

CROSS BORDER VAT – FA21 CHANGES GUIDE

The study manual has been amended due to the UK leaving the EU ('Brexit'). The changes detailed below for each chapter are mostly non-Brexit changes. If a chapter says it has had minor or major changes but there is nothing in the Notes box, then the changes will be due to Brexit.

Boxes appear throughout the study manual to show how rules have changed because of Brexit.

| FA21 Ch | FA20 Ch | Topic | Major changes | Minor changes | No changes | Notes |
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| 1 | <i>n/a</i> | How to use this manual | New Chapter | | | The manual has been substantially amended due to the UK leaving the EU ('Brexit'). There is a new chapter that covers the rules in brief and what you could be examined on. The changes detailed below for other chapters are mostly other non-Brexit changes. If a chapter says it has had minor or major changes but there is nothing in the Notes box then the changes will be due to Brexit and you should refer back to this new chapter at the start of the manual. |
| 2 | <i>n/a</i> | Northern Ireland | New Chapter | | | A new chapter due to the 'special status' that Northern Ireland has with the EU from 1 January 2021. |

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| 3 | 1 | General Principles | | ✓ | | <p>There is a box at the start explaining the impact of EU law on the UK's withdrawal from the EU.</p> <p>Brief mention of postponed VAT accounting.</p> |
| 4 | 2 | The EU VAT system | | ✓ | | <p>Halifax continues to apply from 1 January 2021.</p> <p>The Paul Newey/Ocean Finance case was remitted back to the FTT and their decision released in late 2020. They concluded that the arrangements did reflect the economic and commercial reality and therefore were not an artificial arrangement and not an abuse of rights. This is contrasted with the FTT case of Wilmslow Financial Services plc where it was abusive as the contractual arrangements did not reflect the reality.</p> |
| 5 | 3 | Registration | | ✓ | | <p>Schedules 2, 3, 3A, 3B, and 3BA of VATA 1994 no longer apply to GB from 1 January 2021.</p> <p>The XT CJEU case C-312/19 held that a single partner of a partnership was solely liable for VAT where they were the only person who had the power to act in the name of the partners as a whole.</p> <p>MOSS is no longer available for non-UK businesses from 1 January 2021 who supply BTE in the UK, as Sch 3B and 3BA are repealed.</p> |

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| 6 | 4 | Definition of supplies | ✓ | | | <p>The CJEU 2021 case of Wellcome Trust was decided in favour of HMRC. Receiving overseas services for the purposes of its non-economic activities did not mean that they were not business supplies. The reverse charge was due on the services.</p> <p>Colchester UTT 2020 and Kingston Maurward College FTT 2021 cases have been added about non-business v business activities and HMRC's BB 8(2021).</p> <p>The CJEU 2021 case of LN has been added. A sale of properties in order to obtain repayment of loans did not constitute an economic activity (Note that as this case is 2021 it is not binding on the UK but may be taken into consideration by UK courts).</p> |
| 6 | 4 | ... continued | | | | <p>More information has been added on salary sacrifice schemes and The Northumbria Healthcare Court of Appeal case in 2020. The case gives a curious result on salary sacrifice schemes by allowing the recovery of input tax in full on car leases but with no output tax charge on the supply to the employees by virtue of SI 1992/630.</p> |
| 7 | 5 | Liability of the supply | | | ✓ | |

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| 8 | 6 | Schedule 7A – reduced rate | | ✓ | | <p>HMRC BB07/2021 says that electricity provided from electric vehicle chargers in public places is taxed at 20% and not 5%.</p> <p>The 2020 FTI case of Greenspace (UK) Ltd held that replacement roof panels which had insulating properties were not reduced-rated 'insulation for roofs'.</p> |
| 9 | 7 | Schedule 8 – zero-rating | | ✓ | | <p>The Morrison's FTI case in 2021 held that Nakd bars were confectionery.</p> <p>Group 18 is removed from 1 January 2021.</p> <p>The Upper Tribunal in the Core Swindon held that fruit and vegetable juices sold as a meal replacement were food and not beverages and were therefore zero-rated.</p> <p>HMRC won their appeal in the News Corp case in the Court of Appeal. Electronic newspapers were standard-rated.</p> <p>Revenue and Customs Brief 13(2020) has been included which looks at advertising supplied to a charity.</p> |

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| 10 | 8 | Schedule 9 - exemptions | ✓ | | <p>The Black Cabs Services Ltd case held that leasing a taxi with insurance was the making of two separate supplies.</p> <p>The Safestore case was heard in the Upper Tribunal, which has upheld the FTT decision.</p> <p>The Court of Appeal decision in Target Group in 2021 has been given. Loan administration services are not exempt transactions in group 5.</p> <p>The CJEU has given its ruling in the United Biscuits case and has agreed with the Advocate General.</p> <p>The Upper Tribunal in 2021 reversed the FTT decision in the Anna Cook case - Ceroc dancing is standard-rated</p> <p>The FTT case of the University of Southampton Students' Union held that hot food and coffee did not fall within item 4(a) of group 6 and note 1 (e).</p> <p>Revenue and Customs Brief 14(2020) included about how opticians/hearing aid sellers can apportion consideration to account for VAT on the glasses/hearing aids (dispensing service is exempt).</p> <p>The CJEU decision in the Frenetikexito case (C-581/19) held that nutrition services could be an exempt supply only if the national court decided that they pursued a therapeutic aim.</p> |
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| 10 | 8 | ...continued | | | | <p>The Northumbria Healthcare NHS Trust FTT case in 2021 held that car parking was an economic activity and standard-rated. It was not closely related or essential to hospital or medical care in item.</p> <p>The D v E CJEU case held that the preparation of an expert report on care and support needs was services 'closely linked to welfare and social security work' but the person was not a recognised body so could not benefit from the exemption.</p> <p>Payroll services provided to disabled persons to help them live in their own homes are standard-rated and not connected with the provision of care (Cheshire Centre for Independent Living and Revenue and Customs Brief 16 (2020)).</p> <p>HMRC has issued BB 18 (2020) following the RSR Sports case.</p> <p>Business Brief 9 (2021) has been issued by HMRC following the Court of Appeal decision in the joined cases concerning whether private companies can benefit from the day care exemption if they are not state regulated. They cannot.</p> |
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| 10 | 8 | ...continued | | | | In Kaplan International Colleges C-77/10 the CJEU held that the CSE was not available where supplies of services were made by an independent group of persons to a VAT group whose members were not also members of that independent group of persons. |
| 11 | 9 | Value of the supply | | ✓ | | <p>As a result of the Vodafone CJEU case, HMRC has updated its internal manuals to state that all payments received for early termination of contracts are liable to VAT and invites businesses to make error corrections for past transactions.</p> <p>Ice Rink Co Ltd FTT case in 2020 held that a 'skate hire and admission' package was two separate supplies for VAT – zero-rated children's skates and standard-rated admission.</p> |
| 12 | 10 | Time of supply | | | ✓ | |

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| 13 | 11 | Input tax: when to recover | | ✓ | | <p>Advisory fuel rates have been updated.</p> <p>The AG in July 2021 gave their opinion in the Zipvit case that input tax is not available where there is not a VAT invoice showing VAT separately charged.</p> <p>The CJEU case of Vos Aannemingen (C-405/19) held that an input tax deduction can be available in full where there is an ancillary benefit to a third party, provided there is a direct and immediate link with the taxable person's economic activity.</p> |
| 14 | 12 | VAT records & returns | | ✓ | | Businesses under the current VAT threshold will have to use MTD from 1 April 2022. |
| 15 | 13 | Accounting for VAT | | | ✓ | |
| 16 | 14 | HMRC powers, appeals & assessments | | ✓ | | The FA 2021 has amended the rules on third party notices and in certain circumstances the taxpayer cannot be disclosed the notice by the third party. Failure to comply can result in a £1,000 penalty. |
| 17 | 15 | Penalties for inaccuracies | | | ✓ | |

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| 18 | 16 | Imports | ✓ | | | Postponed VAT Accounting (PVA) from 1 January 2021 and the rules on low value imports (£135) and online marketplaces have been included. |
| 19 | 17 | Exports | ✓ | | | New section on the Import One Stop Shop (IOSS). |
| 20 | 18 | EU movement of goods | ✓ | | | <p>The EU has abolished the distance selling limits from 1 July 2021. There is an EU-wide €10,000 de minimis limit (place of supply where the supplier is based). The One Stop Shop (OSS) can be used to report distance sales of goods. Information on the UK OSS scheme has been included.</p> <p>The <i>Healthspan</i> (FTT) case and <i>KrakVet</i> (CJEU) case in 2020 state four principles to determine who is supplying goods for the distance selling rules.</p> |
| 21 | 19 | Overseas businesses | ✓ | | | <p>New rules on when online marketplaces must account for VAT on supplies of goods in the UK are introduced from 1 January 2021.</p> <p>The EU electronic cross-border refund scheme (ECBRS) is only available to UK businesses with expenses up to 31 December 2020. From 1 January 2021, refunds need to be made by the 13th Directive claim procedure.</p> |

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| 22 | 20 | International aspects – services | ✓ | | <p>Rules that mentioned 'use and enjoyment outside the EU' now say 'use and enjoyment outside the UK'.</p> <p>The CJEU case of <i>Titanium</i> has been added. A property in Austria, with no staff, could not constitute a 'fixed establishment', as there were no human resources to enable it to act independently.</p> <p>In the CJEU case of <i>SK Telecom</i> (Case C-593/19), roaming charges to customers in Austria were subject to VAT there under the use and enjoyment rule.</p> <p>The Mini One Stop Shop (MOSS) applies in the UK until 31 December 2020. The MOSS is available to UK businesses supplying services in the EU until the non-Union OSS operates from 1 July 2021. A new section on the OSS is included.</p> <p>The FTI case of <i>St George's University</i> in 2021 held that the activities for organising education in the UK took place in the West Indies and therefore were outside the scope of UK VAT.</p> <p>The CJEU case of <i>Danske Bank</i> has been added. The CJEU held that a principal business in Denmark (part of a VAT group there) was a separate taxable person to the branch in Sweden and VAT was due on re-charges.</p> |
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| 23 | 21 | Agency | | ✓ | | |
| 24 | 22 | Fiscal warehousing | | ✓ | | From 1 January 2021, GB-GB fiscal warehouse only transfers can occur. Northern Ireland can continue to transfer goods between EU fiscal warehouses. |
| 25 | 23 | Tour operators margin scheme | | ✓ | | EU travel is now zero-rated (from 1 January 2021). |
| 26 | 24 | Missing trader intra-community fraud | | ✓ | | <i>Kittel</i> is retained in UK law from 1 January 2021. |

CUSTOMS & EXCISE DUTIES – FA21 CHANGES GUIDE

Due to Brexit, this study manual has had fundamental changes.

As there are so many changes, not all of the Brexit-related changes can be shown in detail in this guide.

You will need to read the FA 2021 study manual to see all of the changes in detail.

In the exams in 2022 you could be examined on Customs Duties under EU law - the UK followed these rules until 31 December 2020.

From 1 January 2021, the UK has its own import duty and new rules on imports and special procedures. EU law broadly ceases to apply from 1 January 2021 and as you can be examined on historic and future transactions, you need to know both sets of rules.

Northern Ireland has its own special status and continues to follow EU law to a certain extent.

Due to syllabus changes, some chapters from the FA 2020 edition are no longer examinable. The Old Code (2913/92) and its old Impl. Regs (2454/93) are no longer examinable. All references to them have been removed.

Chapters with a tick in the minor changes column but nothing in the Notes column contain a note in the chapter about the impact of Brexit.

| FA21 Ch | FA20 Ch | Topic | Major changes | Minor changes | No changes | Notes |
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| 1 | 1 | Introduction to Customs Duties | ✓ | | | <p>Introductory paragraphs added about the examinability of Customs Duties (EU) and Import Duties (UK) in the 2022 exams.</p> <p>References to new UK legislation on Import Duties added.</p> <p>New UK import procedures, including entry summary declarations and changes to EORIs and health certificates for agricultural products added.</p> <p>Postponed VAT Accounting added.</p> <p>Guarantee waivers for Duty Deferment Accounts added.</p> <p>UK rules for Temporary Storage added.</p> <p>A new section on AEOs in GB has been written.</p> |
| 2 | <i>n/a</i> | Northern Ireland | ✓ | | | New chapter on the NI Protocol and effect on duties in NI as a result of the UK leaving the EU. |
| 3 | 2 | Prohibitions, restrictions & penalties | | ✓ | | |

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| 4 | 3 | Types of Duties | ✓ | | | <p>Non-preferential EU origin rules for ADD etc added.</p> <p>Safeguard Duties and UK legislation on ADD etc added.</p> <p>CAP no longer applies to the UK.</p> <p>A new section on imports into Northern Ireland has been written and a new section on steel products.</p> |
| 5 | 4 | Preferences | ✓ | | | <p>A new section on GSP in the UK from 1 January 2021 has been written. AORs replace BOIs.</p> <p>A new section has been written on NI and trade with the EU from 1 January 2021.</p> <p>A new section has been written on GB and trade with NI from 1 January 2021.</p> <p>A new section has been written on trade between the EU and GB from 1 January 2021.</p> |

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| 6 | 5 | Administration & appeals | ✓ | | | <p>UK rules on payment of Import Duty have been included.</p> <p>The changes to interest in the UK from 1 January 2021 have been added.</p> <p>References to new UK legislation on repayment and remission have been included.</p> <p>A new power has been granted to HMRC which allows them to grant a temporary approval to a business that is seeking a review/appeal of a decision to remove/reject one.</p> |
| 7 | 6 | Classification | ✓ | | | <p>A new section on Classification in Great Britain from 1 January 2021 has been written. ATRs are available instead of BTIs.</p> |
| 8 | 7 | Valuation (1) | ✓ | | | <p>The CJEU case involving BMW in 2020 has been added.</p> <p>New UK rules on valuation are included.</p> |
| 9 | 8 | Valuation (2) | ✓ | | | <p>New UK rules on valuation are included.</p> |

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| 10 | 9 | Inward Processing (IP) | ✓ | | | Content from the old PCC chapter has been moved here. A new section on IP in Great Britain from 1 January 2021 has been written. |
| 11 | 10 | Customs Warehousing (CW) | ✓ | | | A new section on CW in Great Britain from 1 January 2021 has been written. |
| 12 | 11 | Import Licensing | | ✓ | | |
| 13 | 12 | Tariff Quotas | ✓ | | | A new section on UK Global Tariff Quotas from 1 January 2021 has been written. |
| 14 | 13 | Common Agricultural Policy (CAP) | | ✓ | | Changes to the UK as a result of Brexit. |
| 15 | 14 | Outward Processing (OP) | ✓ | | | Old second method has been removed as it was under the Old Code. A new section on UK OP from 1 January 2021 has been written. |
| 16 | 15 | End Use/Authorised Use | ✓ | | | Chapter re-named. A new section on UK 'Authorised Use' from 1 January 2021 has been written. |

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| 17 | 16 | Returned Good Relief (RGR) | ✓ | | | A new section on UK RGR from 1 January 2021 has been written. |
| 18 | 17 | Temporary Admission (TA) | ✓ | | | A new section on UK TA from 1 January 2021 has been written. |
| 19 | 18 | International administration & the WCO | | ✓ | | |
| 20 | 19 | Other reliefs | ✓ | | | Chapter re-named. UK reliefs from 1 January 2021 have been included. |
| 21 | 20 | Exports & dispatches to other Member States | ✓ | | | UK export declarations legislation added (including simplified procedures). Union Transit/Common Transit changes. |
| - | 21 | Processing under Customs Control (PCC) | | | | Chapter removed and relevant parts put into Chapter 10 Inward Processing. |
| - | 22 | Free Zones | | | | Chapter removed as no longer in syllabus. |

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| 22 | 23 | Introduction to Excise Duties | ✓ | | | Chapter re-named and expanded on. Detail added on Excise Duties in GB and NI from 1 January 2021. Changes to operation of EMCS included. GB Registered Consignor rules from 1 January 2021 included. |
| 23 | 24 | Alcoholic Liquor Duties | | ✓ | | |
| 24 | 25 | Tobacco Products | | ✓ | | Rate changes included. |
| - | 26 | Registered Consignees | | | | Chapter removed and relevant parts put into Chapter 22 Introduction to Excise Duties. |