

The Style for VAT Regulations

The importance of adequate guidance to taxpayers and the tax authorities is significant with a transactional tax like VAT because registered suppliers of goods and services must know the VAT consequences of their transactions by, at the latest, when they issue the related invoice or charge the price to their customers. The suppliers generally are not in a position to adjust, at a later stage, the tax charged to their customers if they discover that the initial charge was incorrect. Guidance as to the correct application of VAT rules is particularly important in countries where a large percentage of registered suppliers are relatively small businesses that cannot afford to hire professionals to resolve the VAT issues that they face in day-to-day business.

While the VAT Act is the primary legal source, additional interpretative guidance is usually needed. There are a variety of instruments relied on by tax authorities to provide guidance on VAT issues. They include, most significantly, regulations, but may also include explanatory notes, rulings, practice notes, and other less formal notices of the tax authorities' positions on a variety of VAT issues. Regulations generally represent the highest level of interpretative guidance from the tax authorities or Ministry of Finance, although rulings may be accorded almost equal weight in some countries. This column focuses on the style of regulations in select English-speaking countries.

In this column, I classify regulations (and other guidance that serves that purpose), into three different styles: the United Kingdom statutory form, the Dominica (American-style) expository form, and the Australian "plain English" form of regulations. They each have advantages and disadvantages. The large majority of English-speaking countries follow the UK statutory style. While many of these countries cannot explain why the UK style should always be followed, most are not willing to depart from "tradition."

I will briefly illustrate the differences between these three styles. The traditional content and form of the style of the UK regulations limit the nature of the guidance provided. The UK-style regulations do not include examples. In addition, by tradition, each subpart of a regulation is limited to a single sentence. The resulting language may be "forced", awkward, or "run on". As an example, the following UK VAT Regulation covers the VAT treatment when a previously written-off bad debt is recovered.¹

- (1) Where a claimant –
 - (a) has received a refund upon a claim, and
 - (b) either –
 - (i) a payment for the relevant supply is subsequently received, or
 - (ii) a payment is, by virtue of regulation 170, treated as attributed to the relevant supply,
 he shall repay to the Commissioners such an amount as equals the amount of the refund, or the balance thereof,

multiplied by a fraction of which the numerator is the amount so received or attributed, and the denominator is the amount of the outstanding consideration.

- (2) The claimant shall repay to the Commissioners the amount referred to in paragraph (1) above by including that amount in the box opposite the legend "VAT due in this period on sales and other outputs" on his return for the prescribed accounting period in which the payment is received.
- (3) Save as the Commissioners may otherwise allow, where the claimant fails to comply with the requirements of regulation 167, 168, 169 or 170, he shall repay to the Commissioners the amount of the refund obtained by the claim to which the failure to comply relates; and he shall repay the amount by including that amount in the box opposite the legend "VAT due in this period on sales and other outputs" on his return for the prescribed accounting period which the Commissioners shall designate for that purpose.
- (4) If at the time the claimant is required to repay any amount, he is no longer required to make returns to the Commissioners, he shall repay such amount to the Commissioners at such time and in such form and manner as they may direct.

The Dominica regulations adopt the expository style. On the recovery of a bad debt previously written off for VAT purposes, the Dominica regulations provide:

If a registered person recovers any portion of a debt that gave rise to a bad-debt deduction, under section 27(12) of the Act, the registered person must report the following amount as tax on a taxable supply (output tax) in the tax period in which the debt is wholly or partially recovered. The amount reportable is calculated according to the formula $A \times B/C$, where –

- A is the section 27(9) of the Act allowable input tax deduction for the bad debt,
- B is the amount of the recovered bad debt, and
- C is the total bad debt written-off.

For example, if the original input tax deduction for the bad debt was ECD 1,500, the recovery was ECD 3,000, and the bad debt written-off was ECD 10,000, the output tax reportable on the recovered bad debt is $1,500 \times 3,000/10,000$, or ECD 450. A claw-back of VAT resulting from a recovery of a previously deducted bad debt is required, even if the supplier is no longer registered for VAT purposes.

The Australian "plain English" style may, in part, have been a response to (or dissatisfaction with) the statutory style of law and regulations that Australia inherited from the United Kingdom. The Australian approach is designed to make the law and guidance more accessible to users. My quarrel with the Australian style stems, in part, from the style of the VAT Act, as well as the split between the guidance issued as regulations and issued as rulings by the Australian Tax Office. In some cases, the guidance in one part of a regulation or ruling cannot be understood

* Member of the editorial board of the *International VAT Monitor*.

1. SI 1995/2518, Reg. 171, Bad-Debt Relief (The new scheme).

unless the user reads the cross-referenced language of the GST Act itself.²

In Australia, bad-debt recovery guidance is provided by a ruling, not a regulation. I will therefore use a different subject (what is a financial supply) to illustrate the style of the Australian GST regulations.³

When supply may be financial supply (Act s 40-5)

- (1) For subsection 40-5(2) of the Act, a supply is a financial supply if the supply is mentioned as:
 - (a) a financial supply in regulation 40-5.09; or
 - (b) an incidental financial supply in regulation 40-5.10.
- (2) However, if a supply is mentioned in regulations 40-5.09 and 40-5.12, that supply is not a financial supply.

The Australian style of regulation requires the reader to go back and forth among several regulations in order to determine whether a particular supply is or is not a financial supply within the meaning of a specific provision of the VAT Act.

In my view, the Dominica expository style is more user-friendly for the tax authorities, taxpayers, and tax professionals. As abuses in the VAT system accelerate, it becomes more important that the tax authorities remain nimble in addressing those abuses. If a regulation is not under-

standable without adding an explanatory note or other explanatory material, to the extent possible, the regulations should include that expository material. While an explanatory note may not have the authoritative status of a regulation, the problem is solved by incorporating expository material in the regulation.

I favour more flexibility in designing the style of VAT regulations. The more complex the issues the regulation must address, the more useful is the Dominica (expository) approach. The aggregation of all guidance on a single section of a VAT and the use of examples make expository regulations more user-friendly. The use of the UK statutory style of regulations may have advantages in some cases but, ultimately, what is best for any country depends on the complexity of the VAT system and the sophistication of the tax authorities, taxpayers, and tax advisers. Following the leader (the United Kingdom) is not always the best approach.

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2. Richard Krever has done an excellent job, in his "GST Legislation Plus", integrating in an understandable form, for each section of the Act, the regulations, rulings and other guidance.
 3. Australian GST Regulation 40-5.08.

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VAT Law Link

- Links the provisions of the current Community VAT Directive, Directive 2006/112, to the corresponding provisions of national VAT legislation of the EU Member States.
- Links the provisions of the national VAT legislation of one Member State to the corresponding national provisions of another Member State, through the relevant provision of Directive 2006/112.
- Contains national VAT legislation in both the official national language(s) and in English.

Contents
Directive 2006/112: VAT Law Link contains the current, consolidated text of the Community VAT Directive in 22 official languages.

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