

## DOMESTIC INDIRECT TAXATION – 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 Kursu Zeme states that the authorities cannot deny input tax recovery under abusive arrangements if they have not identified a tax advantage.</p>
3	3	Registration		✓		<p>The FTT 2019 case of Caton has been added. A café run by a husband and a restaurant run next door by his wife were separate businesses and not subject to aggregation for the VAT registration threshold.</p>

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>Whether a supply is of insurance or intermediary services of insurance is important, because if the latter and the supplier is resident in Guernsey (for example) then the supply would be outside the scope of UK VAT with the entitlement to credit. Conversely a supply of insurance would be exempt without any recovery. Safestore tried this argument when it offered storage facilities and required customers to take out insurance through an intermediary resident in Guernsey. It argued it was an insurance intermediary. The FTT rejected the argument contending that they were supplying insurance. Safestore was the policyholder under which the customer received their cover.</p> <p>In the 2019 tribunal case involving Claims Advisory Group, the FTT held that the Appellant was supplying the services of assisting its customers with the making of claims for compensation for mis-sold Payment Protection Insurance and not the termination of insurance relationships and was not providing insurance transactions or services related to insurance contracts.</p> <p>The tribunal case of Romima &amp; 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>
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8	8	...continued				<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>Fees charged by a travel agent to customers paying by debit or credit card are not exempt transactions. [ULOOK UBOOK Ltd FTT 2020]</p> <p>From 1 April 2020 a VAT Order has been issued to formally exempt the management of certain pension funds, following the ATP case.</p> <p>The Advocate General has given their opinion in the United Biscuits case saying that pension management services are not exempt insurance services.</p> <p>Services supplied to both qualifying funds and non-qualifying funds which are part of a single composite supply cannot be exempt. [Blackrock Investment Management CJEU C-231/19]</p>
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8	8	...continued				<p>Ceroc dance is exempt as a subject ordinarily taught in school or university. [A Cook FTT 2019] Driving Tuition is not exempt [CJEU case C-449/17]</p> <p>Kickboxing classes are standard rated. [Premier Family Martial Arts LLP FTT 2020].</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> <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>
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8	8	...continued				<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>School holiday camps were a single exempt supply of childcare and not the provision of activities in the tribunal case of RSR Sports Ltd. [2019 FTT TC07453]</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>
9	9	Deemed supplies & self-supply			✓	

10	10	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 &amp; 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&amp;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>
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10	10	...continued				The 2020 case of Europcar Group UK Ltd has been added where a car hire company providing children's car seats to its customers are separate supplies for VAT.
11	11	Time of supply			✓	
12	12	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>

12	12	...continued			<p>The Frank Smart &amp; 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 implantation of an employee reward scheme does have a direct and immediate link with the business. [Taylor Pearson FTI 2019]</p> <p>Addition of the 2019 FTI case of Graham, a sole trader that successfully argued input tax deduction on three cars for the business.</p>
13	13	Partial exemption		✓	<p>The FTI case of Royal Opera House Covent Garden allowed input tax on production costs to be treated as relating to other aspects of the business such as catering in bars/restaurants.</p> <p>The CJEU decision in the Volkswagen Financial Services case has been given with reference to Revenue &amp; Customs Brief 8 (2020) and a worked example of input tax recovery.</p> <p>The CJEU decision in the Cambridge University case has been given in favour of HMRC. Input VAT on management fund fees was not recoverable as it was not a cost component of the wider economic activities.</p>

13	13	...continued				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.
14	14	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.
15	15	Accounting for VAT			✓	
16	16	Bad debt relief		✓		HMRC cannot deny a claim for bad debt relief where an employee diverts payments from customers into their own bank account. The supplier never received the funds. This is distinguished from theft from a till by an employee where the supplier has been paid. [Total Catering FTT 2019 TC 07184]
17	17	HMRC powers, appeals & assessments			✓	
18	18	Penalties for inaccuracies			✓	

19	19	Penalties for failure to notify			✓	
20	20	Default surcharge			✓	
21	21	Other penalties, interest & migration		✓		The reverse charge for construction services has been deferred to 1 March 2021.
22	22	Refunds, repayment supplement & interest			✓	
23	23	Land & buildings: zero & reduced-rating	✓			<p>The Court of Appeal decision in Wakefield College has been added. Zero rating was not available for a building to be used for further education where the fees were a significant part of the undertaking as it was an economic activity.</p> <p>A church constructed a zero rated annexe and not a standard rated extension in the FTT case of Immanuel Church in 2019.</p> <p>The Upper tribunal decision in Languard Homes (joined with Macpherson) has been added which overturned the FTT. Zero rating did not apply to the conversion.</p>

23	23	...continued				<p>The 2019 tribunal case of Darren Luke confirmed Taylor Wimpey that three mirrored bathroom cabinets that were designed to be screwed to the wall, which also incorporated lights and a shaving socket were held not to be 'building materials.' The tribunal held that it would be a "simple task to disconnect the electricity and unscrew the cabinets from the wall."</p> <p>Eynsham Cricket Club lost their appeal to the Upper Tribunal in 2019 in claiming that their cricket pavilion should be zero rated. As a Community Amateur Sports Club (CASC) they were not a charity and therefore not entitled to zero rating.</p> <p>A DIY claim must be made within 3 months of the certificate of completion. HMRC cannot use a different time frame (eg from occupation if earlier) as their guidance is clear. [McGarry FTT case 2020]</p> <p>In 2019 Darren Luke made a claim for the repayment of VAT incurred on construction of a residential house, under the DIY Housebuilder scheme. The building was a garage with some first-floor accommodation, which he lived in whilst the replacement dwelling was being constructed. This was included as a condition in the Planning Permission granted. HMRC denied part of the claim on the basis that the materials which formed part of an annexe (which can't be disposed of separately to the main dwelling) did not qualify. The FTT allowed his appeal.</p>
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24	24	Land & buildings: exemption & std-rating		✓		<p>A reverse surrender of an option to acquire land is a right over land which is exempt from VAT (subject to the option to tax). [Landlinx Estates Ltd [2020] FTT]</p> <p>The domestic reverse charge for construction services has been deferred to 1 March 2021.</p>
25	25	Land & buildings: option to tax			✓	
26	26	Capital goods scheme			✓	
27	27	Transfer of a business as a going concern		✓		<p>A pre-arranged sale of a let property will not amount to a TOGC. The transferee could not have intended to carry on the business. [General Storage Distribution Ltd FTT 2019]</p>

28	28	Groups	✓		<p>The Baillie Gifford tribunal case in 2019 held that VAT grouping rules offended the principle of fiscal neutrality. From 1 November 2019 the eligibility rules for VAT groups have changed. Individuals, partnerships and Scottish partnerships are now eligible to join, subject to conditions.</p> <p>Where a subsidiary makes payments via an increase in an inter-company loan, this is consideration for a supply and input tax is deductible for the holding company. [Tower Resources FTT 2019]</p> <p>The Melford 2020 tribunal case held that a VAT group could recover input VAT incurred by the general partner of a limited partnership which undertook investment activities.</p> <p>The CJEU in the San Domenico case (C-94/19) held that VAT is chargeable on payments from a subsidiary to its parent for the secondment of an employee, even where it is a simple reimbursement of costs. This could have implications for HMRC's concession.</p> <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>
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29	29	Second-hand goods margin scheme			✓	
30	30	The flat-rate scheme		✓		In Holy Cow! Ice Cream Ltd [2019] TC 07400, the First-tier Tribunal (FTT) refused an appeal against a decision not to backdate an application to join the Flat-Rate Scheme to VAT periods for which normal VAT returns had already been submitted. HMRC did not act unreasonably since the purpose of the scheme is to simplify VAT accounting and record-keeping and not to provide a cash refund to a struggling business.
31	31	Agency		✓		As a result of the Brabners case, HMRC released a policy paper announcing the withdrawal of the concessionary VAT treatment for property searches conducted by post from 1 December 2020, so to avoid the inconsistent treatment for VAT.  A reference has been added to the section on employment v self-employment about the online CEST tool referred to in HMRC's factsheet ES/FS1, which can help to identify whether a person is an employee or self-employed.

32	32	Retail & promotion schemes		✓		Mention of the M&S case (as above) in the section on 'promotions' 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.
33	33	Farmers' flat-rate scheme		✓		From 1 January 2021 there will be new entry and exit rules for the scheme. Designated activities turnover cannot exceed £150,000 in order to join the scheme. If turnover exceeds £230,000 they must leave the scheme. Turnover above £85,000 from non-farming activities makes farmers ineligible to join the scheme.
34	34	Miscellaneous			✓	
35	35	IPT 1		✓		Removal of historic rates no longer required.
36	36	IPT 2		✓		Removal of historic rates no longer required.
37	37	IPT 3			✓	
38	38	IPT 4		✓		The interest rate on underpayments has dropped from 3.25% to 2.6%.
39	39	Stamp duty on shares	✓			Note: Temporary changes implemented as a result of COVID-19 are not examinable in the 2021 exams. This applies to all taxes.  Where shares are transferred in a target company to an acquiring company, with the acquiring company issuing shares to all shareholders of the target company, they are

					<p>exempt from SD.</p> <p>Cryptoasset exchange tokens eg bitcoin can be given as consideration for stock and marketable securities. HMRC does not consider exchange tokens to be currency or money so they do not meet the definition of money. They are also not 'stock or marketable securities' either. They can count as the release of a debt.</p> <p>A general market value rule was enacted in 2020 for transfers of unlisted securities sold to a connected company for a consideration. Tax is charged on the higher of the consideration or the market value of the shares. For listed securities the same market value rule applies but here there does not need to be any consideration provided.</p>
40	40	Stamp duty land tax	✓		<p>Note that although the bands for calculating SDLT have undergone temporary changes due to COVID-19, the rates on the tax tables are the ones to use for the exam. The temporary increases have, therefore, not been included in the manual.</p> <p>A purchase of residential property made by a non-resident (individual or company) on or after 1 April 2021 will have a 2% surcharge (on top of existing rates).</p> <p>As a result of a number of tribunal cases residential properties include a meadow, barn to the side of a house and a public bridleway; a paddock adjoining a cottage</p>

					<p>and garden; and an equestrian property, with a home office above the garage and a paddock let for a nominal rent. Where grazing animals are kept for leisure purposes the land is residential.</p> <p>From September 2019 payments are made electronically.</p> <p>In the Consultus Care case a property let to carers while there were attending a training course enhanced other aspects of the business and was not therefore used exclusively for a rental business. There was no relief from the 15% rate.</p> <p>In the Pensfold case an intention to carry on a qualifying trade at the time of purchase is sufficient for the relief from the 15% rate to apply.</p> <p>HMRC has updated their manual and emphasised that just because two transactions are concluded with the same buyer and seller it does not automatically make them linked. HMRC will look at whether they are part of a single bargain or if one transaction is dependent on or affected by another.</p> <p>Multiple dwellings relief can be claimed where a number of residential properties are bought together. In the Fianders tribunal case an annexe connected by a corridor from the main house with no door between the two parts of the property did not constitute two dwellings. MDR is also available for student flats in a single property</p>
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					<p>in certain circumstances.</p> <p>A new section has been written concerning spousal transfers. This is only relevant for students studying for the Individuals APS paper.</p>
41	41	SDLT - administration		✓	<p>A land transaction return can be amended outside the 12 month time limit in certain circumstances, for example, where rescission takes place more than 12 months after substantial performance.</p> <p>There is no appeal against a Revenue determination, even if the taxpayer would have won. This was the decision of the tribunal in Said Mashoof in February 2020.</p>