

Association of Accounting Technicians response to the HMRC Consultation on VAT and Value Shifting

Association of Accounting Technicians (AAT) welcomes the opportunity to provide a short response to the HMRC consultation on VAT and Value Shifting. AAT very much supports any effective steps that will prevent VAT abuse that distorts competition and creates an uneven playing field, whether that is between large and small businesses, UK and non-UK businesses or reputable businesses and those who are less so.

AAT is unable to directly comment on the questions regarding the supply of specific 'bundles' of goods and services as it is our members and more pertinently many of their 500,000 small business clients who would be selling in this way.

AAT supports the proposals to legislate to prevent inappropriate value shifting but believes they need to be widened beyond those contained within this consultation document. AAT agrees that legislation will provide legal certainty and make the calculation of VAT for mixed supplies more straightforward, thus levelling the playing field for many businesses. However, if Government is serious about its intention to level the playing field for **all** businesses then the abuse created by VAT value shifting in relation to mail order imports from outside the UK must also be addressed.

This problem can be summarised as being where the taxable value of the goods declared (the intrinsic value) is reduced and is shifted to the non-taxable postage value. This frequently occurs to avoid paying the correct amount of import VAT and is facilitated by the fact that VAT is only charged on the intrinsic value of imports and not on postage/carriage costs and that there is also an overly generous allowance for postage costs permitted by HMRC.

So, VAT is applicable to postal and carriage charges made by retailers within the UK but it is not currently applicable to the value of postage charged on imports. For example, a VAT registered UK retailer selling an item by post to a UK customer must account for an additional 20% VAT on the postage charge. However, a retailer outside the UK selling goods to a UK customer does not have to charge any VAT on the postage although VAT is due on the value of the goods.

As a result, sellers into the UK are not only aware of this but actively seek to take advantage of it by inflating the postage charge whilst reducing the declared value of the goods. This creates a wholly unacceptable and uneven playing field between UK and non-UK sellers.

At present HMRC permit a VAT free postage and package allowance of up to £5 per packet. In many cases this is much higher than the actual postage/packing costs accrued by the seller. Due to advantageous postal rates, Chinese sellers are often only paying pennies to mail packages to the UK, making it cheaper to mail a packet from China to London than from one London borough to another. A further imbalance is created when part of the value of the goods is shifted into the declared (VAT exempt) postage allowance. For example, an item sold at £17 plus £5 postage i.e. £22 in total, may in reality have a value of £21 with only £1 actually spent on postage and packing. By claiming the item is worth £17, the seller can avoid paying VAT on a portion of the item's real value (by shifting part of that value into the permitted VAT free allowance for postage). In online retail this can be a significant advantage that not only distorts competition but, in some cases, could potentially put legitimate small UK businesses out of business.

HMRC may believe that that freight and insurance costs are incidental expenses that do not need to be included when applying import VAT but this approach is causing significant problems for many UK businesses. Although VAT is only applicable to the 'intrinsic value' of the goods (which excludes the cost of postage and packaging as per a decision made by the EU VAT Committee¹) as the UK is no longer a member of the EU there is no longer any legal barrier preventing the UK from taking action to tackle this abuse.

Whilst this represents a post-Brexit opportunity to positively address market abuse, it is important that the proverbial baby is not thrown out with the bath water and that the non-distortion principles of the EU VAT Directive should still be applied to the UK's internal market. This is because these principles will help to ensure an internal UK market in which the application of legislation on turnover taxes is not permitted to distort conditions of competition or hinder the free movement of goods and services. To achieve non distortion, VAT should eliminate, as far as possible, factors which may distort conditions of competition.²

¹ In the February 1988 EU VAT Committee meeting, the question of total value was considered deemed not to include incidental expenses such as postage, freight and insurance:

https://ec.europa.eu/taxation_customs/sites/taxation/files/guidelines-vat-committee-meetings_en.pdf

² As detailed in Recital 4 of Council Directive 2006/112/EC of 28th of November 2006 on the common system of value added tax:

<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celext%3A32006L0112>

In conclusion, it is clearly unfair that imports into the UK do not attract a VAT charge in respect of postage; that there is an excessive VAT free allowance; and that non-UK businesses are consequently at a competitive advantage to UK sellers.

AAT would therefore like to see practical proposals to address this issue contained within any new legislation being brought forward to introduce mandatory valuation methods, ban cost-based apportionments and prevent estimates of market value. This would appear to be the perfect opportunity to genuinely create a level playing field and tackle VAT shifting once and for all.

Further information

If you have any queries, require any further information or would like to discuss any of the above points in more detail, please contact Phil Hall, AAT Head of Public Affairs & Public Policy:

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