

VAT and Value Shifting

Consultation

Publication date: 5 January 2021

Closing date for comments: 30 March 2021

Subject of this consultation:	Proposed revision of the rules for apportioning the consideration between supplies with mixed liabilities in a single transaction. The current law in Section 19(4), Value Added Tax Act 1994 (VATA 94) is non-prescriptive and some businesses pay less VAT by apportioning more consideration (or “shifting the value”) to non-standard rated items.
Scope of this consultation:	Although the broad principles of the new rules are set, businesses can: comment on how these can be written into UK law; draw attention to any issues the new rules present; and highlight whether greater clarity is required in some areas. Businesses are also invited to provide suggestions of other ways to tackle the issue of value shifting.
Who should read this:	Businesses, mostly in the retail sector, that sell goods or services for a reduced price as part of a package (or “bundle”).
Duration:	5 January to 30 March 2021.
Lead official:	Andy Heywood , HM Revenue and Customs.
How to respond or enquire about this consultation:	Email responses to: valueshifting@hmrc.gov.uk
Additional ways to be involved:	Please contact the lead official if you would like to discuss this paper further.
After the consultation:	We will aim to publish a summary of responses to the consultation within 12 weeks of the end of the consultation.
Getting to this stage:	This consultation forms part of HMRC’s strategy to ensure fair outcomes for VAT and reduce the tax gap through tackling tax avoidance, evasion, and other forms of noncompliance .
Previous engagement:	None.

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1. Introduction

- 1.1. Businesses often sell a number of goods or services for a single price as part of a package (or “bundle”). One or more items in the bundle may be advertised as discounted, but the discount is only available if all the bundled items are purchased together. The separate elements of the package may have different VAT liabilities, for example standard rated and zero-rated items.
- 1.2. Some businesses seek to exploit the existing rules to reduce the amount of VAT they account for. They do this by apportioning less of the total bundle price to products that are standard rated than appears to be justified, given the normal price a customer would pay for those items if sold individually. In some instances, business have attributed none of the price to a standard rated item, claiming that it is free.
- 1.3. The current law does not prescribe any particular method on how to apportion the price of items bundled together in a single transaction. Some guidance has been provided by the courts, yet this has not given a clear steer as it is on a case by case basis and has been very fact-specific. Under the existing legislation, businesses are permitted to calculate the VAT due on such transactions on the basis of how much the various items cost the business, even where items in the bundle are sold separately and thus individual sales prices are known. Where individual sales prices are not known, calculations can also be based on an estimate of the market value.
- 1.4. Some businesses achieve a competitive advantage over other businesses by manipulating values to reduce the amount of VAT they pay to HMRC.
- 1.5. The Government intends to legislate to prevent inappropriate value shifting. The change will primarily affect businesses that currently seek to achieve unfair outcomes, though all businesses selling bundled supplies will have to follow the new rules. This will provide legal certainty and make the calculation of VAT for mixed supplies more straightforward, thus levelling the playing field for all businesses.
- 1.6. This document sets out how the Government plans to amend the current legislation and mandate methods for the apportionment of output tax on bundled supplies with mixed VAT liabilities in a single transaction. It explains the proposed rules and invites comment on any points that may cause businesses difficulty, so they can be addressed. It also aims to provide information to help businesses engaged in the selling of bundles to plan for the changes.
- 1.7. This consultation does not consider the VAT treatment of single composite supplies.

2. Purpose of the Consultation

- 2.1. This consultation proposes amendments to the current rules, in order to prevent some businesses from manipulating values of items sold in a bundle and thus accounting for less VAT. This will help create a level playing field for all businesses.
- 2.2. Although the broad principles of the new rules are set, businesses can: comment on how these can be written into UK law; draw attention to any issues that the new rules may present; and highlight whether greater clarity is required in some areas. Businesses are also invited to provide suggestions of other ways to tackle the issue of value shifting.
- 2.3. This proposal is only concerned with how VAT is apportioned across bundles, not the scope of VAT or whether VAT is due.

3. Current Treatment

- 3.1. Our current guidance (see 3.15 below) states that there are two basic methods of apportionment for output tax on multiple supplies in a single transaction; one is based on cost, and the other on market value.
- 3.2. Cost-based apportionments can be manipulated to increase the cost of the zero rate, reduced rate or exempt supplies in order to reduce the amount of VAT accounted for on the bundle.
- 3.3. Some businesses also use estimates of the market value of items, which are not sold separately, and therefore have no actual sale price. Where this is the case, it can be difficult to demonstrate the true market value of the items. This leads to uncertainty for businesses as HMRC may challenge whether the estimates of the market value of non-standard rated items have been inflated to reduce the VAT due on the bundle.
- 3.4. The current law does not prescribe that any particular method should be used. HMRC policy is that businesses can use cost-based methods, (actual) market value-based methods or any other method that produces a “fair” result. This can lead to different tax results for very similar bundles.
- 3.5. Value shifting is a listed scheme under the disclosure of avoidance scheme rules to which penalties can apply (scheme 3 in section 6.4 of [VAT Notice 700/8 Disclosure of Avoidance Schemes](#)). However, the scheme deals with cases where the consideration for the bundle is “no different or not significantly different” from the separate sales prices. “Significantly different” is not defined.
- 3.6. In addition to this, the scheme specifically excludes “normal business promotions”.
- 3.7. As a consequence, many of the unfair outcomes that the proposed treatment (set out in paragraph 4.1) seeks to address do not fall under the rules for the listed scheme.

Current Legislation

- 3.8. The legislation dealing with multiple supplies in a single transaction, including where supplies do not all have the same liability, is Section 19 of the Value Added Tax Act 1994 (VATA).
- 3.9. VATA, Section 19(1) states that the value of any supply of goods or services is determined in accordance with that section and Schedule 6. Section 19 contains the general provisions and Schedule 6 is concerned with valuation in special cases.
- 3.10. Section 19(2) provides that, where a supply is for a consideration in money, the value of the supply is the amount equal to the consideration.
- 3.11. Section 19(4) sets out the specific legislation which deals with multiple supplies and states that:

“Where a supply of any goods or services is not the only matter to which a consideration in money relates, the supply shall be deemed to be for such part of the consideration as is properly attributable to it.”

In other words, where there is a bundle of supplies for a single consideration, the consideration must be apportioned between the supplies properly.

- 3.12 Section 19(5) provides that where the consideration for a supply is non-monetary, its value must be what would be payable in money in an “arm’s length” transaction.
- 3.13 The special cases under Schedule 6 include deemed supplies of goods for no consideration under paragraphs 6 and 8.
- 3.14 There is a similar provision for deemed supplies of services for no consideration under paragraphs 7 and 8 of Schedule 6.

Current Guidance

- 3.15 Our current guidance can be found in [VAT Notice 700, Section 31](#) and the VAT Valuation Manual; the contents page is here: [VATVAL03000](#).

Case Law

- 3.16 The UK courts have dealt with several cases involving bundles and “value shifting”. However, each case is fact-specific and based on the current law which, as noted above, is non-prescriptive in relation to the method of apportionment. Most recently, in [Marks and Spencer \[2019\] UKUT 182](#), the Tribunal held that a bottle of wine purchased with a meal was not “free”, and the consideration had to be apportioned across all the items in the bundle. However, the court pointed out that the decision applied to the particular circumstances of the case and did not decide how much of the total consideration for the bundle should be allocated to the wine. Neither this or earlier cases, provide legal certainty as to how consideration should be apportioned.

Current Treatment Scenarios

- 3.17 Paragraphs 3.18 – 3.20 set out three scenarios. Under paragraph 4.1, we set out how the same scenarios would change in accordance with the proposed new rules.
- 3.18 **Scenario 1: All items in the bundle are also sold separately**
- In this scenario, each item in the bundle can be purchased from the supplier separately, the items do not all share the same liability, and the consideration paid for the bundle is less than the aggregate amount for the items purchased separately.
 - As noted above, under the current rules, businesses can use any methodology which gives a “fair” result. Our guidance says that *actual* market value-based methods and cost-based methods are acceptable.

- Some businesses seek to use a market value method, which applies all of the discount to the standard rated item in a bundle, thus accounting for less VAT. This is compared to apportioning the discount across all items in the bundle based on their individual sale prices.
- Also, as noted in paragraph 3.2 above, some businesses manipulate cost-based apportionments by arguing that costs are higher for non-standard rated items.

For comment

Q1.

- Does your business sell items of different liabilities in bundles and also sell those items separately? If no, please go to 3.19.**
- If yes, what goods or services are involved?**
- Are these bought in or developed (or partly developed) in-house?**

Q2.

- Do you use a cost-based apportionment? If no, please go to Q3.**
- If yes, how do you calculate the costs of any goods or services that are developed (or partly developed) in-house?**
- Do you include overheads or indirect costs e.g. transportation or refrigeration? Please provide details.**

Q3.

- Do you use a market value-based apportionment? If no, please go to 3.19.**
- If yes, please provide details.**

3.19 Scenario 2: One or more items in the bundle are not also sold separately

- In this scenario, some items can be purchased from the supplier separately, but others cannot, and the items do not all share the same liability.

For comment

Q4.

- Does your business sell bundles where one or more items are not also sold separately? If no, please go to 3.20.**
- If yes, what goods or services are involved?**
- Are these bought in or developed (or partly developed) in-house?**

Q5.

- a. Do you use a cost-based apportionment? If no, please go to Q6.
- b. If yes, how do you calculate the costs of any goods or services that are developed (or partly developed) in-house?
- c. Do you include overheads or indirect costs e.g. transportation or refrigeration? Please provide details.

Q6.

- a. Do you use a market value-based apportionment? If no, please go to 3.20.
- b. If yes, do you use actual market values or estimated market values? Please provide details.

3.20 Scenario 3: None of the items in the bundle are also sold separately

- In this scenario, none of the items can be purchased from the supplier separately and the items do not all share the same liability.

For comment

Q7.

- a. Does your business sell bundles where none of the items in the bundle are also sold separately? If no, please go to 3.21.
- b. If yes, what goods or services are involved?
- c. Are these bought in or developed (or partly developed) in-house?

Q8.

- a. Do you use a cost-based apportionment? If no, go to Q9.
- b. If yes, how do you calculate the costs of any goods or services that are developed (or partly developed) in-house?
- c. Do you include overheads or indirect costs e.g. transportation or refrigeration? Please provide details.

Q9.

- a. Do you use a market value-based apportionment? If no, go to 3.21.
- b. If yes, do you use actual market values or estimated market values? Please provide details.

Coupons

3.21 Some businesses offer money-off coupons which are a promise of a discount on a future purchase. These are not Single Purpose Vouchers or Multi-Purpose Vouchers as defined by Schedule 10B, VATA.

For comment

Q10.

- a. Does your business currently offer such money-off coupons? If no, please go to 3.22.
- b. If so, are these coupons issued for specific items or multiple items in a bundle?
- c. In each case, how do you apportion the consideration when coupons are issued; and when they are redeemed?

Bundles sold by more than one entity

3.22 In some cases, different items in bundles are sold by different entities but they are still part of a conditional offer i.e. the customer must buy all items to obtain the discount. In these circumstances, the consideration for the bundle must currently be apportioned under Schedule 19(4), VATA.

For comment

Q11.

- a. Does your business currently sell bundles involving more than one entity? If no, please go to section 4.
- b. If so, please provide details.

4. Changes to UK Legislation

4.1. The new legislation will introduce mandatory valuation methods. Cost-based apportionments will not be permitted where items sold in bundles are also sold separately, and therefore their individual sale prices are known. Estimates of market value will not be permitted at all and use of cost will be mandatory for items which are not sold separately and therefore their actual market value is not known. The following outlines how this will work in the three scenarios described in paragraphs 3.18 – 3.20 above:

4.1.1. Where each item in a bundle is also sold separately by the supplier, an apportionment based on the separate sale price of each item will be mandatory.

4.1.2. Where one or more items in a bundle are also sold separately and one or more of the other items in the bundle are not sold separately, the consideration must be apportioned between the sale price(s) where known and the greater of:

- the remainder of the consideration (consideration *minus* known sale price) and;
- the cost of the item(s) not sold separately.

Where the cost of the item(s) not sold separately is used, the known sale price(s) will need to be adjusted so that the value given to all the items in the bundle equates to the consideration. This is illustrated in scenario 2 of the example.

Example

- A bundle comprises one zero-rated item and one standard-rated item for a bundle price of £12.
- The zero-rated item is sold separately for £8 and the standard-rated item is not sold separately.

Scenario 1

- The cost of the standard-rated item is £3

The remainder of the consideration (consideration £12 *minus* known sale price £8 = £4) is greater than the cost of the item(s) not sold separately.

The £12 consideration for the bundle is apportioned between the zero-rated element of £8 and a standard-rated element of £4 (the remainder).

Scenario 2

- The cost of the standard-rated item is £5

The £12 consideration for the bundle is apportioned between the standard-rated element of £5 and a zero-rated element of £7.

The zero-rated element has been adjusted from £8 to £7, so that the total value of both elements equates to the total consideration (£12).

- 4.1.3. Where none of the items in a bundle are also sold separately, cost-based apportionments will be mandatory.
- 4.2 If for any reason a single consideration for multiple mixed supplies was not liable to be apportioned to items held out as “free” within the bundle, the provisions in Schedule 6, VATA, paragraphs 6 – 8, would apply.
- 4.3 Defining and calculating costs can be complex, and so under 4.1.3, where cost-based apportionments will be mandatory, we want to hear your views and understand the impact on your business in the following scenarios:
- a) Where each item is bought in;
 - b) Where services (instead of or in addition to goods) are involved;
 - c) Where items are manufactured or developed in-house (i.e. not just bought in);
 - d) A mix of a) to c).

For comment

Q12.

- a. How do you envisage the new rules working with the scenarios outlined at 4.1.1 – 4.1.3 and with regard to 4.1.3, taking into account 4.3 a) – d)?**
- b. Will applying the new methods of apportionment to bundles increase the administrative burdens or cost for your business?**
- c. Please provide details of both one-off and ongoing costs.**

Q13.

- a. How do you envisage the new proposal working with “money-off coupons” described at question 10?**
- b. Does this raise any concerns for your business or organisation?**
- c. Will applying the new methods of apportionment to bundles increase the administrative burdens or cost for your business in terms of issuing “money-off coupons” to your customers?**
- d. Please provide details of both one-off and ongoing costs.**

Q14.

- a. The new rules will apply to bundles supplied by more than one entity as described at 3.22 above. How do you envisage this working?**
- b. Does this raise any concerns for your business or organisation?**
- c. Will applying the new methods of apportionment to bundles sold by more than one entity increase the administrative burdens or cost for your business?**
- d. Please provide details of both one-off and ongoing costs.**

Q15.

- a. Please suggest any methods of apportionment other than those proposed at 4.1 above that you think would better to address the unfair outcomes caused by “value shifting”?**

5. Summary of Proposed Changes

- 5.1. We are proposing to amend the current legislation to mandate specific methods of apportionment. This change is important because due to the uncertain and subjective nature of the current rules, some businesses can achieve unfair outcomes through manipulation of values, resulting in less VAT being paid.
- 5.2. Under the proposed policy change, (actual) market value apportionments would be mandatory and cost-based apportionments would be disallowed where the sale prices of items are known; and cost-based apportionments would be mandatory and estimated market value-based apportionment would be disallowed where sale prices are not known.
- 5.3. The proposed change will prevent unfair outcomes that can arise under the current treatment. It will also provide legal certainty, make the calculation of VAT for mixed supplies considerably more straightforward and help to achieve a level playing field.
- 5.4. Most of the additional VAT collected will be 'sticking tax' as the affected sales are almost entirely retail sales to private individuals who cannot recover VAT on their purchases.
- 5.5. Businesses that are currently manipulating values may in the future choose to pass the full costs of using a mandated method on to consumers, or to absorb any extra cost themselves. The new methods will put them on the same footing as businesses currently using fair methods of apportionment.
- 5.6. The Government believes that the new rules will provide clarity of treatment and make existing attempts to use the rules to obtain unwarranted tax advantages even less likely to succeed.

6. Assessment of Impacts

Summary of Impacts

[this table is mandatory, and it should only be deleted if an alternative format is used. Consider the best place in the document to present this information – this will normally be after you have explained the policy options and before a summary of the consultation questions. Go [here](#) for help on each field.]

Exchequer impact (£m)	Any exchequer impact will be estimated following consultation, final scope and design of the policy, and will be subject to scrutiny by the Office for Budget Responsibility.
Economic impact	The economic impacts will be identified following consultation and final design of the policy.
Impact on individuals, households and families	This proposal will have no direct impact on individuals, households or families, provided that those businesses currently exploiting the existing rules bear the costs of having to apply the new rules and do not pass the costs onto individuals, households or families. Where businesses do choose to pass on the costs, there will be an impact, which will vary depending on the amount passed on. Customer experience is expected to remain broadly the same as it is not anticipated that individuals will see any change. There is not expected to be any impact on family formation, stability or breakdown.
Equalities impacts	It is not anticipated that there will be impacts for those in groups sharing protected characteristics.
Impact on businesses and Civil Society Organisations	This measure will impact businesses, mostly in the retail sector, that sell goods or services for a reduced price as part of a package (or “bundle”). Where businesses are currently exploiting the existing rules, they will be required to pay additional tax under the new rules. 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 e.g. 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. Customer experience is expected to remain broadly the same as it does not significantly change how businesses interact with HMRC. There are not expected to be any impacts on civil society organisations.
Impact on HMRC or other public sector delivery organisations	The additional costs / savings for HMRC in implementing this change are anticipated to be negligible.

Other impacts	Any other impacts are assessed as negligible.
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7. Summary of Consultation Questions

Current treatment scenarios

Q1.

- a. Does your business sell items of different liabilities in bundles and also sell those items separately? If no, please go to 3.19.
- b. If yes, what goods or services are involved?
- c. Are these bought in or developed (or partly developed) in-house?

Q2.

- a. Do you use a cost-based apportionment? If no, please go to Q3.
- b. If yes, how do you calculate the costs of any goods or services that are developed (or partly developed) in-house?
- c. Do you include overheads or indirect costs e.g. transportation or refrigeration? Please provide details.

Q3.

- a. Do you use a market value-based apportionment? If no, please go to 3.19.
- b. If yes, please provide details.

Q4.

- a. Does your business sell bundles where one or more items are not also sold separately? If no, please go to 3.20.
- b. If yes, what goods or services are involved?
- c. Are these bought in or developed (or partly developed) in-house?

Q5.

- a. Do you use a cost-based apportionment? If no, please go to Q6.
- b. If yes, how do you calculate the costs of any goods or services that are developed (or partly developed) in-house?
- c. Do you include overheads or indirect costs e.g. transportation or refrigeration? Please provide details.

Q6.

- a. Do you use a market value-based apportionment? If no, please go to 3.20.
- b. If yes, do you use actual market values or estimated market values? Please provide details.

Q7.

- a. Does your business sell bundles where none of the items in the bundle are also sold separately? If no, please go to 3.21.
- b. If yes, what goods or services are involved?

- c. Are these bought in or developed (or partly developed) in-house?

Q8.

- a. Do you use a cost-based apportionment? If no, go to Q9.
- b. If yes, how do you calculate the costs of any goods or services that are developed (or partly developed) in-house?
- c. Do you include overheads or indirect costs e.g. transportation or refrigeration? Please provide details.

Q9.

- a. Do you use a market value-based apportionment? If no, go to 3.21.
- b. If yes, do you use actual market values or estimated market values? Please provide details.

Coupons

Q10.

- a. Does your business currently offer such money-off coupons? If no, please go to 3.22.
- b. If so, are these coupons issued for specific items or multiple items in a bundle?
- c. In each case, how do you apportion the consideration when coupons are issued; and when they are redeemed?

Bundles sold by more than one entity

Q11.

- a. Does your business currently sell bundles involving more than one entity? If no, go to section 4.
- b. If so, please provide details.

Changes to UK legislation

Q12.

- a. How do you envisage the new rules working in the scenarios outlined at 4.1.1 – 4.1.3 and with regard to 4.1.3, taking into account 4.3 a) – d)?
- b. Will applying the new methods of apportionment to bundles increase the administrative burdens or cost for your business?
- c. Please provide details of both one-off and ongoing costs.

Q13.

- a. How do you envisage the new proposal working with “money-off coupons” described at question 10?
- b. Does this raise any concerns for your business or organisation?
- c. Will applying the new methods of apportionment to bundles increase the administrative burdens or cost for your business in terms of issuing “money-off coupons” to your customers?
- d. Please provide details of both one-off and ongoing costs.

Q14.

- a. The new rules will apply to bundles supplied by more than one entity as described at 3.22 above. How do you envisage this working?
- b. Does this raise any concerns for your business or organisation?
- c. Will applying the new methods of apportionment to bundles sold by more than one entity increase the administrative burdens or cost for your business?
- d. Please provide details of both one-off and ongoing costs.

Q15.

- a. Please suggest any methods of apportionment other than those proposed at 4.1 above that you think would better to address the unfair outcomes caused by “value shifting”?

8. The Consultation Process

8.1. This consultation is being conducted in line with the Tax Consultation Framework. There are 5 stages to tax policy development:

Stage 1 Setting out objectives and identifying options.

Stage 2 Determining the best option and developing a framework for implementation including detailed policy design.

Stage 3 Drafting legislation to effect the proposed change.

Stage 4 Implementing and monitoring the change.

Stage 5 Reviewing and evaluating the change.

8.2. This consultation is taking place during stage 2 of the process. The purpose of the consultation is to seek views on the detailed policy design and a framework for implementation of a specific proposal, rather than to seek views on alternative proposals.

How to respond

8.3. A summary of the questions in this consultation is included at chapter 7.

8.4. Responses should be sent by 30 March 2021.

Email responses to: valueshifting@hmrc.gov.uk

Please do not send consultation responses to the Consultation Coordinator.

8.5. Paper copies of this document or copies in Welsh and alternative formats (large print, audio and Braille) may be obtained free of charge from the above address. This document can also be accessed from [HMRC's GOV.UK pages](#). All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations.

8.6. When responding please say if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of people you represent.

Confidentiality

8.7. Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018, General Data Protection Regulation (GDPR) and the Environmental Information Regulations 2004.

8.8. If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public

authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Revenue and Customs.

Consultation Privacy Notice

8.9. This notice sets out how we will use your personal data, and your rights. It is made under Articles 13 and/or 14 of the General Data Protection Regulation.

Your Data

The data

8.10. We will process the following personal data:

Name
Email address
Job title
Organisation

Purpose

8.11. The purpose(s) for which we are processing your personal data is: *VAT Value Shifting Consultation*.

Legal basis of processing

8.12. The legal basis for processing your personal data is that the processing is necessary for the exercise of a function of a government department.

Recipients

8.13. Your personal data will be shared by us with HM Treasury.

Retention

8.14. Your personal data will be kept by us for six years and will then be deleted.

Your Rights

- You have the right to request information about how your personal data are processed, and to request a copy of that personal data.
- You have the right to request that any inaccuracies in your personal data are rectified without delay.
- You have the right to request that any incomplete personal data are completed, including by means of a supplementary statement.

- You have the right to request that your personal data are erased if there is no longer a justification for them to be processed.
- You have the right in certain circumstances (for example, where accuracy is contested) to request that the processing of your personal data is restricted.

Complaints

If you consider that your personal data has been misused or mishandled, you may make a complaint to the Information Commissioner, who is an independent regulator. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
0303 123 1113
casework@ico.org.uk

Any complaint to the Information Commissioner is without prejudice to your right to seek redress through the courts.

Contact details

The data controller for your personal data is HM Revenue and Customs. The contact details for the data controller are:

HMRC
100 Parliament Street
Westminster
London SW1A 2BQ

The contact details for HMRC's Data Protection Officer are:

The Data Protection Officer
HM Revenue and Customs
7th Floor, 10 South Colonnade
Canary Wharf, London E14 4PU
advice.dpa@hmrc.gsi.gov.uk

Consultation Principles

This call for evidence is being run in accordance with the government's Consultation Principles.

The Consultation Principles are available on the Cabinet Office website:
<http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance>

If you have any comments or complaints about the consultation process please contact:
John Pay, Consultation Coordinator, Budget Team, HM Revenue and Customs, 100
Parliament Street, London, SW1A 2BQ.

Please do not send responses to the consultation to this address.

Annex A: Current UK Legislation

Relevant (current) legislation

Value Added Tax Act 1994, Section 19

19 Value of supply of goods or services.

(1) For the purposes of this Act the value of any supply of goods or services shall, except as otherwise provided by or under this Act, be determined in accordance with this section and Schedule 6, and for those purposes subsections (2) to (4) below have effect subject to that Schedule.

(2) If the supply is for a consideration in money its value shall be taken to be such amount as, with the addition of the VAT chargeable, is equal to the consideration.

(3) If the supply is for a consideration not consisting or not wholly consisting of money, its value shall be taken to be such amount in money as, with the addition of the VAT chargeable, is equivalent to the consideration.

(4) Where a supply of any goods or services is not the only matter to which a consideration in money relates, the supply shall be deemed to be for such part of the consideration as is properly attributable to it.

(5) For the purposes of this Act the open market value of a supply of goods or services shall be taken to be the amount that would fall to be taken as its value under subsection (2) above if the supply were for such consideration in money as would be payable by a person standing in no such relationship with any person as would affect that consideration.

Value Added Tax Act 1994, Schedule 6

6(1) Where there is a supply of goods by virtue of—

- (a) a Treasury order under section 5(5); or
- (b) paragraph 5(1) or 6 of Schedule 4 but otherwise than for a consideration); or
- (c) paragraph 8 of that Schedule,

then, except where **[F11**the person making the supply opts under paragraph A1(3) above for valuation on the flat-rate basis or] paragraph 10 below applies, the value of the supply shall be determined as follows.

(2) The value of the supply shall be taken to be—

- (a) such consideration in money as would be payable by the person making the supply if he were, at the time of the supply, to purchase goods identical in every respect (including age and condition) to the goods concerned; or

(b) where the value cannot be ascertained in accordance with paragraph (a) above, such consideration in money as would be payable by that person if he were, at that time, to purchase goods similar to, and of the same age and condition as, the goods concerned; or

(c) where the value can be ascertained in accordance with neither paragraph (a) nor paragraph (b) above, the cost of producing the goods concerned if they were produced at that time.

(3) For the purposes of sub-paragraph (2) above the amount of consideration in money that would be payable by any person if he were to purchase any goods shall be taken to be the amount that would be so payable after the deduction of any amount included in the purchase price in respect of VAT on the supply of the goods to that person.

7 **[F12(1)]** Where there is a supply of services by virtue of—

(a) a Treasury order under section 5(4); or

(b) **[F13** paragraph 5(4)] of Schedule 4 (but otherwise than for a consideration),

the value of the supply shall be taken to be the full cost to the taxable person of providing the services except where paragraph 10 below applies.

[F14(2) Regulations may, in relation to a supply of services by virtue of paragraph 5(4) of Schedule 4 (but otherwise than for a consideration), make provision for determining how the full cost to the taxable person of providing the services is to be calculated.

(3) The regulations may, in particular, make provision for the calculation to be made by reference to any prescribed period.

(4) The regulations may make—

(a) different provision for different circumstances;

(b) such incidental, supplementary, consequential or transitional provision as the Commissioners think fit.]

8 Where any supply of services is treated by virtue of section 8 **[F15**, or any supply of goods is treated by virtue of section 9A,] as made by the person by whom they are received, the value of the supply shall be taken—

(a) in a case where the consideration for which the services **[F16**or goods] were in fact supplied to him was a consideration in money, to be such amount as is equal to that consideration; and

(b) in a case where that consideration did not consist or not wholly consist of money, to be such amount in money as is equivalent to that consideration.

Consultation Checklist

	YES	NO
Have you completed all the mandatory sections?		
Have you completed the “standard table of basic information” and made it clear who this consultation is aimed at?	✓	
Is the scope of the consultation clearly explained i.e. what’s in, what’s out and where there is still scope to influence?	✓	
Have you explained what has happened (for instance the decisions and/or assumptions made and informal consultation held) before the consultation began?	✓	
Is the Tax Information Assessment information in a sensible place from the point of view of the reader? Have you asked questions about and given the respondents the opportunity to challenge the assessment?	N/A	
Have you allowed an appropriate consultation period (especially if consulting over a holiday period?)	12 weeks	
Have you set a clear deadline for responses?	12 weeks from start date to be announced at Budget.	
Have you included clear contact details for responses to, and queries about the content of, the consultation?	✓	
Has the standard paragraph on the confidentiality of responses been included? [included in the HMRC Consultation template]	✓	
Have you stated that this consultation is complying with the Government’s Consultation Principles? [included in the HMRC Consultation template]	✓	
Have you included contact details for the Consultation Coordinator for comments/complaints about the process?[included in template]	✓	
Are you communicating the right things in the right way?		
Is the document in plain English with jargon/acronyms explained?	✓	
Have you reflected HMRC’s Policy Principles when developing the policy and writing the document?	✓	
Have you asked questions to which you genuinely want responses to and have you summarised them?	✓	
Have you planned to publicise the launch of the consultation (especially alerting key stakeholders that it is starting)?	✓	
Have you considered and planned for supplementary methods of getting stakeholders involved (such as meetings etc)?	Online meetings could be arranged depending on the response.	
Have you, so far as possible, indicated the likely timetable for future policy development, including any further consultation?	Will depend on response.	
Have you explained how, why and what steps you are taking to make the consultation as effective as possible if it is being conducted to a shortened timetable?	N/A. Full consultation.	
Are the right people content for your document to be published?		

Has the Solicitors Office, and other internal stakeholders (KAI etc), had an opportunity to comment on the consultation document?	✓	
Have you discussed any operational costs with Corporate Finance?	✓	
Has the consultation document been cleared for publication by the Budget Team?	VAT Policy team has signed off, HMT consulted and awaiting final sign off (all substantial issues agreed)	
Has the consultation document been cleared for publication by the Minister?	To be included with the Ministerial submission for sign-off.	