

Technical Consultation on Draft Finance Bill Measures relating to the Interpretation of VAT and excise law

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Technical Consultation: <https://www.gov.uk/government/publications/interpretation-of-vat-and-excise-legislation>

Sent to: retainedeulaw.financebill@hmrc.gov.uk

UK Finance is the collective voice for the banking and finance industry. Representing more than 300 firms across the industry, we act to enhance competitiveness, support customers and facilitate innovation.

General Comments

The Retained EU Law (Revocation and Reform) Act 2023 (REUL) has given rise to a number of unintended consequences for UK tax policy. The publication of draft legislation, intended to clarify how VAT and excise legislation should be interpreted in the light of changes made by REUL, demonstrates a welcome intention on the part of HM Treasury (HMT) and HM Revenue & Customs (HMRC) to smooth the transition from the current rules governing the interaction between UK law and retained EU law to those that come into effect under REUL next year.

However, the VAT landscape is complex and nuanced. The draft legislation does not appear to adequately address this complexity, thereby sustaining a high degree of uncertainty for industry and the prospect of settled interpretations of VAT law being disturbed.

Examples of uncertainty

- **Intermediation of bank accounts, savings accounts, cash ISAs etc** - Whilst EU VAT law makes clear provision for a VAT exemption for intermediary services provided in connection with bank accounts (Article 135(1)(d)), this exemption has not been implemented within UK VAT law even though it is recognised by HMRC's guidance (VATFIN2950). In HMRC's covering email informing UK Finance of the technical consultation on the draft Finance Bill clauses, the accompanying message stated "businesses will no longer be able to rely on direct effect of EU Law". If HMRC is correct, from 1 January 2024, without adequate notice or consultation, the fees charged by intermediaries (such as financial planners, independent financial advisers, savings platforms and through embedded banking operating models) would become subject to the standard rate of VAT at 20%. It is not clear from the draft Finance Bill whether this situation is intended to be fixed, or if HMT considers that this material change to the operation of the FS VAT exemptions is an acceptable if unintended consequence of REUL.
- **Skandia/Danske** - HMRC's policy on VAT groups and the circumstances in which a supply will be generated on transactions within a legal entity where that entity has a fixed establishment within an overseas VAT group seeks to implement the CJEU judgment in *Skandia*. This policy is implemented through HMRC Briefs (RCB 2/2015, RCB 18/2015, and RCB 23/2015) – no change was made to section 43 of the VAT Act 1994 or to the UK's form of VAT grouping (i.e. whole entity VAT grouping). UK VAT grouping legislation (post Danske) is wider than the Principal VAT Directive provision and EU law principles. It is not clear how the draft Finance Bill measures will operate in relation to this area. Without a nuanced approach, the UK may lose the opportunity to capitalise on an opportunity to increase competitiveness.

- **Fund Management Exemption** – it is unclear how the draft Finance Bill relates to the EU VAT concept of a Special Investment Fund (as referred to in Article 135(1)(g) of the Principal VAT Directive and developed through both UK and CJEU jurisprudence).

UK Finance would strongly urge HMT and HMRC to legislate to codify the VAT exemption for intermediary services provided in connection with bank accounts. Alternative measures are no substitute for the degree of certainty that codifying the VAT exemption would provide, achievable by using either primary or secondary legislation to add a reference to Item 8 to the existing provisions within item 5, group 5, schedule 9 of the VAT Act 1994.

We would further urge more consultation with industry to provide the reassurance and certainty that is required to maintain an environment conducive to enhancing the UK's global competitiveness.

If you have any questions relating to this response, please contact Sarah.Wulff-Cochrane@ukfinance.org.uk.

Sarah Wulff-Cochrane
Principal