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VAT and Value Shifting

Response by the Chartered Institute of Taxation

1 Executive Summary

- 1.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the UK for advisers dealing with all aspects of taxation. We are a charity and our primary purpose is to promote education in taxation with a key aim of achieving a more efficient and less complex tax system for all. We draw on the experience of our 19,000 members, and extensive volunteer network, in providing our response.
- 1.2 HMRC has not demonstrated that there is sufficient 'value shifting' to warrant a wholesale change to the VAT rules which will affect all VAT-registered businesses that sell a number of goods or services for a single price. We would encourage HMRC to disclose the evidence that has led it to this conclusion.
- 1.3 HMRC has adequate armoury to challenge such arrangements; because many simply fail on technical merits, or on 'abuse' grounds etc. If any additional armoury is considered necessary this should be targeted at the mischief it intends to prevent, without creating significant collateral damage for other taxpayers.
- 1.4 We are concerned that the proposed rules in their current form could actually create opportunities to manipulate the amounts attributable to bundled supplies, such as by inflating individual selling prices of zero or lower rated components. The prescriptive rules could actually result in a smaller proportion of the consideration being properly attributable to positive rated supplies, necessitating complex anti-avoidance measures.
- 1.5 There is a need for exceptions from any new rule. For example (**and on which we declare an interest below**), we consider that non-profit making bodies which apportion their subscription income in accordance with Extra Statutory Concession 3.35, together with any other 'bespoke' agreements between taxpayers and HMRC, should be allowed to continue.

2 About us

- 2.1 The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it –

taxpayers, their advisers and the authorities. Our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party-political organisation.

- 2.2 The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.
- 2.3 The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries.
- 2.4 Our members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

3 Introduction

- 3.1 We are pleased to set out our comments in relation to HMRC's consultation 'VAT and Value Shifting'.
- 3.2 Our stated objectives for the tax system include the following aspects which are relevant to this issue:
 - A legislative process that translates policy intentions into statute accurately and effectively, without unintended consequences.
 - Greater simplicity and clarity, so people can understand how much tax they should be paying and why.
 - A fair balance between the powers of tax collectors and the rights of taxpayers (both represented and unrepresented).
- 3.3 We are disappointed that this consultation is starting at stage 2 of the Tax Consultation Framework. No explanation is provided as to why stage 1 has been skipped. Coupled with the fact that we are largely unaware of the type of value shifting referred to in the consultation, we would have preferred a more collaborative approach, whereby HMRC could have shared more detail of the mischief it is seeing, and a united attempt to achieve a proportionate solution. The questions in the consultation are focussed on taxpayers making bundled supplies that will be subject to the proposed new rules; as stated above as we are largely unaware of and the scope of the value shifting, we have no practical evidence upon which we can make conclusions.
- 3.4 A number of commentators have cited Brexit as an opportunity to address complexities in the VAT regime, yet these proposals (without stage 1 consultation as noted) further increase the particular complexity of the UK's regime. Meanwhile, as evidenced by the [OTS's 2019 VAT review evaluation report](#), progress in taking forward the Office of Tax Simplification's November 2017 proposals to address problems of complexity and distortion in VAT appears slow.
- 3.5 In the light of the above, we have kept our comments relatively brief.

4 Evidencing a problem

4.1 We do not think the consultation adequately demonstrates a systemic problem with bundles of supplies to warrant a structural change to the VAT regime. For example, the consultation:

- Makes reference to ‘some businesses’ (but doesn’t state how many).
- Seeks to identify the extent of the problem by asking the various questions of suppliers of bundles (even though the solution already seems to have been determined).
- Recognises that these are neither disclosable avoidance schemes, and could be genuine business promotions.
- References the *Marks and Spencer* case which had little prospect of succeeding – and in fact demonstrates that attempts to argue for extreme apportionments are likely to fail on the current rules.
- Avoids quantifying the exchequer impact of the measure, even though the proposed solution is known.¹

4.2 It appears to us that the consultation is proposing a solution to a problem, the extent of which is not fully known. We believe that more work should be undertaken to evidence the scale of the problem before the proposal is taken any further.

5 Scope for manipulation

5.1 Because the new rules are intended to be prescriptive, we are concerned that it might in fact open up more avenues for mischief than currently exist.

5.2 By way of a simple example, let’s say a zero rated item costs £2 to produce and a standard rated item £4. Ideally they are to be sold as a package for £15. The retailer prices the standard rated item at £10 (and is happy to sell it individually at that price), but prices the zero rated item at £50 (knowing that it won’t sell individually at that price, but so that it can be ‘sold separately’. Because each item is ‘sold separately’, *an apportionment based on the separate sale price of each item will be mandatory*. This will attribute just £2.50 to the standard rated item, and £12.50 to the zero rated item.

5.3 Whilst this is an extreme example, it may be necessary to prevent such behaviour by one or a combination of:

- Setting out what is meant by ‘sold separately’
- Introducing multiple / a hierarchy of tests eg looking first at market value, but then at cost or something else if the preceding test produces an irrational result
- Introducing some form of specific anti-abuse measure.

5.4 All the above will add further complexity – which again begs the question whether the perceived problem is being addressed in a proportionate manner.

¹ We would also challenge the comments ‘There will be a negligible impact on businesses which do not exploit the existing rules. For all affected businesses, there could be one-off costs eg for familiarisation with the new rules and systems changes. No ongoing costs are expected. The number of businesses affected and the impacts on them will be explored as part of the consultation.’

6 Requirement for exceptions

- 6.1 Whilst it is recognised that most businesses affected will be in the retail sector, its impact could be much wider; including on the not-for-profit sector.
- 6.2 For example, Extra Statutory Concession (ESC) 3.35 allows membership subscriptions payable to non-profit making bodies to be apportioned to reflect the value and VAT liability of those individual benefits. Those apportionments are typically agreed between HMRC and the body on a 'bespoke' basis ie to reflect their individual circumstances. The guidance in [VAT Notice 48](#) already provides a simple and clear statement to the constraints of applying the ESC: *'This concession may not be used for the purpose of tax avoidance.'*
- 6.3 Indeed, we consider that where HMRC and a taxpayer already have in place an agreed method for apportioning the consideration for a bundle of supplies, that any new measures do not supersede those agreements.
- 6.4 ***NOTE – the CIOT as an educational charity and membership body itself adopts Extra Statutory Concession 3.35 and in the interests of transparency we are declaring that here.***
- 6.5 There is also an existing ESC for a business promotion scheme where minor promotional items are supplied with linked goods at para 3.7 of VAT Notice 48. The CIOT considers that the proposed change in value-shifting rules should also exclude transactions that are currently compliant with the rules set out in ESC 3.7.

7 Acknowledgement of submission

- 7.1 We would be grateful if you could acknowledge safe receipt of this submission, and ensure that the Chartered Institute of Taxation is included in the List of Respondents when any outcome of the consultation is published.

The Chartered Institute of Taxation

8 April 2021