

DOMESTIC INDIRECT – 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
1	1	General Principles		✓		There is a box at the start explaining the impact of EU law on the UK's withdrawal from the EU Brief mention of postponed VAT accounting
2	2	The EU VAT system		✓		Halifax continues to apply from 1 January 2021 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

3	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MOSS is no longer available for non-UK businesses from 1 January 2021 who supply BTE in the UK, as Sch 3B and 3BA are repealed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>
4	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>

4	4	... continued				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
5	5	Liability of the supply			✓	
6	6	Schedule 7A – reduced rate		✓		HMRC BB07/2021 says that electricity provided from electric vehicle chargers in public places is taxed at 20% and not 5% The 2020 FTI case of Greenspace (UK) Ltd held that replacement roof panels which had insulating properties were not reduced rated 'insulation for roofs'

7	7	Schedule 8 – zero-rating		✓		<p>The Morrison's FTT 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>
8	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>

8	8	...continued			<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> <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>
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8	8	...continued			<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> <p>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</p>
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9	9	Deemed supplies & self-supply			✓	
10	10	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>
11	11	Time of supply			✓	
12	12	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>

13	13	Partial exemption		✓		<p>HMRC won their appeal to the UT in 2020 and then the Court of Appeal agreed in 2021 in the Royal Opera House Covent Garden case. There was not a direct and immediate link between production costs and supplies of catering, but two separate supplies and an indirect link</p> <p>HMRC added clarification to their calculation in Business Brief 8(2020) that where the amount of credit is less than the total value of the asset then both the amount shown as 'value of asset' and 'value of credit' would be reduced</p> <p>The CJEU case of Radio Popular C-695/19 held that a fee charged for an extended warranty was an exempt insurance transaction and the amounts were not excluded from the PE % calculation as they were not 'financial' transactions.</p> <p>From 1 January 2021 certain foreign and specified supplies also include those to EU Member States. Until 31 December 2020 the supplies had to be outside the EU</p>
14	14	VAT records & returns		✓		Businesses under the current VAT threshold will have to use MTD from 1 April 2022
15	15	Accounting for VAT			✓	

16	16	Bad debt relief		✓		Regency Factors UTT case 2020 shows the importance of complying with the record keeping requirements in order to claim BDR
17	17	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
18	18	Penalties for inaccuracies			✓	
19	19	Penalties for failure to notify			✓	
20	20	Default surcharge	✓			New section on the penalties for late returns and late payments replacing the default surcharge from 1 April 2022
21	21	Other penalties, interest & migration		✓		New interest rules from 1 April 2022 The FA 2021 has extended HMRC's powers under DASVOIT and can issue a notice to a person that has failed to disclose arrangements and allocate a SRN

22	22	Refunds, repayment supplement & interest		✓		New interest rules from 1 April 2022
23	23	Land & buildings: zero & reduced-rating		✓		<p>The FTT 2020 case of Wickford held that roller blinds installed in new houses were building materials</p> <p>Balhouse was appealed to the Supreme Court in 2021 who agreed with the taxpayer</p>
24	24	Land & buildings: exemption & std-rating		✓		<p>Seasonal pitches for caravans do not include those for all-year round residential use and connection and disconnection fees are ancillary and follow the main supply's VAT liability (Tallington Lakes case 2020)</p> <p>The RK Fuels Ltd FTT case in 2021 held that a car wash operating on leased land as a car park was a car park and standard rated</p> <p>The Netbusters FTT case in 2020 held that a supply of football/netball pitches along with the organisation of the clubs/leagues was a single exempt supply of an interest in land</p> <p>Reference to HMRC's technical guide on the Domestic Reverse Charge has been included and the 5% de minimis rule</p>

25	25	Land & buildings: option to tax			✓	
26	26	Capital goods scheme		✓		CJEU case of HF Case C-374/19 added where if the intended taxable use ceases, then the actual exempt use will result in a CGS adjustment. (Imofloresmira C-672/19 distinguished)
27	27	Transfer of a business as a going concern			✓	
28	28	Groups	✓			<p>Special rules apply to VAT groups which include Northern Irish entities from 1 January 2021</p> <p>HMRC appealed the Tower Resources decision to the Upper Tribunal and in 2021 it agreed with the FTI</p> <p>The Prudential Assurance Company Ltd FTI case in 2021 held that services provided intra group but only invoiced after leaving the group benefited from being outside the scope</p> <p>The CJEU issued its decision in Danske Bank in 2021. It has held that 'Reverse Skandia' applies and the supply of services is subject to the reverse charge</p> <p>HM Treasury issued a call for evidence in 2020 to gather views from businesses about current VAT group rules</p>

29	29	Second-hand goods margin scheme		✓		A section has been inserted concerning the operation of the second-hand goods scheme in Northern Ireland following Brexit
30	30	The flat-rate scheme			✓	
31	31	Agency			✓	
32	32	Retail & promotion schemes		✓		Voucher rules prior to 1 January 2019 will not be examined. These sections have, therefore, been removed
33	33	Farmers' flat-rate scheme			✓	
34	34	Miscellaneous		✓		<p>FTT decision in joined cases of Chelmsford City Council, Mid Ulster DC and Midlothian Council have been added concerning fees charged for access to sport and leisure facilities</p> <p>HMRC are secondary preferential creditors for some debts in an insolvency where the procedure is commenced after 1 December 2020. VAT is one of those debts</p>

35	35	IPT 1		✓		<p>Brexit has not had a large impact on IPT as it is predominantly governed by UK legislation.</p> <p>The GB Taxi Services Ltd tribunal case 2020 has been added. Supplying a leased taxi to customers which included insurance (the appellant took out insurance with a third party) was a supply of insurance by the appellant but not a contract of insurance. The amount was not liable to IPT.</p>
36	36	IPT 3			✓	
37	37	IPT 3		✓		<p>HMRC will not accept an agent based outside the UK to be a tax representative.</p> <p>Wording changed on liability notices to reflect the UK leaving the EU.</p> <p>The FA 2009 Sch 55 and 56 penalties might not be implemented for IPT.</p>
38	38	IPT 4			✓	
39	39	Stamp duty on shares		✓		<p>A 'block' transfer stock form can be sent for multiple chargeable transfers (eg on a takeover), with a schedule detailing the duty on each transfer. This aims to ease the administrative burden on taxpayers.</p>

40	40	Stamp duty land tax	✓		<p>The 2% surcharge for purchases of residential property by non-UK residents is imposed from 1.4.21. Details have been included on what makes a person or company non-UK resident and exceptions to the surcharge.</p> <p>The Fish Homes Ltd FTT case of 2020 held that a property with flammable cladding was still habitable as a dwelling and liable to the additional 3% residential rates.</p> <p>In the 2020 case of Moaref, the 3% additional rate applied to the purchase of two apartments which the purchaser intended to combine into one property after their purchase, to live in as their main residence. Neither property was intended on its own to replace their main residence, so no refund of the 3% rate was due.</p> <p>Three FTT cases were joined for an appeal to the Upper Tribunal in 2021 as to what amounts to residential property, when properties are surrounded by land. (Hyman, Pensfold and Goodfellow). Appeals by the taxpayers were dismissed and the residential rates applied to the entire purchase as the land formed part of the garden or grounds. It was not a requirement of the legislation that it needed to be for the reasonable enjoyment of the house having regard to its size or character.</p>
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40	40	Stamp duty land tax continued				<p>HMRC is of the view that LLPs cannot take advantage of the housebuilders' relief on 'exchanges' unless all the members of the LLP are companies.</p> <p>Where anti-avoidance legislation means that a notional transaction is treated as occurring, then if contingent consideration is never paid by the purchaser a reclaim can be made for the SDLT on that part. [Project Blue 2020]</p> <p>When determining the SLP for partnership transfers to a limited company, you do not include 'connected parties of connected parties'. This was part of the Waterside Escapes Ltd case in 2020.</p> <p>The Doe and Partridge cases in 2021 re-affirm that an annexe can only be a separate dwelling for MDR where the annexe and the main house can both be used as separate dwellings.</p> <p>The 15% rate on high value residential properties will be due on a property rental business where a non-qualifying individual has the right to occupy the dwelling.</p> <p>HMRC has changed its guidance on claiming MDR and whether the 3% surcharge is due on the dwellings. Provided, the amount attributable to the non-residential is not negligible or artificially contrived, then the 3% surcharge is not applied to the dwellings.</p>
41	41	SDLT - administration			✓	