

## Minutes of the 96th JVCC meeting held on Friday 4 December 2015

13:30-15:15 in Room 2/65,  
100 Parliament Street, London SW1A 2BQ

<b>1</b>	<b>Agenda Item 1 - introductions and apologies</b>	<b>Ian Stewart</b>
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1.1 IS welcomed attendees, among them Rahul Haldania, VAT Practitioners Group, deputising for Ruth Corkin, and Mike Revis, Chartered Institute of Public Finance & Accountancy, standing in for Sarah Bagley.

A list of attendees and apologies is at appendix A.

<b>2</b>	<b>Agenda item 2 – minutes of the last meeting; review of action points</b>	<b>Ian Stewart Jon Riley</b>
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2.1 Minutes of the meeting of Thursday 6 August had been agreed via correspondence and were available on GOV.UK.

2.2 JR gave an update on the three action points from the meeting of 6 August. Details are at appendix B.

<b>3</b>	<b>Agenda item 3 – update on EU and other international VAT issues</b>	<b>Ian Broadhurst, Alicia Walker</b>
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### **Update on EU Commission Work on VAT**

3.1 The recently-published Commission Work Programme (CWP) for 2016 indicated the Commission's plans for VAT initiatives over the coming period. AW explained that VAT featured in two of their priority areas. The first of these, priority 2, *A Connected Digital Single Market*, will propose modernising VAT rules for e-commerce. The second, priority 4, *A Deeper and Fairer Internal Market with a Strengthened Industrial Base*, will include an Action Plan setting out the principles of an efficient and VAT-fraud proof definitive VAT system and initiatives on VAT rates, as well as the withdrawal of a number of VAT proposals, such as that for a standard VAT return.

3.2 Under priority 2 of the CWP the UK was pressing for an EU cross-border threshold for digital services and a 'soft landing' approach (simplified requirements)

for smaller businesses to be included in the legislative proposal due next year. A Commission consultation on “modernising VAT for cross-border e-commerce” was currently taking place with a legislative proposal expected in the summer 2016.

3.3 As part of the work under priority 4, the UK was expecting to see both an Action Plan on the definitive VAT regime and a green paper on reforming the rules on VAT rate setting by Member States in spring 2016. The UK was generally supportive of Member States having the ability to set their own VAT rates provided this did not lead to any cross-border distortion. AW added that UK had recently written to the Commission and all Member States setting out the UK government’s strong view that the issue of permitting the zero-rating of sanitary products be considered fully in the context of this work.

#### **Update on OECD VAT work**

3.4 Work on the international VAT/GST Guidelines for digital services to consumers and a report on the collection of VAT on the import of low value goods had contributed to Action 1 (Addressing the tax challenges of the digital economy) of the OECD/G20 Base Erosion and Profit Shifting (BEPS) Project.

3.5 All the OECD work on the international VAT/GST Guidelines, including the previous elements on neutrality and B2B transactions, was presented for discussion and endorsed as a global standard at November’s OECD Global Forum on VAT in Paris. Over 100 governments were in attendance, alongside academics and business representatives.

3.6 AW advised that no changes to EU VAT rules will be required as a result of the endorsement of the Guidelines, although other OECD governments and non-OECD governments may change their rules. UK businesses will benefit through greater adoption of the ‘neutrality’ principle by non-OECD countries, and by way of a reduction in the potential for double taxation as others adopt the ‘destination’ principle.

3.7 Future OECD work will look at ways in which to improve administrative cooperation across jurisdictions and at implementation packages. On the latter businesses and governments would like to see more detail on key aspects.

## **Fiscalis**

3.8 The focus of the Fiscalis event held in Dublin on 7-9 September was “modernising VAT for cross-border e-commerce”. It was attended by officials from all EU Member States, the EU Commission, and a wide cross-section of businesses and representative bodies. The views of small businesses were well-represented, especially those of the UK with three members of the SME Working Group in attendance.

3.9 The event looked back at the recent VAT changes, including the experience of the Commission, Member States and the business community. It also looked forward to possible options for a potential future legislative proposal on VAT for cross-border e-commerce, for both services and goods, in line with the Commission’s recent Digital Single Market Communication.

3.10 IB advised that the perception remained among other Member States that the negative reaction to the 2015 changes was a UK problem. The response to comments from the UK was that 95% of complaints received by the Commission came from the UK. The UK’s high domestic threshold was seen as a possible driver for this, although it was our view that this was a reflection in part of better dialogue between the UK and affected businesses.

3.11 Contributions to the Commission consultation on “modernising VAT for cross-border e-commerce” will feed into the legislative proposals that will emerge towards the end of 2016. In the short term, it was clear that there was no appetite from other Member States, the Commission or from the majority of businesses for emergency action, particularly on thresholds.

3.12 There was emerging evidence from some of the presentations that most of the revenue comes from a small number of large businesses with large numbers of small businesses accounting for very small amounts of revenue. This was supported by UK analysis which found that the top 9% of businesses paying through the UK MOSS system account for 95% of the revenue paid. Conversely 78% of businesses paying through the UK MOSS system account for only 1% of the revenue paid.

3.13 Despite differing views on thresholds among EU Member States, IB said that the UK was continuing to consider mitigation measures for small/micro business. In this context, it was worth noting a recent letter from the Commission to Member States encouraging them to adopt measures aimed at simplifying the rules as much

as possible, especially for small businesses. The UK very much supports the case for some form of 'soft landing' approach, such as simplified requirements, to help smaller businesses, and will keep pressing to achieve this. The number of businesses currently registered for VAT MOSS in the UK stood at just over 2700, of which 510 were non-EU.

<b>4</b>	<b>Agenda item 4 – EU Commission consultation on VAT and cross-border e-commerce</b>	<b>Ian Broadhurst, JVCC members</b>
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4.1 The consultation, which was in the form of an online survey, opened on 25 September and will close on 18 December. Its principal purpose was to help identify ways to simplify the VAT payments on cross-border e-commerce transactions of both goods and services in the EU. IB explained that any potential future changes arising from this work might also impact on the current regime for distance sales of goods, as well as e-services. A link to the consultation was circulated to JVCC on 11 November and HMRC was very keen to hear members' views.

4.2 AMi asked about a possible extension of the current MOSS to include all intra-EU supplies, which would help to ensure VAT was correctly accounted for by partially-exempt businesses. He also asked whether the current MOSS could be extended to include recovery of input tax incurred in other Member States and even, in time, replace the domestic VAT return. IB said the likelihood was that any expansion of the MOSS system would focus first on B2C supplies of goods, with B2B supplies of goods part of much longer term thinking. The UK was cautiously supportive of this direction of travel, while recognising the need to progress by degrees.

4.3 Although the Commission was in favour of a VAT threshold a number of Member States were likely to be opposed. IB explained that the introduction of a threshold for cross-border e-commerce was a top UK government priority

4.4 In order to help influence thinking on the Commission's legislative proposals due in 2016, IB encouraged JVCC members to respond to the consultation, and to bring it to the attention of others in their respective organisations.

4.5 PJ asked about work on the Commission's review of existing VAT legislation on public bodies. IB said that there was nothing imminent expected on this. The dossier on vouchers was still in Council and this could be prioritised under the forthcoming Dutch presidency, but we will have to wait and see.

<b>5</b>	<b>Agenda item 5 – EU VAT Forum: suggested topics for discussion</b>	<b>Ian Broadhurst, JVCC members</b>
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5.1 The EU VAT Forum was set up by a Commission Decision in July 2012 to allow businesses and tax authorities to exchange views and best practices with the aim of “improving the smooth functioning of the current EU VAT system”. The Forum consisted of Members States’ VAT authorities and of 15 organisations representing business and tax practitioners. A new call for applications was made earlier this year, in order to allow a new designation of business organisations for another three-year mandate starting on 1 October 2015. The first meeting of new members took place in October.

5.2 Among the different strands of work the Forum has undertaken was a cross-border rulings (CBR) pilot. This was aimed at resolving complex cases that could result in double taxation.<sup>16</sup> Member States were currently participating in the pilot and it was hoped that another 2 would soon come on board. Member States have also agreed to share information about the CBR opinions. More information can be found at:

[http://ec.europa.eu/taxation\\_customs/taxation/vat/traders/cross\\_border\\_rulings/index\\_en.htm](http://ec.europa.eu/taxation_customs/taxation/vat/traders/cross_border_rulings/index_en.htm)

5.3 The Forum had also produced a report on good practice for voluntary disclosures, with exchanges demonstrating a general consensus, in particular around mistakes that have no impact on VAT revenues. In addition, the group had looked at burden of proof in the context of cross-border B2B goods, a possible MoU to assist against fraud, and more general cross-border dialogue, for example to resolve actual cases of double taxation. Further information on the work of the EU VAT Forum can be found at

[http://ec.europa.eu/taxation\\_customs/taxation/vat/key\\_documents/eu\\_vat\\_forum/index\\_en.htm](http://ec.europa.eu/taxation_customs/taxation/vat/key_documents/eu_vat_forum/index_en.htm)

5.4 IB said that the Forum provided a unique opportunity for views to be exchanged directly between business, Member States and the Commission in an informal but structured way. This had resulted in a greater level of trust and mutual co-operation, and the Commission was now looking for ideas for future work. He asked JVCC members for any suggestions.

5.5 JO mentioned supply chain issues arising from recent CJEU decisions. IB advised that this was something that the VAT Expert Group was currently looking at, although aspects were of relevance to both groups. IB invited members to send in details of any other suggestions via email.

<b>6</b>	<b>Agenda item 6 – pre-registration input tax</b>	<b>David Webb</b>
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6.1 There had recently been a number of representations from members about HMRC’s policy on the recovery of pre-registration VAT incurred on goods used in a business. The main concern was that changes HMRC had made in 2011 to guidance in its VAT Input Tax manual to require an apportionment of the VAT incurred at the time of purchase amounted to a change in policy. At the previous JVCC meeting on 6 August HMRC had maintained that this approach was right in law and that there had been no change in policy, but we accepted that our public notices had not been sufficiently clear on this point.

6.2 Following the 6 August meeting HMRC had looked into this issue in more detail. IS explained that we had been minded to allow businesses who had misunderstood the guidance in our public notices in the past to claim pre-registration input tax without apportionment and to issue updated public notices that made it clear beyond doubt that apportionment was required for the future.

6.3 However, late last night HMRC had received a paper from the VAT Practitioners Group. The paper included an extract from a 2003 consultation carried out by HM Customs & Excise, which appeared to confirm that our policy in 2003 was to allow full recovery of VAT incurred on fixed assets regardless of any use prior to registration. IS said that HMRC would now review the position again as a matter of urgency and will revert to JVCC at the earliest opportunity.

**AP4/15: HMRC to review its policy on pre-registration input tax and to provide an update to JVCC at the earliest opportunity**

<b>7</b>	<b>Agenda item 7 – Implications of the CJEU judgment in <i>Sveda</i></b>	<b>David Webb</b>
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7.1 *Sveda* was a Lithuanian case concerning a for-profit business (*Sveda*) that operates a range of economic activities in a park. The CJEU was asked to decide whether *Sveda* was entitled to recover all of the VAT it incurred on construction of a “recreational path” in circumstances where the Lithuanian government provided 90% of the funding and the park has free access to the public.

7.2 The Court found that Sveda incurred VAT on the creation of the path in order to make its taxable supplies. In reaching this conclusion it necessarily found that there was a direct and immediate link between the costs and those taxable supplies and that this link was not brought in to question by the fact that Sveda received a 'subsidy'.

7.3 PJ asked about the potential implications of this decision on similar “free admission” cases in the UK, and whether and to what extent it might make a difference if the body providing it was a commercial or charitable organisation. DW advised that HMRC’s initial reaction was that the judgment would not have a significant impact on our policy. The finding of the Court referred to “objective evidence” and it saw no issue with the full deduction of input tax in this case. PJ suggested that this could result in two subsidised organisations being treated differently because one was for-profit and the other not-for-profit. He felt that a “one size fits all” approach was not appropriate and the CTG would welcome the opportunity for further dialogue with HMRC on this point.

<b>8</b>	<b>Agenda item 8 – Operational update: Error Correction Team &amp; Option to Tax Unit performance</b>	<b>Andrew Bryant</b>
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**VAT Error Corrections**

8.1 AB explained that it was HMRC’s aim to process all error correction notices within 15 working days. Currently 95% of error corrections were being dealt with in about 25 days, although the most complex cases (about 3% of the total volume) had recently been subject to a 7 week turnaround. We were currently training 50 new staff to support this work and recovery of the target was expected by the end of the calendar year.

8.2 ST said that some ATT members were still experiencing delays of up to 12 weeks. AB asked ST to send him details of specific cases so that these could be investigated.

**Option to Tax notifications**

8.3 HMRC’s aim was to process 95% of option to tax notifications in 15 working days. Current performance was just over 60% in 25 working days with some more complex cases currently taking up to 50 working days to clear.

8.4 Additional resource had been recruited, trained and these staff were now working on notifications. As a result, AB advised that lead times for this work were reducing and recovery of the target was anticipated by the end of February 2016. He added that the Option to Tax Unit received around 400 calls per week. All of the calls were either dealt with immediately or the customer was contacted within one day of leaving a message.

8.5 AMi asked if HMRC would consider introducing an electronic acknowledgement of receipt of an OTT notification – something that had been raised previously at JVCC. MS suggested that to speed up the process HMRC might want to consider date stamping and returning OTT notifications as opposed to responding by letter. AB said he would take these suggestions away for further consideration.

**AP5/15: HMRC to consider possible changes to its Option To Tax notification processes and report back to JVCC in due course**

9	<b>Agenda item 9 – Any Other Business</b>	
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9.1 AMi asked if HMRC had plans to update its guidance in light of the Court of Appeal decision in *Volkswagen Financial Services (UK) Limited*. [Post Meeting Note: HMRC has sought leave to appeal to the Supreme Court to challenge the Court of Appeal judgment. We have no plans to update our guidance at this stage.]

9.2 IS announced that he was retiring from HMRC at the end of the year and so this would be his final meeting. He thanked JVCC members for their contributions during his time as Chairperson. He also thanked AB for his input to JVCC, having announced that AB would shortly be moving to a new job in HMRC.

9.3 JR will provide JVCC members with the dates of meetings in 2016 shortly.

## Appendix A

### JOINT VAT CONSULTATIVE COMMITTEE (JVCC)

(Meeting no 96)

Friday 4 December 2015

13:30-15:15, Room 2/65

100 Parliament Street, London SW1A 2BQ

#### **External Attendees**

Casey Baird (CB)	Finance and Leasing Association
Dean Carey (DC)	The Association of Chartered Certified Accountants
Helene Dinsdale (HD)	One Hundred Group
Rahul Haldania (RH)	VAT Practitioners Group
Fiona Heron (FH)	The Confederation of British Industry
Tony Jackson (TJ)	The Chartered Institute of Taxation
Peter Jenkins (PJ)	Charity Tax Group
David Jordorson (DJ)	Association of British Insurers
Nick McChesney (NM)	Institute of Chartered Accountants in England and Wales
Alex McDougall (AMc)	The Institute of Chartered Accountants of Scotland
Alex Millar (AM)	Association of Accounting Technicians
Julian Ogden (JO)	VAT in Industry Group
Mike Revis (MR)	Chartered Institute of Public Finance & Accountancy
Martin Scammell (MS)	British Property Federation
Richard Sharp (RS)	The Chartered Institute of Management Accountants
Stephen Taylor (ST)	Association of Taxation Technicians

#### **Apologies**

Sarah Bagley	Chartered Institute of Public Finance & Accountancy
Ruth Corkin	VAT Practitioners Group
Leigh Francis	London & International Insurance Brokers Association
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
Alicia Walker (AW)	HM Treasury
David Webb (DW)	Indirect Tax Directorate
Andrew Bryant (AB)	Business Tax Operations

**Appendix B**

**Current position on JVCC action points**

<b>AP ref</b>	<b>Detail</b>	<b>Current position</b>
<b>Action points from the meeting of 6 August 2015</b>		
<b>AP1/15</b>	<b>PR to write to JVCC members to seek expressions of interest in joining a Making Tax Easier for Small Business working group</b>	<b>A note was sent to members on Friday 27 November about plans to establish a Making Tax Digital JVCC sub-group. Terms of Reference were circulated with the note and expressions of interest in joining the sub-group invited</b>
<b>AP3/15</b>	<b>HMRC to report back on any plans for submitting C79s online</b>	<b>We have plans to issue C79s electronically. We are currently exploring a couple of delivery solutions and will update JVCC further when we can.</b>
<b>Action points from the meeting of 4 December 2015</b>		
<b>AP4/15</b>	<b>HMRC to review its policy on pre-registration input tax and to provide an update to JVCC at the earliest opportunity</b>	
<b>AP5/15</b>	<b>HMRC to consider possible changes to its Option To Tax notification processes and report back to JVCC in due course</b>	