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Value Added Tax and Stamp Duties

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82.1 Value Added Tax

82.1.1 Introduction

The UK's value added tax (VAT) is a consumption tax charged on the commercial supply of goods or services in the UK as well as the importation of goods into the UK. VAT is one of the largest sources of tax revenue in the UK, generating £134 billion in 2019–20, behind only income tax (£194 billion) and NICs (£145 billion). Its numerous definitions, categories and exemptions also make it one of the most litigated taxes.

VAT has historically been the most European of UK taxes. The Sixth Directive imposed a common tax base to VAT throughout the Union, with that Directive subsequently recast as the Principal VAT Directive.[128] The Directives were enacted in the UK in what is now the Value Added Tax Act 1994 (VATA 1994). The UK was required to implement the VAT rules prescribed by the EU, including minimum VAT rates.[129] The EU scheme is premised on special arrangements for members of the internal market, and incorporates arrangements aimed at easing compliance and administration on intra-Union trade. Following the UK's exit from the EU, the UK is now a third country for VAT as far as the remaining Member States are concerned, with the result that goods exported from the UK will be subject to VAT in the destination country, and goods imported into the UK from the EU will be subject to UK VAT. The UK VAT legislation has been amended to remove special rules formerly related to goods moving between EU Member States (eg on place of supply and distance selling, acquisition VAT and cross-border supplies of electronic services).[130] Under the Withdrawal Agreement, however, certain elements of EU law concerning VAT on

[128] Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes—Common system of value added tax: uniform basis of assessment; Council Directive (EC) 2006/112 [2006] OJ L347/1 on the common system of value added tax (the Principal VAT Directive).

[129] Principal VAT Directive, Articles 96–101.

[130] See in particular amendments to the VATA 1994 introduced by the Taxation (Cross-border Trade) Act 2018, ss 41–43 and Sch 8, with effect from the end of the implementation period at 23:00 on 31 December 2020. Rate freedom that would permit this might be introduced by the EU, but these reforms have been postponed: see https://www.avalara.com/vatlive/en/vat-news/eu-2022-eu-vat-rate-setting-freedoms.html.

goods, including the Principal VAT Directive, continue to apply to and in the UK in respect of Northern Ireland.[131]

The UK enjoys some new-found freedoms in the design and operation of its VAT post-Brexit, unfettered by the constraints of the Principal VAT Directive.[132] This raises the interesting question of how closely the UK will/should track future EU developments. Some minor policy changes to VAT have already been made, including the move to a zero rate of tax on women's sanitary products.[133] The new-found freedoms also open the door for greater lobbying of politicians for special VAT treatment, which may be less welcome by those politicians as well as by tax experts. Overall, there are clear advantages to taxpayers in terms of stability and compliance costs from the UK maintaining a VAT regime substantially similar to its current model and the one used by its closest trading partners. On the other hand, the EU VAT was one of the earliest VAT models and looks outdated compared to some of its newer counterparts, which tend to have a one-rate, broad-base structure with few exemptions. Such a VAT is simpler to comply with and administer, less open to political interference, reduces costly uncertainty and litigation at the boundaries between differently rated categories, and is less distortive than the EU model.[134]

Statutory references in this section are to the VATA 1994, unless otherwise noted.

82.1.2 Structure

The administration of VAT centres on a credit mechanism system whereby a taxable person (ie a registered business) who is charged VAT on the supplies it purchases for its business can set off that tax against the tax charged by the business on the supplies made to others. Considerable legislation and case law considers many elements of that last sentence; interested readers are directed to the VATA 1994, associated regulations and HMRC guidance, and to the section on VAT in *Halsbury's Laws of England and Wales*.[135] The business is accountable to HMRC only for the *excess* of the tax on the supplies made by it over the tax on the supplies made to it. Thus, the tax is on the 'value added' by the business, hence its name. VAT paid on supplies is called 'input tax' and VAT charged on supplies is 'output tax' (section 24). The result of all this is a tax levied on the final consumer on the purchase of goods and services, usually at the standard rate of 20% and normally included in the price quoted to the consumer.

The registration threshold for VAT in Schedule 1 is taxable supplies in excess of £85,000 p.a.—a relatively high figure compared to other countries in Europe. Traders with turnover

[131] See Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (October 2019), Protocol on Ireland/Northern Ireland, Art 8 and Annex 3. The Withdrawal Agreement also allows the UK to apply in Northern Ireland exemptions and reduced rates applicable in Ireland: Art 8. See also the Taxation (Post-transition Period) Act 2020, ss 3, 7 and Sch 2–3, adding Schs 9ZA and 9ZB to the VATA 1994.

[132] See the special issues on Brexit in the *Oxford Review of Economic Policy* (2017, 2022) and the *British Tax Review* (Issue 4, 2016 and special issue on post-Brexit in 2022), and also Yates [2017] BTR 151.

[133] See VATA 1994, Sch 8, Pt II, Group 19, with effect from 1 January 2021.

[134] See de la Feria and Krever, 'Ending VAT Exemptions: Towards a Post-Modern VAT' in de la Feria (ed), *VAT Exemptions: Consequences and Design Alternatives* (Kluwer Law International, 2013) 3–35. See also James, *The Rise of the Value-Added Tax* (CUP, 2015).

[135] On 'taxable person' see VATA 1994, ss 3, 4. On 'supply' see VATA 1994, s 5 and Sch 4, and eg *Customs and Excise Comrs v Oliver* [1980] 1 All ER 353. On 'business' see VATA 1994, s 94.

less than £85,000 can elect to register for VAT, which may be beneficial if the trader incurs considerable VAT on purchases and provides goods/services primarily to VAT-registered customers. Other traders who provide mostly personal service to final consumers may find they enjoy a competitive advantage from not being VAT registered, and research has found a high level of bunching of reported revenue by traders just below the VAT threshold.[136]

VAT is not chargeable on exempt supplies, including education, land and insurance. A supplier is not, therefore, entitled to credit for the input tax which he incurs on supplies made to him for the purposes of his exempt activities (section 31 and Schedule 9). Other items, including domestic fuel/power, are eligible for a reduced rate of VAT of 5% (section 29 and Schedule 7A). Yet others are zero-rated, meaning that no tax is charged on the provision of such supplies, but the trader is entitled to claim input tax related to that supply (section 30 and Schedule 8). Examples of zero-rated supplies include food, children's clothing and footwear, books, and exported goods and services.

From 1 April 2019, under the Making Tax Digital (MTD) initiative, most VAT-registered businesses with taxable turnover in excess of the VAT registration threshold are required to keep records in digital form and file VAT returns electronically. Several simplified accounting and payment schemes are available.[137]

An EU doctrine of abuse of rights is a feature of the UK's VAT following on from the *Halifax* case.[138] Since 2013 the UK has had its own general anti-abuse rule that applies for most other taxes but not VAT.[139] Post-Brexit, the Taxation (Cross-border Trade) Act 2018, section 42(4) expressly confirms that the *Halifax* principle continues to be relevant, in accordance with the European Union (Withdrawal) Act 2018, for the purposes of the law relating to the UK's VAT.

82.2 Stamp Duties

Stamp duties are a very old form of taxation, dating back hundreds of years in the UK.[140] This section considers in outline stamp duty, stamp duty reserve tax and stamp duty land tax. Together these duties raised approximately £15 billion in 2020–21.

82.2.1 Stamp Duty and Stamp Duty Reserve Tax

Stamp duty is charged on instruments relating to stock or marketable securities and instruments transferring interests in partnerships holding stock or marketable securities. The legislation is set out in the Stamp Act 1891 and various Finance Acts. The liability of an

[136] Liu, Lockwood, Almunia and Tam, 'VAT Notches, Voluntary Registration, and Bunching: Theory and U.K. Evidence' (2021) 103(1) *Review of Economics and Statistics* 151.

[137] For details on VAT returns, filing, payment etc, including simplified schemes, see the Value Added Tax Regulations 1995, SI 1995/2518.

[138] Case C-255/02 *Halifax PLC and others* [2006] STC 919, para 72.

[139] FA 2013, Pt 5, s 206 et seq.

[140] Recommended historical writing on the very wide range of stamp duties levied in the UK and elsewhere over time includes that by Stebbings (eg *Tax, Medicines and the Law: From Quackery to Pharmacy* (CUP, 2018)) and also by Sadler and Oats (eg [2002] BTR 353).

instrument to stamp duty arises at the moment at which it is executed, and the character of the instrument must be ascertained by reference to its legal effect when it is executed.[141] Stamp duty of 0.5% applies on both transfers on sale of stock or marketable securities and on transfers of interests in partnerships holding stock or marketable securities.[142] The higher rate charge of 1.5% applies in respect of bearer instruments, transfers of securities to persons who issue depositary receipts and transfers of securities to persons who provide clearance services.[143] A variety of exemptions apply, eg where the consideration is less than £1,000. Until very recently, documents needed to be physically stamped by large machines to evidence payment of the tax. One upshot of the pandemic was the move in 2021 to abolish physical stamping in favour of an electronic system.

Stamp duty reserve tax (SDRT) is charged in respect of agreements to transfer certain securities for money or money's worth and in respect of arrangements involving depositary receipts and clearance services. SDRT is broader than stamp duty as it applies to transactions which are not effected by means of an instrument of transfer and the tax is imposed irrespective of the nature of the consideration. SDRT is charged at the same rates as stamp duty—generally 0.5%, but 1.5% in respect of certain transactions involving depositary receipts or clearance services which do not give rise to a transfer chargeable under stamp duty.[144]

82.2.2 Stamp Duty Land Tax

Stamp duty land tax (SDLT) is charged on land transactions, such as the purchase of a new residential property, and comprises the largest of the stamp duties in terms of revenue. For this purpose, a 'land transaction' means any acquisition of a 'chargeable interest', which in turn means an estate, interest, right or power in or over land in England, or the benefit of an obligation, restriction or condition affecting the value of these.[145] Various exemptions apply, eg for intra-group transfers and transfers on divorce.[146]

The purchaser is liable to pay the tax.[147] Where the relevant land consists entirely of residential property, the tax rate is set out in Finance Act 2003, section 55(1B), Table A as:

(a) zero, where so much of the part of the relevant consideration does not exceed £125,000;
(b) 2% on the next £125,000 (that is, the portion from £125,001 to £250,000);
(c) 5% on the next £675,000 (that is, the portion from £250,001 to £925,000);
(d) 10% on the next £575,000 (that is, the portion from £925,001 to £1.5 million);
(e) 12% on the remaining amount (that is, the portion above £1.5 million).

[141] See *Limmer Asphalte Paving Co Ltd v IRC* (1872) LR 7 Exch 211.
[142] See FA 1999, s 112(1), (3), Sch 13, paras 1, 2, 3 and FA 2003, s 104(1), Sch 15, para 31.
[143] See FA 1999, Sch 15, paras 2, 4 and FA 1986, s 67 et seq.
[144] See FA 1986, ss 87 and 93.
[145] FA 200,3 ss 43, 48.
[146] FA 2003, s 49, referring to Sch 3 and ss 42–124.
[147] FA 2003, s 85.

Pursuant to Finance Act 2003, Schedule 4ZA higher rates apply to second-home owners, non-UK residents and companies; Schedule 6ZA provides reliefs for first-time buyers. Reliefs are also available to housing cooperatives and on the purchase of land within designated freeport sites in England.

In Wales, a similarly structured tax applies—the Land Transaction Tax.[148]

[148] See Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 and related regulations.