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By Antony Seely

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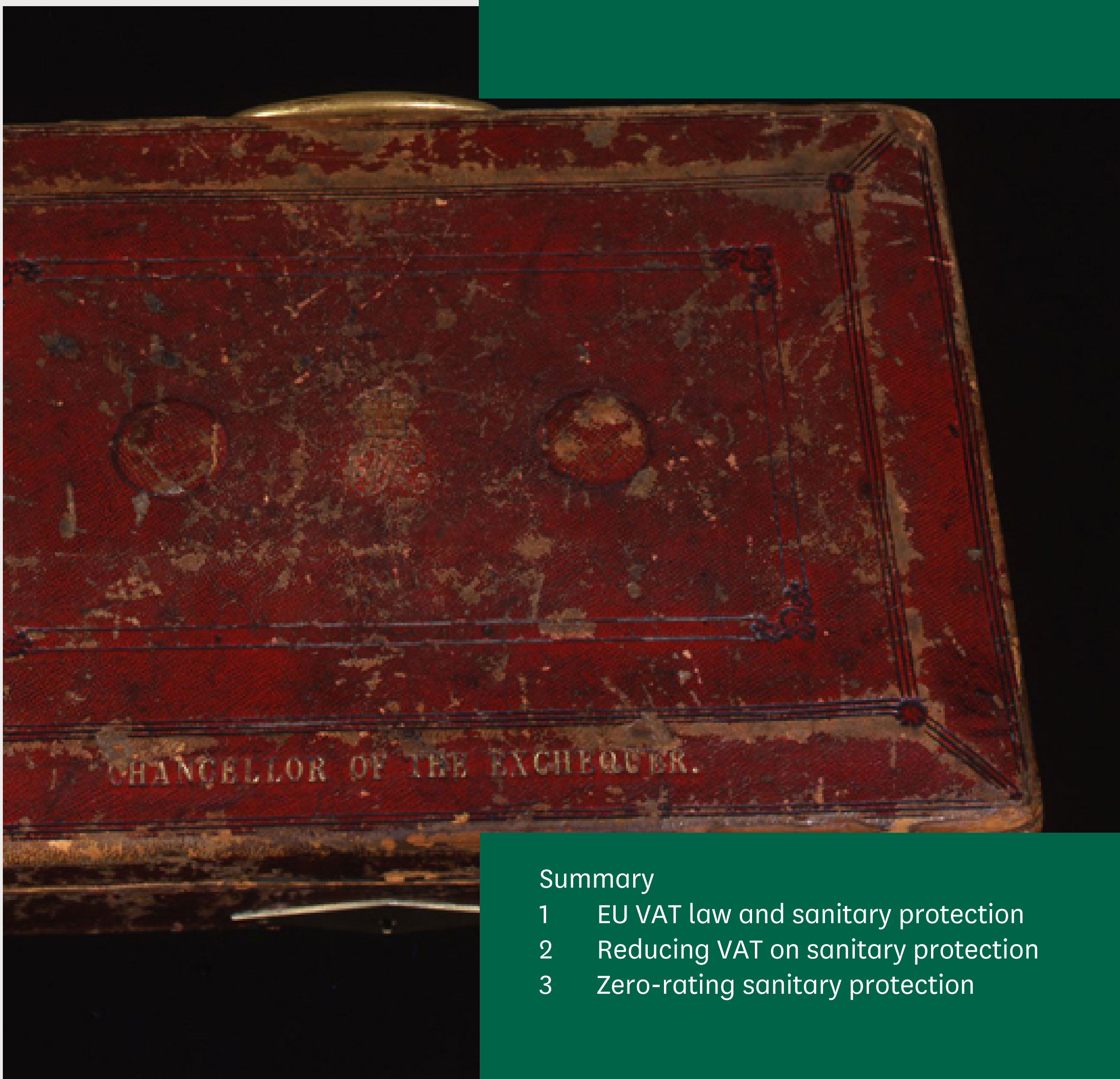
VAT on sanitary protection



Summary

1 EU VAT law and sanitary protection
2 Reducing VAT on sanitary protection
3 Zero-rating sanitary protection

Number 1128

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Contents

1 EU VAT law and sanitary protection 7

2 Reducing VAT on sanitary protection 14

3 Zero-rating sanitary protection 19

3.1 Campaign to cut VAT to zero rate 19

3.2 Budget 2016 23

3.3 Recent developments 27

The Tampon Tax Fund 27

The new zero rate 29

Summary

Generally VAT is charged on the supply of all goods and services, unless specifically exempt, at either the standard rate - currently 20% - or the zero rate.[1] In September 1997 a reduced VAT rate of 5% was introduced on the supply of domestic fuel and power.[2] Since then the coverage of the reduced rate has been extended to a small number of other supplies including, the installation of energy saving materials (from 1 July 1998), children's car seats (from 12 May 2001), and sanitary protection (from 1 January 2001).[3]

There has been a long-running campaign against any VAT being charged on sanitary protection – the so-called 'tampon tax' – and for it to be zero-rated in the same way as food, children's clothing and books. However, in the past EU-wide rules on VAT rates have been an obstacle to doing this. Although the EU agreement on VAT rates has allowed Member States, should they choose, to charge a reduced rate of VAT - between 5% and 15% - on certain specified supplies, including sanitary protection, the introduction of a new zero rate would contravene these rules.

In October 2015 the Government confirmed it would seek a change in EU law to allow sanitary protection to be zero-rated, as part of a forthcoming review of EU VAT by the European Commission.[4] In April 2016 the Commission published its 'VAT Action Plan', including plans to update these rules on VAT rates,[5] and the Government included provision in the *Finance Act 2016* (specifically section 126), to allow for sanitary protection to be zero-rated, once the UK had discretion to do this.[6] At the time it was anticipated that a zero rate could be in place by 1 April 2017.[7] However the Commission's proposals were not published until January 2018; in brief, the Commission proposed to reverse the current approach:

> In addition to a standard VAT rate of minimum 15%, Member States would now be able to put in place:

1 HM Revenue & Customs (HMRC) publish guidance on the VAT treatment of a variety of goods and services on Gov.uk.

2 Initially zero-rated, this supply had been charged an 8% rate from 1 April 1994.

3 Goods and services charged the 5% reduced rate are listed in schedule 7A to the *VAT Act 1994*, as amended. Group 4 to the schedule covers women's sanitary products.

4 PQ16882, 26 November 2015

5 European Commission press notice, VAT Action Plan: Commission presents measures to modernise VAT in the EU, 7 April 2016. See also, Action Plan on VAT: Questions and Answers (Memo 16-1024), 7 April 2016

6 HMRC, VAT: zero-rating of women's sanitary products: tax information & impact note, 24 March 2016.

7 As noted by Treasury Minister David Gauke (Public Bill Committee, Fifth sitting, 7 July 2016 c146).

- two separate reduced rates of between 5% and the standard rate chosen by the Member State;
- one exemption from VAT (or 'zero rate');
- one reduced rate set at between 0% and the reduced rates.

> The current, complex list of goods and services to which reduced rates can be applied would be abolished and replaced by a new list of products (such as weapons, alcoholic beverages, gambling and tobacco) to which the standard rate of 15% or above would always be applied.
>
> To safeguard public revenues, Member States will also have to ensure that the weighted average VAT rate is at least 12%. The new regime also means that all goods currently enjoying rates different from the standard rate can continue to do so.[8]

The relevance of these EU-wide rules has receded, with the UK's departure from the EU on 31 January 2020.[9] The UK has been required to remain compliant with EU law, including VAT law, during the 'transition period' – the period set for the negotiation of a new UK-EU relationship.[10] In anticipation of the transition period being completed by the end of 2020, in the 2020 Budget the Chancellor, Rishi Sunak, announced that a zero rate would be charged on sanitary products from the new year.[11] With the completion of a new trade agreement with the EU, and the end of the transition period, this new zero rate was introduced from 1 January 2021.[12] Details of the coverage of the zero rate are in, HMRC, Women's sanitary protection products – VAT Notice 701/18/02, 4 January 2021.

It is worth noting that the financial impact of cutting VAT on this supply from 5% to zero is relatively small; the annual cost of the new zero rate is estimated to be £15m.[13]

In the 2015 Autumn Statement the then Chancellor George Osborne announced that the Government would set up a new scheme to provide grants for women's charities, funded by receipts from VAT on sanitary protection.[14] Initially the Tampon Tax Fund would provide a £5m grant split between four charities (the Eve Appeal, SafeLives, Women's Aid, and The Haven). Three more rounds of grant funding were made subsequently,

8 European Commission press notice, VAT: More flexibility on VAT rates, less red tape for small businesses, 18 January 2018. Negotiations on the proposals are ongoing, as noted on Commission's EUR-lex site.

9 For a narrative of events leading up to the UK's exit see, Brexit timeline: events leading to the UK's exit from the European Union, Commons Briefing paper CBP7960, 6 January 2021.

10 Letter from the Financial Secretary to the European Scrutiny Committee, "EU legislative proposals on VAT", 5 December 2018

11 HC Deb 11 March 2020 c284; see also, Budget 2020, HC 121, March 2020 para 1.176

12 HM Treasury press notice, Tampon tax abolished from today, 1 January 2021

13 Budget 2020, HC 121, March 2020 p66 (Table 2.1 – item 17)

14 HC Deb 25 November 2015 c1368

bringing the total amount of monies given to £62m.[15] Following the 2020 Budget the Department for Culture, Media & Sport (DCMS) invited applications for the next round of funding. The applications process closed on 7 June 2020,[16] and details of the 12 projects to share £15m in funding were announced on 27 November 2020.[17] Following the introduction of the zero rate on 1 January, on 21 May 2021 DCMS launched the final round of Tampon Tax Funding.[18] Applications closed on 4 July. DCMS anticipate that individual grant agreements will be finalised with successful applicants in Autumn 2021.[19]

This briefing gives a short description of the EU VAT rules, before looking at the Labour Government's decision – announced in the March 2000 Budget – to introduce a 5% rate on sanitary protection, and the current Government's introduction of a zero rate from 1 January this year.

15 See, PQ41191, 5 July 2016; DCMS press notice, Charities across the UK benefit from Tampon Tax Fund, 30 March 2017, Women and girls set to benefit from £15 million Tampon Tax Fund, 26 March 2018, Charities encouraged to bid for £15 million Tampon Tax Fund, 29 November 2018

16 DCMS, Tampon Tax Fund application form: 2020-2021 funding round, updated 21 May 2020

17 DCMS press notice, Thousands of women and girls to benefit from £15m Tampon Tax Fund, updated 4 December 2020; PQ121929, 2 December 2020

18 DCMS press notice, Final round of tampon tax fund launched, 21 May 2021

19 DCMS, Tampon Tax Fund 2021-2022 - Guidance for Applicants, updated 23 June 2021

1 EU VAT law and sanitary protection

It has long been recognised that national sales taxes across the EU need to interlock effectively for the Single Market to function. The first steps toward harmonising the VAT systems of Member States were taken in the late 1960s. However, it was the sixth VAT directive (77/388/EEC), adopted on 17 May 1977, which marked a turning point in the development of EU VAT law – as governments agreed on common criteria for the VAT base in all Member States (ie, specifying those goods and services which could be exempted from tax).

Initially the sixth directive focused on the VAT base rather than VAT rates, though it had implications for the UK's zero rates. Article 28(2) allowed Member States to maintain "reduced rates and exemptions… which are in force on 31 December 1975 and which satisfy the conditions stated in the last indent of Article 17 of the second council directive of 11 April 1967." Article 17 refers only to exemptions maintained for "clearly defined social reasons and for the benefit of the final consumer." As a result the UK was allowed to maintain its zero rates, *provided* they satisfied these criteria.[20]

Of course, all Member States are governed by these directives on decisions they take on the coverage of VAT, and - under the terms of later amendments to the sixth directive - on decisions taken about their VAT rates. Though the UK and Ireland are the only countries to use zero rates very much, there is considerable variety in VAT rates on certain goods and services across the EU.[21]

Agreement between Member States on harmonising the rates of VAT took much longer, but was reached in June 1991, and encompassed by directive 92/77/EEC, which came into effect on 1 January 1993.

In brief, all Member States:

- have had to apply a standard VAT rate of 15% or more from 1 January 1993.
- have the option of applying one or two reduced rates, no lower than 5% to certain specified goods and services, as listed in Annex H of the directive.

[20] In June 1988 the European Court of Justice found that certain zero-rated supplies – including supplies of fuel and power to industry – did not meet these criteria. As a result the UK was required to standard-rate these supplies, which it did on 1 July 1990.

[21] European Commission, *VAT rates applied in the Member States of the European Community*, January 2020

- may continue charging any lower rates, including zero rates, that had been in place on 1 January 1991 for the duration of the "transitional period", assuming these rates were in accordance with Community law.

In November 2006 the European Council of Finance Ministers adopted a new principal EC VAT directive (2006/112/EC), which revised or recast both the first and the sixth EC VAT directives, to reorganise the provisions and set them out in a clearer way.[22] Annex H to the revoked sixth directive is now recast as Annex III to the new directive. The new directive made no change to EC or UK VAT law.

The UK secured a special right to bring any of its zero rates into a reduced rate band, even if they were not in Annex H. However, this provision would not have allowed the UK to reintroduce a zero rate that had been in place on 1 January 1991 which it had then withdrawn. Naturally in the past the focus has been on those aspects of the directive which directly affect the UK. Even so, it is worth noting one aspect of this agreement: at present no Member State can introduce a new zero rate.[23] In the absence of any new agreement, these 'transitional' arrangements may continue indefinitely – and this is what has happened, though there have been some minor additions to the list of supplies which may be charged at a reduced rate.[24] It should be noted that any amendment to these rules – as with any VAT directive – must be agreed **unanimously** between the Member States.[25] In October 2015 the European Commission confirmed that, as part of its work programme for 2016, it would present an initiative on VAT rates.[26]

In April 2016 the Commission published its 'VAT Action Plan' setting out a series of measures to amend EU VAT rules – including two options to change the legal framework for VAT rates:

> Under the current rules, Member States need to stick to a pre-defined list of goods and services when it comes to applying zero or reduced VAT rates. The Commission plans to modernise the framework for rates and to give Member States more flexibility in future. It proposes two options: one option would be to maintain the minimum standard rate of 15% and to review regularly the list of goods and services which can benefit from reduced rates, based on Member States' input. The second option would abolish the list of goods and services that can benefit from reduced rates. This would, however, require safeguards to prevent fraud, avoid unfair tax competition within the Single Market and it could also increase

22 Council Directive 2006/112/EC of 28 November 2006 (OJ L 347, 11 December 2006).

23 There is limited provision for those countries whose standard rate was below 13% at 1 January 1991 to charge a rate below 5% on certain supplies

24 This is discussed in, *VAT : European law on VAT rates*, Commons Briefing paper CBP2683, 17 January 2019.

25 The Treaty base for all proposals to harmonise excise duties and turnover taxes is Article 113, which requires unanimity.

26 European Commission, *Commission Work Programme 2016*, COM(2015) 610 final, 27 October 2015 p8

> compliance costs for businesses. Under both options, the currently applicable zero and reduced rates would be maintained.[27]

The Commission also proposed wider reforms to the way cross-border trade would be treated for VAT …

> The current VAT system needs to be modernised to keep pace with the challenges of today's global, digital and mobile economy. The current VAT system for cross-border trade which came into force in 1993 was intended to be a transitional system and leaves the door open to fraud. The Commission therefore intends to come forward in 2017 with a proposal to put in place definitive rules for a single European VAT area. Under the new rules, cross-border transactions would continue to be taxed at the rates of the Member State of destination ('destination principle') as today, but the way taxes are collected would be gradually changed towards a more fraud-proof system. At the same time, an EU-wide web portal would be implemented to ensure a simple VAT collection system for businesses and a more robust system for Member States to gather revenue.

… and anticipated that it would bring forward legislation on these two elements of the Action Plan in 2017:

> **What are the next steps for the Action Plan?**
>
> The Action Plan aims to trigger a debate with EU Member States and with the European Parliament. Agreement on the way forward would allow the Commission to present legislative proposals on each of the issues raised in the Action Plan.
>
> Forthcoming measures in 2016 include proposals to adapt the VAT system to the digital economy, removing VAT obstacles to cross-border e-commerce, and specific measures for e-publications. In order to simplify VAT for smaller businesses, a VAT package for SMEs will be proposed in 2017. As a pre-cursor to setting up a single European VAT area, different initiatives which aim to improve cooperation and mutual assistance between Member States' tax administrations will already be tabled in 2016… In 2017, the Commission expects to make a proposal for the definitive VAT system for EU cross-border trade together with a reform of the VAT rates. [28]

The Commission published proposals regarding the definitive VAT system in October 2017[29] and for new rules regarding VAT rates in January 2018.[30] In the latter case it was envisaged that Member States would be free to apply

[27] European Commission press notice IP16-1022, *VAT Action Plan: Commission presents measures to modernise VAT in the EU*, 7 April 2016

[28] European Commission press notice IP16-1022, 7 April 2016; see also *Action Plan on VAT: Questions and Answers* (MEMO16-1024), 7 April 2016.

[29] European Commission press notice IP17-3443, 4 October 2017

[30] European Commission press notice IP18-185, 18 January 2018

reduced or even zero-rates of VAT to any good or service, except for those specifically listed:

> **How will Member States set their VAT rates in future, according to your proposal?**
>
> While a minimum standard VAT rate of at least 15% will continue to apply, the harmonised and less restrictive rules will enable all Member States to apply a range of rates to products:
>
> - two separate reduced rates of between 5% and the standard rate chosen by the Member State;
> - one exemption from VAT (or 'zero rate');
> - one reduced rate set at between 0% and the reduced rates.
>
> At the same time, the Commission proposes to abolish the list of goods and services to which reduced rates can currently be applied. Instead, there is now a list of products to which reduced rates cannot be applied, ensuring that products such as alcohol, weapons, tobacco and gambling will always be taxed at the standard rate or above. That will give Member States more freedom in setting VAT rates, as per their request.
>
> Safeguards will be introduced to avoid potential risks like revenue erosion, distortion of competition, unnecessary complexity and legal uncertainty. Member States will be required to ensure that reduced rates benefit the final consumer and, in order to protect revenues, that the average VAT rate applied to those transactions for which VAT cannot be deducted always exceeds 12%.[31]

Negotiations on the proposals are ongoing, as noted on Commission's EUR-lex site.

In February 2018 the Government published an explanatory memorandum on the draft text expressing support for the Commission's intention, and noting that the changes would allow all Member States to zero-rate women's sanitary products. It went on to observe that "previous discussions on VAT rates have shown that Member States hold a wide range of views and therefore, swift progress … is unlikely."[32]

In April 2018 the European Scrutiny Committee published a report on these proposals, noting that there was considerable uncertainty as to the significance of these reforms in the context of Brexit:

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31 Q and As on the VAT package (MEMO18-186), 18 January 2018

32 HM Treasury, *Proposal for a Council Directive amending Directive 2006/112/EC as regards rates of VAT – explanatory memorandum*, 8 February 2018 para 22, 32. The Commission's site notes that negotiations on this draft legislation continue.

> For the UK, the implications of the [draft rates directive] … are inextricably linked to its post-Brexit relationship with the EU's common VAT area after Brexit. If the UK, as a 'third country' like Norway, is completely outside of that area when the 'definitive' VAT system takes effect, the Government would in any event have full flexibility to vary value added tax rates beyond the constraints imposed by EU law present or future.
>
> We note in this respect that it is the European Commission's intention that the new VAT system—including the updated rules in rate-setting—will not take effect before 2022, well after the "two year period" of transition during which the UK would remain in the common VAT area after Brexit …
>
> We have repeatedly asked the Government to provide details of its proposals on the UK's post-Brexit relationship with the EU on Value Added Tax, in the context of:
>
> - either the trade barriers that arise as a result of leaving the common VAT area for UK businesses which import or export goods and services to or from the EU; or
> - minimising UK-EU trade friction by remaining in, or aligned with, the single EU VAT area, and the potential constraints continued alignment with the EU's VAT Directive could place on the UK's domestic tax sovereignty—including the ability to vary rates—after Brexit.
>
> To date, we have not received a satisfactory response to these questions.[33]

In November 2018 the UK concluded the draft Withdrawal Agreement with the EU. This provided for a transition period, also described as the 'implementation period', to bridge the period between the date of the UK's exit from the EU, initially set for 29 March 2019, and the entry into force of the new, yet to be negotiated, UK-EU partnership arrangements. The transition would run until the end of December 2020, with the possibility of extension for up to two years. During this period the UK would continue to apply EU law, with a few exceptions, as if it were a Member State, though the UK would have no institutional representation and no role in decision-making.[34]

Agreement was also reached on the Political Declaration, which aimed to set the scope and terms for the UK's future relationship with the EU.[35] The Declaration said nothing specific about VAT, though it included a commitment to open and fair competition between the UK and the EU, that

[33] *Value Added Tax: EU proposals for reform and the implications of Brexit*, HC 301 of 2017-19, 3 April 2018 paras 2.11, 2.14-5

[34] For details see, *The UK's EU Withdrawal Agreement*, Commons Briefing paper CBP8453, 11 April 2019.

[35] For details see, *The Political Declaration on the Framework for Future EU-UK Relations*, CBP8454, 30 November 2018.

would include relevant tax matters; as the Government underlined, this would *not* "fetter sovereign discretion on tax, including in relation to setting direct or indirect tax rates."[36]

Writing to European Scrutiny Committee at the time Treasury Minister Mel Stride confirmed "the Withdrawal Agreement sets out that during the Implementation Period, the UK will no longer be a Member State of the EU, but market access will continue on current terms. Accordingly, common rules will remain in place until the end of the Implementation Period, meaning businesses will be able to trade on the same terms for the duration of this period." The Minister went on to note that the Political Declaration "reiterates the competition between the UK and the EU must be open and fair, and that there should be provisions covering tax matters", though "the precise nature of these provisions will be a matter for future negotiation."[37]

Prime Minister Theresa May's continued failure over the following months to obtain Parliamentary approval for the Withdrawal Agreement led, in turn, to her resignation in May 2019, the resumption of talks with the EU by Boris Johnson's Government, and the conclusion of an updated Withdrawal Agreement and Political Declaration – although these made no significant changes with regard to this specific issue.[38] Following the 2019 General Election, Parliament approved the revised Withdrawal Agreement,[39] and the UK left the EU on 31 January 2020.

More recently on 24 December 2020 the UK and EU announced the conclusion of the Trade and Cooperation Agreement (TCA), to be implemented in time for the end of the transition period.[40] The TCA sets out provisions to maintain a level planning field between the UK and the EU for open and fair competition and sustainable development, and this includes commitments to uphold global standards on tax transparency and fighting tax avoidance,[41] but as the Government has underlined "there are no provisions constraining our domestic tax regime or tax rates."[42]

36 HMG, *Explainer for the Political Declaration setting out the framework for the future relationship between the UK and the EU*, November 2018 para 85.

37 Letter from Financial Secretary to EU Scrutiny Committee, "EU legislative proposals on VAT", 5 December 2018

38 For details see, *The October 2019 EU UK Withdrawal Agreement*, CBP8713, 18 October 2019

39 *Brexit next steps: Ratifying the EU Withdrawal Agreement*, Commons Library Insight, 23 January 2020

40 For details see, *The UK-EU Trade and Cooperation Agreement: summary and implementation*, CBP9106, 30 December 2020.

41 specifically, Articles 5.1-3 of Title XI to Part Two of the Agreement. See also, European Commission, *Questions & Answers: EU-UK Trade and Cooperation Agreement*, 24 December 2020 ("*How will you ensure that taxation isn't used as a means to distort competition?").*

42 10 Downing Street, *UK-EU Trade and Cooperation Agreement: summary*, December 2020 para 90

With the UK leaving the EU VAT regime, Customs Union and Single Market, the Chancellor confirmed on 1 January that the new zero rate on sanitary protection had come into effect.[43]

Turning back to the provisions in EU VAT law that have allowed for reduced rates of VAT on specified goods and services, item 3 to Annex III of the principal VAT Directive is, "pharmaceutical products of a kind normally used for health care, prevention of illnesses and as treatment for medical and veterinary purposes, including products used for contraception and sanitary protection." It was under this provision that the Labour Government introduced a 5% VAT rate on sanitary protection in 2001, as discussed below.

[43] HM Treasury press notice, *Tampon tax abolished from today*, 1 January 2021. For a narrative of events leading up to the end of the transition period see, *Brexit timeline: events leading to the UK's exit from the European Union*, Commons Briefing paper CBP7960, 6 January 2021.

2 Reducing VAT on sanitary protection

VAT was introduced in the UK on 1 April 1973 at two rates: a standard rate of 10%, and a zero rate on selected goods and services (such as food, books, children's clothing, and certain supplies for charities). The main changes to the VAT structure since the introduction of the tax are:

- The standard rate was cut to 8% on 29 July 1974.
- A higher rate on selected goods and services was introduced on 18 November 1974, set at 25%. Initially this was applied to petrol only; it was extended to a list of other supplies from 1 May 1975. The higher rate was cut to 12.5% from 12 April 1976.
- The standard rate was increased to 15% on 18 June 1979; at this time, the higher rate of VAT was abolished.
- The standard rate was increased to 17.5% from 1 April 1991.
- Domestic supplies of fuel and power were charged VAT at a reduced rate of 8% from 1 December 1993. This was cut to 5% from 1 September 1997.
- The standard rate was cut temporarily to 15% from 1 December 2008 to 31 December 2009. The rate was set back at 17.5% on 1 January 2010.
- The standard rate was increased to 20% from 4 January 2011.[44]

In general the current categories of zero-rated goods and services date from when VAT was introduced in 1973,[45] and there have been relatively few changes to the scope of zero-rating since then.[46]

Prior to the March 2000 Budget, the Labour Government's position on cutting VAT on sanitary protection was that it would not be appropriate to extend special treatment to just this one product, an argument which the previous Conservative Government also made.[47] When introduced in 1973, VAT was designed to be as broadly based as possible, in the interests of fairness, simplicity and legal certainty. It is arguable that introducing one new reduced rate might well encourage lobbying for other reduced rates on 'essential' items, eroding government revenues from VAT and the base of the tax itself.

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[44] Adapted from, HM Treasury, *Tax Benefit Reference Manual* 2009/10 ed. (Commons paper 2009-1987) pp100-102

[45] The original provisions for zero-rating were set out in schedule 4 to the *Finance Act 1972*. Zero-rated supplies are now set out in schedule 8 to the *VAT Act 1994*.

[46] Two exceptions are aids for disabled persons, and supplies of protective clothing, which Dennis Healey announced would be zero-rated in his 1974 Budget (HC Deb 26 March 1974 c 308).

[47] For example, HC Deb 3 April 1996 cc 257-258W

The then Economic Secretary to the Treasury, Helen Liddell, set out the Labour Government's initial view on this issue, at Treasury Questions in June 1998:

> Jackie Ballard: Does the Minister agree that, for 15 million British women, sanitary products are as an essential part of the family budget as food or clothing? Is the hon. Lady aware that Britain has one of the highest rates in Europe of valued added tax on sanitary protection? Will she therefore respond positively to the 171 Members, many of whom are her hon. Friends, who signed early-day motion 683, and asked the Government to reduce VAT on sanitary protection to the European Union minimum of 5 per cent?
>
> Mrs. Liddell: I am grateful to the hon. Lady for making that point, and I am well aware of the anxiety that exists not only in the House, but in women's groups; it has been well represented in women's magazines. Value added tax is levied on a wide range of other essential health and hygiene products that affect men or women, or both, and they have to pay VAT. The history of VAT on those products dates back to 1977, and there has been a debate about the matter. At the moment, there is no proposal to reduce VAT on sanitary products.[48]

A further Early Day Motion with much the same wording as that cited by Ms Ballard was laid in November 1999,[49] and during this time the Labour Government received a considerable number of representations on the subject.[50] In the Budget in March 2000 the Government confirmed that a new 5% VAT rate would be introduced on women's sanitary products from 1 January 2001. The delay in implementing this measure was to give businesses time to adjust their pricing structure, and retailers time to adapt their accounting systems.

Announcing this measure the then Paymaster General, Dawn Primarolo, said "Today's measure shows the Government's willingness to listen to the views and concerns of women throughout the country. This is not a luxury consumer product. This is about fairness, and doing what we can to lower the cost of a necessity. Our action today sends a signal to women that we will continue to work towards equality in the tax system, the workplace and in society as a whole."[51] It was estimated that the measure would cost £10 million in 2000-

[48] HC Deb 25 June 1998 c 1166. The EDM Ms Ballard is referring to was, EDM 683 of 1997-98 *VAT on sanitary products* 22 January 1998. In her answer the Minister is referring to the agreement in 1977 of the EC sixth VAT directive, which allowed the UK to continue to charge its *existing* zero VAT rates, but not to add to this list (say, by zero-rating sanitary protection).

[49] EDM 89 of 1999/2000 *VAT on sanitary products*, 24 November 1999. 246 Members signed the motion.

[50] In July 1999 the Paymaster General, Dawn Primarolo, noted that over the previous two years the Government had received "almost three hundred letters and a few small-scale petitions on reducing the rate of VAT on sanitary products" (HC Deb 7 July 1999 c550W).

[51] HM Customs & Excise Budget press notice C&E7, 21 March 2000

01, rising to £35 million in a full year.[52] The annual Exchequer cost of the 5% rate is now estimated to be around £45m.[53]

The announcement was not given very much coverage in the press, although the Financial Times made some observations at this time:

> The move was welcomed by Labour's female MPs who have lobbied the chancellor on the issue over the past year. The three female ministers in the Treasury are also thought to have been instrumental … 'This measure is good for women and good for children,' said Fiona MacTaggart, MP for Slough. 'In every quartile of every income group, women are the least well paid. For families with low income, especially where there are a large number of women in the family, sanitary protection can be a big chunk of the family budget. So as well as targeting women this is targeting children.'
>
> The supermarket chain Asda has also supported the campaign, backing up its appeal by paying the VAT itself on own-brand product lines. The move was also seen as reflecting the Government's desire to hold on to the substantial number of female voters that defected to Labour at the last election.[54]

Following the Budget, HM Customs & Excise consulted trade groups to establish a clear and workable definition of those sanitary products to be taxed at the reduced rate.[55] In June it published a draft of the proposed legislation and a draft regulatory impact assessment (RIA); in a covering letter, Customs explained the scope of the new VAT relief:

> In drafting the legislation we have sought to produce a clear, simple and workable reduced rate for products that are clearly designed for women's sanitary protection e.g. of the pad, tampon, panty liner nature. The reduced rate will not apply to complimentary products such as feminine wipes, lined pants and sprays. The reduced rate specifically excludes all products designed for urinary incontinence because relief in the form of a zero rate is already available when such products are bought by incontinent people living in their own homes. Clearly there is no intention to introduce VAT on a supply where VAT does not currently apply.[56]

In the draft impact assessment Customs conceded that many felt standard-rating was unfair: it discriminated against women; it was an additional tax burden on families because sanitary protection is needed by all women of childbearing age, which includes daughters; and, its use was essential to

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52 *Budget 2000*, HC 346, March 2000 p151

53 HMRC, *Minor tax expenditures and structural reliefs*, January 2019

54 "VAT on sanitary protection to be cut to 5%", *Financial Times*, 22 March 2000

55 HC Deb 3 July 2000 c97W. At this time HM Customs & Excise administered VAT and other indirect taxes. In 2005 it was merged with the Inland Revenue, the UK's other revenue authority, to form HM Revenue & Customs.

56 HM Customs & Excise, *VAT: Women's sanitary protection products*, June 2000

hygiene. As a consequence, "the Government's preferred option is [to cut VAT to 5%] which goes as far as possible in lowering the VAT on sanitary protection. It is a simple, relatively cheap change which addresses what many have seen as an anomaly and - provided the benefit is passed on in the purchase price - is a real benefit to women."[57]

The legislation to introduce the new reduced rate - the Value Added Tax (Reduced Rate) Order SI 2000/2954 - was debated, and agreed to, on 23 November 2000.[58] The Order added "women's sanitary protection products" to the list of items charged at a reduced rate.[59] These products are defined as "products that are designed, and marketed, as being solely for use for absorbing, or otherwise collecting, lochia or menstrual flow", "panty liners, other than panty liners that are designed as being primarily for use as incontinence products", and "sanitary belts." "Protective briefs or any other form of clothing" are specifically excluded from the scope of this relief.

On this occasion the then Paymaster General Dawn Primarolo set out the purpose of the Order; part of her speech is reproduced below:

> As part of the 2000 Budget, the Government announced that women's sanitary protection would be charged at a reduced VAT rate of 5 per cent. from 1 January 2001. The announcement was greeted with widespread support from Members on both sides of the House and we have since consulted the appropriate trade bodies. The order fulfils our commitment. The Government agree that, for social reasons, certain strictly limited goods and services should be subject to a reduced VAT rate of 5 per cent., which is the lowest rate allowed under our agreements. Sanitary protection is one of those items …
>
> The Government have made it clear to manufacturers and suppliers of sanitary protection products that we expect the VAT reduction to be passed on to customers. Many of the larger retailers have lowered their prices before the introduction of the measure on 1 April 2001. It would be disappointing to discover that businesses were using the reduced rate to increase their profit margins at the consumer's expense. I am confident that smaller traders—who will find it more difficult to make the adjustment—will none the less pass the price reduction on to consumers. Women across the country have applauded the benefits of the measure, for which many campaigns have taken place over the years.
>
> It was difficult to apply the border line in terms of the benefits and dis-benefits of the 5 per cent. rate. We hope that we have achieved

[57] The consultation closed on 27 July 2000.

[58] Fourth Standing Committee on Delegated Legislation, *Value Added Tax (Reduced Rate) Order 2000*, 23 November 2000. The Order was formally approved on 28 November 2000 (HC Deb cc 935-6).

[59] At the time the Order was made, provision to charge the reduced rate of 5% was consolidated in schedule A1 of *VATA 1994*. Under section 99 of the *Finance Act 2001*, the schedule was repealed, replaced by new schedule 7A to the Act.

> the correct definition and separation and that women will benefit greatly.[60]

[60] *op.cit.* cc 3-4

3 Zero-rating sanitary protection

3.1 Campaign to cut VAT to zero rate

From early 2015 there has been a renewed campaign for the 5% VAT rate on sanitary protection to be cut to zero.[61] In March 2015 seventy Members signed an EDM calling for "the Chancellor to urge the European Commission to bring forward a proposal to remove VAT from women's sanitary products as part of measures in the 2015 Budget."[62] The Coalition Government set out the legal position regarding a lower rate of VAT on this supply in answer to this PQ:

> **Mr Jim Cunningham**: To ask the Chancellor of the Exchequer (1) what consideration he has given to changing the 5% VAT rate applied to female sanitary products; (2) for what reason HM Revenue and Customs considers female sanitary products non-essential for tax purposes; and if he will make a statement; (3) if he will lower the VAT rate applied to female sanitary products.
>
> **Mr Gauke**: A reduced rate of VAT of 5% currently applies to female sanitary products. This has been in place since 2001 and is the lowest rate possible under EU law.
>
> The application of VAT in the EU, including rates and flexibilities afforded to member states in this regard, is governed by EU law. The Government cannot introduce a new zero rate as this would require a change to EU VAT legislation, which would require a proposal from the European Commission and the unanimous agreement of all 28 member states.[63]

In its 2015 General Election manifesto the Conservative Party had stated that, in government, it would "not increase the rates of VAT, Income Tax or National Insurance in the next Parliament."[64] Subsequently, in the Government's first Budget on 8 July the Chancellor George Osborne confirmed that "in the coming weeks" the Government would legislate to "prohibit any increase in the main rates of income tax, national insurance and VAT for the next five years."[65]

[61] A petition on Change.org – *Stop taxing periods. Period* – gathered over 300,000 signatures.

[62] EDM 866 of 2014-15, 12 March 2015

[63] HC Deb 12 June 2014 c257W – see also, PQ223436, 12 February 2015

[64] Conservative Party, *2015 General Election Manifesto*, April 2015 p27

[65] HC Deb 8 July 2015 c336

Provision to set a tax lock for both income tax and VAT was made by ss1 & 2 of the Finance (No 2) Act 2015.[66] Both provisions were debated and agreed to, without a vote, at the Committee stage of the Finance Bill on 17 September 2015. When the Committee considered the second of these clauses, it also debated a new clause, tabled by the Scottish National Party, to require the Treasury to report on "the impact of exempting women's sanitary protection products from value added tax." Introducing the new clause Alison Thewliss argued that "there is no recognition that [sanitary products] are essential items, and a zero rating would go some way to addressing that."[67] Speaking for the Labour Party Barbara Keeley supported the new clause, arguing, "although the reduction in the rate of VAT on sanitary products in the UK from 2000 was welcome, more needs to be done … I ask the Minister to take action at an EU level to support the exemption of women's sanitary products from VAT in the UK."[68] In response the Treasury Minister David Gauke said, "I very much sympathise with the aims of the new clause, but this is not simply a case of the Government taking action":

> Different countries have different priorities, setting their tax rates to meet the economic conditions prevalent in their own jurisdictions. Across the EU, the average rate of VAT applied to sanitary protection products is more than 17% … The Republic of Ireland has a zero rate for sanitary products … That zero rate was agreed before Ireland joined the European Union in the early 1970s. A zero rate on these products was not in place when the UK joined the EU, or the Common Market as it then was …
>
> A strong case is made from all parts of the House that greater flexibility in this context would be helpful, but the point I would make is that we see little indication that other member states … share that objective … Other than when an accession country joins the EU and negotiates a zero rate, there is no particular indication that the Commission or member states as a whole are prepared to introduce new zero rates. Indeed, quite a lot of the advice coming from organisations such as the OECD and the general position that the Commission takes tend to be against that, so I do not want to underestimate the difficulties.[69]

The House debated the issue a second time at the Report stage, in the context of a new clause, tabled by Paula Sherriff, supported by a cross-party selection of Members, to require the Chancellor to report on his strategy to obtain EU agreement for this measure.[70]

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66 The Government introduced a separate Bill to set a 'tax lock' to the rates of Class 1 NICs; see, Commons Briefing Paper CBP7260, 29 February 2016.

67 Public Bill Committee (Finance Bill), *First sitting*, 17 October 2015 c17

68 *op.cit.* c18

69 *op.cit.* cc24-26. The Committee did not vote on this new clause because it was not formally moved at the conclusion of the Committee's proceedings (Public Bill Committee Proceedings, 15 October 2015).

70 HC Deb 26 October 2015 cc84-128. Ms Sherriff presented her case for the new clause at cc102-3.

On this occasion Treasury Minister David Gauke gave a commitment to raise the issue with the EC and other Member States:

> The UK does not have the ability to extend zero rating to new products unilaterally. We have more extensive zero rating than most, if not all, other member states, but any change to EU VAT law would require a proposal from the European Commission and the support of all 28 member states. Without that agreement, we are not permitted to lower rates below 5%. None the less, as this debate illustrates, there is considerable cross-party support for the UK to abolish VAT on sanitary products.
>
> To that end, I undertake to raise the issue with the European Commission and with other member states, and to set out the view, which has been reflected in this debate, that it should be possible for a Member State to apply a zero rate to sanitary products … I do not want to conceal from the House the fact that we do not have flexibility in these circumstances. Nor do I want to conceal the challenge that we would face in reaching agreement on this … It was striking that [a] vote in the French Assembly just a couple of weeks ago on an attempt to move the rate down from 20% to 5.5% was defeated. I do not wish to pretend that this would be a mere formality; other member states do take a different approach to this issue.
>
> **Paula Sherriff**: If the Minister is pledging to start negotiations, will he also give us a clear commitment to come back and update the House, and if so, will he tell us exactly when he will do so?
>
> **Mr Gauke**: I would certainly be happy to update the House on any developments at any stage, as and when they might occur. I am happy to give the hon. Lady that reassurance.[71]

The then Chancellor, George Osborne, presented the Government's Spending Review & Autumn Statement to the House on 25 November 2015. In his statement the Chancellor announced a new scheme to provide grants for women's charities, funded by receipts from VAT on sanitary protection:

> Some 300,000 people have signed a petition arguing that no VAT should be charged on sanitary products. We already charge the lowest rate—5%—allowable under European law and we are committed to getting the EU to change its rules. Until that happens, I will use the £15 million a year raised from the tampon tax to fund women's health and support charities. The first £5 million will be distributed between the Eve Appeal, SafeLives, Women's Aid, and The Haven, and I invite bids from other such good causes. It is similar

[71] HC Deb 26 October 2015 c126. In the event Ms Sherriff's new clause was defeated by 305 votes to 287 (*op.cit.* c137).

> to the way we use LIBOR fines—and today I make further awards from them, too.[72]

As Mr Osborne said, the Government had been using monies raised by LIBOR fines to make grants to military charities. In the past this was informal process, though subsequently the Government introduced a formal application procedure.[73]

Following Mr Osborne's statement, Jess Phillips MP asked the Chancellor how this funding scheme would operate:

> **Jess Phillips** : I very much welcome the Chancellor's announcement about how the tax that I pay on my sanitary products will now be spent on women's health charities. Will any of that money be spent on domestic and sexual violence charities…?
>
> **Mr Osborne**: The £15 million from the tampon tax will be available to charities that support women: not just women's health causes but domestic violence causes, where they do brilliant work. I have announced the allocation to four charities, some of which are already involved in domestic abuse prevention. Having listened to the hon. Lady over the past few months as a new Member of Parliament, I suspect that we will not agree on many things in this Parliament, but if she has some good causes that she would like to be funded by this money, I will take a very serious look at them.[74]

The Autumn Statement indicated that further grants would be announced in the Budget in March 2016,[75] and the Treasury set up an email account to receive applications.[76]

In October 2015 the European Commission confirmed that, as part of its work programme for 2016, it would present an initiative on VAT rates.[77] The Tax Journal argued that the review "represents a reversal of the position of the EC on reduced VAT rates. Since as recently as 2013, the EC had been calling for a full withdrawal of the use of reduced VAT rates based on them being a distortion of the single market for goods and services."[78] The *Financial Times* reported that the review "will consider whether states could have greater powers over the VAT rates of specific products. Member States would have the 'leverage' to raise specific concerns, for example over women's sanitary products."[79] Subsequently the Government confirmed that it had made the

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72 HC Deb 25 November 2015 c1368

73 PQ44173, 7 September 2016; HMT, *LIBOR Funding*, November 2017. The Fund made grants over the period 2012-2107 (see, *Support for UK Veterans*, Commons Briefing paper CBP7693, 5 November 2019 – specifically section 5.4).

74 *op.cit.* c1394

75 Cm 9162, November 2015 p40

76 PQ23768, 27 January 2016

77 European Commission, *Commission Work Programme 2016*, COM(2015) 610 final, 27 October 2015 p8

78 "EU reduced VAT rates review", *Tax Journal*, 31 October 2015

79 "Britain could drop VAT on sanitary products", *Financial Times*, 28 October 2015

case that the review should consider the VAT treatment of sanitary protection.[80]

Writing on the issue in the paper a few days after the Commons vote, Giles Wilkes suggested that the controversy illustrated “that VAT exemptions occupy a middle ground between politics and economics”:

> The EU origin of the VAT restrictions led to last week’s Commons debate being portrayed as national sovereignty versus Brussels’ over-reach, with the campaign to exempt female sanitary products attracting support from eurosceptic Conservatives as well as politicians from the Green party, Scottish National party and Labour. Analysts, however, say such rules are essential to maintain the integrity of the EU’s single market. Varying rates of VAT could otherwise become trade tariffs by another name …
>
> Such rows are a reminder that VAT exemptions occupy a middle ground between politics and economics. Politicians like to deploy them as a tool for pleasing a particular constituency but tax experts complain that by altering prices, differential rates make compliance more costly to enforce. They also distort consumers’ decisions towards buying one item over another, muffling the price signal provided by the underlying cost of the product.[81]

3.2 Budget 2016

In his Budget statement on 16 March, the Chancellor did not address the question of zero-rating sanitary protection, though he announced a second series of grants from the ‘Tampon Tax Fund’ worth £12m.[82]

After any Budget, prior to the introduction of the annual Finance Bill, the Government is required to obtain the House’s approval of a series of Ways and Means Resolutions. Broadly speaking these resolutions allow for provisions to be included in the Bill that will impose a new tax, renew an annual tax, or to increase or widen the burden of an existing tax. They are formally moved at the end of the debates on the Budget, when the House will divide on a number of these reflecting the major or most controversial aspects of the Budget.[83]

Usually the first of these is an “Amendment of the Law” Resolution, which is slightly different. It makes general provision for the law regarding public

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80 PQ16882, 26 November 2015

81 “Tax row throws spotlight on EU VAT anomalies”, *Financial Times*, 1 November 2015

82 HC Deb 16 March 2016 c964. For a list of grant recipients see, *Budget 2016*, HC901, March 2016 para 2.16 Some details of how successful bids were chosen have been given in answer to PQs: PQ31498, 23 March 2016; PQ41191, 5 July 2016

83 For more details see, *The Budget and the annual Finance Bill*, Commons Briefing Paper CBP813, 17 December 2020.

finance to be amended, and allows for the Bill to contain provisions that give relief from tax or which deal with tax administration. It also restricts the scope for amendments to be tabled to the Bill – usually in respect to VAT, to stop the progress of the Bill being bogged down by a wish list of amendments to lower VAT on selected goods or services.[84] In December 1994, in a striking departure from precedent, the House voted to *amend* the Amendment of the Law resolution, following the debates on the Budget on 29 November 1994. The then Conservative Government had intended increasing the rate of VAT on domestic supplies of fuel & power from 8% to the standard rate – which was then 17½%. However, there proved to be sufficient back bench support to force the Government to freeze the rate at 8%.[85]

Following the 2016 Budget, a cross-party number of Members put down a similar amendment so as to allow for zero-rating sanitary protection.[86] A second amendment was tabled by the Labour front bench, with cross-party support, to block changes the Government had planned to make to the 5% VAT rate on energy-saving materials following a ruling by the European Court of Justice.[87]

In the days between the Budget statement and the conclusion of the Budget debates, the Prime Minister attended the European Council, which met over 17/18 March 2016. Although most of its deliberations concerned migration and the impact of the war in Syria, in its formal conclusions it noted: “the Commission intends to publish shortly a communication on an action plan on VAT. It welcomes the intention of the Commission to include proposals for increased flexibility for Member States with respect to reduced rates of VAT, which would provide the option to Member States of VAT zero rating for sanitary products.”[88] This part of the statement was mentioned by the Prime Minister when he gave a statement to the House on the outcome of the Council meeting, the day before the conclusion of the Budget debates:

> [At the Council] I took the opportunity to deal with a long-standing issue we have had about the VAT rate on sanitary products. We have had some EU-wide VAT rules in order to make the single market work, but the system has been far too inflexible, and this causes understandable frustration. We said we would get this changed and that is exactly what we have done.
>
> The Council conclusions confirm that the European Commission will produce a proposal in the next few days to allow countries to extend the number of zero rates for VAT, including on sanitary products. This is an important breakthrough. Britain will be able to have a zero rate for sanitary products, meaning the end of the tampon tax. On this

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84 In recent years the Government has not tabled this type of Budget resolution (see, ; *Erksine May* 25th edition 2019 para 36.38).

85 Subsequently the Labour Government cut the rate of VAT to 5% after the 1997 General Election.

86 See, Order of Business: 22 March 2015 OP No.131 Part 1

87 Further details are in HM Revenue & Customs’ consultation on complying with the Court’s judgement (December 2015).

88 European Council press release 143/16, *European Council conclusions 17-18/3/2016*, 18 March 2016

> basis, the Government will accept both the amendments tabled to the Finance Bill tomorrow night.[89]

Treasury Minister David Gauke confirmed earlier the same day that "new evidence" had emerged, so that the Government would not make any immediate changes to VAT on energy-saving materials.[90]

In the event this amendment to the Amendment of the Law Resolution was agreed without a vote.[91] During the debate Paula Sherriff asked "what will happen to those women's charities that have benefited from the tampon tax fund since the autumn statement back in November?" Closing the debate Treasury Minister Greg Hands responded to the point saying, "That was a one-year bidding process, and all the organisations will get the money that we announced on Wednesday."[92]

The Finance (No.2) Bill 2015/16 was published on 24 March; clause 115 provided for a zero rate to apply to those sanitary products currently charged 5%, with effect from a date to be specified in regulations.[93] HMRC published a tax information & impact note at the time which stated it "is likely to affect 18 million women mainly of child bearing age. They will be able to acquire supplies of their sanitary products at a lower cost provided their supplier passes on the VAT reduction." It notes that cutting VAT in this way "is expected to decrease receipts by approximately £15m per annum", though "the final costing will be subject to scrutiny by the Office for Budget Responsibility."[94]

This clause was debated and agreed at the Committee stage of the Bill on 7 July 2016.[95] Speaking for the Opposition on this occasion, Rebecca Long Bailey asked about the implications of the EU referendum vote on the introduction of the zero rate, and the prospects for the 'Tampon Tax Fund' in the longer term. In response Treasury Minister David Gauke said the following:

> In May, ECOFIN [the Council of European Finance Ministers] unanimously agreed that the Commission should bring forward proposals as soon as possible to allow member states to apply a zero rate to women's sanitary products.[96] The next step in the process is for a proposal to be published by the Commission, which it has committed to do before the end of this year. We are working with the Commission to expedite that process, so that the proposal is

89 HC Deb 21 March 2016 cc1245-6

90 HC Deb 21 March 2016 c1233. Subsequently the Government introduced secondary legislation to amend the scope of the 5% rate; for details see, *VAT on solar panels*, Commons Briefing paper CBP8602, 17 December 2019.

91 Votes & Proceedings, No.137, 22 March 2016

92 HC Deb 22 March 2016 c1419, c1478

93 "Clause 155: VAT – women's sanitary products", *Finance (No.2) Bill 2015-16: Explanatory Notes (Bill 155 EN)*, 24 March 2016

94 HMRC, *VAT: zero-rating of women's sanitary products: tax information & impact note*, 24 March 2016

95 Public Bill Committee (Finance Bill), *Fifth sitting*, 7 July 2016 cc140-147

96 [see ECOFIN press release 284/16, 25 May 2016]

> brought forward as soon as possible. To ensure that there is no delay in zero-rating women's sanitary products for VAT at the earliest opportunity, we have included this clause in this year's Bill …
>
> I wrote to European Commissioner Pierre Moscovici in May, seeking the early publication of a proposal that would set a date for introduction. He confirmed that a proposal would definitely be provided before the end of the year. Discussions continue between ourselves and our EU partners to ensure that a proposal is published as soon as possible, and we are confident about those assurances … I am optimistic that we will have the measure in place by 1 April 2017 …
>
> The Chancellor committed to [the tampon tax fund] continuing for the duration of this Parliament, or until we could introduce a zero rate for women's sanitary products. We are in sight of introducing a zero rate for women's sanitary products. Once the measure is introduced, the Chancellor will decide whether to continue funding women's charities in that way. I cannot provide any more clarity than that, as the decision will have to be made in the future.[97]

Both issues were also raised at the report stage of the Bill on 5 September. The new zero rate is to come into effect from a date to be specified in regulations, and the Government tabled an amendment so that this date could not be "after the later of 1 April 2017 and the earliest date that may be appointed consistently with the United Kingdom's EU obligations."[98] On this occasion Treasury Minister Jane Ellison set out the Government's reasons for opposing amendments tabled by Paula Sherriff and by Christopher Chope to have the Act specify a single fixed date:

> Prior to the referendum we received assurances from the Commission that it would publish a legislative proposal [to allow zero-rating] … at the earliest opportunity and definitely before the end of this year. When the Government introduced the Finance Bill, they expected to be able to apply the zero rate soon after Royal Assent …
>
> I reassure those Members who have tabled amendments and all other hon. Members that we will not rest on the issue. The Government will continue to push for the proposal to be brought forward and agreed to as soon as possible. However, until we leave the EU we need the legislative change to introduce zero-rating; until we have it, fixing a date risks contravening EU law at a time when we are entering critical negotiations with the EU about our future …
>
> We would risk jeopardising our negotiating position by pre-empting EU legislation on sanitary products. We would also risk the UK's rights in other areas where we expect other EU member states and

[97] *op.cit.* cc145-6

[98] HM Treasury, *Explanatory Note - Amendment 161 to Clause 125: VAT: Women's Sanitary Products*, September 2016

> the Commission to respect their obligations to us … We must act in good faith towards our European partners. That is why the Government have proposed an alternative amendment that delivers on the intentions of the hon. Member for Dewsbury but ensures consistency with EU law.[99]

In the event the House rejected an amendment tabled by Ms Sherriff to set 1 April 2018 as a statutory deadline for the new zero rate, and agreed the Government's amendment.[100] The Minister was also asked about the 'Tampon Tax Fund', and on this Ms Ellison said, "we are committed to the fund and respect greatly the work of those who have campaigned on this issue."[101]

3.3 Recent developments

The Tampon Tax Fund

Since the 2016 Budget, the Tampon Tax Fund has continued to offer annual rounds of grant funding,[102] although responsibility for administering the Fund has passed from the Treasury to the Department for Culture, Media & Sport (DCMS).[103] In November 2020 DCMS announced the most recent round of successful grants worth £15m in total.[104]

In answer to PQs about the grant making process Ministers have said, "all applications into the fund were assessed by officials against three criteria: evidence for the need of the project: the organisation's ability to deliver; and the sustainability/impact of the project, and were then vetted by officials before they were signed off."[105] Ministers have also answered questions on the purpose of the Fund; for example,

> **Mrs Emma Lewell-Buck** : To ask the Secretary of State for Digital, Culture, Media and Sport, what assessment he has made of the potential merits of restricting the Tampon Tax Fund to charities which specialise in women's issues.
>
> **Mims Davies** : The purpose of the Tampon Tax Fund is to allocate the funds generated from the VAT on sanitary products to projects that improve the lives of disadvantaged women and girls. The existing

[99] HC Deb 5 September 2016 c169
[100] *op.cit.* cc172-6
[101] *op.cit.* c171
[102] DCMS press notice, *Charities across the UK benefit from Tampon Tax Fund*, 30 March 2017, *Women and girls set to benefit from £15 million Tampon Tax Fund*, 26 March 2018, *Charities encouraged to bid for £15 million Tampon Tax Fund*, 29 November 2018
[103] DCMS press notice, *Tampon Tax Fund opens for new bids*, 1 December 2016
[104] DCMS press notice, *Thousands of women and girls to benefit from £15m Tampon Tax Fund*, updated 4 December 2020; PQ121929, 2 December 2020
[105] PQ71181, 26 April 2017; PQ110540, 3 November 2017. See also PQ118935, 18 December 2017; PQ121287, 15 January 2018

> criteria for the Fund - with the focus on onwards grants to small and medium sized charities and direct support for vulnerable women and girls - maximise the reach and impact of the Tampon Tax Fund across the UK. Whether directly or through onwards grants, tampon tax fund is exclusively made available to projects that support vulnerable women and girls.[106]

In answer to earlier PQs Ministers have stated there is no regional breakdown of the grants as "the Tampon Tax Fund is UK-wide and many of the projects operate across the UK."[107] The Department published an FAQ document alongside the 2020 funding round, which addressed this issue:

> **Geographical reach of proposed projects**
>
> The Tampon Tax Fund is a United Kingdom-wide fund.
>
> DCMS will ensure a fair distribution of funding reaches beneficiaries in England, Scotland, Wales and Northern Ireland. As such, we are seeking to award funds to a range of organisations that collectively support the whole of the United Kingdom.
>
> Individual organisations do not need to have a national remit but must demonstrate how proposed activities will be delivered across a number of regions or, where possible, more than one of England, Scotland, Wales and Northern Ireland.
>
> Additionally, all applicants must demonstrate that they have planned how lessons learnt from the funded work will be disseminated through relevant networks. If the work addresses issues specific to one of the four United Kingdom nations lessons learned or insights should be applicable elsewhere.

The briefing also underlined that "the Fund's purpose is not awareness-raising or campaigning":

> The purpose of the Tampon Tax Fund is to allocate the funds generated from the VAT on sanitary products to front line projects that directly improve the lives of disadvantaged women and girls. The Fund's purpose is not awareness-raising or campaigning.
>
> Successful applicants can use Tampon Tax Funding to promote their project to potential beneficiaries, and to organisations and individuals which may refer beneficiaries to the project, i.e. successful applicants may raise awareness of the project and the services provided by that project.
>
> As part of a funded project, Tampon Tax funds may be used to provide vulnerable and disadvantaged women with one to one

[106] PQ247081, 29 April 2019

[107] PQ171352, 24 September 2018

> support, including advocacy to access services, for example by attending sessions with her to help her to ensure she can clearly express her needs.
>
> However, the following can not be funded by the Tampon Tax Fund: activity intended to influence or attempt to influence Parliament, government or political parties, or attempting to influence the awarding or renewal of contracts and grants, or attempting to influence legislative or regulatory action.[108]

Following the introduction of the zero rate on 1 January 2021 – discussed below – on 21 May DCMS launched the final round of Tampon Tax Funding.[109] Applications closed on 4 July. DCMS anticipate that individual grant agreements will be finalised with successful applicants in Autumn 2021.[110]

The new zero rate

Turning to the issue of zero-rating, in the past the Government's position has been that it strongly supported the ongoing negotiations on changes to the EU VAT rules, and reiterated its commitment "to zero rate women's sanitary products as soon as it is legal to do so."[111] It has also stated that it would continue to fund the Tampon Tax Fund "until the UK is legally able to apply the zero rate. As such the Tampon Tax Fund, in its current form, will eventually come to an end. The most recent funding round allows organisations to use up to 10% of their grant money to build their sustainability."[112]

In October 2019 the UK concluded an updated Withdrawal Agreement (WA) and Political Declaration (PD) with the EU, and following Parliament's approval of the WA, the UK left the EU on 31 January 2020.[113] The UK has been required to remain compliant with EU law, including VAT law, during the 'transition period' – the period over which the UK is to negotiate a new UK-EU relationship.[114]

The Chancellor, Rishi Sunak, presented the 2020 Budget on 11 March, and in this he confirmed that a zero rate would be charged on sanitary products once the transition period ended.[115] As noted above, following the completion of the UK-EU Trade Cooperation Agreement and the end of the transition period, this new zero rate was introduced from 1 January.[116] As anticipated,

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108 DCMS, *Tampon Tax FAQs*, updated 21 May 2020

109 DCMS press notice, Final round of tampon tax fund launched, 21 May 2021. There is a pot of £11.25m for bids.

110 DCMS, Tampon Tax Fund 2021-2022 - Guidance for Applicants, updated 23 June 2021

111 PQ252004, 16 May 2019

112 PQ HL1673, 27 February 2020

113 For a narrative of events leading up to the UK's exit see, *Brexit timeline: events leading to the UK's exit from the European Union*, Commons Briefing paper CBP7960, 24 January 2020.

114 Letter from the Financial Secretary to the European Scrutiny Committee, "EU legislative proposals on VAT", 5 December 2018

115 HC Deb 11 March 2020 c284; see also, *Budget 2020*, HC 121, March 2020 para 1.176

116 HM Treasury press notice, *Tampon tax abolished from today*, 1 January 2021

secondary legislation to set the date for the zero rate to take effect was introduced on 23 December.[117] HMRC has published details of the coverage of the zero rate.[118]

In this context there have been some PQs asking about the scope of the zero rate, and, in particular, whether it does not cover period pants; two examples are reproduced below:

> **Sarah Olney** : To ask the Chancellor of the Exchequer, pursuant to the Answer of 2 November 2020 to Question 108277, what recent discussions he has had with the Secretary of State for Environment, Food and Rural Affairs on the potential merits of applying a zero rate of VAT to period pants for the purposes reducing the use of single-use plastics.
>
> **Jesse Norman** : Pursuant to the Answers of 2 November and 12 November 2020 to Questions 108277 and 113192, the scope of the new zero rate is defined by the existing five per cent reduced rate applied to women's sanitary products. This covers the supply of any sanitary protection product that is designed and marketed solely for the absorption or collection of menstrual flow or lochia, whether disposable or re-useable.
>
> The current relief specifically excludes articles of clothing, such as "period pants". Such exclusions are designed to ensure that the relief is properly targeted, since difficulties in policing the scope of the relief create the potential for litigation, erosion of the tax base and a reduction in revenue.[119]
>
> *
>
> **James Murray** : To ask the Chancellor of the Exchequer, for what reason the zero-rate of value-added tax for women's sanitary products is not applied to period pants.
>
> **Jesse Norman** : A zero rate of VAT has applied to women's sanitary products since 1 January 2021. This applies to those products which were previously subject to the reduced rate of 5 per cent, for example, tampons and pads, and to reusable menstrual products, such as keepers.
>
> The relief specifically excludes articles of clothing, such as "period pants". Such exclusions are designed to ensure that the relief is properly targeted, since difficulties in policing the scope of the relief create the potential for litigation, erosion of the tax base and a reduction in revenue. Under existing rules "period pants" may

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[117] Reg 3 of SI 2020/1642. See also HMT, *Overview of Tax Legislation & Rates*, March 2020 para 2.23

[118] HMRC, *Women's sanitary protection products – VAT Notice 701/18/02*, & *Revenue and Customs Brief 1 (2021): introduction of the zero rate of VAT for women's sanitary products*, 4 January 2021

[119] PQ113617, 16 November 2020

> already qualify for the zero rate, if they have been specifically designed to be worn by a child, meet the sizing criteria, and are held out for sale specifically for use by girls under the age of 14 years old. Details are provided in VAT Notice 714: young children's clothing and footwear.[120]

Unsurprisingly in the context of the emerging coronavirus pandemic, there was little coverage of the Chancellor's announcement in the 2020 Budget. That said, with the introduction of the zero rate, Jill Rutter, senior fellow at the Institute for Government, posted some interesting reflections on the campaign for zero-rating, and the fact that the Chancellor now has full discretion to set VAT rates:

> Everyone is piling in on the govt on its abolition of VAT on tampons.. a few thoughts from a former (very former) HMT official
>
> When the UK joined the EU we were allowed to retain zero rating on items that had not been subject to tax previously. But we were not allowed to introduce any new ones. And any decision to end zero rating was not reversible. As a young HMT official in the 1980s I had to sign off lots of letters arguing that we didn't zero rate other sanitary products that men used (soap? shaving foam? Brut?) -- but we could always blame the EU. That is why govts cd never introduce a zero rate on sanitary products - and why once they had decided to apply VAT to fuel and power Gordon Brown could reduce it to the minimum allowable reduced rate but not to 0% ...
>
> Of course its a historical accident that UK had a rather primitive attitude to sanitary products - may be reflecting the dearth of female ministers and senior officials at HMT in the 1970s when VAT was introduced. But the CX may find his new found freedom is a pain rather than a pleasure.. its very easy to resist lobbies to reduce/zero rate everything that moves with a "I would, but the EU....". Chancellors will now have to explain why they won't move ... Particularly important when at some point the Chancellor will need to raise taxes.[121]

The Treasury's estimate of the annual Exchequer cost of cutting VAT from 5% to zero remains £15m.[122] As with all Budget measures the Office for Budget Responsibility (OBR) has assessed how much reliance one can put to this costing, and in this case, states that the level of uncertainty is 'medium-low'.[123]

HMRC has not revised its impact note on this measure, which was published alongside the 2016 Budget. This noted that setting a zero rate would mean

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[120] PQ145167, 2 February 2021. See also, PQ884, 17 May 2021

[121] Jill Rutter, Twitter, 3 January 2021

[122] *Budget 2020*, HC 121, March 2020 p66 (Table 2.1 – item 17); HMT, *Budget 2020: policy costings*, March 2020 p14

[123] OBR, *Economic & Fiscal Outlook*, CP230, March 2020 p179 (Table A.2 – item 17)

that "18 million women mainly of child bearing age … will be able to acquire supplies of their sanitary products at a lower cost **provided** their supplier passes on the VAT reduction."[124]

Commenting on the new zero rate in the Tax Journal, Heather Self (Blick Rothenberg) suggested this was far from certain: "anecdotal experience … suggest that suppliers will keep some or all of the savings." Ms Self went on to note that debates as to the coverage of zero rating reflected the fact that "every change [in tax policy] is assessed for its impact on different sectors of society as if that was the only tax that people pay":

> It is often suggested that putting up VAT will hit the poor hardest (think 'pasty tax'), even though those with more income spend more and so pay more VAT. But if the government were to standard rate all zero-rated items, and spend the extra revenue on improving universal credit and child benefit, the combined effect of the changes would almost certainly be progressive, not regressive.[125]

Ms Self noted that a wider discussion of these issues was provided in a paper in the British Tax Review,[126] and one of the authors, Professor Rita de la Feria, Chair in Tax Law at the University of Leeds, wrote a piece for the Oxford Centre for the Business Taxation, strongly critical of the case that had been made for this change; part of this is reproduced below:

> There is now an overwhelming body of evidence against the use of exclusions from the VAT base to achieve social and distributional aims. First because, for exclusions from the base to achieve distributional and social aims, the decrease in the tax rate must be passed on to consumers in the form of price reductions. Theoretically this should be (mostly) the case, but there is now a wealth of studies showing that prices tend not to fully reflect reductions in VAT …
>
> Second, even assuming that the decrease in VAT will affect prices, richer women are much more likely to benefit, than poorer women … Consumption, even of essential items, is overwhelmingly done by the highest income households, so when there is a VAT reduction it is those households that benefit the most.
>
> Third, the costs of reduced rates must also be considered. Tax expenditures resulting from the application of exclusions from the VAT base tend to be extremely significant. … Finally, there are the significant spillover costs. Most have heard of the (in)famous Jaffa

[124] HMRC, *VAT: zero-rating of women's sanitary products: tax information & impact note*, 24 March 2016 **emphasis added**

[125] "Self's assessment: the tampon tax – does it matter?", *Tax Journal*, 12 January 2021

[126] Rita de la Feria (University of Leeds) & Michael Walpole (UNSW Australia Business School): "The Impact of Public Perceptions on General Consumption Taxes", (2020) *British Tax Review* 67/5, 637-669

> Cakes case, but few realise that this case is just the tip of a very big iceberg of litigation regarding VAT classification problems …
>
> There is therefore a strong – and progressive - case for applying a standard rate of VAT to women's sanitary products, whilst targeting low income households for assistance combating "period poverty", for example by providing free sanitary products in state schools.[127]

The Chancellor Rishi Sunak presented the 2021 Budget on 3 March.[128] The Budget made no mention of this issue, but just before the Budget the Treasury Select Committee completed an inquiry, Tax after Coronavirus, which looked, in part, at priorities for tax reform. The Committee observed that the use of zero and reduced VAT rates created economic distortions, and, even though even it welcomed the new zero rate on sanitary protection, it recommended the Government set out a "framework within which new reliefs can be assessed or existing ones withdrawn":

> We welcome the increased flexibility that the UK Government has to set VAT rates–for example we welcome the abolition of the "tampon tax". We recognise that the VAT system is complicated and that the zero and reduced rates, together with the exemptions, create economic distortions. We also recognise, however, that in political terms simplification through removing exemptions and zero rates is likely to be very hard to deliver. We do not recommend any significant changes to the scope of VAT.
>
> The Government should, following consultation, set out principles and objectives for the VAT system now that VAT is free from EU law. This should include a framework within which new reliefs can be assessed or existing ones withdrawn. The Government should ensure that the principles balance revenue raising, economic growth and other objectives, such as improving the quality of the environment and "levelling up".[129]

The Committee published the Government's response on 2 June.[130] In his letter to the Committee the Financial Secretary addressed this recommendation regarding VAT as follows:

> Following the end of the transition period, the UK is free to set its own VAT and excise rules. The Government is already using that freedom to create a fairer and more robust tax system, which complies with World Trade Organisation rules and other international obligations. The Government introduced changes effective from the end of the transition period in respect of goods

[127] Rita de la Feria, "Why We Should All Worry About the Abolition of the Tampon Tax", Oxford Centre for Business Taxation blog, 8 March 2021

[128] HC Deb 3 March 2021 cc251-262

[129] Treasury Committee, *Tax after Coronavirus*, HC 664, 1 March 2021 paras 180-1

[130] Treasury Select Committee press notice, *Government responds to Treasury Committee's Tax After Coronavirus report*, 2 June 2021

> from overseas suppliers, including changes to how VAT is paid on low value consignments. The Government has also implemented other VAT and excise changes which came into effect on 1 January 2021, including changes to passengers policy and the zero rating of women's sanitary products. As announced at Budget 2020, the Government is also currently undertaking a review of alcohol duty, a review of the UK funds regime including the VAT treatment of fund management fees, and establishing an industry working group to review how financial services are treated for VAT purposes. The Government keeps all tax policy under review, including all tax reliefs. As part of the established tax policy making process, the Government consults on new tax policy including reliefs and conducts monitoring and evaluation of existing reliefs. Tax reliefs are implemented through the Finance Bill, which is scrutinised by Parliament to ensure that reliefs, and tax policy in general, are well-designed and effective.
>
> As Budget 2021 acknowledged, VAT makes a significant contribution towards the public finances and the Government intends VAT to remain a broad-based tax on consumption where the standard rate of 20% applies to most goods and services. VAT is the third biggest tax head, and an important source of revenue for the Exchequer, raising approximately £130 billion in 2019/2020. Any further changes to VAT rules would need to be considered very carefully, as part of the normal fiscal events process.[131]

For its part the Committee expressed the view that while the Government had not explicitly rejected a number of its recommendations, "it does not agree to implement them and is unclear about why." As an example, in the case of VAT, "the Government provides general background about its current approach to VAT but fails to explain why it is not minded to accept our recommendation that it should set out principles and objectives for the VAT system now that VAT is free from EU law." The Committee went on to recommend that the Government provide a clearer explanation of its position, but to date Ministers have not given a response.[132]

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[131] Treasury Select Committee, *Tax after Coronavirus: the Government's response*, HC 14, 2 June 2021 pp13-14

[132] *op.cit.* p7