



Please reply to: Alex Hunter, Finance Director, IPA, 44 Belgrave Square, London SW1X 8QS

HMRC Review of Powers,  
Security, Room 1/72,  
100 Parliament Street,  
London SW1A 2BQ.

26<sup>th</sup> January 2011

Dear Sirs,

### **VAT supply splitting**

We jointly represent the interests of a wide range of companies supplying marketing printed matter and support any draft legislation which brings clarity to the provisions for such services involving zero-rated printed matter. In that context the draft legislation that you have published on VAT supply splitting could usefully be expanded to ensure the current confusion caused by your Anti-Avoidance Group is resolved.

#### **Current confusion**

We are aware that the contention of the Anti-Avoidance Group is that agencies supplying printed matter as part of their delivery to a client (especially to partially exempt clients such as financial services, healthcare or charities) should not be treating it as a single supply of zero-rated material. This is contrary to common usage, duly accepted in routine VAT inspections, that the supply of advertising leaflets and associated delivery is one overall supply of delivered goods. Accordingly if the goods themselves are eligible for zero-rating (and the package test is well understood and applied), then the delivery may also be zero-rated. This follows HMRC Notice 701/10 and Notice 700/24/03.

We understand the same Group has intimated that the service is that of advertising not printing. However, the attempt to rely on the definition of the supplier, rather than the service, has been rejected routinely in Tribunal and it would be in keeping with HMRC's reliance on our legal system if the Tribunal findings were accepted and embedded in its approach to this issue. To have a conflict of treatment depending on whether one was relying on the definition of the provider or the product cannot be in the best interests of a clear taxation policy.

As a result of these challenges to accepted practice, there has been confusion in the industry, an impediment to supplier relationships and a threat to the most vulnerable element of British business, since the interested party is the tiny supplier and not the more massive recipient of the supply. Specifically, it has resulted in back assessments which have crippled the small and medium sized companies typically involved in this service (and which constitute the vast bulk of our various membership), it has created complete disparity of tax treatment with certain agencies relying on previous clean VAT inspections while others have had to reflect the more challenging stance represented by the Anti-Avoidance Group.

### **Proposed clarification**

Exactly what element of mail inserts/door drops/direct mail can be treated as a single supply of zero-rated printed matter is thus now in doubt and, despite an number of back assessments being made on selected agencies, it has yet to be determined by either HMRC guidance notes or by a Tribunal ruling.

Consequently we would suggest the draft VAT legislation provides an opportunity to clarify the application of VAT to the provision of printed matter in the following respect.

The definition of service of delivered goods is the first test and the business of the supplier is of no direct relevance to that. It is important that clarification of the service to supply printed matter by a given supplier should be confirmed as a single supply and guidance provided as to what is included in that single supply, which can be summed up as the production and fulfilment cost of the tangible printed matter. We would advise that such production costs would naturally include as an integrated offering: design, data processing (personalised material requires gathering and managing data accurately) and finishing (eg: guillotining, laminating and poly-bagging). Fulfilment would include the distribution and postage costs, typically forming part of the contract where efficiencies in this area are produced by the straight-through processes of the supplier. We appreciate that not all elements may be required for each customer, and some elements being contracted for from other parties may represent a separate supply of a different service. But in its most sophisticated form, from a single supply source, this would constitute a single supply of printed matter.

We understand the difficulty in covering all aspects in legislation designed to be clear and yet comprehensive. Accordingly we should be delighted to assist in the drafting both of potential legislation, and of any guidance notes used for the public and VAT inspectors. Our wish in this regard is to achieve an equitable and clear result.

The intended legislation should hopefully resolve a very difficult time for those parties caught up by the current confusion over single supply zero-rated printed matter. It is vital for the health of these small and medium sized enterprises that the threat of back assessments is removed so that they can continue to assist the recovery of the economy.

Yours truly,

Hamish Pringle  
Director General  
Institute of Practitioners  
in Advertising

Scott Logie  
Chairman  
Direct Marketing  
Association

Michael Johnson  
Chief Executive  
British Print Industries  
Federation

cc HMRC Policy: John Egerton and VAT Supply: Jack Fletcher

Jack Fletcher  
HM Revenue & Customs  
VAT Directorate  
VAT Supply Team  
3C/07  
100 Parliament Street  
London  
SW1A 2BQ

25<sup>th</sup> February 2013

Dear Jack

We met in the middle of last year to discuss the issues surrounding VAT on postage, there is still a great deal of confusion in the Industry and we are seeking some clarification on the issue we raise below.

We represent the interests of nearly 1,000 member companies in the UK that are involved in Direct Marketing. These range from small partnerships through to multi-national organisations and include advertisers - using Direct Marketing for the promotion of their products and services - and suppliers to those advertisers.

Many of our members are involved in the print and supply of direct mail packs for charities and other organisations and the interpretation of the VAT liability for these has been well established over a number of years ("The Package Test" Notice 701/10, para 6.5).

Indeed HMRC refer to direct mail packs specifically within this section of the notice when quoting examples of printed matter as follows:

- Packages contained in an outer polythene or paper envelope, for example, a package sent to a shareholder which includes company reports, circulars, a proxy voting form and a reply-paid envelope.
- Cardboard folders with pockets into which are inserted a variety of forms, leaflets, etc.
- Advertising packages often from financial institutions

Briefly, our members determine the liability of direct mail packs by following this process:

1. Consider each item separately to determine its individual liability
2. To decide the liability of the pack itself , apply “The Package Test”
3. Apply the Extra Statutory Concessions available for certain printed matter used for appeals (where applicable)

Our members are comfortable with this process. It is a connected supply with which we require your assistance.

Changes to the VAT liability of Royal Mail postal charges:

From April 2012 there has been a significant change when, as a result of changes in postal regulation, Royal Mail started charging VAT on the postal services used for most direct mail packs.

The consequences of this change for charities and other organisations who cannot reclaim part or all of their VAT is significant since they are potentially facing a 20% increase in the cost of their direct mail activity. For charities in particular, direct mail is often responsible for most of their fund raising.

Contractual arrangements with customers:

Our members supply the packs to their customers ready for posting. To get the mail packs to this state members must design the individual component parts, buy or print each component part, address the letters and then assemble the packs into the envelopes ready for posting. Several of these production processes are done by members themselves or their sub-contractors. However it is our members who supply the customers with the finished direct mail packs.

Sending the mail packs by post:

In the past our members were not involved with making the postal arrangements or paying the postal providers. However many members have now changed the contractual arrangements with their customers. With this contract (‘ the single source contract’) our members both produce the packs and undertake to deliver by post a pack to each household/addressee agreed with the customer. To do this our members are buying in postal services from Royal Mail or other postal provider and then re-supplying the same to the customer.

Uncertainty about how VAT applies to ‘single source contract’:

We would like confirmation that to account correctly for VAT on such a ‘single source contract’ our members should apply the guidance given in Section 2 of Notice 700/24. This is because under the terms of the ‘single source contract’ our members will supply goods (the packs) and deliver individual packs to the selected households. In effect a ‘single source contract’ will be a single composite supply of goods as the delivery by post is considered to be ancillary to the production and supply of the mail packs.

Certain of our members have previously corresponded with the Written Enquiries Team at Southend and been told that they can treat the postage costs as described

in this letter. This is positive news but we would feel more comfortable knowing this had the backing of HMRC's experts on single sourcing.

#### Single Source Contract – Commercial & Tax Implications:

In "Appendix 1" attached we have provided a representation of a typical "contract" placed by a customer with our members to supply and deliver printed direct mail packs. Across the industry many millions of these packs are printed and in practice, depending on the pack format and the mailing tariff used, the postal element may vary from 30 – 60% of the total cost.

How we would use your advice:

Many firms already incorporate postage into a 'single source contract' so that charities and others may avoid paying VAT on the direct mail postal charges. Others do not do this due to a lack of clear guidance from you or from tribunal or courts cases on this.

As a leading trade body for the direct marketing industry we would like certainty for our members with regard to the VAT treatment of the 'single source contracts' described above. We would appreciate a clear helpful ruling from yourselves which we may circulate to our members with the aim of standardising within the direct mail industry the VAT Treatment of these 'single source contracts'.

We look forward to receiving your assistance. Please do not hesitate to contact us if you require more information.

Yours sincerely

Mike Lordan  
Chief of Operations

## Appendix 1:

Worked example showing scope of supply and costs for a typical “single source contract”.

### Step 1: Pre press

Receive origination (artwork), normally supplied using File Transfer Protocol (FTP) in print-ready PDF format.

### Step 2: Specification for pack items

#### Appeal Letter

Size	A4
Pagination	2pp
Material	100gsm white offset
Printed	3 PMS colours both sides
Method	Offset litho
Finishing	Duplex laser printing

#### Leaflet

Size	A4
Pagination	6pp
Material	100gsm white offset
Printed	4 process colours throughout
Method	Offset litho
Finishing	Roll folded

#### Donation Form

Size	210 x 140 mm
Pagination	2pp
Material	100gsm white offset
Printed	2 PMS colours both sides
Method	Offset litho
Finishing	Duplex laser printing

#### Appeal Reply Envelope

Size	C6
Material	80 gsm white gummed wallet window, standard blue opaque liner
Printed	1 PMS colour (only to face)
Method	Overprinted

#### Appeal Outer Envelope

Size	C5
Material	80 gsm white gummed wallet window, standard blue opaque liner
Window	20mm ftl, 60mm ftl, Size 90 x 45mm
Printed	1 PMS colour (to front and flap)
Method	Overprinted

### Step 3: Data processing / preparation for laser printing

Receive and process data files as requested.

Laser print consistent with “opt out” and “tax-type” options. Wherever the “opt out” field indicates “Yes” you must ensure that the opt-out text/tick box is laser printed onto the response form. Wherever the tax type field indicates “Tax” or “Gift Aid”, you must ensure the appropriate text is laser printed on to the response form.

### Step 4: Laser printing and proofing

Receive files and layouts in PDF format. Provide live proofs of laser printing for all versions of the letter/form.

#### Letter

- Name and suffix
- Address
- Mailsort number
- Personalised salutation
- Letter text

#### Donation form

- Name and suffix
- Address
- Matching letter code
- Opt out option sentence and tick box (where appropriate)
- Gift Aid/Tax option sentence and tick box (where appropriate)
- Match code

### Step 5: Enclosing

Enclose all packs using the enclosing order and orientation below:

1. Letter with name and address showing through window of outer envelope
2. Donation form nested within fold of letter
3. Reply envelope
4. Leaflet

### Step 6: Mailing

All packs to be mailed to individual addresses via Mailsort 3

#### Cost breakdown – representative example

To carry out steps 1-5 (finished direct mail packs ready for posting) - quantity  
100,000

Total cost = £16,000

Price per pack = 16 pence

To carry out step 6 (post packs to individual addresses)

Total cost = £18,500

Price per pack = 18.5 pence

END



## Indirect Tax Directorate

VAT Liability Policy Team  
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London  
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**Date** 16 July 2014

**Our ref**

**DX**

**Your ref**

Dear Mr Lordan

### Direct Marketing Supply Issues

I refer to your letter in respect of the VAT implications of certain arrangements involving supplies of direct mail when supplied with postal services and apologise for the delay in responding. I hope that this letter helps to clarify HMRC's approach to the VAT liability of direct marketing campaigns which involve postal supplies.

In your letter you ask for confirmation of HMRC's position in relation to what you term as "single source contracts" and say that you regard these as a single composite supply of goods.

Where two or more elements are being supplied, the VAT liability of supplies will depend on an analysis of the essential features of what is being supplied and the circumstances under which the supply is made in order to determine the *nature* of the supplies being made.

The supply of printed matter by itself can be zero-rated but once other services are included in the supply, it is essential to consider the precise details to ascertain whether a typical customer is being provided with a single supply, or with more than one distinct principal supply.

HMRC's position on single and multiple supplies was set out in Business Brief 02/2001, issued on 16 February 2001, which explained the European Court of Justice (ECJ) and the House of Lords decisions in the case of Card Protection Plan (CPP). These decisions affect the way in which businesses are required to decide whether they are making single or multiple supplies for VAT purposes. HMRC published further guidance on how to decide whether a supply is a single or multiple supply in VAT Information Sheet 02/01, published in July 2001. Updated guidance, taking into account more recent precedent case law, will be published later this year.

In some situations where there are different elements to a supply, one aspect can be regarded as ancillary to another if it is not essential to the main aim of the supply. This means the VAT liability is determined by the predominant characteristic and any ancillary supplies follow this liability.

Where other services such as postage services are provided in addition to the production of printed matter, HMRC does not view these additional services as ancillary to the supply of printed matter. Our policy in this area is set out in paragraph 3 Notice 700/24; if the postal services do not fulfil the criteria for disbursements, the supplies form part of the supply of direct mailing and the supply is standard-rated. These additional services cannot simply follow the zero-rating of printed matter as this would illegally extend the narrow interpretation of the zero rate.

The production of printed matter can only be zero-rated when it is supplied in isolation and qualifies for zero-rating in its own right. When other services are provided by a printer, or direct marketing business, the nature of the supply changes to one of providing a marketing service.

If a supplier is required to analyse or organise customers' details or is responsible for posting or distributing the marketing packs or leaflets in addition to printing the material themselves this is not simply a zero-rated supply of printed matter. Services such as these are not ancillary because they are essential to the distribution of the printed matter and so cannot be disregarded. The overall supply is properly regarded as one of marketing rather than a supply of printed matter with ancillary supplies.

I thought that it may be of assistance to set out some practical examples for you.

1) A business simply produces a direct marketing pack and sends it to their client without any other service being provided

The supply of the pack is of printed goods and can be zero-rated if the conditions for zero-rating are met (see Notice 701/10).

2) A business produces a direct marketing pack and is also responsible for arranging postage

If postal services are provided in addition to the printed matter itself then the supply is not a composite supply of goods to your customer, as you suggest in your letter, but is a supply of services as the "goods" are sent direct to the recipient rather than your customer. Even if the supply consists of different elements such as printed matter and postage, one element is not ancillary to another because they are both essential to the overall aim of the contract.

For example, the function of the direct marketing campaign is to send out the promotional material so the postage element is at least as important as the printed matter element. This is the reason that the postage is not ancillary to the printed matter because the nature of the supply has changed and so it cannot take the same VAT liability. As this supply does not fall within the zero or reduced rate, the whole supply must be taxed at the standard rate of VAT.

3) A business produces the printed pack. Its client provides a list of names and the marketing company pays postage costs on behalf of the client.

The supply of the printed material is a supply of goods.

The payment by the client to the direct marketing company in respect of the postage recharge is outside the scope of VAT as it is a disbursement providing all the following conditions are met:

- the contract for postage is between the client and the postage provider, not the direct marketing company and the postage provider
- the direct marketing company pays the postage fee on the client's behalf and does not receive a supply of postage for its own business
- the recharged fee is the exact amount paid by the direct marketing company
- the direct marketing company does not need to organise the names and addresses

The reason for the supply of postage not attracting VAT is not because it is ancillary to the supply of printed matter but rather the charge is a disbursement and so is outside the scope of VAT altogether. The business supplying the printer matter cannot recover the VAT on postage as this VAT will be incurred by the client.

If the conditions are not met, for example the direct marketing company recharges the postage cost and adds a profit element, then this is not a disbursement and the whole of the charge is taxable at the standard rate. This will include the amount charged for the printed matter as the supply is now one of marketing.

I hope that the above has assisted in clarifying HMRC's approach and would be happy to receive any comments that you may have.

Yours sincerely

Keith Parnell  
Senior Policy Advisor

Keith Parnell  
Senior Policy Advisor  
VAT Liability Policy Team  
Room 3/34  
100 Parliament Street  
London  
SW1 2BQ

21 August 2014

Dear Mr Parnell

Thank you for your letter of the 16<sup>th</sup> July with guidance on the VAT implications relating to the supply of Direct Mail, which responds to my letter of 25<sup>th</sup> February 2013. I must say that it is disappointing, to put it mildly, that it has taken HMRC almost a year and a half to respond to my letter, which in itself was written, as we had not had a formal response from you, to a meeting that was held in June 2012.

We have reviewed the guidance that you have provided for the 3 examples and after discussion with members we are surprised by your view in example 2 where postage is included as part of a zero-rated single source supply. Not only are we aware of instances where companies, after receiving clearance from HMRC's written enquiries team, have entered into contracts that include postage (example attached in appendix 1) but this appears to contradict guidance relied upon by many members.

Many members have relied upon HMRC Reference Notice 700/24 dated April 2003 in that Section 2.3 clearly states:

*The important test is whether delivery is included in the contract. You are making a single supply of delivered goods if, under the contract, you have to deliver the goods to a place specified by the customer. This might include the customer's:*

- *own address;*
- *friends or relatives; or*
- **their own customers.**

*The position is not affected by whether the charge you make for delivery is separately itemised or invoiced to the customer. **In either case there is a single supply for which the VAT liability is based on the liability of the goods being delivered.***



In The VAT guide (HMRC Reference: Notice 700 of August 2013) Section 8.3 is even more explicit and states that:

*If the terms of your agreement with your customer for the supply of the goods require you to deliver or post them to the customer there is no separate supply of delivery or postage. This applies even if you show a separate charge.*

*Then this means that you make **a single supply of delivered goods and, if the supply of the goods is zero-rated, then the zero-rating also covers the delivery or postage.** This applies to most mail order transactions, but not if a delivery service is available at an extra charge for customers who request it.*

### **Separate supplies of postage**

You provide two pieces of advice about postage which without further clarification our members will not properly grasp. These pieces of advice are as follows:

1. *'If a supplier is...responsible for posting...the marketing packs...this is not simply a supply of...printed matter...The overall supply is...marketing services...'*
2. *'The payment by the client to the direct marketing company in respect of the postage...is a disbursement providing all the following conditions are met...'*

We presume the advice in the Guidance Manual (VTAXPER43000) is still sound. This is as follows:

*'... some firms, particularly in the direct mail field, specialise in providing a service of posting material on behalf of their client. This service usually involves receiving a list of customers from their client, addressing and printing material, putting the material in envelopes and taking it to the Post Office. The responsibilities of the direct mail firm cease when the material is accepted for safe delivery by the Post Office, and thus in these circumstances, the supply of postage is by the Post Office to the client, with the direct mail firm acting as agent of the client.....'*

As we see it, the important principle here is that a direct mail firm may, as an agent, arrange postage for their client.

What criteria would you expect to see from a mailing house to be satisfied the direct marketing firm is acting as agent for the client?

There is one other issue about which we seek further clarification. This is about making sure we and our members fully understand how they show, to your satisfaction, what 'other services' are ancillary to the supply of printed matter and any liabilities accruing during the period when we sought clarification from you.

**'Other services' ancillary to the supply of printed matter**

We would like some further clarification around the criteria that determine when a supply of zero-rated printed matter changes to the supply of a “marketing service”. In your letter you say “*When other services are provided by a printer, or direct marketing business, the nature of the supply changes to one of providing a marketing service.*” And that “*If a supplier is required to analyse or organise customers’ details..... in addition to printing the material themselves this is not simply a zero-rated supply of printed matter*”.

Nowadays all bulk mail must be presented to the postal service provider in a specific way in order to qualify for discounts. There are in fact penalties applied to mailings that don’t meet certain requirements. These requirements can vary from simply sorting the mail into a specified order e.g. by postcode, to printing a barcode on the envelope and of course, apply equally to sending out invoices and bills not just marketing mail.

Although this will require “*organising customer’s details*” we believe that preparing the print so that it is ready for mailing, is an integral part of the print function and should be viewed in exactly the same way as if the customer had asked for print to be delivered on pallets or wrapped in plastic. As we have said above, exactly the same process needs to be carried out whether you are sending a bill or advertising material so it really should not be considered as a “marketing service”.

Most marketing print is produced to a specification to help with distribution – whether it is a specific size or weight to comply with a newspaper or magazine requirement, to fit a brochure rack, or even the number of items in a box. Supplying print that is “fit for purpose” i.e. the customer just needs to hand it over to the postal provider, should not therefore be viewed as a “marketing service” and would simply be a slight variation on your first example:

*1) A business simply produces a direct marketing pack **that meets the postal provider’s specifications** and sends it to their client without any other service being provided*

The issue of “other services” still remains unclear and we would welcome your views on the comments above.

### **Conflicting guidance**

In the months following the imposition of VAT on many postal services, we became aware of the significant consequences this was having for our members. We wrote to you about this in February 2013 after not having received a response from our meeting in June 2012.

The direct mail industry is very competitive and used greatly by charities and financial institutions. The advent of VAT on postage significantly increased costs for charities using direct mail as a means of raising funds. There was then intense pressure on the industry to find ways of mitigating this.

The general belief in the market place, based on the existing published guidance, is that VAT on postal supplies could be mitigated by including postal charges with a zero rated supply of printed matter.

As a result many direct mail firms have been openly advocating and practicing this approach and in many instances members and non-members tell us they had clearances on this from the written enquiries team. Until such time as you officially notify the industry of different guidance, our members and the industry as a whole, have to work with the existing guidance that is in the public domain that appears to suggest a different interpretation from the guidelines that you have provided in your letter. Unfortunately your letter has not provided the clarity we were seeking and there is still some ambiguity about this issue.

### **Not meeting your Charter commitments**

We refer to 'Your Charter' which is available on your website. It sets out the level of service which HMRC will provide to its customers. Two of the services levels particularly relevant to our dealing with you are as follows:

- Help and support you to get things right; and;
- Respond to your enquiries and resolve any problems as soon as we can.

We began to ask for help and clarification from you in June 2012. We wanted assistance with the issue on a matter that has polarised our industry since most postal services became standard rated. This was in order that our members could get things right.

It is axiomatic that when help and support was sought to begin with in June 2012 but has not been provided, without adequate clarification, until July 2014 you have failed in your commitment to your customers.

I do hope that HMRC can respond to this letter in a reasonable timescale. We are happy to meet with you and your team if that would help to expedite the current situation.

Yours sincerely



Mike Lordan  
Director of External Affairs

Enc

Rt Hon Dr Vince Cable MP  
Secretary of State for Business, Innovation and Skills  
Department for Business, Innovation and Skills  
1 Victoria Street  
London  
SW1H 0ET

21 August 2014

#### VAT Issues

Dear Dr Cable,

I would like to bring to your attention an issue we are having with HMRC which has now been going on for over two years.

The highly competitive direct mail industry is used greatly by charities and financial services institutions. The advent of VAT on postage in April 2012 significantly increased costs for both, but especially charities using direct mail as a means of raising funds. This placed intense pressure on our supplier members, for example printers and mailing houses to find ways of mitigating these costs.

The general belief in the market place was that if the supply of postage was combined with the supply of printed matter which is zero-rated, then no VAT would be chargeable on the postage element. This practice is generally known as single sourcing. Our members and other organisations tell us they received clearances for doing this from HMRC's written enquiries team.

Our members took this approach to secure the survival of their businesses. Many of our members were competing with direct mail firms who openly advocated and practised the single sourcing approach. They were forced to go along with joining the supply of postage services with the supply of printed matter and zero rating the combined service. If they hadn't done this they would have lost so many orders to other organisations who were single sourcing that they would have gone out of business.

We met with HMRC in June 2012 to discuss these, admittedly complicated, issues concerning the VAT treatment of the supply of printing and direct mail services after which some guidance was promised. No such guidance was received. In the absence of this we wrote to HMRC setting out our issues in February 2013 (letter attached). We received a

response to that letter in July 2014 (attached). The issue has still not been resolved to our satisfaction and we have sent a further letter (also attached) asking for more clarification.

A number of broader issues arise from this. Firstly, we are concerned at the length of time that has been taken to resolve this issue, secondly, the situation has not been resolved and finally, our members, and others, are sitting on a potential VAT 'time bomb'.

We are writing to you to seek your help in getting this situation resolved and, more importantly, your assurance that none of our members, once the guidance is made clear, will face any VAT charges from HMRC on this issue retrospectively.

Yours sincerely

Mike Lordan  
Director of External Affairs

David Gauke MP  
Financial Secretary to the Treasury  
HM Treasury  
1 Horseguards Road  
London  
SW1A 2HQ

21 August 2014

#### VAT Issues

Dear Mr Gauke

I would like to bring to your attention an issue we are having with HMRC which has now been going on for over two years.

The highly competitive direct mail industry is used greatly by charities and financial services institutions. The advent of VAT on postage in April 2012 significantly increased costs for both, but especially charities using direct mail as a means of raising funds. This placed intense pressure on our supplier members, for example printers and mailing houses to find ways of mitigating these costs.

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Yours sincerely



Mike Lordan  
Director of External Affairs

Enc.



HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ

Mr Mike Lordan  
Director of External Affairs  
Direct Marketing Association (UK) Ltd  
DMA House  
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London  
W1W 8SS

22 SEP 2014

Dear Mr Lordan

Thank you for your letter of 21 August about the difficulties that your members have been encountering with the treatment of direct marketing services.

I note that you refer to separate supplies of printed matter and postage. However, HM Revenue & Customs' (HMRC's) position is that where a supplier is required to analyse or organise customers' details, or is responsible for posting and distributing the marketing packs in addition to printing the material itself, this is a single supply of services, and not simply a zero-rated supply of printed matter including delivery services. This is because services such as these are not ancillary to the supply of printed matter as they are essential to the distribution of the printed matter, and so cannot be disregarded. The overall supply is properly regarded as one of marketing or direct mailing services, rather than a supply of printed matter with ancillary supplies. HMRC policy on this can be found in Notice 700/24 Postage and Delivery Charges paragraph 3.4; by typing 'VAT Notice 700/24' in the search box on its website.

These additional services cannot simply follow the zero-rating of printed matter as this would illegally extend the narrow interpretation of the zero rate. Moreover, VAT is an EU-wide tax, the scope of which is set out in EU law under the terms of agreements that successive UK Governments have signed with our European partners. These agreements do not allow the UK (or other EU countries) to extend the scope of our existing zero rates.

Whilst the information in VAT Notice 700/24 was correct, I shall be asking my officials to update this guidance to ensure that there is no further confusion on the part of members and their competitors.

I understand that, for cases where the incorrect treatment has been applied, HMRC will consider each case on its merits, and be sympathetic to specific circumstances where direct marketing services may have been incorrectly zero-rated, but only to the extent that they include printed matter that may be separately zero-rated. HMRC will, however, expect these supplies to be treated correctly going forward.

Thank you for taking the trouble to make us aware of these concerns.

Yours sincerely

A handwritten signature in black ink, appearing to read 'David Gauke', with a stylized flourish at the end.

DAVID GAUKE



**Indirect Tax Directorate**

VAT Liability Policy Team  
Room 3/34  
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**Date** 30 September 2014  
**Our ref**  
**Your ref**

**DX**

Dear Mr. Lordan,

**Direct Mail: VAT Treatment**

I refer to our previous correspondence and in particular your letter of 21 August 2014.

You highlight a number of areas where you disagree with the contents of my letter of 16 July and I will try to deal with them in the same order that you have and under the same headings.

You first comment on the length of time taken to provide clarification and I apologise for the delay.

I note that the points that were made in my letter were originally put to you at the meeting in June 2012.

You quote from Notice 700/24 – Postage and delivery charges – and in particular paragraph 2.3 which refers to making a supply of “delivered goods” whereas in my letter I refer to section 3 which deals with “direct mailing”.

The difference here is that, as I explained in my letter of 16 July, it is not delivered goods that are being supplied by your members but a combination of goods and services which are actually a single supply of services to their client. Paragraph 3.4 of the notice makes it clear that if the conditions for disbursements (listed in paragraph 3.3) are not fully met then the mailing charges (i.e. the postage) are part of an overall supply which will normally be standard-rated.

**Separate supplies of postage**

Under this heading you mention 2 pieces of advice from my letter and ask

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**DMA Reply To 21 8 Letter**

*“What criteria would you expect to see from a mailing house to be satisfied the direct marketing firm is acting as agent for the client?”*

The scenario that you quote from the guidance (VTAXPER43000) is the situation where there are no other services and is covered by section 2 of the VAT Notice rather than section 3. I have explained in more detail below under “other services”.

### **‘Other services’ ancillary to the supply of printed matter**

You ask for further clarification around the criteria that determine when a supply of zero-rated printed matter changes to a supply of a “marketing service”.

Leaving aside postal services, if someone is making a supply involving printed matter we have to consider exactly what is being provided i.e. the essential features of the supply and the other services involved in order to decide if it can be regarded as one of printed matter only. If the other services are artwork, design or similar leading to the supply of printed matter then HMRC would generally accept that this is a zero-rated supply of printed matter.

However, if the other services include activities such as data handling, data management/processing, targeting of potential customers, distribution, media inserts, response recording and analysis, follow up to responses and similar then the essential features are likely to show that it is more than a supply of printed matter.

What the printer is essentially being asked to do is to produce a mail pack which is delivered to a large number of recipients to get a message across; it cannot in our view be merely characterised as providing printed matter.

### **Conflicting guidance**

You say that following the introduction of VAT on the bulk postal charges there was intense pressure on the industry to find ways of mitigating the increased costs for charities and that the general belief, based on published guidance, was that this could be done by including postal charges with a zero-rated supply of printed matter.

You go on to say that the industry has to work with existing guidance that is in the public domain that appears to suggest a different interpretation from the guidelines in my letter.

As mentioned there is a difference between sections 2 and 3 of the VAT Notice. Section 2 deals with delivered goods, for example where a mail order business sends a zero-rated book to a customer the postage will follow the liability of the goods. In such cases, section 2 applies as there is a contract with the customer to supply ‘delivered goods’.

Section 3 of the Notice concerns ‘direct mailing’, which is the issue here. . The supply being made by the direct mailing company is not of delivered goods to their client, but of unsolicited mail – not mail delivered under contract with a recipient – but distributed at the request of a customer. What the printer is being asked to do is to provide a full service for their client which results in the distribution of a message to a wide audience rather than simply supplying delivered goods.

This was explained in some detail by Aidan McDonnell at the meeting in 2012 and is clear from the correct part of the published guidance.

However, I appreciate that businesses may have considered that the guidance given in section 2 of the Notice was relevant and may not therefore have fully considered section 3. Although the published information is correct, it was written before this type of scenario was common. As I mentioned previously, guidance is currently being updated to reflect this.

## **Not meeting your charter commitments**

I apologise for the delay.

## **Finally**

I should also like to mention that, although HMRC consider that the published information contained in guidance is correct, we will consider each case on its merits including the specific circumstances where direct marketing services may have been incorrectly zero-rated, but only to the extent that they include printed matter that would be zero-rated if it had been supplied separately from the other elements of the overall supply of services. We do however expect these supplies to be treated correctly from 1 October 2014.

Yours sincerely

Keith Parnell  
Senior Policy Advisor



Keith Parnell  
Senior Policy Advisor  
VAT Liability Policy Team  
Room 3/34  
100 Parliament Street  
London  
SW1 2BQ

17 October 2014

Dear Mr Parnell,

Thank you for your letter of 30 September in which you have explained HMRC's position. Many in our industry remain convinced that this position is incorrect and an inclusive contract to print marketing packs and also post/distribute them can be liable to zero rate VAT (subject to the mailing pack meeting certain criteria). Because of the potential impact on the organisations involved – mainly charities - we believe that HMRC's view will be challenged and, unfortunately, until such time as there is a definitive ruling the industry will still be uncertain on how to assess the VAT liability of the goods they are supplying.

I must also point out that we did not believe that there was a clear explanation of HMRC's position at our meeting in June 2012 which is why I subsequently wrote requesting clarification. At the meeting we were promised "revised guidance" and subsequent correspondence from HMRC confirms this and states that it was expected "soon". Although we have your responses to our letters we have yet to see the updated guidance David Gauke refers to in his letter of the 22 September in the public domain.

We would also like to make sure that we completely understand HMRC's position and the implications as to how members should account for VAT when printing marketing packs that are intended to be distributed by post.

As we pointed out in our letter of 21 August all bulk mail services now require some degree of sortation in order to qualify for the discounts on offer. This applies to whether you are sending invoices or advertising material. A customer who intends to organise and pay for the postage themselves would expect the printer to deliver their print in the appropriate way so that they can simply pass it on to the postal operator. It would be completely impractical for the customer to try to sort their mailing after it has been printed. We strongly believe that there is a distinction between carrying out the "analysis or organisation of customers' details" for marketing purposes and the data handling necessary to ensure that the print is suitable for posting. In the latter case the data handling is ancillary to the supply of the printed matter. It is no different to a customer requesting their print to be supplied in boxes of 250 items so that it can be easily distributed out to branches, or specifying that the print is a particular size so that it fits leaflet dispensers. It is simply providing customers with the goods they have ordered in a form that is suitable for distribution by them – whether that is by hand, lorry or post. It is unreasonable to view data handling, where the sole purpose is to provide printed matter in a form that the customer can actually use it for the purpose for which it is intended, as a "marketing service".

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We would also like confirmation that where a supplier is providing other activities such as data management in addition to the supply of printed matter that this would continue to be viewed as a multiple supply – some of which may be zero-rated and some standard rated – as has been the case historically. We believe that there is ample precedent and case law to support this position.

You stated in your letter to me dated the 30 September that you expect these supplies will be treated ‘correctly’ from 1 October. I trust you will extend the deadline until the guidance is actually published. If this is not done our members, to whom we have published the information received so far, will be left at a commercial disadvantage to non-members who may still be making interpretation on the existing guidance which I think we all agree needs clarification.

I would be interested to hear your views on the points above and we look forward to seeing the updated guidance when it is published.

Yours sincerely



Mike Lordan  
Director of External Affairs



David Gauke MP  
Financial Secretary to the Treasury  
HM Treasury  
1 Horseguards Road  
London  
SW1A 2HQ

17 October 2014

Dear Mr Gauke,

Thank you for your letter of 22 September which was followed a few days later by one from HMRC explaining their position.

Many in our industry remain convinced that this position is incorrect and I enclose a copy of our further response to HMRC. Because of the potential impact on the organisations involved – mainly charities - we believe that HMRC's view will be challenged and, unfortunately, until such time as there is a definitive ruling the industry will still be uncertain on how to assess the VAT liability of the goods they are supplying.

We welcome your remarks that you will be asking your officials to update their guidance to ensure that there is no further confusion on the part of members and their competitors. This is in fact what we have been asking for since our meeting with HMRC in 2012 who, somewhat disingenuously in our view, have stated in subsequent letters that they had clarified these issues in that meeting.

We trust that HMRC, who stated in their letter to me dated 30 September, that they expect these supplies will be treated 'correctly' from 1 October, will extend this date until their guidance is actually published. If this is not done, our members to whom we have published the information received so far, will be left at a commercial disadvantage to non-members who may still be making interpretation on the existing guidance that HMRC are agreeing needs clarification.

Thank you for taking up this matter for us.

Yours sincerely

Mike Lordan  
Director of External Affairs

Rt Hon Dr Vince Cable MP  
Secretary of State for Business, Innovation and Skills  
Department for Business, Innovation and Skills  
1 Victoria Street  
London  
SW1H 0ET

12 November 2014

### **VAT and bulk mail postage**

Dear Dr Cable

I am writing on behalf of the British Printing Industries Federation (BPIF), the leading trade association and business support organisation representing companies in the printing, packaging and graphics communications industry, concerning recent reports that direct mail suppliers could face backdated VAT bills following HMRC's decision in April 2012 to strip bulk mail of its VAT-exempt status.

This decision has affected our members who supply to charities and financial services that are unable to claim back or charge VAT who use "single sourcing". This practice combines the postage cost with the production cost, meaning that the entire supply could be zero-rated. The BPIF is in agreement with the Direct Marketing Association (DMA): 'that many of our members remain convinced that the HMRC's position is incorrect and an inclusive contract to print marketing packs and also post/distribute them can be liable to zero rate VAT'.

The DMA has written to yourself, Treasury Financial Secretary David Gauke MP and HMRC asking for clear guidance on whether single-sourced advertising mail would be exempt from VAT charges. After 18 months of chasing, HMRC has written back to the DMA saying that it intends to issue new guidance on single-sourcing shortly, although no date has yet been given for the publication of this. HMRC has made it clear however that single-sourcing, in their view, changes the nature of what is being supplied from zero-rated goods (print), to a fully VAT-able supply of a service, with the attendant risk that HMRC could potentially issue backdated VAT bills and penalties to companies that have not complied with their interpretation of the published guidelines. In July 2014 HMRC provided three examples:

- 1) *A business simply produces a direct marketing pack and sends it to its client without any other service being provided*

*The supply of the pack is a supply of printed goods and can be zero-rated if the conditions for zero-rating are met (see Notice 701/10).*

- 2) *A business produces a direct marketing pack and is also responsible for arranging postage*

*If postal services are provided in addition to the printed matter itself then the supply is not a composite supply of goods to its customer, but is a supply of services as the "goods" are sent direct to the recipient rather than to its customer. Even if the supply consists of different elements such as printed matter and postage, one element is not ancillary to another because they are both essential to the overall aim of the contract.*

*For example, the function of the direct marketing campaign is to send out the promotional material, so the postage element is at least as important as the printed matter element. This is the reason that the postage is not ancillary to the printed matter because the nature of the supply has changed and so it*

cannot take the same VAT liability. As this supply does not fall within the zero or reduced rate, the whole supply must be taxed at the standard rate of VAT.

3) A business produces the printed pack. Its client provides a list of names and the marketing company pays postage costs on behalf of the client.

*The supply of the printed material is a supply of goods.*

*The payment by the client to the direct marketing company in respect of the postage recharge is outside the scope of VAT as it is a disbursement providing all the following conditions are met:*

- the contract for postage is between the client and the postage provider, not the direct marketing company and the postage provider;*
- the direct marketing company pays the postage fee on the client's behalf and does not receive a supply of postage for its own business;*
- the recharged fee is the exact amount paid by the direct marketing company;*
- the direct marketing company does not need to organise the names and addresses*

It is clear from the above that HMRC has taken the view that where a printing business “arranges” postage (example 2) standard rate VAT should apply, and furthermore that this rate should apply to the entire supply not just the postage element. In addition Keith Parnell, Senior Policy Adviser, VAT Liability Policy Team, stated in a letter to the DMA dated 30<sup>th</sup> September that ‘We do however expect these supplies to be treated correctly from the 1 October 2014’.

The BPIF along with the DMA believe that retrospective charges and penalties should not be issued to businesses: the position remains unclear and the publication of official revised HMRC guidance is still awaited. We ask that clear guidelines be issued before any such action is contemplated.

Most bulk mail requires sorting and processing to meet strict requirements specified by the postal services provider and to optimise bulk mailing discounts offered by the postal services provider. However in our view such sortation cannot be in any way be regarded as a “marketing service”. We would therefore contend that bulk mailings that have been subject to sortation only should not be subject to VAT and should be removed from any definition of ‘data handling’ that HMRC chooses to adopt in deciding when VAT should be applied to postal services.

Finally if the forthcoming guidance that we have been promised by HMRC does ultimately determine that postage is to be subject to standard rate in the circumstances of example 2, we believe that the print production services element of any bulk mailings should still remain at zero rate VAT.

Yours sincerely



Dale Wallis  
Membership Director

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