

Minutes of the 91st JVCC meeting held on Thursday 8 May 2014

13:30-15:30 in The Auditorium,
1 Horse Guards Road, London SW1A 2HQ

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| 1 | Agenda Item 1 - introductions and apologies | Ian Stewart |
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1.1 IS welcomed attendees, among them Adrienne Curtis, Association of British Insurers, deputising for Steve Pautard, and Victoria Dixon, Finance and Leasing Association, standing in for Casey Baird.

A list of attendees and apologies is at appendix A.

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| 2 | Agenda item 2 – minutes of the last meeting; review of action points; matters arising | Ian Stewart Jon Riley |
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2.1 Minutes of the meeting of Thursday 6 February had been agreed via correspondence and a copy was available on GOV.UK.

2.2 PR gave an update on the action point carried over from the meeting on 8 November. Details are in Appendix B.

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| 3 | Agenda item 3 – JVCC Terms of Reference | Ian Stewart |
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3.1 Draft revised JVCC Terms of Reference (ToR) were circulated to members for comments on 29 April. No changes were put forward and revised ToR were formally agreed at the meeting on 8 May. [Post meeting note: the revised ToR have now been published on GOV.UK.]

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| 4 | Agenda item 4 – Update on EU and other international VAT issues | Ian Broadhurst, Mike Cunningham |
| | OECD VAT/GST Project | |
| | MOSS and 2015 changes | |
| | Other EU VAT dossiers | |
| | EU Web Portal | |
| | work of the various EU VAT groups | |

OECD VAT/GST Project

4.1 MC advised that the project to draw up a set of VAT/GST Guidelines for International Cross-Border trade had picked up pace. An amended set of Guidelines had been produced following a public consultation on a consolidated version of all the work to that point and these had been approved by both WP9 and the CFA. This version was subsequently endorsed by delegates at the second [OECD Global Forum on VAT](#) in Tokyo on 17-18 April 2014. Work continues on the next key elements. The aim was to have a completed set of Guidelines available for the third Global Forum on VAT in November 2015.

Mini One Stop Shop (MOSS) and 2015 changes

4.2 With effect from 1 January 2015 businesses providing telecommunications, broadcasting and electronic services to UK customers will have to apply UK rules and pay UK VAT and vice versa. IB explained that the Commission had recently published Explanatory Notes on its website to help provide a better understanding of the new regulations. Although the Notes were robust and business-friendly and had widespread support amongst Member States they were work in progress and not legally binding. IB added that future proofing of the Notes will be required.

4.3 MOSS is an optional simplification scheme targeted at businesses providing telecommunications, broadcasting and electronic services that are faced with having to register for VAT in other Member States. The UK would be ready by October 2014 to register businesses for MOSS and the expectation was that MOSS systems in most Member States would also be ready on time. The Commission was set to publish MOSS taxpayer audit control arrangements later in May which nearly all Member States had signed up to. It was hoped that this level of cooperation would encourage other Member States to come on board. Asked if agents would be able to register their clients for MOSS, AH advised that this will not be possible and businesses would have to register themselves. Once registered businesses may appoint an agent to complete returns on their behalf.

4.4 IB added that countries outside the EU were showing an interest in MOSS and it might prove to be a model for how taxes are collected in the future. MC confirmed that the OECD had looked at MOSS in connection with work on the VAT/GST Guidelines.

4.5 HMRC would shortly be issuing further guidance for UK businesses on the 2015 changes. DC asked if this would cover Article 9A and payment processing. IB advised that this was already covered in detail in the Explanatory Notes published by the Commission, which explained that payment service providers will not be caught by the regulations. DC indicated that he felt that the guidance did not make absolutely clear when a person might be treated as a payment service provider (excluded from Article 9A). IB said that in HMRC's view the situation was clear. A person who plays no active role in promoting the underlying supply of electronic services will not be caught by Article 9A. Article 9A is intended to capture businesses that operate an online portal or marketplace to sell a third party's services - not businesses whose involvement with a transaction is limited to facilitating payments and starts at the point that a sale is to take place. [Post meeting note: a link to the Explanatory Notes was circulated to JVCC members on 9 May.]

4.6 IB also highlighted the upcoming 2015/MOSS seminar covering the changes [Post meeting note: this event has now been held and all the presentations and panel discussions can be found here: www.online-web-presentations.com/HMRC]

Other EU dossiers

4.7 While the Greek presidency had taken forward work on vouchers and a Standard VAT Return, neither dossier had been completed and it was expected that the incoming Italian presidency would pick up both. Work on a Standard VAT Return will be discussed at ECOFIN in June. This followed discussion in Council of a first compromise text, although Member States had still to consider what information will be included in the boxes.

EU Web Portal

4.8 As a result of concerns from other Member States about cost and legal certainty there had been little tangible progress on the Portal to date, despite the UK pressing for progress at every opportunity. Although the Commission had now indicated that a comprehensive Web Portal will be developed, support for the project from Member States was seen as key to this happening. IB therefore encouraged JVCC members to write direct to the Commission to show support for the Web Portal. [Post meeting note: a contact address for correspondence was circulated to JVCC members on 9 May.] A limited EU MOSS Web Portal will be available before the end of 2014 which will include information about VAT rates, invoicing requirements and penalty regimes.

Work of the various EU VAT Groups

4.9 The Commission's level of engagement with stakeholders had increased significantly over the course of the last two years through the EU VAT Forum, Group on the Future of VAT and VAT Expert Group. Although the UK supports this direction of travel we would like to see greater interaction between the various groups. MC explained that these developments had no impact upon the UK consultation process and the UK will continue to engage actively with businesses through the JVCC, HMT VAT Forum and sector liaison groups.

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| 5 | Agenda item 5 – Implementation of the decisions in PPG, ATP & BAA | Barbara Farndell, Bruno Giordan |
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5.1 The CJEU judgment in PPG held that, subject to the normal rules, employers could recover VAT incurred on services relating to the management and operation of a pension scheme when supplied to them and where these services had a direct and immediate link to their taxable activities. In the light of this decision, HMRC issued Revenue & Customs Brief (RCB) 06/14 that set out a number of conditions to be met for VAT charged to be recoverable as input tax. The RCB also provided for a six-month transitional period for those businesses affected to make adjustments to their VAT treatment.

5.2 BF explained that since the RCB was issued it had become apparent that some of the conditions specified were more difficult for businesses to meet than had been anticipated. Furthermore, it had become clear that additional issues raised by the CJEU judgment in ATP, on the liability of pension fund management services, had an impact on the issues covered in the RCB. In light of this and feedback from ongoing stakeholder engagement, HMRC was reviewing the treatment outlined in RCB 06/14 and was hoping to publish further guidance on the implementation of both the PPG and ATP judgments in the autumn. HMRC would therefore be issuing an interim RCB shortly which will explain the current position and extend the existing transitional arrangements. [Post meeting note: RCB 22/14 issued on 27 May.]

5.3 On BAA, BG advised that HMRC was in the process of revising its guidance in this area to make it clearer. The intention was to publish an RCB shortly which will bring together different strands of related litigation. A draft had been shared with representatives of firms dealing with the majority of the litigation in this area and we were currently considering how to incorporate the responses received.

5.4 BG said that it was hoped that a new reference from Germany, Larentia & Minerva (C-108/14), will resolve a lot of the outstanding issues arising from BAA and bring some much needed certainty to this area of the tax. He added that he was speaking about PPG and BAA at the VPG conference in June and would be happy to debate the arguments in more detail then.

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| 6 | Agenda item 6 – VAT Prompt Payment Discounts | Andy Heywood |
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6.1 This measure, announced by the Chancellor in Budget 14, aligned UK legislation with EU law and ensures VAT is accounted for on the full consideration paid. Historically, HMRC had interpreted UK legislation to allow suppliers to account for VAT on the discounted price even where this offer had not been taken up. This was not perceived as an issue until PPDs began being offered to final consumers who cannot recover the VAT charged. Under the existing interpretation there was a real risk of significant loss of revenue where PPDs were not been taken up.

6.2 AH explained that for telecommunications and broadcasting services where a VAT invoice was not required the measure had effect for supplies made on or after 1 May 2014. For all other supplies the measure will have effect for supplies made on or after 1 April 2015. HMRC will shortly launch a consultation on the invoicing and accounting arrangements where PPDs are taken up in relation to supplies made after 1 April 2015. [Post meeting note: consultation published 17 June. Closing date for comments 9 September.]

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| 7 | Agenda item 7 – Mandatory online filing of VAT returns: summary of consultation responses | Paul Riley |
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7.1 Following a consultation exercise on changes to the VAT rules to clarify the assistance available, PR explained that HMRC was proposing to amend the VAT Regulations to make telephone filing an alternative form of electronic filing available to VAT registered businesses that meet certain criteria, such as age, disability, or remoteness of location. These changes will see HMRC providing a dedicated telephone filing service which will be available outside normal working hours.

7.2 The VAT Regulations will also be amended to provide that businesses that satisfy HMRC that they meet certain conditions will not be required to file their returns either online or using telephone filing. We expect this exemption will only apply to a

very small number of businesses. Subject to responses received to the technical consultation on the draft amended VAT Regulations, the changes will come into effect from 1 July 2014 and will apply to the first VAT returns due after this date.

7.3 It was pleasing to note that the proposals had satisfied concerns raised by the Low Incomes Tax Reform Group about HMRC'S approach.

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| 8 | Agenda item 8 – Issues for discussion raised by JVCC members | |
| | Failure to take reasonable care penalties | Pete Woodham |

8.1 DC asked if the introduction of penalties for “failure to take reasonable care” had prompted a change in customer behaviour and what the impact had been on the number of penalties issued by HMRC.

8.2 PW explained that the total value of penalties imposed since the introduction of “failure to take reasonable care” stood at £100.13m of which just over £46m were suspended. Although it was possible to extract a figure for the value of penalties issued, establishing the number of penalties raised was more difficult and system changes to improve access to this level of information were planned. Research into whether “failure to take reasonable care” penalties had prompted behavioural changes was also planned but had not yet got underway.

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| 9 | Agenda item 9 – Any Other Business | |
| | HMRC Communications following Court & Tribunal decisions | Alex Millar |
| | Delays in post coming from HMRC Delays in the publication of Tribunal decisions | Rhiannon Churchill |

9.1 AMi raised an issue about litigation cases that HMRC had lost on a point of law and how decisions taken not to appeal or change current policy were communicated externally. IS referred AMi to the VAT Appeals List published on the HMRC website. The list provided brief details of cases that HMRC has lost and indicates whether we intend to appeal or issue an RCB. If a loss was not included on the list this infers that we don't see the decision as having a wider impact.

9.2 AMi said the list was useful. However, there were some losses with perceived wider implications that he had expected to see on the list which had not been added and where an explanation of why HMRC did not agree with the decision would have been useful. IS encouraged AMi and other JVCC members to alert JR to any cases not on the list that they feel should be included. It was agreed that going forward the list will be updated every two months.

9.3 RCh provided details of two examples of HMRC delays and asked whether these were isolated instances. The first concerned an assessment sent out with a covering letter where the letter was dated a number of days after the enclosed assessment. The second example was about notification to HMRC of changes to a VAT group membership which had not been picked up as quickly as had been expected resulting in correspondence being sent to an outdated list of group members. PR said he would look into both issues and report back to JVCC.

AP1/14: PR to look into reported delays in issuing assessments by post and in updating HMRC systems to take account of changes in VAT group membership

9.4 RCh also mentioned delays in the publication of Tribunal decisions. It was agreed that this was a matter for the Courts and Tribunals Judiciary.

9.5 JR to circulate a note to JVCC members inviting expressions of interest in taking part in user testing VAT guidance on GOV.UK in the second half of May. [Post meeting note: further details circulated to JVCC members on 9 May.]

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| 10 | Agenda item 10 – Review of Meeting | |
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10.1 RCh said that wherever possible JVCC members would welcome the opportunity to comment on draft RCBs and VAT Information Sheets that policy teams were working on.

10.2 Further meetings in 2014 will take place on Tuesday 5 August and Thursday 6 November respectively.

Appendix A

JOINT VAT CONSULTATIVE COMMITTEE (JVCC)

(Meeting no 91)

Thursday 8 May 2014

13:30-15:30, Auditorium

1 Horse Guards Road, London SW1A 2HQ

External Attendees

| | |
|--------------------------|---|
| Dean Carey (DC) | Association of Chartered Certified Accountants |
| Rhiannon Churchill (RCh) | Institute of Chartered Accountants in England and Wales |
| Adrienne Curtis (AC) | Association of British Insurers |
| Helene Dinsdale (HD) | One Hundred Group |
| Victoria Dixon (VD) | Finance and Leasing Association |
| Michele Hood (MH) | British Retail Consortium |
| Alex McDougall (AMc) | The Institute of Chartered Accountants of Scotland |
| Alex Millar (AM) | Association of Accounting Technicians |
| Tony Jackson (TJ) | The Chartered Institute of Taxation |
| Martin Shah (MS) | The Law Society of England & Wales |
| Richard Sharp (RS) | The Chartered Institute of Management Accountants |
| Stephen Taylor (ST) | Association of Taxation Technicians |

Apologies

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| Casey Baird | Finance and Leasing Association |
| Ruth Corkin | VAT Practitioners Group |
| Leigh Francis | London & International Insurance Brokers Association |
| Peter Jenkins | Charity Tax Group |
| Julian Ogden | VAT in Industry Group |
| Steve Pautard | Association of British Insurers |
| Martin Scammell | British Property Federation |
| Trevor Steel | Chartered Institute of Public Finance & Accountancy |

HMRC/HMT Attendees

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| Ian Stewart (IS) | Director, Indirect Tax Directorate |
| Jon Riley (JR) | JVCC Secretary, Indirect Tax Directorate |
| Ian Broadhurst (IB) | Indirect Tax Directorate |
| Mike Cunningham (MC) | HM Treasury |
| Barbara Farndell (BF) | Indirect Tax Directorate |

Bruno Giordan (BG)

Andy Heywood (AH)

Paul Riley (PR)

Pete Woodham (PW)

Indirect Tax Directorate

Indirect Tax Directorate

Indirect Tax Directorate

Central Policy

Appendix B

Current position on JVCC action points

| AP ref | Detail | Current position |
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| Action points from the meeting on 8 November 2013 | | |
| AP5/13 | PR to look into the possibility of an automated response from HMRC to acknowledge receipt of Option to Tax notifications | HMRC does not acknowledge receipt of Option to Tax notifications submitted with VAT registration applications. However, we are looking in more detail at establishing an email communication channel and will report back to JVCC in due course |
| Action points from the meeting on 8 May 2014 | | |
| AP1/14 | PR to look into reported delays in issuing assessments by post and in updating HMRC systems to take account of changes in VAT group membership | |