

TAXREP 8/01

VAT: SINGLE OR MULTIPLE SUPPLIES

*Text of a letter **sent** in March 2001 to Customs by the Tax Faculty of the
Institute of Chartered Accountants in England and Wales in response
to Business Brief 2/01 issued in February 2001*

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1. We welcome the opportunity to respond to the invitation to comment on Business Brief 2/01 dated 15 February 2001.
2. There may well be past decisions that are no longer reliable. In the business brief Customs acknowledge that in the past some issues have been resolved through their giving directions, entering into liability agreements with trade bodies or giving individual rulings at the request of the taxpayer.
3. Many of the long-standing agreements on split supplies ought now to be reviewed, with effect from some future date, but it is unfair to place on the taxpayer the burden of identifying supplies where the VAT treatment is to change from what was previously understood to be correct. Some taxpayers are unlikely to know on which litigation such directions, agreements or rulings that they currently rely on were based. We appreciate that VAT is a self-assessed tax but Customs encourage businesses to seek their advice and it is therefore unacceptable in our view for Customs to penalise taxpayers who rely, in good faith, on past rulings. The taxpayers may not appreciate that the ruling in question depended on a particular case which is now considered by Customs to be in conflict with decisions of the European Court of Justice ('ECJ').
4. We consider that the announcement in Business Brief 2/01 is not adequate to alert traders and advisors what they should do as a result of such a change. The relevant paragraphs in the business brief do little more than draw the reader's attention to the fact that there are several factors arising out of ECJ decisions, which may conflict with earlier cases that were relied upon, that need to be taken into account when determining the VAT status of a potential multiple supply. The business brief is insufficiently detailed to enable taxpayers or advisors to reach any meaningful conclusion when applying the principles to their own or their clients' circumstances.
5. The date for implementing the changes specified in the business brief, namely 1 June 2001, is impossible for many to meet. Most traders would not even have become aware of Customs' intended policy change until they received VAT Notes 1 of 2001, which, although dated March 2001, would not have reached all traders until the second half of June. Customs should withdraw their suggestion of a 1 June deadline, or failing which announce that they will take the impossibility of meeting such a deadline into account when determining any interest and penalties for non-compliance and the date from which any repayment is due.
6. Customs say that they reserve the right to review past periods in any case where the relevant supplies have formed part of a 'tax avoidance arrangement'. In the absence of a generally-accepted definition of tax avoidance, Customs' proposed policy may lead to inconsistent implementation of the new principles as individual officers form their own view of what is or is not tax avoidance to which the revised test should be retrospectively applied. This is likely to result in an increasing number of cases being referred to the High Court for judicial review or to the Adjudicator.
7. We would welcome confirmation that where, for example, it had been agreed that a supply should be treated as partly standard-rated and partly zero-rated and following a review it is concluded that the supply should now be seen as all standard-rated, Customs

do not intend to argue that the former treatment of splitting the supplies will be seen as tax avoidance.

8. In the circumstances, we think it incumbent on Customs to issue advice in plain English which explains with reasons:
 - the leading cases to which anyone studying the subject in detail should refer;
 - which case law Customs consider to have been superseded; and
 - what types of supply Customs consider to be affected; andwhich quotes practical examples so as to help everyone identify the circumstances that Customs are likely to want to argue. Such guidance will need to set a practical deadline, not 1 June, for implementing any new policy.
9. This would give taxpayers fair warning that they need to change their procedures of, in some cases, nearly 30 years.
10. We would also expect Customs to follow their usual procedure of honouring existing directions, agreements or rulings until they withdraw them.
11. As a first step, we suggest that Customs set up in conjunction with interested parties a joint working group with a view to considering and agreeing mutually-acceptable criteria for distinguishing single and multiple supplies on the basis of decided ECJ cases as a precursor to issuing guidance on the lines suggested above. We would welcome the opportunity to be a part of such a group.

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