



DRAFT REGULATIONS: VAT PROVISIONS FOR DRINK DEPOSIT RETURN SCHEMES

Issued 17 May 2023

ICAEW welcomes the opportunity to comment on the draft regulations: VAT provisions for drink deposit return schemes published by HM Revenue & Customs on 29 March 2023, a copy of which is available from this [link](#).

For questions on this response please contact the Tax Faculty at taxfac@icaew.com quoting REP 42/23.

This response of 17 May 2023 has been prepared by the ICAEW Tax Faculty. Internationally recognised as a source of expertise, the ICAEW Tax Faculty is a leading authority on taxation and is the voice of tax for ICAEW. It is responsible for making all submissions to the tax authorities on behalf of ICAEW, drawing upon the knowledge and experience of ICAEW's membership. The Tax Faculty's work is directly supported by over 130 active members, many of them well-known names in the tax world, who work across the complete spectrum of tax, both in practice and in business. ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark the tax system and changes to it, are summarised in Appendix 2.

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KEY POINTS

Executive summary

1. Thank you for this opportunity to provide comments on the draft regulations for the VAT provisions for drink deposit return schemes.
2. Whilst ICAEW is broadly supportive of the proposed drink deposit return schemes being introduced across the UK, it is important to ensure the schemes do not create an excessive administrative burden on businesses affected by the schemes.
3. The VAT rules regarding the scheme should therefore operate as simply as possible.
4. We consider that the purpose of the drink deposit return scheme is to increase recycling rates rather than to raise revenue. This is supported by the [tax information and impact note](#), which states that the VAT provisions will have a negligible impact on the Exchequer.
5. On this basis, we recommend that the deposit falls wholly outside the scope of VAT.
6. This approach is recommended in TOMRA's white paper '[Rewarding Recycling: Learnings from the World's Highest Performing Deposit Return Systems](#)'.
7. Should HMRC continue to require that output VAT is due on unredeemed deposits, we recommend it is considered whether the producer is the right person to be liable for the output VAT on unredeemed deposits or if this liability should in fact fall on the scheme administrator.
8. We recommend it is confirmed that the unredeemed deposit amount should be treated as VAT-inclusive.
9. Though we note that this doesn't fall within the scope of this consultation, it is regrettable that the drink deposit return scheme is not being introduced uniformly across the UK on a single date.
10. ICAEW remains available to discuss the proposed VAT provisions with HMRC in more detail.

Person liable for VAT on unredeemed deposits

11. We understand that, under section 55D of VATA 1994, the person who sells a product in respect of which a deposit amount is added to the price (or the first supplier to do so in a chain of supplies relating to the same product) is liable for VAT in respect of that portion of the person's relevant deposit scheme supplies for which packaging is not returned.
12. Concerns have been raised by members that this would leave the 'producer' (the *person* described above) liable to pay output VAT on an amount it has not received and will not be able to collect.
13. Appendix 1 contains a visual representation of this issue. Please note this only shows the flow of deposits, drinks containers and VAT. It does not include any other payments such as the producer fee.
14. This outcome conflicts with the basic principle of VAT that it should ultimately be borne by the final consumer in the supply chain. As the regulations are currently drafted, the VAT can only ever be borne by the first supplier in the chain.
15. Using Scotland's deposit return scheme as an example, unredeemed deposits will accrue to Circularity Scotland to put towards funding the scheme. However, the producer will be liable for output VAT on these unredeemed deposits.
16. This output VAT becomes an absolute cost to the producer of the scheme. This is on top of the producer fee already being paid to, in the case of the Scottish scheme, Circularity Scotland.
17. If VAT must be accounted for on unredeemed deposits, we recommend it is the scheme administrator that should be liable for output VAT on unredeemed deposits.

18. The scheme administrator would be the only person in the supply chain with both the information required to make a scheme adjustment, and the money collected to pay the resulting VAT liability.

Cash-flow implications

19. In addition to the absolute cost of the VAT outlined above, and aside from the cash-flow implications of the deposit itself, which is outside the scope of this consultation, there will be a cash-flow impact of the VAT liability.
20. Due to the time taken for drinks sold to a wholesaler to make their way through a supply chain to the consumer and for the container to be returned, the producer may be required to fund a significant amount of VAT.
21. Particularly in the first VAT quarter in which the scheme is operational, there is likely to be a significant output VAT liability as drinks are placed on the market but not returned until the following quarter or later. This will be the case even if recycling rates reach 100%.

Outside the scope of VAT

22. The scheme is not intended to generate revenue. It is designed to change behaviour and improve recycling rates. This is supported by the [tax information and impact note](#), which states that the VAT provisions will have a negligible impact on the Exchequer.
23. The provisions as drafted will raise VAT revenue, as output VAT will be due from the producer, but no party will be eligible to recover this. The estimated VAT revenue would be more than negligible.
24. We recommend that the deposit is kept entirely outside the scope of VAT. The deposit is not intended to be a tax and, as per '[Rewarding Recycling: Learnings from the World's Highest Performing Deposit Return Systems](#)' keeping it outside the scope of VAT reinforces this perception, thus improving recycling rates.
25. This would remove an unnecessary financial for the producer, in terms of both absolute cost and the cash-flow implications.
26. It would also reduce the administrative burden placed on the producer.

Scheme adjustment

27. If the producer *is* required to make a scheme adjustment, as the provisions currently state, this will be an additional step in the producer's VAT return process, which it will need to ensure is MTD-compliant.
28. We assume the calculation would not need to be made in functional compatible software, but this should be confirmed.
29. As the calculation requires data on unredeemed deposits, the producer will be wholly reliant on the scheme administrator providing this data on time and in the correct format.
30. As well as the ongoing cost to the producer of funding output VAT on unredeemed deposits, there would be an upfront cashflow hit due to the time taken from putting the product on the market and the drinks containers being returned for recycling.
31. Therefore, in the first period the scheme is active, unredeemed deposits would be higher than usual and the output VAT due would also be higher.
32. Depending on timings and payment terms with the wholesaler/retailer, the producer may have to fund the deposit and the output VAT, before it has received payment.
33. Again, we recommend that the scheme administrator is the party liable for any output VAT. They will have received the deposit amount upfront from the producer with which to pay the VAT to HMRC.

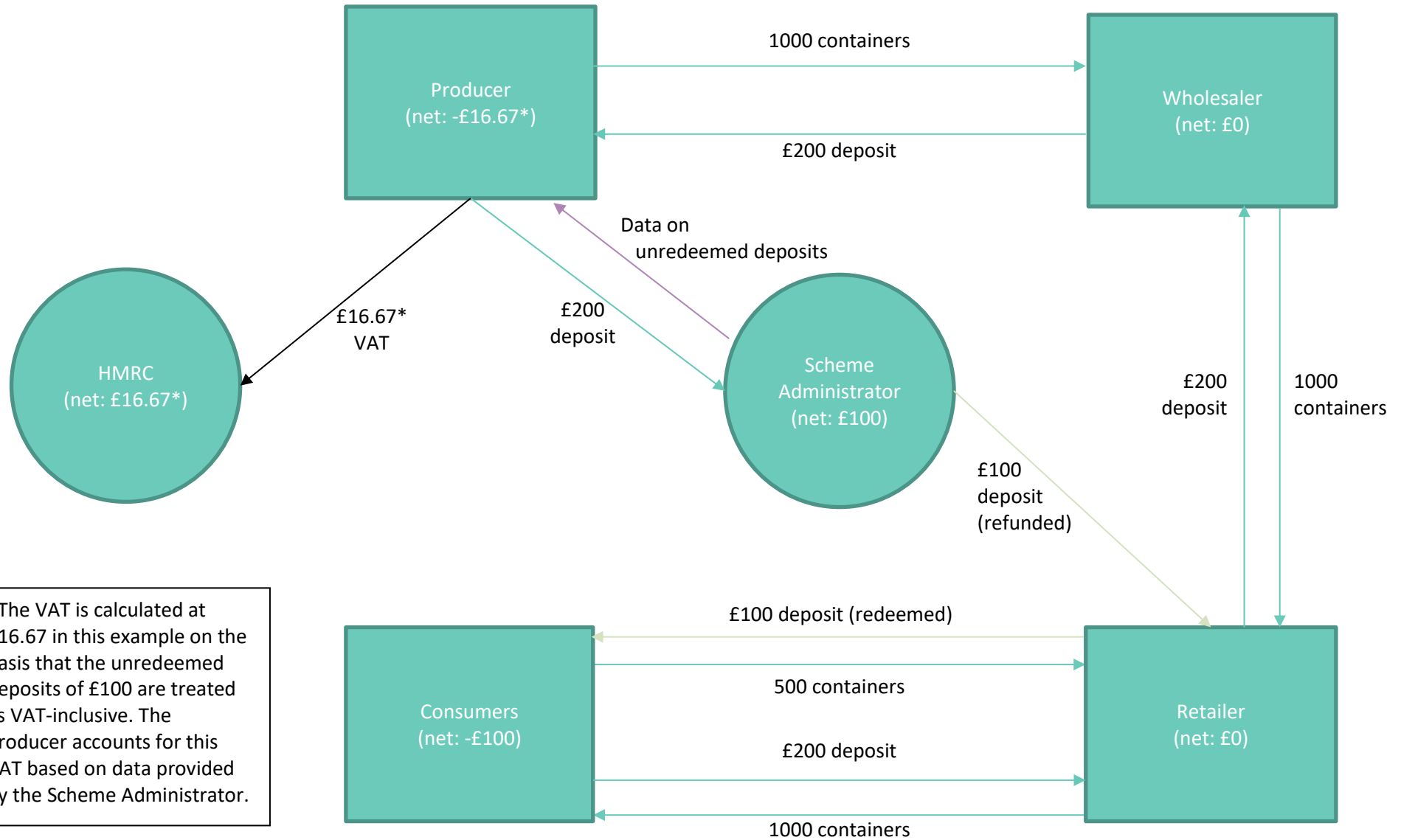
Inclusive or exclusive basis

34. Assuming VAT remains due on unredeemed deposits, we recommend the legislation is amended to explicitly state that any unredeemed deposits are VAT-inclusive rather than VAT-exclusive.

Additional comments

35. Although we note that this is not within HMRC's remit, it is regrettable that the drink deposit return scheme is not being introduced uniformly across the UK on a single date.
36. A UK-wide system would benefit from cost efficiency and a reduction in fraud.
37. Furthermore, we consider that uniformity across the UK would make it easier for consumers to understand and use the scheme. It would also be beneficial in terms of the efficiency of the administration of the scheme as manufacturers and producers would adhere to a single set of deposit return scheme criteria.
38. It is also regrettable that the tax implications of the deposit return schemes are being considered after the scheme has been designed. As the provisions are currently drafted, the scheme has unintended VAT consequences.
39. We recommend that tax consequences of initiatives such as the deposit return scheme are considered earlier in the consultation period in future.

APPENDIX 1



*The VAT is calculated at £16.67 in this example on the basis that the unredeemed deposits of £100 are treated as VAT-inclusive. The producer accounts for this VAT based on data provided by the Scheme Administrator.

APPENDIX 2

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.
4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see <https://goo.gl/x6UjJ5>).