system is controlled from that matters – as it could be controlled from within the annexe it does not breach the 'capable of functioning independently' condition.

July 2019 Yeshivas Lubavitch Manchester First Tier Tax Tribunal – RCP nursery annexe. Renovation of a residential building into a school with a nursery annexe for which YML claims zero-rating on the basis of RCP use and this was accepted by the First Tier Tax Tribunal.

October 2019 Immanuel Church First Tier Tax Tribunal – RCP church hall, degree of integration. New church hall added onto a church with an existing and retained church hall. HMRC argue the new hall is integrated with the existing hall so not an annexe. Cantrell tests applied. Decided for the church.

9 International aspects of VAT

9.1 INTRODUCTION

9.1.1 Territories of the UK and EU

December 2019 EU withdrawal agreement. The UK formally left the EU on 31 January 2020 but will remain in the EU VAT and Customs Unions until 31 December 2020 under a transitional agreement, though there is an option to extend the transitional period by a further two years. The new Withdrawal Agreement gives the government the power to make regulations which permit UK courts or tribunals to depart from retained EU case law in circumstances provided for in the regulations, though notes there are specific provisions to retain the Halifax and Kittel abuse principles.

9.2 RECOVERING FOREIGN VAT

9.2.1 EU VAT Refund Scheme

September 2019 HMRC - Claim VAT refunds from EU countries after Brexit. After a no deal Brexit UK business will have to claim VAT directly from each EU27 state concerned, using each state's individual claims process for businesses in non-EU states.

9.3 CROSS-BORDER GOODS INTRODUCTION

9.3.2 EORI number

September 2019 UK and EU27 EORI numbers. All UK and EU27 customs declarations (on export or import of goods) must be accompanied by an EORI number. In the event of a no deal Brexit the UK and EU27 will no longer recognise each other's EORI numbers. HMRC has automatically assigned all UK businesses that it has identified as trading goods with the EU, a UK EORI number. An additional EU27 EORI number will only be required if a UK business lodges a customs declaration in an EU27 state. A UK EORI number must be applied for if the business is not registered for VAT.

9.4 Exports

9.4.1 Selling goods

April 2020 Extended time limits for export. VEXP30310. As a result of the COVID-19 pandemic, HMRC will use its discretionary powers to temporarily waive the prescribed time limits for removal/export of goods on a case by case basis, in circumstances, where the goods have not left the UK due to the COVID-19 crisis. The goods must, however, have either already been exported/removed or will be as soon as is reasonably practicable after the date a customer is notified that HMRC is temporarily waiving the tax

9.5 IMPORTS

September 2016 Overseas sellers using an online marketplace to sell goods in the UK. Under new rules introduced by Finance Act 2016 if the goods are located in the UK at the time of sale, HMRC can require an overseas seller (NETP) to register in the UK and appoint a UK VAT representative. If the seller fails to do this, HMRC can transfer VAT liability to the marketplace. Liability then stays with the marketplace until the overseas seller is removed.

9.5.5 Payment of import VAT

January 2019 VAT Postal Packets and Amendment EU Exit Regulations 2018. In the event of a no deal Brexit these regulations will create a new VAT regime for cross border postal packets valued at up to £135 excluding VAT. The supplier will be liable to HMRC for the VAT and liable to register and make 'postal packet VAT returns' to HMRC. However certain postal packets will be exempt from the requirements, including where a UK-established postal operator has a legally binding obligation (including an obligation that arises under a contract) to pay any import VAT.

April 2019 Revenue & Customs Brief 2/19: VAT – import VAT deducted as input tax by non-owners. HMRC's position on who can reclaim import VAT, to take effect from 15 July 2019. Only the owner of the goods at the point of import can make a claim and import agents, who are the importer of record but do not take ownership of the goods, cannot make a claim. However HMRC will not pursue historical VAT deduction where the VAT could have been recovered in full by the owner as long as there is no risk of duplicated claims. In this context 'historical' means deductions made before 15 July 2019.

March 2020. **Postponed accounting for import VAT**. In the 2020 budget the government announced that, with effect from 1 January 2021, postponed accounting for VAT will apply to all imports of goods, including from the EU. Eligible businesses will be able to report import VAT in their VAT returns, and pay any import VAT due with the routine VAT return payments. Import VAT will be reported in a re-purposed box 2 on the VAT return.

9.5.6 Import VAT exemptions

March 2020. Temporary import duty and import VAT relief for medical equipment. As a result of the COVID-19 pandemic, public bodies and other bodies authorised by HMRC can claim relief from import duty and import VAT on imported protective equipment, other relevant medical devices and equipment for the coronavirus outbreak. The relief applies to imports into the UK from 30 January 2020 until 31 July 2020.

The goods must be for distribution free of charge or made available free of charge to those affected by, at risk from or involved in combating COVID-19. Goods imported into the UK for donation or onward sale to the NHS are also eligible for this relief.
The goods must be imported by or on behalf of organisations based in the UK who are:

- state organisations, including state bodies, public bodies and other bodies governed by public law
- other charitable or philanthropic organisations approved by the competent authorities

HMRC has given general approval to the following charitable and philanthropic organisations:

- those registered by the Charity Commission or the Office of the Scottish Charities Regulator
- state organisations which are devoted to welfare
- the following, as long as they are non-profit making and their objective is the welfare of those in need:
    - hospitals
    - youth organisations
    - clubs, homes and hostels for the aged

- orphanages and children's homes
- organisations set up for the relief of distress caused by particular disasters in the Customs Union
- organisations concerned with the relief of distress generally (such as the British Red Cross Society or the Salvation Army)

9.6 INTRA-EU TRANSFERS OF GOODS

October 2019 EU quick fixes. The EU's four quick fixes for intra-EU B2B supplies of goods, announced in November 2016, took effect from 1 January 2020. They are:
(1) the customer must provide a VAT Number in order to be eligible for the zero-rate
(2) The supplier must report the sale on an EC sales list
(3) clarified evidence requirements for intra-EU removals
(4) changes to the call off stock regime and
(5) changes to the cross border chain transaction rules (see below).

9.6.1 Acquisitions

December 2019 Intra-EU chain transactions. An intra EU chain transaction (A -> B -> C) is an intra-EU B2B supply of goods where the goods are transported directly from the first supplier in the chain (A) to the last customer in the chain (C), but sold via one or more intermediates (B). With effect from 1 January 2020 EU law is amended to specify which transaction (A-> B) or (B - > C) is the intra EU dispatch and acquisition. The general rule is that it is (A->B), however if B provides A with a valid VAT registration number in A's state, the intra-EU transfer is B->C

9.6.10 Zero-rating removals

December 2019 VAT changes for intra EU B2B supplies of goods. With effect from 1 January 2020, in order to zero-rate an intra-EU supply of goods, the customer must provide the supplier with a VAT number for an EU state other than the state of origin and the supplier must report the transaction on their EC sales list. If the supplier zero-rates and fails to report, the transaction loses zero-rating unless the supplier can justify his failure to the satisfaction of the competent authorities.

9.6.11 Extended time limits for removal of goods from the UK

April 2020. VEXP30310. As a result of the COVID-19 pandemic, HMRC will use its discretionary powers to temporarily waive the prescribed time limits for removal/export of goods on a case by case basis, in circumstances, where the goods have not left the UK due to the COVID-19 crisis. The goods must, however, have either already been exported/removed or will be as soon as is reasonably practicable after the date a customer is notified that HMRC is temporarily waiving the tax

9.6.20 Consignment and call-off stock

January 2020 The intra EU call off stock regime. Call off stock is stock held abroad for a specific customer to call off as required. With effect from 1 January 2020, the time of supply rule for intra-EU transfers of call off stock is amended so the intra-EU dispatch and acquisition are seen as taking place when the goods are taken out of stock rather than when transferred. However the intra EU call off stock regime is subject to a list of requirements, including that if stock is not transferred within 12 months, it is deemed transferred.

9.7 CROSS-BORDER SERVICES INTRODUCTION

9.7.3 B2B and B2C

October 2018 Wellcome Trust Ltd First Tier Tax Tribunal – place of supply general rule. WTL had accounted for VAT under the UK reverse charge on investment management fees charged by non-EU suppliers, but now argues these are not B2B general rule supplies on the basis the B2B general rule only applies to supplies to a taxable person 'acting as such' and WTL is not acting as a taxable person when it manages investments, as decided by the CJEU in 1996. The First Tier Tax Tribunal has accepted WTL's argument. This decision has been appealed by HMRC to the Upper Tier Tax Tribunal and the Upper Tier Tax Tribunal has referred the matter to the CJEU.

9.7.6 Cross-border VAT groups

February 2015 Revenue & Customs Brief 2/15: Cross border VAT groups and the Skandia judgement. In Skandia the CJEU decided that an internal supply of services between branches can be a VATable supply where the supplier or customer is a member of a VAT group that does not include the other. This contradicts the UK rules which see a VAT group as including all branches of a group member, wherever they are located. This is HMRC's consequent policy announcement. HMRC's position is that the decision does not directly affect UK VAT groups, as under the UK grouping rules the whole of an entity is in the VAT group whereas under the Swedish rules, only business or fixed establishments located in Sweden can join a group. HMRC accept that supplies are affected where they take place between a branch in the UK and a branch in VAT group in an EU state that follows the Swedish model.

November 2015 Revenue & Customs Brief 18/15: Cross border supplies post Skandia. With effect from 1 January 2016, intra-entity (branch – branch) and intra group supplies between a UK establishment and an EU establishment in a VAT group in another 'Sweden type' EU state (i.e. that adopts the Swedish local establishment only approach to who can join a VAT group) must be treated as cross border supplies subject to VAT unless exempt.

December 2015 Revenue & Customs Brief 23/15: VAT grouping rules and the Skandia judgment. This is an update to brief 18/15. HMRC has updated its table of the EU states that follow the Sweden model of VAT grouping.

9.7.8 Use and enjoyment overrides

October 2016 Revenue & Customs Brief 23/15: 15/16 VAT: Use and enjoyment of insurance repair services. From 1 October 2016, repair services supplied to an insurer or their agent located outside the EU, and carried out as the result of an insurance claim, will be covered by a use and enjoyment override.

9.8 PLACE OF SUPPLY OF SERVICES RULES

9.8.2 Services related to land

October 2018 EU VAT Committee: Waterway navigation fees and the use of port infrastructure. The EU VAT Committee almost unanimously agreed that waterway navigation fees and the use of port infrastructure are land related supplies for place of supply purposes.

9.8.3 B2B Event admissions

March 2019 Srf Konsulterna CJEU – place of supply of admission to a week long course. A subsidiary of a Swedish accountancy body provides five day CPD courses in other EU states for Swedish businesses. The Swedish tax authority argued this is not admission to an event but a right to participate in a course so is B2B general rule (and hence supplied in Sweden). Rejected – the right to participate in the course is closely linked to the right of admission. In addition the underlying principle is taxation in the place of consumption - hence the place of supply is where the event takes place.

December 2019 EC VAT Committee: B2B event admissions. Following the Srf Konsulterna decision, Sweden has referred several questions to the committee regarding the place of supply rule for B2B event admissions, including: (i) is there a maximum duration for an event (ii) what happens if an event is supplied to an employer for its employees and (iii) what happens if an event takes place in more than one EU state. To be discussed by the Committee with a view to developing a guideline.

9.8.4 B2C services relating to cultural, artistic, sporting, scientific, educational, entertainment or similar activities

November 2016 Finmeccanica Court of Appeal: Place of supply - exhibition organising vs advertising. The case provides a comprehensive summary of the case law on the place of supply rules for advertising and event related services.

9.8.5 B2C IP rights, advertising, consultancy, etc.

November 2019. Gray and Farrah International First Tier Tax Tribunal – matchmaking services. Is matchmaking a supply of B2C services of consultants and/or a supply of information, for place of supply purposes? The decision is that matchmaking is not such a service as even though it includes the provision of expert advice and information, there is also a support service provided by a liaison team which is neither the provision of expert advice nor of information and not ancillary to these.

9.8.6 Electronically supplied services

May 2018 New VAT Committee guidelines: meaning of minimal human intervention. Electronically supplied services involve minimal human intervention. The EU VAT Committee almost unanimously agreed this means performed without human response to individual requests made by a customer, but excludes human intervention required to maintain the system and exceptional human intervention with customers if required to ensure the smooth running of the system. Includes a list of scenarios that do and do not involve minimal human intervention.

May 2018 VAT Committee guidelines: Distinction between intermediation and electronically supplied services. The VAT Committee almost unanimously agreed that where intermediation takes place electronically, the place of supply depends on whether the intermediation is automated (electronically supplied service) or requires human intervention (intermediation).

9.8.7 Broadcasting and telecoms services

April 2017 Place of supply: B2C telecoms services. With effect from 1 August 2017, the use and enjoyment override for B2C telecom services is abolished, so B2C telecoms services are supplied where the customer belongs. The purpose of the change is to subject the mobile phone bills of UK customers to VAT fully and to avoid disputes with mobile phone companies.

August 2017 HMRC: Place of supply of B2C telecoms services. The government originally intended the changes to apply from 1 August 2017, however they are now effective from 1 November 2017. The changes remove the use and enjoyment override for B2C telecoms services. These will be seen as supplied where the customer belongs. However the use and enjoyment override will be retained for B2B telecoms services.

9.9 THE MINI ONE STOP SHOP (MOSS)

9.9.1 MOSS scheme principles

June 2018 Com 2018/164: The one stop shop. From 1 January 2021 the MOSS will be widened to any supply of goods or services whose place of supply is an EU state in which the supplier is not established. Non-EU suppliers will have to appoint an EU agent. The OSS will cover B2C and B2B distance sales of goods and services. If total EU turnover exceeds EUR 2.5m the OSS returns will be monthly. The scheme will allow for VAT recovery, however if no OSS supplies have been made to an EU state for 12 months or more, the right to VAT recovery under the OSS will be suspended for that state and claims will have to be made via the EU VAT refund procedure

January 2019. MOSS threshold. With effect from 1 January 2019, there will be a €10,000 (£8,818) threshold for B2C digital services supplied to consumers in EU27 states, below which UK businesses will not have to register for the MOSS. The threshold will only apply under the Union Scheme.

September 2019 MOSS after a no deal Brexit. In the event of a no deal Brexit, UK business will have to register for the EU27 MOSS scheme in an EU state or register in each customer state, however they will not be able to register for the EU27 MOSS scheme until the UK has fully left the EU.

October 2019 UK MOSS for EU27 businesses. After a no deal Brexit the UK will close its MOSS scheme. EU27 businesses making B2C digital supplies to UK consumers will have to register for VAT in the UK immediately (nil threshold) and the €10,000 intra-EU threshold will no longer apply to UK sales.

9.9.2 UK registration

January 2019. MOSS €10,000 registration threshold. With effect from 1 January 2019 there will be a £8,818 (€10,000) threshold below which the place of supply of intra EU B2C digital services is the supplier's state. The threshold will have to be met in the each of the current and previous calendar years. Suppliers will be able to opt out, so the place of supply remains the customer's state.

9.9.5 Determining customer location

June 2015 MOSS concession for micro-businesses. HMRC has announced that UK micro-businesses, that are below the current UK VAT registration threshold and are registered for MOSS, may base their customer location VAT taxation and accounting decisions on information provided to them by their payment service provider. HMRC initially limited this concession until 30 June but has now announced it will apply indefinitely.

January 2016 REVENUE & CUSTOMS BRIEF 04/16: VAT MOSS: Further simplifications for UK unregistered businesses. Under MOSS a business must normally collect two pieces of non-contradictory evidence to establish customer location. HMRC already accepts a business operating below the UK registration threshold can collect just one piece of evidence from their payment service provider. HMRC has now relaxed this rule still further and accepts businesses operating below the UK registration threshold can rely on a single piece of evidence from any source. In addition HMRC accepts that transactions carried out as a hobby on a minimal and occasional basis are not business supplies and so not within the scope of MOSS.

10 VAT special schemes

10.1 CAPITAL GOODS SCHEME

10.1.3 Capital items

July 2019 HMRC: Simplification of partial exemption and the Capital Goods Scheme. HMRC call for evidence on suggestions which include: revise the Capital Goods Scheme thresholds (£250,000/£50,000) and remove computers from the Capital Goods Scheme.

10.1.11 Disposal of a capital item

April 2019 Mydibel CJEU – VAT implications of sale and leaseback. Mydibel owned buildings on whose construction, alteration and renovation it recovered VAT in full. It then sold and leased back the buildings. It remained in occupation throughout and the purpose was to improve liquidity. The CJEU was asked if the sale and leaseback triggered a change of use or Capital Goods Scheme adjustment. The CJEU's decision is that it did not.

10.2 TOUR OPERATORS' MARGIN SCHEME (TOMS)

10.2.2 Scope of the TOMS

January 2019 Alpenchalets Resorts CJEU – scope of TOMS, holiday accommodation. Confirmation that TOMS applies to taxable supplies of bought in and resupplied holiday accommodation, with or without additional services.

10.2.5 Calculating the margin – UK rules

January 2019 Skarpa Travel CJEU – TOMS, calculation of the margin. Skarpa argues that as its TOMS margin is not known at the time a traveller makes a payment on account, it does not have to account for VAT on them. Rejected. The expected margin must be calculated on the basis of the total price and expected cost. The taxable amount for a payment on account is then the payment on account multiplied by the expected margin.

September 2019 Revenue & Customs Brief 9/19: TOMS retained payments and deposits. In March 2019 HMRC updated the TOMS VAT Notice to say that all forfeited deposits and cancellation fees should be included in TOMS calculations. HMRC has now corrected this to say these should only be included in two circumstances, depending on the TOMS method adopted.

10.3 PUBLIC BODIES

10.3.1 Section 33 refund bodies

July 2018 Revenue & Customs Brief 4/18: Aligning time limits for VAT refund schemes. The time limit for claims under s33 was increased from three years to four years with effect from 1 July 2018, phased in over one year.

10.3.2 Government departments and health authorities

April 2016 s33e: VAT refund scheme for specified persons. Finance Act 2016 introduced a new non-business VAT refund scheme for public bodies specified in Treasury regulations. Claims under s33e are subject to the requirement it has been agreed with HMT that, in the circumstances specified in the agreement, the person's funding is reduced by all or part of the amount of the VAT refunded.

10.4 MUSEUMS AND GALLERIES REFUND SCHEME

March 2016 Museums and galleries. The s33a VAT refund scheme eligibility criteria have been broadened to include local museums and galleries. They must have free admission for at least 30 hours per week (with no exceptions) and will have to apply to join the scheme. Government ministers will have the final say.

May 2016 VAT Notice 988: VAT refund scheme for national museums and galleries. HMRC has updated the notice for the changes announced at the budget.

10.6 CHARITY VAT REFUND SCHEME

September 2015 Updated VAT Notice 1001: The VAT refund scheme for certain charities (s33c/d). Includes acceptance that any NHS service level contract in England is non-business (not just the 2015/16 version)

November 2018. Continuing care income. Hospice UK has announced that HMRC has accepted that continuing care income can be classed as non-business rather than VAT exempt. Hospice UK state 'In 2015, HMRC advised that income received under a Continuing Care Contract constituted contractual income and should be treated as exempt from VAT because the contracts typically refer to specified named individuals. Hospice UK obtained a QC's opinion challenging this interpretation, and in November 2018, HMRC accepted that such income could in fact be classified as non-business. This means that hospices can now recover the input VAT in relation to the delivery of such contracts. Hospices who have previously treated this income as exempt may also be due refunds for past periods'.

10.14 ABUSIVE SCHEMES

10.14.1 The Halifax case

July 2019 Kuršu Zeme CJEU – Halifax principles, no evidence of abuse. An EU tax authority cannot invoke Halifax to redefine an arrangement without providing any evidence the arrangement is abusive. In this case the Latvian tax authority could see no logical reason for a chain of cross border transactions so they redefined the chain and charged VAT on that basis. However it was unable to demonstrate any abuse in what had occurred.

10.15 LISTED AND HALLMARKED SCHEMES

10.15.4 Disclosure of VAT avoidance schemes (DASVOIT)

January 2018 The Indirect Taxes (Notifiable Arrangements) Regulations 2017. The regulations are effective from 1 January 2018 and replace the existing VAT disclosure of listed and hallmarked schemes regime. The new disclosure regime mirrors the direct tax DOTAS approach. Notifiable schemes include supply splitting, offshore looping, options to tax that are disapplied as a result of the option to tax anti-avoidance rule and promoter

schemes that involve confidentiality, premium fees or standardised tax products. The listed and hallmarked scheme regime remains in place for arrangements first entered into before 1 January 2018.

March 2019 VAT Notice 799: Disclosing VAT and other indirect tax avoidance schemes. This is a new VAT Notice dealing with the DASVOIT disclosure regime, introduced with effect from 1 January 2018

10.16 DOMESTIC REVERSE CHARGES

10.16.1 Construction services

September 2019 Revenue & Customs Brief 10/19: Reverse charge for construction services. With effect from 1 October 2020 a domestic reverse charge will apply to certain supplies in the construction sector. Domestic reverse charge means the customer receiving the service will have to pay the VAT due to HMRC instead of paying the supplier. It will only apply to individuals or businesses registered for VAT in the UK and it will not apply to (1) supplies of construction services to end users, who are businesses, or groups of businesses, that do not make onward supplies of the building and construction services in question, (2) certain intermediaries. If a number of connected businesses are collaborating together to purchase construction services, they are all treated as if they are end users and the reverse charge does not apply to their purchases. As such the domestic reverse charge is unlikely to apply to charities as purchasers of construction services and design & build subsidiary companies.

10.16.3 Renewable energy certificates and guarantees of origin

June 2019 Revenue & Customs Brief 04/19: Reverse charge for renewable energy certificates. As an anti-avoidance measure the government has introduced a domestic reverse charge for the supply of renewable energy certificates, effective 14 June 2019. These are certificates that are issued to gas and electricity generators when they produce energy from renewable means. However they can also be bought and sold as a commodity and as such create an opportunity for fraud.

November 2019 VAT Notice 735 Domestic reverse charge for renewable energy certificates and guarantees of origin. VAT Notice 735 has been updated for the domestic reverse charge on tradeable renewable energy certificates and guarantees of origin that took effect on 14 June 2019.

11 Other topics

11.1 SUPPLIES OF STAFF

11.1.2 Employment businesses

August 2018 Adecco Court of Appeal – supplies of temporary staff. Adecco argue they just introduce temps, the temps supply services to the client and Adecco acts as agent in paying each temp's salary, so VAT is due on Adecco's commission only. Rejected. The Court of Appeal has decided the VAT position follows the contractual position as the contracts reflect economic reality. The Court of Appeal has also decided the First Tier Tax Tribunal Reed Employment case (May 2011) was wrongly decided.

11.2 AGENCY SUPPLIES

11.2.4 Disbursements

October 2017 Brabners First Tier Tax Tribunal – meaning of disbursements, electronic property searches. Are fees for electronic property search reports, recharged by conveyancing solicitors to property buyers disbursements (and outside the scope of VAT) or recharged expenses (and within the scope of VAT)? HMRC argue that they are recharged expenses. The First Tier Tax Tribunal has agreed with HMRC. The searches are used by the solicitor in making its own supply to the buyer. It would be different if the solicitor obtained the searches and simply passed them on to the buyer without making any use of the information.

11.5 TRANSFER OF A BUSINESS AS A GOING CONCERN

11.5.1 TOGC conditions

June 2016 Revenue & Customs Brief 11/16: VAT and the transfer of a going concern. HMRC now accepts that there can be a TOGC into a VAT group where the transferred assets are only used within the group, but provided the group makes taxable supplies outside the group.

March 2018 Clark Hill First Tier Tax Tribunal: relevant dates for opting properties sold as a TOGC. When an opted property is sold as a TOGC, the seller must have opted to tax the property by the relevant date, which is the earliest date the property would be seen as supplied but for the TOGC. The case considers four TOGC scenarios. Two involve properties opted after a deposit was paid to the seller's solicitor as agent, one a property sold at auction under the RICS common auction conditions, and one involved the novation of a sale agreement under which the option was made after a deposit had been paid by the original buyer.

12 Operational aspects

12.2 RECORD-KEEPING

April 2019 Making Tax Digital for VAT. With effect from 1 April 2019 or from 1 October 2019 most VAT-registered businesses with taxable turnover of £85,000 or more are required to keep VAT transaction records of sales and purchases in a prescribed digital format using functional compatible software (see 12.6.2. below).

The information that must be stored digitally is:

Designatory data
- business name
- address of principal place of business
- VAT registration number
- VAT accounting schemes in use

Supplies made (outputs)
For each supply there must be a record of the:
- time of supply - the tax point
- value of the supply - the net value excluding VAT
- rate of VAT charged

This only includes supplies recorded as part of a VAT Return. Supplies that do not go on the VAT Return do not have to be recorded in the functional compatible software, for example income that is outside the scope of VAT. However in practice it will usually be simplest to store all financial transactions in the FCS, and flag these transactions as non-reportable on the VAT return, for example by use of a 'T9' or 'NT' type non-reportable tax code.

HMRC say (VAT Notice 700/22) 'Where you need to apportion the output tax due on a mixed rate supply with a single inclusive price you do not have to record these supplies separately. You can record the total value and the total output tax due. Not all software will allow you to record a rate of VAT other than the standard, reduced, zero or exempt. If this is the case, this mixed supply should be recorded as either one standard rated supply and one zero rated supply or you can record the sale at one rate and correct the VAT through an adjustment at the end of the period. You will also need to do this if you are using a margin scheme or the flat rate scheme'.

Supplies received (inputs)
For each supply you receive you must record the:
- time of supply (tax point)
- value of the supply
- amount of input tax that you will claim

This only includes supplies recorded as part of your VAT Return, supplies that do not go on the VAT Return do not need to be recorded in functional compatible software (FCS). For example, wages paid to an employee would not be covered by these rules. However in practice it will usually be simplest to store all financial transactions in the FCS, and flag these transactions as non-reportable on the VAT return, for example by use of a 'T9' or 'NT' type non-reportable tax code.

HMRC accept that where the amount of input tax that you will claim is not known at the time you record the supply you have received, you can record:
- the total amount of VAT and adjust for any irrecoverable VAT once calculated, or
- no VAT and adjust for any recoverable VAT once calculated, or
- VAT recoverable based on an estimated percentage and adjust for any VAT once calculated

Reverse charge purchases. If your software records reverse charge transactions you do not need separate entries for the self supply and purchase. If your software does not record reverse charge transactions you will need to record reverse charge transactions twice, once as a supply made and a second time as a supply received.

Batching
HMRC accept separate VAT transactions can be batched and recoded as a single transaction in the FCS:
- Where more than one supply is recorded on an invoice and those supplies are within the same VAT period and are charged at the same rate of VAT you can record these as a single entry.
- If more than one supply is on a purchase invoice you can record the totals from the invoice
- Where you are claiming input tax on employee or volunteer's expenses and that individual provides the combined value of more than one purchase, you do not have to record each purchase separately. You can record the total value and the total input tax allowable

- Where a supplier issues a statement for a period you may record the totals from the supplier statement (rather than the individual invoices) provided all supplies on the statement are to be included on the same return and the total VAT charged at each rate is shown
- Where a business uses petty cash to pay for small value items, these do not need to be individually recorded in the digital records. The business can record the total value and the total input tax allowable. This applies to individual purchases with a VAT-inclusive value below £50 and the total value of petty cash transactions recorded in this way cannot exceed a VAT-inclusive value of £500 per entry.
- Where a third party agent makes purchases on your behalf, those purchases do not fall within the digital record keeping requirements until you receive the information from the agent. Where the information is received as a summary document you can treat this document as one invoice received by you for the purpose of creating your digital record. This relaxation only varies the requirements on maintaining records using functional compatible software. It does not change any other record keeping requirements set out in VAT legislation
- Where supplies are made or received during a charity fundraising event run by volunteers you may treat all supplies made as covered by one invoice for the event, and all supplies received as covered by one invoice for the event, for the purposes of the digital record keeping requirements. This relaxation only varies the requirements on maintaining records using functional compatible software. It does not change any other record keeping requirements set out in VAT legislation

If your software records reverse charge transactions you do not need separate entries for the self supply and purchase. If your software does not record reverse charge transactions you will need to record reverse charge transactions twice, once as a supply made and a second time as a supply received.

Correcting errors Where a business makes an error correction to a VAT return, they are not required to amend the input tax claimed or output tax charged recorded in the digital record of the supply.

Adjustments
Where you are allowed or required to adjust the input tax claimed or output tax you owe according to the VAT rules you must record this adjustment in the FCS. For example for partial exemption adjustments, annual adjustments and Capital Goods Scheme Adjustments. Only the total for each type of adjustment will be required to be kept in the FCS, not details of the calculations underlying them. If the adjustment requires a calculation, this calculation does not have to be made in the FCS and digital links are not required for any information used in the calculation.

This means that partial exemption calculations, business / non-business apportionments, annual adjustments, output tax apportionments etc can be calculated using existing approaches (e.g. in practice, usually in an Excel workbook) using manually imported data and posted to the FCS as a journal. The calculation itself does not have to be a part of the FCS, though it is evidence of the transaction.

Summary data
HMRC say ‘To support each VAT Return you make, your functional compatible software must contain:
- the total output tax you owe on sales (box 1)
- the total tax you owe on acquisitions from other EU member states (box 2)
- the total tax you are required to pay on behalf of your supplier under a reverse charge procedure (box 1)
- the total input tax you are entitled to claim on business purchases (box 4)
- the total input tax allowable on acquisitions from other EU member states (box 4)
- the total tax that needs to be paid or you are entitled to reclaim following a correction or error adjustment (box and any other adjustment allowed or required by VAT rules (boxes 1 – 9)

A total of each type of adjustment must be recorded as a separate line’.

12.6 THE VAT RETURN

12.6.2 Submission of VAT returns and payment of VAT

April 2019 Making Tax Digital for VAT. (or ‘MTD for VAT’). With effect for VAT periods beginning on or after 1 April 2019 most VAT-registered businesses who are compulsorily registered for VAT (i.e. with a taxable turnover of greater than or equal to the VAT registration threshold) must keep all VAT transaction records of sales and purchases in a prescribed digital format in functional compatible software (‘FCS’).

The FCS can be a single compatible software product or it can be multiple software products, however if more than one product, they will have to link digitally in compiling the VAT return with effect from the start of the business’s soft landing period (see **Digital links** below).

The FCS must be able to extract the information required for the VAT return from the digital records and to then submit that information to HMRC via the internet, using a dedicated HMRC Applications Programming Interface (‘API’).

There was a 6-month deferral, to 1 October 2019, for:

- VAT groups
- Trusts
- 'not for profit' organisations that are not set up as a company
- annual accounting scheme users
- those required to make payments on account
- VAT divisions
- Government departments, NHS Trusts, local authorities and public corporations
- traders based overseas

Such businesses must implement MTD for VAT for periods ending after 1 October 2019. HMRC later announced a deferral to April 2022 for businesses who use the GIANT (Government Information and NHS Trust) service.

Digital Links. The entire journey of the VAT return data from the digital transaction records to the submission of the VAT return must be carried out by the FCS. If the FCS comprises several software products, then they must be linked digitally, though there is a 'soft landing period' of one year, during which businesses will be able to carry on with manual links, though submission will have to be via HMRC's MTD for VAT API (application programming interface). If a set of software programs, products or applications are used as functional compatible software there must be a digital link between these pieces of software.

The digital links rule does not apply during the soft landing period, except where the data to be included in any of the boxes of the VAT Return has been prepared within a software program, product or application, and this data is then transferred to another program, product or application in order to submit the VAT Return data to HMRC via the API platform.

October 2019 HMRC: MTD Digital links deadline extensions. Businesses can now apply to HMRC for an extension to their soft landing period for implementing fully digital links. The business must explain why completion by the end of its soft landing period is unachievable and provide details of the systems that are unable to be digitally linked, including a system process map.

April 2020: MTD Digital links deadline extension Due to the COVID-19 pandemic, HMRC has put back the start date for mandatory full digital links from 1 April 2020 to 1 April 2021

March 2020. Deferred VAT payments. As a result of the COVID-19 pandemic, UK VAT registered business with a VAT payment due between 20 March 2020 and 30 June 2020, may defer the payment to 31 March 2021. HMRC will not charge interest or penalties on any amount deferred.

Businesses may only defer:

- quarterly and monthly VAT returns' payments for the periods ending in February, March and April
- payments on account due between 20 March 2020 and 30 June 2020
- annual accounting advance payments due between 20 March 2020 and 30 June 2020

The deferral does not cover payments for VAT MOSS or import VAT. VAT payments that are due after the end of the deferral period will need to be paid as normal.

12.7 THE EC SALES LIST

September 2019 HMRC No deal Brexit guidance. Businesses should only include sales made up to the time of fully exiting the EU (currently planned to be 1 January 2021). HMRC will contact businesses that complete a simplified annual ESL.

January 2020. New transaction codes. There are three new EC sales lists codes for the new call off stock regime. The sales list codes are now: 0 - B2B goods, 2 – Triangulation, 3 - B2B services, 4 - call off stock sent, 5 - call of stock returned, 6 - change in intended acquirer of call off stock. Call off stock must be reported on the EC sales list when sent, even though its time of supply is, from 1 January 2020 and subject to qualifying conditions, when taken out of stock.

12.8 Dealing with HMRC

12.8.3 The Tax Tribunal

April 2020 Extended period for appealing against an HMRC tax decision as a result of the COVID-19 pandemic, Normally a taxpayer must appeal to the Tax Tribunal within 30 days of an HMRC decision. Because of coronavirus, HMRC will not object if a taxpayer asks the tribunal to hear an appeal after 30 days, if the review decision is dated February 2020 or later and the taxpayer asks within 3 months of the normal deadline

12.11 SAGE 50 T-CODES

12.11.4 Cross-border T-codes

January 2015 To deal with VAT reporting for the Mini-One Stop Shop in Sage 50, Sage advised that users should set up a new tax code for each EU country with a sale of B2C digital services. Each tax code must have the 'Include in VAT return' flag set to No. The Sage VAT report 'Tax Analysis - Sales of EU digital services' can then be run to generate lists of transaction assigned to each MOSS code in each MOSS reporting period. The report can be downloaded from the Sage website.