

Zero-rating of e-publications

Updated on 10 August 2020 by Andrea Marshall, BUFDG Tax Specialist

Contents

Zero-rating of e-publications	1
Introduction	2
What are the legislation changes?	2
What supplies are included within the zero-rate?	2
What if the supply is of resources with different VAT liabilities?	3
Will there be an actual reduction in the amount paid for e-publication licences?	5
At what point will VAT no longer be due?	5
Will this impact on the cost of supplies from overseas?	5
Can an adjustment be made for reverse charge VAT that has been paid on supplies that relate to 1 May 2020 onwards?	6
What is the impact on News Corp Claims?	6
How should supplies of lending e-publications be treated?	7
What is the liability if I lend or charge for part of an-e-publication?	7
Has there been any clarification of how this will apply to “read and publish” agreements?	8
What do you need to do next?	8
Short Term action	8
Raising Awareness.....	8
System changes.....	8
Other areas	9

Introduction

The Chancellor announced on 30 April 2020 that the zero-rating of e-publications, due to be introduced on 1 December 2020 was being brought forward to **1 May 2020**. This is an exciting development for the HE sector, where VAT incurred on e-publications has often been a non-recoverable cost.

These changes will impact on the VAT liability of supplies **to or by** universities and their subsidiaries with a tax point (see below) on or after 1 May 2020. The supplies must be eligible for zero-rating and it is clear that a proportion of supplies will be still be subject to the standard-rate of VAT.

The following article provides analysis of the changes and the issues that universities and subsidiaries now need to consider.

What are the legislation changes?

[Group 3 of Schedule 8 to the Value Added Tax Act 1994](#) has been amended by statutory instrument.

What supplies are included within the zero-rate?

HMRC has updated [Public Notice 701/10, Zero rating books and printed matter](#), introducing Section 9 that deals with E-publications and its internal manual at [VBOOKS8490](#).

Included within the definition of an e-publications are:

- books
- booklets
- brochures
- pamphlets
- leaflets
- newspapers
- journals and periodicals - including magazines
- children's picture and painting books
- music manuscripts, amps and charts when in one of the above forms (see [VBOOKS8519](#))

The following supplies are **not**, however, eligible for zero rating:

- publications that are designed predominantly to be completed (except for children's picture and painting books)
- advertising
- audiobooks
- supplies of intellectual property in an electronic format
- plans or drawings for industrial, architectural, engineering, commercial or similar purposes
- e-readers
- software or apps.

A full list of [“common items of printed matter”](#) with a guide as to the VAT liability that applies to them can be found in Section 8 of Public Notice 701/10.

HMRC has confirmed to BUFDG and within [VBOOKS8505](#) that it is not necessary for an e-publication to exist in printed form in order to qualify for zero rating.

What if the supply is of resources with different VAT liabilities?

Some supplies include resources that, with effect from 1 May 2020, will have different VAT rates: for example, e-book or e-journal subscriptions that include a written and audio version of the e-publication; databases, that include e-journals, videos, photos, poster, audio content, etc.

In the updated version of [Public Notice 701/10, Zero rating books and printed matter](#), the following has been included:

9.8 Subscriptions to access multiple e-publications

Where a business charges a fee to its customers to access a number of zero-rated e-publications, the supply will be zero-rated. Where a charge is made to access a mixture of standard and zero-rated e-publications, it will be necessary to apportion the fee between the standard and zero-rated elements on a fair and reasonable basis – refer to [Notice 700 section 31](#)

Notice 700 section 31, sets out two basic methods of apportionment – cost and market value. It also says “You do not have to use any of the methods shown here but, if you do use a different method, it must still give a fair result.”

If you are considering how to apportion a supply (including supplies bought in from overseas that are subject to the reverse charge), further guidance can be found within [VBOOKS8506](#), [VBOOKS8507](#) and [VBOOKS8515](#). These sections include 7 examples of the how to determine the liability of a supply and how to apportion mixed supplies, which may assist BUFDG members in determining the approach to take. Within these sections reference is made to methods based on content count, content cost and “a fair and reasonable assessment based on a sensible method”.

At a high level guide, the VAT liability that will apply to purchases or supplies of e-resources will be as follows:

<u>Category</u>	<u>VAT liability post 1 May 2020</u>
1. E-book or e-journal subscriptions	Zero-rated
2. E-book or e-journal subscriptions with other elements (e.g. an audio-book option)	<p>HMRC have advised that these will need to be apportioned between the standard and zero-rated elements. However, within VBOOKS8507, the following examples are given</p> <p><i>Example 2: A business supplies an e-audiobook that is narrated by a well-known actor. It is designed only to be listened to. Since this e-audiobook is wholly devoted to audio content, its supply will be standard rated for VAT purposes.</i></p> <p><i>Example 3: A business supplies an e-book that incorporates an audio function which enables the reader to listen to the book being read by a synthetic voice when they are tired of reading. The e-book is designed primarily to be read, and the audio function is incidental. Since this e-book is not wholly or predominantly devoted to audio content, its supply will be zero rated for VAT purposes.</i></p>
3. Databases that only offer e-book or e-journals (sometimes subscriptions are packaged as a “database” but in reality they are e-book and/or e-journal subscriptions)	Zero-rated
4. Databases where a range of materials are provided (e.g. journals, articles from journals, reports, images, extracts from encyclopaedias, videos, maps, audio, etc.)	<p>HMRC have advised that these will need to be apportioned between the standard and zero-rated elements. (For supplies subject to UK VAT, the supplier will need to determine this apportionment.) Paragraph 9.8 of 701/10 reads as follows:</p> <p><i>9.8 Subscriptions to access multiple e-publications</i></p> <p><i>Where a business charges a fee to its customers to access a number of zero-rated e-publications, the supply will be zero-rated. Where a charge is made to access a mixture of standard and zero-rated e-publications, it will be necessary to apportion the fee between the standard and zero-rated elements on a fair and reasonable basis – refer to Notice 700 section 31</i></p>
5. Databases that provide data analytics and a range of materials – mainly in the financial area	Standard-rated

BUFDG understands that some UK publishers are currently reviewing their various packages to determine the VAT liability that will apply.

Will there be an actual reduction in the amount paid for e-publication licences?

There appears to be an assumption within the policy paper and [The HM Treasury News story, “VAT Scrapped on E-publications” on gov.uk](#) that savings will be passed onto consumers. However, it will be prudent for universities and their subsidiaries to check the terms of agreements with suppliers to establish if they are drafted on a VAT inclusive or exclusive basis, or even if they are silent on VAT.

Where the agreed contract figure is exclusive of VAT, the VAT savings should be passed onto the consumer.

In the instances where a university and/or its subsidiaries make charges for supplies of e-publications, the contract terms entered into with customers should be checked to ensure that the correct charge is made going forward.

Please note that tuition fees (that include an element of e-publication charges) will not be impacted by these changes.

At what point will VAT no longer be due?

The change applies to supplies with a tax point on or after 1 May 2020. Where you pay or charge a monthly subscription on an ongoing basis, known as continuous supplies of services, the tax point is the earlier of the date of the invoice or receipt of payment.

However, if your supplier **was willing** to issue a credit note for supplies eligible for zero-rating that relate to 1 May onwards and reinvoice that proportion at the zero-rate, then the VAT saving can apply. This should have been done within 45 days of the rate change ([please see the guidance in paragraph 30.7.4 of Public Notice 700](#)), so credit notes should have been issued by 14 June 2020. However, BUFDG are aware that HMRC has granted some publishers an extension to this 45 day limit, so that they had until late July 2020 to issue credit notes. It is not clear if further time extensions have been granted.

In addition where the supply has been bought in from overseas and subject to the “VAT reverse charge” (or self-charge of VAT), it should be possible to claim back an element of the VAT that relates supplies from 1 May onwards (see *“Will this impact on the cost of supplies from overseas?”* below).

Will this impact on the cost of supplies from overseas?

Where e-publications have been bought in from overseas, it has until this change been necessary to apply the reverse charge (or self-charge) of VAT to the whole value.

With effect from 1 May 2020, the reverse charge adjustment will no longer be necessary for the elements of the supply that are eligible for zero-rating, such as e-journals. Careful consideration

should be given to the tax point for reverse charge supplies. This tends to be the date of payment, but further guidance [can be found in paragraph 15.12 of Public Notice 700.](#)

The impact of the tax point is that if the reverse charge tax point fell within the April 2020 VAT return then the reverse charge adjustment will be due on the full payment; if the reverse charge tax point falls within the July 2020 return then the reverse charge will only be due on the elements of the payment that is not eligible for zero-rating (e.g. audio book licences.)

BUFDG members should consider how to apportion between the zero and standard rated elements based on the above section [“What if the supply is of resources with different VAT liabilities?”](#)

Can an adjustment be made for reverse charge VAT that has been paid on supplies that relate to 1 May 2020 onwards?

Where a university or its subsidiary has applied the reverse charge, an element of the supply relates to 1 May onwards and includes resources that are eligible for zero-rating, then you can claim this VAT back from HMRC.

Ideally, this adjustment should be put through on your July 2020 VAT return, however, some universities are having difficulties accessing records as staff work remotely due to the COVID-19 crisis. HMRC have advised that such an adjustment is subject to the 4 year cap. (If you have already made a protective claim for these supplies, please see the [“What is the impact on News Corp Claims?”](#) section below.)

There could be an argument that the four year cap may not apply because no error was made when the VAT was accounted for and the reversal has arisen because of a change in the VAT rate not to correct an error. Therefore, if you are unable to calculate the reverse charge VAT that can be reversed out, in time for your July 2020 VAT return to be submitted, it may be prudent to write to HMRC, stating that you are aware that an adjustment was due on the July 2020 return but were unable make it.

Any adjustment made after the July 2020 VAT return will be subject to [the voluntary disclosure limits and rules.](#)

What is the impact on News Corp Claims?

[VBOOKS8502](#) states the following:

The zero rate for certain e-publications applies to supplies made on or after 1 May 2020. Notwithstanding the Upper Tribunal’s decision in News Corp, HMRC’s policy continues to be that supplies of all e-publications are properly standard rated until that date. HMRC is appealing the Upper Tribunal decision to the Court of Appeal - further information can be found in [Revenue and Customs Brief 1 \(2020\): VAT liability of digital publications – Upper Tribunal in News Corp and Ireland Ltd.](#)

Therefore, for historic supplies received or reverse charges adjustments made up to and including 30 April 2020, it will still be necessary for suppliers and/or universities and their subsidiaries to submit protective claims, subject to the 4 year time limit.

If a university has submitted a protective claim to HMRC that includes reverse charge VAT on 1 May-supplies, HMRC have advised that the university should write in to HMRC (hfesector.wmbc@hmrc.gov.uk) to advise of the amount of the voluntary disclosure that relates to post 1 May 2020 supplies so that HMRC can repay that element of the disclosure (subject to any verification checks).

BUFDG is aware that HMRC is currently reviewing and rejecting claims that have already been submitted. Further information on this can be found [in this News Article](#) on BUF DG's website.

How should supplies of lending e-publications be treated?

[VBOOKS8516](#) states:

The lending of any zero rated e-publications for a charge (e.g. by a library) is zero rated.

What is the liability if I lend or charge for part of an-e-publication?

Unfortunately, this point has not been covered in the updated guidance, however, it does cross refer to the guidance on physical books, journals, etc and states that you should consider the "characteristics" and "purpose" of an e-publication to determine whether it qualifies for zero-rating. Therefore, the guidance in paragraphs 4.4 and 4.5 of 701/10 may apply, which states that "incomplete publications" or "photocopies" are standard rated, unless the whole publication is being supplied.

4.4 Incomplete publications

Parts of books, unbound pages and separate illustrations are standard-rated.

4.5 Photocopies

Photocopies of zero-rated items are always standard-rated unless the copies can be properly described as books, booklets, brochures, pamphlets, leaflets, and meet all the criteria for such items in the relevant preceding paragraphs. A bundle of photocopies would not constitute a book unless it included copies of all the pages of a book and was in a permanent binding. Photocopies of parts of books, extracts from periodicals cannot be zero-rated unless they are complete in themselves and have the characteristics of zero-rated items.

If you provide 'instant' photocopying or duplicating services and you cannot determine the VAT liability of the copies which you supply, you should charge and account for VAT at the standard rate.

Has there been any clarification of how this will apply to “read and publish” agreements?

This is where two separate payments are made: for the e-resource subscriptions (potentially zero-rated) and charges for publishing research (standard-rated). The issue is that these two elements cannot be split, one becomes ancillary to the other and there is a danger that the whole supply might be treated as subject to VAT.

Jisc’s advisors have been reviewing examples of contracts and have concluded that it depends on the agreements that are in place. For some, the charge can be split into elements with different VAT liabilities; for others it is an all-inclusive product. It is expected that the publish elements will increase over time.

Universities should establish if they have any such contracts in place. Contracts will need to be reviewed to determine if the whole supply is zero-or standard rated, or can be apportioned.

What do you need to do next?

We suggest that you may wish to consider the following for both your university and its subsidiaries:

Short Term action

- Check the tax points for reverse charge adjustments ;
- Where supplies have been bought in from overseas and the reverse charge adjustment made, identify the elements of those supplies that would be eligible for zero-rating and relate to 1 May 2020 onwards. Where possible, make an adjustment on your July 2020 VAT return; and
- If you have ALREADY submitted a voluntary disclosure under News Corp for reverse charge adjustments that include those that relate to post 1 May 2020, contact HMRC to negotiate the repayment of this element of the voluntary disclosure.

Raising Awareness

There are a variety of staff within a university or subsidiary that will need communication, guidance or training on these changes, including, for example:

- Procurement and library staff who negotiate contracts and place orders with suppliers;
- Finance staff who authorise and pay invoices, or oversee budgets for areas such as your library function; and
- Sales teams and sales ledger staff who negotiate with or raise invoices to customers.

System changes

There may some system automation that will need reviewing, for example;

- Procurement systems – where VAT is automatically added to orders based on type of cost or supplier, or where a reverse charge or self-charge of VAT is generated based on type of cost or supplier;

- Finance systems – for purchases, where a reverse charge or self-charge of VAT is automatically generated, or if there are in-built indicators against e-publishers or account codes so that you "expect" a VAT charge on supplies; and
- Finance system – for sales, where the VAT rate of supplies is automated.

Other areas

There are some other areas that you may wish to consider:

- Budget for VAT, where it is not clear if a supply will be partially or wholly zero-rate;
- Review the wording of VAT clauses within contracts that are “live” with suppliers and/or customers;
- Identify supplies that will now cover elements with different VAT liabilities (including databases);
- Check that the zero-rate has been applied correctly by suppliers and on sales made to customers for supplies with a tax point on or after 1 May 2020;
- Establish whether you have any “read and publish” agreements in place; and
- Update any internal guidance and training material to reflect these changes.

If you have any further questions or comments, please contact [Andrea](#).