



ICAEW REPRESENTATION 98/16

TAX REPRESENTATION

FINANCE BILL 2016: CLAUSE 115: VAT ON WOMEN'S SANITARY PRODUCTS

**Briefing for the Public Bill Committee debates on Finance Bill 2016
submitted on 28 June 2016 by ICAEW Tax Faculty**

Internationally recognised as a source of expertise, ICAEW Tax Faculty is a leading authority on taxation. It is responsible for making submissions to tax authorities on behalf of ICAEW and does this with support from over 130 volunteers, many of whom are well-known names in the tax world. Appendix 1 sets out the ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark proposals for changes to the tax system.

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PUBLIC BILL COMMITTEE BRIEFING

VAT: women's sanitary products (Clause 115)

- **Measure:** Clause 115 of Finance Bill 2016 reduces the VAT rate on the supply of women's sanitary products from 5 % to zero %.
- **Background:** The Government believes that women should not have to pay VAT on essential sanitary products.
- **Our view:** We agree with the Government view that women should not be required to pay VAT on the purchase of sanitary products. Our concern is that current EU and UK VAT legislation does not allow this change to be made.
- The explanatory notes state:

This clause has been introduced following Conclusions of the European Council to permit Member States greater flexibility on VAT rates. This has presented the government with the opportunity to meet an existing commitment to seek and apply a zero-rate to the supply of women's sanitary products.

We understand that, although suggested by the European Council, unanimous agreement between all EU Member States is still required before any change to the existing EU VAT law in this area can be made and that this is unlikely to occur before 2017 at the earliest. It remains to be seen if such agreement will be forthcoming. However, in view of the vote for the UK to leave the EU, this may become irrelevant.

We are also concerned that the UK VAT lock legislation also prohibits the reduction of the VAT rate applicable to women's sanitary products. It includes the wording, at Section 2(3) of the Finance (No. 2) Act 2015, "No supply specified in Schedule 7A to VATA 1994 (charge at reduced rate) at the beginning of the VAT lock period may be removed from it under section 29A(3) of that Act during that period." Although designed to stop an increase in the VAT rate of any item currently subject to the reduced rate, the VAT lock would also appear to stop a reduction in VAT rate for any such item.

It therefore appears that the proposed reduction in VAT on women's sanitary products is contrary to both current EU VAT law and the UK VAT lock legislation.

- **Recommendation:** How the UK VAT lock legislation may be overcome is currently unclear, but would almost certainly require at least an amendment to that legislation to allow a reduction in the VAT rate applicable to women's sanitary products currently included in Schedule 7A to VATA 1994. This might be achieved by adding to clause 115 a new subsection (6) to the effect that this section applies notwithstanding section 2(3) of the Finance (No. 2) Act 2015 (VAT lock).

FURTHER INFORMATION

As part of our Royal Charter, we have a duty to inform policy in the public interest. ICAEW offers impartial expert briefing on the Budget, the Finance Bill and ad hoc policy issues for MPs, Peers and parliamentary staff.

To request further information or a briefing from one of our Tax Faculty experts, please contact: Vincent Paulger, Public Affairs Executive vincent.paulger@icaew.com or 020 7920 8739.

APPENDIX 1

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 via <http://www.icaew.com/en/about-icaew/what-we-do/technical-releases/tax>).