

Draft regulations: VAT provisions for drink deposit return schemes

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 The CIOT welcomes that the VAT accounting position is simplified for persons in the supply chain other than the producer. We note that there may be other arising accounting issues within the supply chain on receiving deposit income, though they are outside the scope of this consultation.
- 1.3 Whilst there are environmental and Equality Diversity and Inclusion ('EDI') impacts created by the deposit return scheme ('DRS') itself, our view is that when considering the draft VAT regulations in isolation, they have negligible/no impact on such matters.
- 1.4 We consider the definitions of terms used in the DRS VAT legislation, being new sections 55B to 55D to the VAT Act 1994, as published in Finance (No 2) Bill, and the definitions in the draft VAT regulations to be readily understandable by tax advisers.
- 1.5 The CIOT notes that some procedures are not detailed in the new regulations and may be specified in a notice. The CIOT would prefer that such procedures were detailed in the regulations to provide certainty for taxpayers.
- 1.6 The CIOT welcomes the simplified single error correction threshold in regulations 75H to 75J, though would like clarity if a person has both an understatement and overstatement in the same VAT period where the balancing VAT due does not exceed the error correction threshold, but where one or both of the over/understated errors in isolation exceed the error correction threshold.
- 1.7 Other than specifically highlighted, the CIOT considers that the new regulations will achieve their intended purpose.

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 The UK government and the devolved governments of Wales and Northern Ireland will introduce a statutory Deposit Return Schemes (‘DRS’) on single use drinks containers with the aim to increase recycling of such drinks containers from c.70% to c.85%; similar schemes in some European countries are achieving recycling rates of c.90%. The Scottish Government will introduce its DRS, which will be the first in the UK to go live on 1 March 2024. The DRS in England, Northern Ireland and Wales are anticipated to launch on 1 October 2025. Deposit return schemes are established under [Schedule 8 to the Environment Act 2021](#)¹ and similar schemes established under other legislation for a returnable deposit to be paid in relation to goods.
- 3.2 The DRS is a UK government/devolved government led scheme and the draft VAT regulations under consultation only address the VAT accounting position for the supply, return and non-return of affected drinks containers. We note that the DRS was subject to [consultation](#)² jointly by DEFRA, the Welsh government and DEARA for England, Wales and Northern Ireland respectively, and [consultation](#)³ by the Scottish Government for Scotland. However, the draft VAT regulations in this consultation will be applicable to the VAT accounting treatment for all deposit return schemes of the four countries of the UK, though will only apply when the local scheme is launched.
- 3.3 The VAT position for the deposit return scheme has been subject to long term negotiations between the UK and Scottish governments. The UK government’s original preferred position was to have VAT accounted for on the deposits throughout the supply chain, as it is the position for similar deposit return schemes in some European countries. The Scottish Government’s original preferred position was that the deposits should

¹ <https://www.legislation.gov.uk/ukpga/2021/30/schedule/8/enacted>

²

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1130296/DRS_Government_response_Jan_2023.pdf

³ <https://consult.gov.scot/environment-forestry/deposit-return-scheme/>

remain VAT free throughout the supply chain. The resulting [VAT accounting legislation](#)⁴ sees a compromise position, in that VAT is only accounted for by a producer based on the amount of non-returned items in a period based on figures supplied by the scheme administrator. This results in a simplified VAT position for other parties in the supply chain, which is welcomed, though there will still be other DRS accounting issues arising though they are outside the scope of this consultation, which solely looks at VAT.

- 3.4 We consider that the impact of paying an additional deposit charge would impact people with lower incomes as they would have to initially pay a higher price for a drink in a container that is subject to the DRS. In addition, they may need to collect a sufficient amount of single use drinks containers in order to make a return journey to a collection point cost effective, meaning more money is tied up in returnable containers. That said, if we compare the position of charging a VAT inclusive 20p deposit charge as opposed to a 20p VAT free deposit charge, as the price would be the same whether VAT was or was not applicable, this means that the draft VAT regulations in isolation do not impact the Equality Diversity and Inclusion ('EDI') position.
- 3.5 We considered any environmental aspects of the VAT charges. Though the increased recycling target should reduce the number of single use drinks containers ending up in landfill, there may be a negligible increase in journeys returning items to a collection point due to it being diverted away from the kerbside collection of domestic and commercial recycling. That said, we consider that the draft VAT regulations in isolation do not impact either of our points nor other environmental aspects, as is the position noted in the related [TIIN](#).⁵
- 3.6 In view of the scheme being managed by departments other than HMRC, our review of the draft VAT regulations is limited to whether this legislation achieves its intended purpose and any consequential impacts, and does not raise wider issues with the schemes themselves.
- 3.7 Our stated objectives for the tax system include:
- 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.
 - Greater certainty, so businesses and individuals can plan ahead with confidence.
 - A fair balance between the powers of tax collectors and the rights of taxpayers (both represented and unrepresented).
 - Responsive and competent tax administration, with a minimum of bureaucracy.

4 Definition of terms

- 4.1 We note that in footnote (1) to the draft regulations, new sections 55B to 55D are laid at paragraph 314 to [Finance \(No. 2\) Bill](#)⁶ rather than in the [Finance Act 2023](#).⁷

⁴ <https://www.gov.uk/government/consultations/draft-regulations-vat-provisions-for-drink-deposit-return-schemes>

⁵ <https://www.gov.uk/government/publications/vat-accounting-for-deposit-schemes/vat-provisions-for-drink-deposit-return-schemes>

⁶ <https://publications.parliament.uk/pa/bills/cbill/58-03/0276/220276v2.pdf>

⁷ <https://www.legislation.gov.uk/ukpga/2023/1/contents>

- 4.2 The terms noted in footnotes 3, 4 and 6 are new terms as defined in the new sections 55B to 55D to the VAT Act 1994, published in Finance (No2) Bill. We consider these definitions to be readily understandable by tax advisers.
- 4.3 The terms noted in footnotes 5, 7-10 to the draft VAT regulations are well established definitions in VAT Regulations 1995, so will be readily understood by tax advisers.

5 The method by which businesses required to account for VAT on unreturned deposits must do so

- 5.1 Regulation 3 of the VAT (Amendment) Regulations 2023 inserts a new regulation 75D into the VAT Regulations 1995 to oblige the producer to declare an amount of VAT calculated from the amount of output VAT that would have become due on deposits charged to customers in the period, less the input VAT that would have been claimable on returned items (such information would be notified by the scheme administrator). In effect this regulation collects the output VAT that would have been due from the supplier to the final consumer, where the consumer did not reclaim the deposit paid.
- 5.2 The CIOT considers regulation 75D to otherwise achieve its intended purpose.
- 5.3 Regulation 3 of the VAT (Amendment) Regulations 2023 inserts a new regulation 75E into the VAT Regulations 1995 to oblige the producer to declare 80% of the deposit value where the exact information is not supplied (by the DRS scheme administrator) in time for the corresponding VAT return to be submitted by the due date.
- 5.4 Whilst in principle, it is welcomed that there is a clear procedure for producers that will allow them to make a specific declaration based on the 80% rule where the returned items information has not been received, it is unknown as to whether this percentage is set at the right level, as if it is too high it may cause cashflow issues for the producer.
- 5.5 The CIOT considers regulation 75E to otherwise achieve its intended purpose.
- 5.6 Regulation 3 of the VAT (Amendment) Regulations 2023 inserts a new regulation 75G into the VAT Regulations 1995 to oblige affected persons to disclose final scheme adjustments and special scheme adjustments. The regulation states that the details for calculation method, the disclosure procedure and the specified time deadline will be published in a notice.
- 5.7 The CIOT would prefer that the details of making such disclosures be included in legislation rather than guidance so that taxpayers have certainty on such matters.
- 5.8 The CIOT considers regulation 75G to otherwise achieve its intended purpose.

6 Additional rules for businesses that cannot distinguish returned containers of a product that was sold both with and without VAT

- 6.1 Regulation 3 of the VAT (Amendment) Regulations 2023 inserts a new regulation 75F into the VAT Regulations 1995 to confirm the procedure when the producer has standard and zero-rated items and the VAT declaration value is unclear. The regulation allows for the procedure to be specified in a notice.

- 6.2 The CIOT would prefer that the details of making such disclosures be included in legislation rather than guidance so that taxpayers have certainty on such matters.
- 6.3 The CIOT considers regulation 75F to otherwise achieve its intended purpose.

7 Error corrections

- 7.1 Regulation 3 of the VAT (Amendment) Regulations 2023 inserts a new regulation 75H to 75J into the VAT Regulations 1995 to provide the procedures for VAT error corrections for the DRS, which will only apply to producers as the first person in the supply chain. The DRS has a different disclosure threshold to the VAT error corrections disclosure in regulations 34 and 35 to the VAT Regulations 1995, insofar as it is a simplified flat £50,000 threshold rather than the calculation methods, known as methods 1 and 2, for other types of VAT error correction.
- 7.2 The CIOT welcomes the simplified error correction threshold for the DRS.
- 7.3 The draft regulations do not clarify the position where person P discovers that there has been both an understatement and an overstatement in the same VAT return period, eg if there is a £75,000 understatement and £30,000 overstatement resulting in £45,000 due to the Commissioners, is person P still able to use the error correction rules in the draft VAT regulations as the balance is less than the simplified threshold? Or in the alternative, would a separate disclosure be required as the understatement in isolation breached the simplified threshold?
- 7.4 The CIOT considers these error correction regulations to otherwise achieve their intended purpose.

8 Tax points for deposit scheme administration services

- 8.1 Regulation 4 of the VAT (Amendment) Regulations 2023 inserts a new regulation 90ZA into the VAT Regulations 1995. This confirms the tax points rules so VAT is accountable when a VAT invoice is issued and that at least one adjustment must be made in each VAT return. The regulation provides clarity on tax points for the producer.
- 8.2 The CIOT considers the tax point regulation 90ZA to achieve its intended purpose.

9 Acknowledgement of submission

- 9.1 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

23 May 2023