



HM Revenue
& Customs

Value Added Tax: Continued application of the principle of abuse

Who is likely to be affected

The measure affects businesses which engage in VAT avoidance schemes or fraud, and is designed to ensure all businesses are treated fairly.

General description of the measure

The measure clarifies UK domestic legislation to put beyond doubt that the principle of abuse (developed through and adopted in EU case law, e.g. Halifax and Kittel) continues to apply in the UK. It should have no material impact on businesses. The principle, together with case law, has been widely used by HMRC to successfully tackle schemes seeking to avoid VAT and missing trader fraud. The measure is necessary to avoid any potential litigation on whether the principle still applies because even litigation which is not based on a sound argument can, in this area, result in delay. Such delay could have an adverse effect on HMRC's ability to tackle avoidance and fraud.

Policy objective

This measure ensures continued protection of revenue against VAT avoidance and fraud and puts beyond doubt in UK VAT legislation that the principle of abuse continues to apply in relation to VAT following the United Kingdom's exit from the EU.

Background to the measure

The principle of abuse (and case law) has been used in the UK to successfully tackle VAT avoidance and fraud, in particular missing trader fraud.

The European Union (Withdrawal) Act 2018 (EUWA) provides that retained EU law (of which the VAT Act 1994 and subordinate legislation form part) continues to apply post EU Exit. This applies to principles and case law determined before the end of the transition period. The Taxation (Cross-border Trade) Act 2018 (TCTA) confirms that this is relevant to VAT, citing the example of the principle of abuse.

Given the importance of this principle in combatting VAT avoidance and fraud, this measure puts beyond doubt in domestic VAT legislation that the principle continues to apply in the UK in relation to VAT.

Detailed proposal

Operative date

This measure will come into effect on Royal Assent to the Finance Bill and will have retrospective effect from the end of the Transition Period (11pm on 31 December 2020).

Current law

Current law is contained in Section 42 (3) and (4) of the TCTA which, in turn, refers to the EUWA.

Proposed revisions

This measure adds a new subsection 42(4A) to the TCTA. The new provision confirms that the EU principle of abuse can continue to be relied upon in relation to VAT.

Summary of impacts

Exchequer impact (£m)

2021 to 2022	2022 to 2023	2023 to 2024	2024 to 2025	2025 to 2026	2026 to 2027
Nil	Nil	Nil	Nil	Nil	Nil

This measure is not expected to have an Exchequer impact.

This measure supports the Exchequer in its commitment to protect revenue.

Economic impact

This measure is not expected to have any significant economic impacts.

Impact on individuals, households and families

It is not anticipated that this measure will have any impact on individuals, households or families.

The measure is not expected to have an 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 business including civil society organisations

This measure is expected to have no impact on businesses or civil society organisations as it merely seeks to clarify existing legislation.

Operational impact (£m) (HMRC or other)

HMRC analysis is currently confirming that this measure carries no costs to HMRC, whether IT, estates, staff resource or other costs.

Other impacts

Other impacts have been considered and none has been identified.

Monitoring and evaluation

This measure will be monitored through information collected from VAT returns.

Further advice

If you have any questions about this change, please contact Dorothy Moules on Telephone:03000 585864 or email: dorothy.moules@hmrc.gov.uk.

Declaration

The Right Honourable Jesse Norman MP, the Financial Secretary to the Treasury, has read this tax information and impact note and is satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impacts of the measure.