TAXREP 32/12

(ICAEW REP 108/12)

ICAEW TAX REPRESENTATION

FINANCE (No 4) BILL 2012 - BRIEFING

VAT - NON-ESTABLISHED TAXABLE PERSONS - CLAUSE 201 AND SCHEDULE 27 AND FACE VALUE VOUCHERS - NEW CLAUSE

Briefing submitted in June 2012 by ICAEW Tax Faculty in relation to the above provisions in Finance (No 4) Bill 2012

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INTRODUCTION

1. ICAEW submitted Briefings to the Public Bill Committee on various clauses in Finance (No 4) Bill 2012. The present TAXREP reproduces the content of the Briefing on the provisions in clause 201 and Schedule 27 re Non-Established Taxable Persons and the new clause provisions re Face Value Vouchers.

WHO WE ARE

2. ICAEW is a world-leading professional accountancy body. We operate under a Royal Charter which obliges us to work in the public interest. ICAEW's regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the UK Financial Reporting Council. We provide leadership and practical support to over 138,000 member chartered accountants in more than 160 countries, working with governments, regulators and industry in order to ensure that the highest standards are maintained.

3. ICAEW members operate across a wide range of areas in business, practice and the public sector. They provide financial expertise and guidance based on the highest professional, technical and ethical standards. They are trained to provide clarity and apply rigour, and so help create long-term sustainable economic value.

4. The Tax Faculty is the voice of tax within ICAEW and is a leading authority on taxation. Internationally recognised as a source of expertise, the faculty is responsible for submissions to tax authorities on behalf of ICAEW as a whole. It also provides a range of tax services, including TAXline, a monthly journal sent to more than 8,000 members, a weekly newswire and a referral scheme.

BRIEFING

VAT: THRESHOLD FOR NON UK BUSINESSES AND 'FACE VALUE VOUCHERS' (Clause 180 and Schedule 20, and New Clause)

What should be done?

We believe that the provision to remove the UK VAT registration threshold to non UK businesses should be withdrawn.

We believe that clarification should be provided in Parliament as to the detailed implications of the new clause re 'Face Value Vouchers'.

We would be happy to provide further information or meet to discuss these issues in more detail. For further information please contact Tax Faculty head Frank Haskew on 020 7920 8618 or Sarah Buckley, Public Affairs Manager, on 020 7920 8694.

Background and Finance Bill 2012

Clause 201 Schedule 27 Non-established taxable persons
Registration of non-UK established businesses

The proposal to remove the UK VAT registration threshold from businesses that are established outside the UK was prompted by the case of Schmelz C-97/09 in the Court of Justice of the European Union (CJEU). HMRC is of the opinion that this case has confirmed that only businesses established in a Member State can benefit from its domestic VAT registration threshold.

Following the response received from HMRC to our comments in TAXREP 66/11, **we accept that the UK proposals to remove the UK VAT registration threshold from overseas businesses may be legal, but we remain of the view that they are unnecessary and impractical.**

We accept that paragraphs 71 and 72 of the Schmelz judgment provide some justification for the proposed measures and provide an argument that they do not go 'beyond what is necessary' to guarantee the effectiveness of fiscal supervision. However, we do not accept that this requires the UK to remove the UK VAT registration threshold from overseas businesses, or that such a removal will enhance the effectiveness of fiscal supervision.

We already have problems with UK VAT registrations where the foreign business does not register because it thinks the supply (eg of goods) will be subject to the reverse charge because it is not established in the UK (this would be the position in equivalent circumstances in the Netherlands for example). Removing the limits for registration is going to involve both businesses and HMRC in a lot of additional administration time and cost for very little tax.

We believe that the costs to HMRC in particular of implementing and enforcing this proposal are likely to be considerable. These costs are likely to be particularly heavy close to the land boundary between Eire and Northern Ireland.

We also remain concerned that the proposals will create significant burdens on small overseas businesses and expect that widespread, albeit inadvertent, non-compliance will occur as a result. In many cases, the requirement to register for UK VAT will fall upon businesses that are too small to be required to register for VAT in their own country, such as a window cleaner based in Eire but cleaning a few windows in Northern Ireland.

It is unreasonable to expect an overseas business that is required to register for VAT in the UK, but which has no previous experience of VAT in its own or any other country to be aware of its requirement to register for VAT in the UK. Such a business may require significant help to comply with its obligations. Any written guidance should be made available in all common languages.

The proposals clearly discriminate against non-UK businesses. This would mean that an exempt small enterprise may have to register in different Member States despite the fact that its total turnover does not exceed the exempt threshold limit of its 'own' Member State. For example, an architect established in Austria obtaining from his independent activity an annual turnover below the exempt threshold limit from services rendered to final consumers (B2C transactions) connected with immovable property located in Austria and supplying similar services in the UK would have to register in the UK and to charge VAT on the services rendered there.

As was recognised in Schmelz case 'the non-application of the exemption to non-resident services providers constitutes unequal treatment which is linked to the place of establishment and thus indirectly to nationality, because the vast majority of the country's own nationals satisfy the establishment criterion. Alongside this, there is a restriction of the freedom to provide services. The non-availability of the registration threshold renders the provision of services in another Member State less attractive, since small undertakings established at the place of performance can offer a comparable service free of tax, and thus either at a lower price or with a higher profit margin than non-resident undertakings'.

The current system fails small business because it has been designed the wrong way round. The aim to 'think small first' 'Think Small First' A 'Small Business Act' for Europe, Communication from the Commission dated 25 June 2008, namely having a simple system and then adding special requirements for large business, is fundamental to creating systems which operate effectively for small business. Unfortunately the current approach is different. In addition, the freedoms conferred on Member States to design their domestic derogation systems contributes to the complexity of the system and to the fact that VAT compliance costs for small business are relatively higher than for big companies, particularly when they conduct business across the EU.

Given the additional administrative burdens on both small overseas businesses and HMRC referred to above, we recommend that the proposed removal of the UK VAT registration threshold from overseas businesses be withdrawn.

New Clause: Face Value Vouchers
http://www.hmrc.gov.uk/budget-updates/march2012/vat-facevalue-tech.pdf

The juxtaposition of the announcement of 'immediate effect' changes to the UK's VAT treatment of 'single purpose vouchers' on 10 May 2012 and the publication that day of the European Commission's proposals for changes to the treatment of vouchers (intended to take effect from 1 January 2015) was very unfortunate, as is the fact that the new UK rules for 'single purpose vouchers' differ from those suggested by the Commission proposal.

A number of issues emerge in the wake of the announcement on 10 May.

At first sight, the proposal to alter the treatment of 'single purpose vouchers' appears to be widely drawn, and hence likely to affect a wide range of vouchers, leading to significant administrative costs for many retailers, who would be faced with having to implement systems to distinguish between vouchers issued before and after 10 May. However, we understand that in discussion with members, HMRC has indicated that a much narrower view of which vouchers will be affected is intended. We trust that this will be reflected in the law (or at the very least is made clear in Parliamentary statements and published guidance so that taxpayers can rely on it).

We understand too that it is expected that most suppliers of any vouchers that would be 'single purpose vouchers' under the revised rules are expected to vary the terms and conditions associated with the vouchers so that they become 'multi-purpose vouchers', such that the new rules will not apply to them. It appears to follow from this that, beyond imposing the commercial burden of altering the way that vouchers are issued and redeemed (by providing a fiscal incentive for vouchers to be 'multi-purpose' rather than 'single purpose') and imposing an administrative burden (due to having to deal with the different treatment of vouchers issued before and after 1 May), the new rules may have little practical effect in revenue terms.

Perhaps the only real exception to that lies in the area of telecoms cards, where it may be more difficult for providers to 'add on' the ability to use the cards to purchase 'other' goods or services apart from telecoms related supplies. This seems likely to result in over taxation, for example when prepaid credit expires without being used (so that no supply of telecoms services is actually made) and when phones are used outside the EU and the 'use and enjoyment' provisions would ordinarily result in the charges not being subject to VAT. This seems to introduce a breach of fiscal neutrality with 'contract' payments (where charges are imposed after the event based on actual usage) and prepaid cards being treated differently for tax purposes when used identically.

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APPENDIX 1

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.

2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.

3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.

4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.

5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.

6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.

7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.

8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.

9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.

10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see icaew.com/en/technical/tax/tax-faculty/~/media/Files/Technical/Tax/Tax%20news/TaxGuides/TAXGUIDE-4-99-Towards-a-Better-tax-system.ashx)