Minutes of the 95th JVCC meeting held on Thursday 6 August 2015

1330-15:30 in The Auditorium,

1 Horse Guards Road, London SW1A 2HQ

1	**Agenda Item 1 - introductions and apologies**	**Ian Stewart**

1.1 IS welcomed attendees, among them Sarah Bagley, Chartered Institute of Public Finance & Accountancy and David Jordorson, Association of British Insurers, attending their first JVCC meeting for their respective representative bodies.

A list of attendees and apologies is at appendix A.

2	**Agenda item 2 – minutes of the last meeting; review of action points; matters arising**	**Ian Stewart** **Jon Riley**

2.1 Minutes of the meeting of Thursday 10 February had been agreed via correspondence and were available on GOV.UK.

2.2 JR gave an update on action point 5/14 that had been carried over from 10 February. Details are at appendix B.

3	**Agenda item 3 – update on EU and other international VAT issues**	**Ian Broadhurst, Angela Morton**

Update on VAT 2015 Place of Supply changes and MOSS

3.1 There were currently 2481 businesses registered for VAT MOSS in the UK, 2020 EU and 461 non-EU. IB explained that forecasting the number of MOSS registrations was a difficult task as HMRC analysts had no concrete data to work from. Not all UK businesses impacted by the place of supply changes will register for MOSS in the UK and, in addition, the rule making digital platforms accountable had taken a lot of businesses out of the equation.

3.2 Nonetheless, the number of UK registrations was the second highest in the EU (behind Germany) with latest estimates that the UK could be approaching 3500 registrations by the end of 2015. To date there had also been just over 220 registrations from small businesses below the threshold.

3.3 There were no particular compliance issues to report. HMRC was continuing to explore mitigation options to help the smallest businesses. As an example of this, we had recently extended a specific simplification for SMEs (one piece of evidence via payment provider) on an indefinite basis, and would welcome any other simplification ideas from JVCC members.

3.4 IB advised that UK-scored net yield from this measure was broadly in line with expectations. Although there were issues in Q1 with payment reminders, these had now been resolved. However, a business that had not paid the correct HMRC account, for example paid the VAT account rather than the MOSS account, was likely to receive another reminder.

3.5 Any business that believed it had paid but had received a reminder should contact HMRC using the VAT 2015 contact mailbox vat2015.contact@hmrc.gsi.gov.uk so that the payment can be correctly allocated. No interest will be charged in such circumstances. IB advised that HMRC intended to mail all businesses again if issues with how returns or payments are made remained during Q2.

Update on the EU Commission's Digital Single Market Strategy

3.6 The EU Commission had published its Digital Single Market Strategy on 6 May. UK input had been significant and the PM had written to the EU in January 2015 attaching a copy of the UK Digital Single Market paper. The paper included the recommendation that consideration should be given to a single cross-border VAT threshold and the UK had continued to make the case for a threshold at EU discussions.

3.7 The Strategy set out the Commission's intention to make legislative proposals in 2016 with the aim of reducing administrative burdens for businesses involved in cross-border trade. These included a proposed extension to the scope of the simplified registration and declaration system - the VAT One Stop Shop concept - to cover cross-border activity in goods. The UK was broadly supportive of this approach provided the need for thresholds was taken into account. A second proposal was to introduce legislation to improve compliance through home country controls. This was an attempt to standardise audit arrangements across all Member States that would need to be carefully monitored to ensure there was no undue impact on UK businesses. Other proposals were the removal of the VAT exemption for small consignments from suppliers in third countries, and the introduction of a common EU-wide VAT threshold to help small start-up e-commerce businesses.

3.8 IB advised that a Fiscalis event in Dublin in September will focus on all four issues, providing an opportunity to hear ideas and options, as well as to look back at the place of supply changes and VAT MOSS implementation. The UK priority will be to get agreement in principle to some form of VAT threshold for e-services or other mitigation options to help smaller businesses. We were still considering the level of a threshold and IB encouraged any JVCC members wishing to feed into that discussion to get in touch via JR.

EU Standard VAT Return – Update on negotiations

3.9 AMn advised that discussions on the Standard VAT Return (SVR) had continued under the recent Latvian Presidency with the aim of working on the detail of the SVR and reducing the number of information boxes. Member States had signalled broad support for an optional SVR, meaning they could choose to introduce a SVR instead of their domestic return.

3.10 The UK could have supported this had it met the criteria of reducing administrative burdens. However, negotiations had proved to be very difficult and Member States were unable to reach agreement on the content. The result was that the current draft compromise was unacceptable to the majority of Member States. The Commission had now expressed concerns that the draft compromise no longer achieves the reduction in business burdens envisaged in the original proposal and had indicated that it was considering withdrawing the proposal.

3.11 At the last technical working group discussion, the Latvian Presidency concluded that as views were so diverse, unanimity was highly unlikely. The SVR dossier had now been taken off the ECOFIN agenda and it was unclear as to whether the Luxembourg Presidency would include the dossier as part of its work programme.

3.12 The UK was continuing to make the case at technical working group meetings and elsewhere for the Commission to work on a wider application of the EU web portal. We agree with businesses that this could provide them with more and better information about the returns and return requirements in each of the Member States.

Update on the work on the definitive VAT system

3.13 There was now general political agreement that it was most likely that the definitive VAT system will be one based on the destination principle. However, the current transitional system had a number of options and issues that needed to be addressed.

3.14 The Commission had recently published a report produced by Ernst & Young *"Implementing the 'destination principle' to intra-EU B2B supplies of goods"*. The report flagged up two important aspects: the existing levels of VAT fraud in the EU through fraudulent transactions; and the additional compliance costs borne by businesses involved in cross-border trade. In a published 'opinion' on the work on the definitive VAT regime, the VAT Expert Group had concluded that the issues needed 'very thorough and detailed consideration', something the UK fully supported.

3.15 Member States and other stakeholders had examined the broad options at a Fiscalis event in June. Of those Member States that spoke, some favoured a generalised reverse charge option and others the gradual expansion of the one stop shop. Some were happy to stay with the status quo. The UK view was that this needed to be looked at in much more detail. Although there were merits in a future expansion of the one stop shop we were sceptical about a generalised reverse charge. The Commission concluded it was time to move to the next step and will present a Communication next year, inviting Member States to provide direction.

3.16 The Commission also said that it would look to bring forward a proposal on rates. Their current view is to provide more flexibility to Member States to set their own rates. As an example of this approach, the Commission has no plans to revisit Article 97, which sets a minimum standard rate of VAT of 15% until 31 December 2015.

Update on OECD VAT work

3.17 A final consolidated version of the international VAT/GST Guidelines was approved by Working Party 9 under the written procedure on 29 May and had also now received approval from the Committee on Fiscal Affairs of the OECD. It included the B2C Guidelines and supporting provisions consolidated with the VAT neutrality Guidelines and the B2B Guidelines.

3.18 The aim was for these Guidelines to be presented for discussion and endorsement as a global standard at the November Global Forum on VAT. It was possible that the input from the Global Forum would be used to develop a draft

Council Recommendation that would then be submitted to the OECD Council for adoption in 2016.

3.19 The OECD had developed an action plan to address concerns expressed by the G20 in 2012 on Base Erosion and Profit Shifting (BEPS). A focus of one part of this work had been on approaches that could assist jurisdictions to reform the collection of VAT on low value imports. The scope of the OECD work is limited to those goods below the Customs duty thresholds (eg 150 euro limit for EU Member States, but thresholds vary by jurisdiction.)

3.20 It was clear from the work done so far that this was a complex area with no easy solution. Consequently, the OECD will produce a report highlighting possible approaches, but with no recommendations. It will be left for jurisdictions to consider and fully evaluate any approach. This will form part of a wider report to the G20 in September.

3.21 Going forward the OECD will look at ways in which to improve administrative co-operation across jurisdictions. It will also consider work on 'implementation packages' to support the international VAT/GST Guidelines.

4	**Agenda item 4 – Making Tax Easier for Small Businesses**	**Paul Riley**

4.1 As part of the government's vision to modernise the tax system, the Chancellor announced Making Tax Easier at Budget 2015. The government will publish a roadmap by the end of 2015 showing how it will transform tax administration for individuals and small businesses. Although Making Tax Easier envisaged the end of the tax return, the constraints of EU law meant that the implications for the VAT return were still to be clarified.

4.2 Making Tax Easier for Small Business will allow customers to send data to HMRC digitally, helping to reduce the need for customers to get in touch as information we already hold will no longer need to be re-supplied. PR explained that the vision was for a personalised service designed around customers' specific needs, built on digital tax accounts and richer data. The digital tax account will create more of a look and feel of paying a single tax, while the use of accounting software and apps will transform the customer experience and make tax compliance easier for small business customers.

4.3 HMRC was currently involved in informal discussions with external stakeholders. To help design and develop this service, we want to better understand how small businesses currently manage their tax obligations and what stops businesses using accounting software or apps. In addition, what would be the barriers to future use of software of apps, and what was the optimum frequency for reporting and payment cycles for small business.

4.4 HMRC was also keen to learn more about the specific impact of Making Tax Easier for Small Business on the agent community and would welcome the views of JVCC members. PR agreed to send round a note outlining the issues we would like to cover and seeking expressions of interest from members in joining a working group.

AP1/15: PR to write to JVCC members to seek expressions of interest in joining a Making Tax Easier for Small Business working group

5	**Agenda item 5 – implications of the CJEU judgment in *Skandia***	**Paul Riley, Mark Alderton**

5.1 The CJEU decided in *Skandia* that under Swedish VAT grouping rules services provided by the US head office to its Swedish branch were supplies for VAT purposes. Revenue & Customs Brief 2 (2015) said we would provide a list of Member States with similar "establishment-only" VAT grouping to Sweden as soon as possible, ahead of implementation of the change in treatment from 1 January 2016.

5.2 MA explained that it had proved more difficult than had been envisaged to obtain information about what other Member States were doing following the Skandia decision. However, HMRC had now prepared a list that was being checked by external advisors and which it was hoped would be published by the end of August. [Post meeting note: difficulties in obtaining information about what other Member States are doing have continued. We will be in a position to issue the Revenue & Customs Brief at the beginning of November.]

5.3 IB reported back on discussions of the impact of *Skandia* at VAT Committee. The UK position was that the approach to VAT grouping taken by the UK, Sweden and other Member States could co-exist. However, in a draft VAT Committee Guideline, the Commission had suggested that the UK will need to make changes to its grouping provisions in the light of the *Skandia* decision.

5.4 The UK welcomed the establishment by the VAT Expert Group of a sub-group to look at the implications of *Skandia.* In our view, if the Commission was contemplating infraction then it was better to have dialogue than await the outcome of any further litigation.

5.5 DC asked about potential mismatches in treatment of cross-border transactions if other Member States incorrectly assumed that the Skandia decision covered UK VAT grouping. MA said we had explained the UK whole entity VAT grouping position at VAT Committee, but we could not force other Member States to accept that our VAT grouping was different.

6	**Agenda item 6 – implications of the CJEU judgment in *Larentia* + *Minerva***	**Paul Riley, Mark Alderton**

6.1 The CJEU judgment in *Larentia* + *Minerva* indicated that holding companies supplying management services to their subsidiaries could recover VAT in full on costs of raising capital for investing in the subsidiaries, unless they also made exempt supplies. This was contrary to UK policy on holding companies set out in Revenue & Customs Brief 32 (2014). PR advised that HMRC was looking at the implications of the decision and was in the process of obtaining legal advice.

6.2 There were also implications for VAT deductibility where the holding company groups with its subsidiaries and we were looking at how this affects our current policy. There was no indication yet as to the Commission's or other Member States' views on the decision.

6.3 RC commented that the judgment was already causing quite a few difficulties and so early publication of a Revenue & Customs Brief setting out the UK's position would be welcome. TJ requested that draft legislation and guidance should be shared with JVCC members. PR acknowledged the need for proper consultation.

7	**Agenda item 7 – Option To Tax Unit performance**	**Andrew Bryant**

7.1 The lead time for clearing individual cases currently stood at 40 days. AB apologised and explained that both local and corporate factors were responsible for this. Additional resources were being deployed to option to tax processing work with effect from Monday 3 August and staff numbers would be further increased the

following week. In addition, funding had been secured for overtime work over three weekends in August.

7.2 Performance should start to improve by the end of August and the aim was to reduce the lead time to 30 days by the 30 September, 20 days by 31 October and 15 days by 30 November. AB encouraged any JVCC members with concerns about individual cases to contact him directly. IF queried why all Option to Tax correspondence was still sent by post. AB said that Business Tax Operations were actively looking into the possibility of email interaction in response to customer demand.

7.3 Ahead of the meeting, IF had raised several queries on behalf of the BPF about the handling of option to tax notifications and the registration of unit trusts by the Option to Tax Unit (OTTU) and VAT Registration Service (VRS) respectively. On the option to tax issues, IS explained that the advice provided by the OTTU had been incorrect and steps were being taken to ensure that OTTU was aware of the correct approach.

7.4 The first unit trust issue concerned an application to register for VAT from a unit trust acting by two corporate trustees, where the VRS had required the trustees to register as a partnership. PR explained that although HMRC recognises that trustees in a unit trust are not partners in a partnership, the VAT Act 1994 contains no provision for registering trustees as trustees, or for registering beneficial owners as beneficial owners. In order to ensure a consistent approach to the handling of such applications, the VAT Registration policy team had confirmed with VRS that trustees/beneficial owners should be registered as unincorporated organisations if they did not wish to be registered as a partnership.

7.5 The second unit trust issue was about the transfer of the ownership of a unit trust and the replacement of the existing corporate trustees with new corporate trustees. In the example provided by the BPF, the VRS had treated the change of trustees as a transfer of a going concern and required the unit trust to de-register for VAT and apply for a new VAT registration number. PR said that this should have been be dealt with as a variation of the existing VAT registration and the correct approach in such cases had been communicated to the VRS.

8	**Agenda item 8 – Pre-registration input tax**	**David Webb, Roy Taylor**

8.1 Several JVCC members had raised concerns about HMRC policy on the recovery of pre-registration VAT incurred on goods used in a business. Chief among the concerns was the view that the policy had been changed without due consultation and communication.

8.2 DW said that there had been no change in policy in this area. Where goods were partly consumed before registration input tax should be apportioned to take into account the extent of pre-registration consumption. He explained that although the VAT Input Tax manual had been amended, this had been done to clarify established policy that HMRC believed was recognised by businesses and advisers.

8.3 ST observed that many customers and agents were of the understanding that input tax could be deducted in full on goods purchased pre-registration that were still on hand at the time of registration. RC questioned whether HMRC was right to raise assessments given that the VAT Public Notices made no mention of apportionment, while TJ suggested HMRC should consider the introduction of a transitional period to allow businesses time to adjust to the “new” position.

8.4 Although re-iterating that there had been no change in policy, DW accepted that published guidance was not clear on the apportionment point. He agreed to consider the points raised in more detail and to revert to JVCC in due course.

AP2/15: HMRC to consider changes to its published guidance on pre-registration input tax to clarify the rules on where apportionment applies

9	**Agenda item 9 – Any Other Business**	

Updates to HMRC guidance

9.3 EP explained that HMRC’s VAT manuals had not been revised for some months due to the ongoing transition of material to GOV.UK. The transfer of guidance had taken longer than anticipated and a date had not yet been fixed after which updates could be made. She added that publication of some Revenue & Customs Briefs had been delayed due to publishing embargoes put in place around Budget 2015 and the Summer Budget.

9.2 Going forward policy teams will have more direct control in making changes to their guidance products and over the timetable for publication. They will also be able to update guidance on a page by page basis and signpost where changes to the

text have been made. By way of background, EP said that when updating guidance priority was given to new material or significant changes in policy.

Use and enjoyment provisions

9.3 The Chancellor announced in the Summer Budget that the government will apply VAT 'use and enjoyment' provisions from next year, which will make it clear that all UK repairs made under UK insurance contracts will be subject to VAT in the UK.

9.4 TJ requested that HMRC consults stakeholders at an early stage in advance of making any changes. EP advised that discussions were already taking place with the insurance sector ahead of a legislative change in early 2016. There would also be an opportunity to feed in to a longer term piece of work to look at whether additional use and enjoyment measures should be applied in other scenarios.

C79s

9.5 VD asked if HMRC had plans for the electronic submission of C79s. JR to take this away and provide a response in due course.

AP3/15 HMRC to report back on any plans for submitting C79s online

Appendix A

JOINT VAT CONSULTATIVE COMMITTEE (JVCC)

(Meeting no 95)

Thursday 6 August 2015

13:30-15:30, Auditorium

1 Horse Guards Road, London SW1A 2HQ

External Attendees

Sarah Bagley (SB)	Chartered Institute of Public Finance & Accountancy
Casey Baird (CB)	Finance and Leasing Association
Ruth Corkin (RC)	VAT Practitioners Group
Dean Carey (DC)	Association of Chartered Certified Accountants
Victoria Dixon (VD)	VAT in Industry Group
Ion Fletcher (IF)	British Property Federation
Fiona Heron (FH)	The Confederation of British Industry
Lee Hurst (LH)	One Hundred Group
Tony Jackson (TJ)	The Chartered Institute of Taxation
David Jordorson (DJ)	Association of British Insurers
Nick McChesney (NM)	Institute of Chartered Accountants in England and Wales
Alex Millar (AM)	Association of Accounting Technicians
Richard Sharp (RS)	The Chartered Institute of Management Accountants
Stephen Taylor (ST)	Association of Taxation Technicians

Apologies

Helene Dinsdale	One Hundred Group
Leigh Francis	London & International Insurance Brokers Association
Peter Jenkins	Charity Tax Group
Alex McDougall	The Institute of Chartered Accountants of Scotland
Julian Ogden	VAT in Industry Group
Colin Scates	Chartered Institute of Public Finance & Accountancy
Martin Scammell	British Property Federation
Martin Shah	The Law Society of England & Wales

HMRC/HMT Attendees

Ian Stewart (IS)	Director, Indirect Tax Directorate
Jon Riley (JR)	JVCC Secretary, Indirect Tax Directorate
Ian Broadhurst (IB)	Indirect Tax Directorate
Angela Morton (AMn)	HM Treasury
Paul Riley (PR)	Indirect Tax Directorate
Mark Alderton (MA)	Indirect Tax Directorate
David Webb (DW)	Indirect Tax Directorate
Roy Taylor (RT)	Indirect Tax Directorate
Andrew Bryant (AB)	Business Tax Operations
Eileen Patching (EP)	Indirect Tax Directorate

Appendix B

Current position on JVCC action points

AP ref	Detail	Current position
Action points from the meeting on 6 November 2014		
AP5/14	**PR to look into possible changes to the additional evidence requirements HMRC imposes on customers without a National Insurance Number (NINo) applying to register for VAT**	**Following an informal consultation, a content change was made to the online registration service to advise that agents who are a member of a professional body that supervises compliance with AML regulations, or who have registered themselves with HMRC for AML purposes, can submit a declaration confirming their client's identity as one of the two pieces of secondary ID evidence required.** **We will arrange for the change to be communicated through VAT Notes and Agent update publications.**
AP1/15	**PR to write to JVCC members to seek expressions of interest in joining a Making Tax Easier for Small Business working group**	
AP2/15	**HMRC to consider changes to its published guidance on pre-registration input tax to clarify the rules on where apportionment applies**	
AP3/15	**HMRC to report back on any plans for submitting C79s online**	