

CROSS BORDER VAT – FA20 CHANGES GUIDE

FA20 Ch	FA19 Ch	Topic	Major changes	Minor changes	No changes	Notes
1	1	General Principles		✓		<p>Note that for exams in 2021 the syllabus is the same as that for 2020. Therefore, although the UK is in a transition phase for Brexit, exams will be set as though the UK is still a member of the EU and that EU law on VAT still applies in the UK. In addition, temporary measures introduced as a result of COVID-19 are not examinable.</p> <p>From 1 January 2020 Campione d'Italia and the Italian waters of Lake Lugano are included in the customs and excise territories (but not VAT)</p> <p>The American Express case [2019 FTT 548] shows that if the contractual arrangements reflect the economic reality that a supply is to an entity outside the EU, then input tax recovery is available.</p>
2	2	The EU VAT system		✓		<p>The 2019 CJEU decision in <i>Kursu Zeme</i> states that the authorities cannot deny input tax recovery under abusive arrangements if they have not identified a tax advantage.</p>
3	3	Registration			✓	

4	4	Definition of supplies		✓		<p>Wakefield and Longridge on the Thames cases have been copied to here from the land and buildings chapter.</p> <p>The paragraph on Personal contract purchases has been moved to this chapter.</p> <p>The 2019 UT case of Pertemps has been added that held that salary sacrifice arrangements whereby an employer adjusted a payment downwards was not a supply of an administration service by them and is not an economic activity.</p>
5	5	Liability of the supply			✓	
6	6	Schedule 7A – reduced rate		✓		<p>The reduced rate on sanitary products is to go from 1 January 2021 when the UK leaves the EU transition phase. They will be liable to 0%.</p> <p>The 2020 Upper Tribunal case of Snow Factor Ltd held that a lift pass allowing skiers the right to use a drag lift was liable to the reduced rate.</p>

7	7	Schedule 8 – zero-rating		✓	<p>From 1 May 2020 electronic versions of publications falling within items 1-3 of Group 3 are also zero-rated. The Upper tribunal agreed with News Corp that electronic versions of their newspapers should be zero rated. HMRC has issued Brief 1 (2020) stating their intention to appeal to the Court of Appeal (for claims prior to the change in the law).</p> <p>An action day planner was held to not be a book by the Upper Tribunal in Gardarsson in 2020.</p> <p>The FTT case of Pearl Chemist Ltd in 2019 held that only prescriptions written by UK doctors registered with the GMC are eligible for zero rating. EU doctors therefore were not covered by zero rating. SI 2020/250 has amended the definition from 1 April 2020 to include EEA professionals.</p> <p>Small addition about the zero rating of additional construction works to restore 'lost space' in a house as a result of a bathroom being put in (for example) for a disabled person under Group 12.</p>
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8	8	Schedule 9 - exemptions	✓		<p>The tribunal case of Romima & Others in 2020 held that 'chips' issued to customers in a club as a form of currency with which customers could pay dancers and staff are not within item 1 of Group 5. They are single purpose vouchers with VAT due on the consideration paid by the customer.</p> <p>The tribunal case of Virgin Media held that the supply of payment handling services to customers was taxable and not an exempt supply of dealing with money.</p> <p>A company providing services operating ATMs on behalf of a bank is not exempt finance. [Finanzamt Trier v Cardpoint GmbH C-42/18]</p> <p>A supply of credit includes fuel cards provided by a parent company to its subsidiaries not (as the company contended) a supply of fuel (Vega International Car Transport and Logistic – Trading GmbH v Dyrektor Izby Skarbowej w Warszawie (Case C-235/18) [2019])</p> <p>The CJEU in the 2020 case of Idealmed Servicos de Saude SA has held the exemption in Art.132(1)(b) to include a private hospital who concluded contracts with public bodies at fixed prices where costs were borne by social security</p> <p>The Court of Appeal held that requiring a body to be state regulated for the medical care exemption to apply did not offend the principles of fiscal neutrality. [Leisure, Independence etc Ltd v HMRC 2020]</p>
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8	8	...continued				<p>Botox, dermal fillers and fungal nail treatments were not exempt medical care as they were primarily sought for cosmetic purposes. [Skin Rich Ltd FTT 2019]</p> <p>Ultrasound scanning services for pregnant women are medical care. [Window to the Womb 2020 FTT]</p> <p>Consultants placed with NHS Trusts was a taxable supply of staff and not exempt supplies of medical care. [Mainpay Ltd FTT 2020] but a company supplying services to GP practices was supplying exempt medical services. [Medacy Ltd FTT 2019]. Archus Trading Ltd supplied medical care and not staff as they delivered the medical services and directed and controlled the GPs. RPS Health Business argued their Occupational Health supplies were standard rated as supplies of information/advice to employers. The tribunal found for HMRC on most of the supplies where they were single supplies of exempt medical care.</p> <p>A charity that assessed families referred to it by Social Services supplied exempt welfare services. The assessments and reports were 'closely linked' and 'directly connected' with the care and protection of children. [Lilias Graham Trust FTT 2019]</p> <p>Brief 8 (2019) states that HMRC will continue to apply the CSE to social housing associations, subject to conditions outlined in the Brief.</p>
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9	9	Value of the supply	✓			<p>Consideration is subjective and what is actually received and not valued according to objective criteria. Overpayments for car parking were part of the consideration. [National Car Parks Ltd 2019 CoA]</p> <p>In the joined cases of C GmbH & Co. KG, C-eG v Finanzamt Z (Joined Cases C-573/18 and C-574/18) [2019] BVC 46, the European Court of Justice (ECJ) ruled that subsidies received by two agricultural co-operatives which enabled members to purchase assets at a reduced price were part of the consideration paid for those assets. The subsidies were therefore subject to VAT, and not outside the scope of VAT.</p> <p>Payments for early termination of a contract in Vodafone are consideration for a supply of services. [Case C-43/19 2020]</p> <p>In the 2019 Upper tribunal case involving M&S with their 'dine in for two for £10 -free wine' promotion - the wine was not provided for no consideration so the price had to be allocated across all four items.</p> <p>Insertion of a new section on increases and decreases in consideration for supplies that have already taken place and when debit and credit notes are required and how the VAT is adjusted. (This was already included in the VAT records chapter.)</p>
10	10	Time of supply			✓	

11	11	Input tax: when to recover	✓			<p>Advisory fuel rates from 1 June 2020 have changed. The new rates are in Tax Tables for your exam now.</p> <p>Addition of the 2019 FTT case of Koolmove Ltd, where input tax on legal expenses incurred prior to incorporation of a company were held to be deductible pre-incorporation expenses. The director won his case against his former employer and the legal expenses allowed him to set up the company to exploit his software. They were not incurred in a personal capacity.</p> <p>The case of Zipvit has had questions referred to the CJEU in April 2020. Zipvit has been trying to recover input tax, without VAT invoices, on VAT it never paid, due to supplies by the Royal Mail to it being wrongly treated as exempt for VAT.</p> <p>VAT incurred on fees relating to a legal dispute concerning a loan that the business made to unconnected third parties was irrecoverable as it related to an exempt supply. [Newmafruit Farms Ltd FTT 2019]</p> <p>The Frank Smart & Son case came before the Supreme Court and its input tax on the purchase of Single Farm Payment Entitlements was deductible as it related to raising finance for a fully taxable business. Cambridge was distinguished on the facts.</p> <p>VAT incurred on fees charged for the design and implementation of an employee reward scheme does have a direct and immediate link with the business. [Taylor Pearson FTT 2019]</p>
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12	12	VAT records & returns		✓		The 'soft landing' period for MTD has changed. Businesses will not be required to have digital links between software programs until their first VAT return period starting on or after 1 April 2021.
13	13	Accounting for VAT			✓	
14	14	HMRC powers, appeals & assessments			✓	
15	15	Penalties for inaccuracies			✓	
16	16	Imports		✓		Brief mention about postponed VAT accounting for import VAT intended to take effect from 1 January 2021.
17	17	Exports			✓	
18	18	EU Movement of Goods	✓			<p>From 1 January 2020 a VAT number is needed from the recipient in the other member state in order to zero rate the supply. Two forms of evidence are needed, and the supply must go on the EC Sales List. Reg.134 of the VAT Regs are amended and a new reg.134A has been inserted.</p> <p>From 1 January 2020 new rules about chains of transactions, and which supply is zero rated, have been introduced. This section has been fundamentally re-written with new illustrations.</p> <p>The section on call-off stocks has been re-written to explain the new simplification from 1 January 2020 and the conditions that need to be met.</p>

19	19	Overseas businesses			✓	
20	20	International aspects - services	✓			<p>The Hastings and DFDS cases have been added on what amounts to a fixed establishment.</p> <p>A supplier is not required to carry out significant due diligence to determine whether their supply is to a local fixed establishment of a foreign entity. Just because there is a local subsidiary does not infer a local fixed establishment of a company. [Dong Yang Electronics C-547/18]</p> <p>The FTT case in 2020 of Mandarin Consulting Ltd has been added. Career coaching and support to students of Chinese origin were consultancy services and not education. The place of supply was outside the UK when supplied to the parents of the students as they were resident in China.</p> <p>The supply of a five day Accountancy course in Skatteverket v Srf konsulterna AB (C 647-17) [2019] BVC 16 was held by the CJEU to be a supply of education and was based on the exception of 'admission to the event' and therefore the general rule does not apply and the place of supply is where the course takes place.</p> <p>The Advocate General in Wellcome Trust has opined that the Reverse Charge is due on services that a VAT registered charitable Trust receives for its non-economic activities.</p>

20	20	...continued				<p>Danske Bank has been referred to the CJEU with respect to the Skandia debate. Does a Swedish branch (not part of a VAT group in Sweden) have to reverse charge Swedish VAT because its Head Office is a member of a VAT group in Denmark?</p> <p>A section about future changes has been inserted which talks about the implementation of a VAT e-commerce package designed to facilitate cross-border trade, combat fraud and ensure fair competition for EU businesses. It was due to be implemented from January 2021 but has been postponed to July 2021.</p>
21	21	Agency			✓	
22	22	Fiscal Warehousing			✓	
23	23	Tour operators margin scheme		✓		<p>Update that the Commission has still not carried out its review of TOMS and further CJEU cases have held some of Germany's rules to be incompatible with the legislation.</p> <p>Changes to the forfeited deposits rules from 1 March 2019 has resulted in HMRC guidance about when to include the deposit in the TOMS calculation.</p>
24	24	Missing trader intra-community fraud		✓		<p>The Upper tribunal case of Sandham where an agent's fraudulent actions were attributed to the Partnership, even where the individual partners did not know of the fraud, for the purposes of the Kittel test, has been added.</p> <p>The domestic reverse charge for construction services has been deferred to 1 March 2021.</p>

CUSTOMS & EXCISE DUTIES – FA20 CHANGES GUIDE

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1	1	Introduction to Customs Duties		✓		<p>Although the UK is in a transition phase for Brexit, the syllabus for exams in 2021 assumes that the UK has not left and that the EU system of Customs Duties continues to apply in the UK.</p> <p>Once the UK is out of the EU it will have its own UK Global Tariff (UKGT).</p> <p>The second phase of the ICS has been implemented and operators must submit an entry summary declaration with ore-arrival data and information concerning the goods.</p> <p>Under the CDS C79s can be viewed and downloaded from the system.</p> <p>AEOs forms have to be submitted through the EU Customs Trader Portal.</p> <p>Where a customs declaration is completed for declaring goods to a special procedure, an agent can only represent the importer in a 'direct' manner and cannot complete it as an 'indirect' agent.</p>
2	2	Prohibitions, restrictions & penalties			✓	

3	3	Types of Duties		✓		Incoterms 2020 is the latest version containing the full list of terms of trade.
4	4	Preferences		✓		<p>A preferential trade deal was concluded with Singapore from 21 November 2019.</p> <p>From 1 September 2020 EU exports to ESA states benefit from a preferential tariff treatment.</p> <p>The latest position on the REX is that it should have been fully operational by 30 June 2020 with Form As no longer being issued. However, some countries still do not use the REX system.</p>
5	5	Administration & appeals		✓		<p>Where a customs debt arises as a result of a criminal act then communication to the debtor can take place outside the three-year time limit. The UCC allows for an extension of this period to a minimum of five years and a maximum of ten years. Under the old Code there was no time limit and UK law did not contain a provision for one. The Supreme Court has held that communication must take place within a reasonable period of time.</p> <p>The rate of interest has gone down from 3.25% to 2.6%.</p>
6	6	Classification		✓		The latest Tariff is contained in Regulation 1776/2019.
7	7	Valuation (1)			✓	
8	8	Valuation (2)			✓	

9	9	Inward Processing Relief		✓		<p>As a declaration to IP relies on the person making it holding an authorisation, an agent must sign the declaration as a 'direct' agent.</p> <p>Clarification that a deferment account cannot be used to guarantee a potential debt under IP. A CCG is needed.</p>
10	10	Customs Warehousing		✓		<p>The value of goods declared at the time of removal depends on whether there is a 'sale for export'. A paragraph has been added on what sale can be used and that when goods depreciate in value in the warehouse and a reduced price has been given by the seller then that price can be used.</p> <p>Clarification that a deferment account cannot be used to guarantee a potential debt under CW. A CCG is needed.</p>
11	11	Import Licensing			✓	
12	12	Tariff Quotas			✓	
13	13	Common Agricultural Policy (CAP)			✓	
14	14	Outward Processing Relief		✓		<p>As a declaration to OP relies on the person making it holding an authorisation, an agent must sign the declaration as a 'direct' agent.</p>
15	15	End Use			✓	

16	16	Returned Good Relief (RGR)			✓	
17	17	Temporary Admission (Temporary Importation Relief)		✓		Clarification that a guarantee is needed for the full authorisation.
18	18	International administration & the WCO		✓		There are slight changes to the WCO's bodies. There is a Capacity Building Committee and an Integrity sub-committee. 212 (formerly 211) countries use the Harmonized System.
19	19	Personal reliefs			✓	
20	20	Exports & dispatches to other Member States			✓	
21	21	Processing under Customs Control (PCC)			✓	
22	22	Free Zones			✓	
23	23	Excise Warehousing		✓		Council Directive 2008/118/EC is being replaced with 2020/262 from 13 February 2023. It is mostly a re-cast as it has been amended numerous times. The EMCS is being upgraded to allow for real time information (RTI) and duty paid goods are being brought into the system.

24	24	Alcoholic Liquor Duties		✓		<p>Rates are currently frozen.</p> <p>Where wine is mixed with water or another substance after being produced or imported and the duty charge would be higher than if the mixing had not occurred, the higher rate of duty is charged.</p>
25	25	Tobacco Products		✓		<p>The rates of excise duty on tobacco products have increased. The rates are on the tax tables.</p>
26	26	Registered Consignees		✓		<p>The EMCS is being expanded to cover duty paid products. When this happens paper based documents will no longer be used.</p>