

# Value Added for Taxpayers

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The case to remove VAT on criminal legal aid



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# Executive Summary



One of the key takeaways from the 2021 Bellamy Report is that the struggle to retain a skilled and diverse workforce in the criminal legal aid sector can largely be attributed to low morale and the regime's unsustainable and insecure financial footing. The aim of this report is to contribute to the discussion on reform of the legal aid scheme, specifically by looking at ways to bolster the resilience of the regime through eliminating bureaucracy and alleviating administrative burdens.

This report highlights the current inefficiencies in the VAT treatment of legal aid. It is currently assumed that the Legal Aid Agency ('LAA'), an executive agency of the Ministry of Justice, is subject to the public sector VAT refund rules contained within s41 of the Value-Added Tax Act 1994.

The provision of legally aided services is considered outside the scope of the current narrow and complex 'contracted out services' treatment, it therefore does not appear that the LAA is currently able to reclaim the VAT they pay to legal aid providers. The cost of this tax burden is thus borne by the agency budget itself.

The tax-paying public might well ask, why does this circular motion of VAT between HMRC and the Ministry of Justice take place? One solution is contained in proposals by HM Treasury in their 2020 review of 'VAT and the Public Sector' to install a 'full refund model' which would largely alleviate these concerns, potentially enabling the Legal Aid Agency to claim a refund on the, previously irrecoverable, input tax incurred on legal aid supplies.

However, this report proposes that a distinct protocol for legal aid service providers should

apply – more specifically, **we recommend that the supply of legally aided services by legal aid contract holders be zero-rated when charged to LAA.**

This measure would not only remove the administrative burden incurred by the LAA in complying with the proposed full refund system but would also alleviate the administrative costs and cashflow implications incurred by legal aid providers when they offset the output tax charged to the LAA with their input tax liabilities.

Instead of refunding the Legal Aid Agency, **legal aid providers can be directly refunded by HMRC with respect to their input tax without having to deal with VAT charged to the LAA.** VAT would still be charged and fall due to HMRC on non-legal aid legal services i.e. work for private clients.

Given the contractual specificity of legal aid claims there can be no real concern that legal aid providers will find it difficult to discern zero-rated legal aid supplies from standard rated services made to private clients. Hence, this solution, rather than complicating VAT matters, would substantially simplify them.

There is widespread recognition that criminal legal aid requires greater resourcing as well as wider investment in the criminal justice system. We believe the bureaucratic and largely pointless circulation of 20% VAT on publicly funded legal services should be part and parcel of reform. We would recommend that any cost efficiencies within government (which are beyond the scope of this paper to assess) achieved through zero-rating criminal legal aid legal services, should be invested into criminal defence legal aid as soon as possible.

# About Commons



Commons Law CIC is a criminal law firm for social justice, which was set up in 2016 to deliver high quality legal services to people most in need.

- We believe in rights and we believe in change which is why we do outreach and project work alongside our defence case work.
- We measure our successes not in profit and shares but in the impact of our work on our clients, on the people and organisations we partner with and the communities we engage with.
- We want to be at the forefront of using new technology and developing new ways of thinking about the justice system.

## Acknowledgments

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# Why act now?



The provision of functioning legal aid services is clearly a necessity in any criminal justice system which purports to uphold the right to access to justice and equality of arms. With legal aid expenditure having fallen in real terms by 35% between 2011 and 2020<sup>1</sup> and the number of criminal legal aid firms having halved in the last 15 years<sup>2</sup>, it is beyond doubt that the scheme as it currently stands is in crisis. Those in the legal sector are urging immediate action to address deficiencies in the system, with Law Society President Stephanie Boyce describing the current situation as a “make or break moment for the future of the beleaguered criminal justice system”<sup>3</sup>.

The Bellamy Report<sup>4</sup> offers an insightful commentary on the values and ideals that should be prioritised in the way the legal aid regime is administered. The structure of the legal aid scheme must be efficient and simple to ensure that it is a financially sustainable system, capable of attracting a diverse and skilled work force.

When the Rt Hon David Gauke MP, the then Lord Chancellor, announced a review of Criminal Legal Aid, one of the objectives he outlined for the review was to look at ways to reform the fee scheme so that it is “simple and places proportionate administrative burdens on

providers [and] the LAA”<sup>5</sup>. The report notes the cost to the system associated with the unpaid time that legal aid providers spend dealing with the procedures of the LAA. Sir Christopher Bellamy QC goes on to conclude that “too much bureaucracy...may weaken the resilience of providers”, contending that the system should be updated and streamlined<sup>6</sup>.

This report hopes to contribute to the discussion on rationalizing legal aid procedures by highlighting the opportunities available, particularly in light of our exit from the European Union (EU), to reform the VAT treatment of legal aid fees to ensure that public resources are used most efficiently. Indeed, a 2008 OECD review reported a loss around 0.5% GDP from the cost of complying with the general European VAT system<sup>7</sup>. Further to this, a 2007 HMRC report recorded a saving of £307 million<sup>8</sup>, attributed to departmental initiatives designed to simplify tax administration systems - testament to the potential impact streamlined tax compliance procedures can have.

Given the UK Government’s goal to “simplify the UK’s VAT system as much as possible”<sup>9</sup> and the findings of the Bellamy Report on the high administrative burdens facing legal aid providers, it is an opportune moment to review the VAT treatment of legal aid.

1. [Payer D, Sturge G, Lipscombe S, Hollnd S \(2020\) 'Spending of the Ministry of Justice on Legal Aid'](#)
2. [www.lawsociety.org.uk/Topics/Legal-aid/News/British-justice-in-crisis-the-end-of-criminal-legal-aid](http://www.lawsociety.org.uk/Topics/Legal-aid/News/British-justice-in-crisis-the-end-of-criminal-legal-aid)
3. [www.lawsociety.org.uk/topics/legal-aid/bar-strike-what-you-need-to-know](http://www.lawsociety.org.uk/topics/legal-aid/bar-strike-what-you-need-to-know)
4. [Bellamy, C \(2021\) 'Independent Review of Criminal Legal Aid'](#)
5. ['Terms of Reference for the Independent Review of Criminal Legal Aid'](#)
6. Bellamy, C (2021) (para. 15.62). See also Recommendation 6 and 19 of the Report.
7. [OECD \(2008\) 'Programs to reduce the administrative burden of tax regulations in selected countries'](#)
8. [HMRC \(2007\) 'Delivering a new relationship with business: Progress Report'](#)
9. HM Treasury (2020)

# What is VAT?



- Value-Added Tax (VAT) is a consumption tax charged on commercially provided goods and services, often including those provided to other businesses and public bodies. It is levied whenever there is a taxable supply of goods or services by a taxable individual.
- The imposition of the VAT system was a requirement of entry into the European Economic Community in 1972. European VAT Directives have largely been given effect in domestic law via the Value-Added Tax Act 1994 ('VATA').
- The core principle of VAT is that the tax burden should be borne by the final consumer. Hence, businesses or providers are generally able to offset the VAT they have paid on goods and services in the course of their business (input tax) with the tax they charge on their own supplies to consumers (output tax). Hence, if a supplier makes a taxable supply of goods or services, the supplier will account to HMRC only for the output tax they have received which is in excess of the input tax they have paid themselves.
- Generally, the supply of legal advice or representation is a taxable service subject to VAT at the standard rate. This is the case for both private and legal aid funded services, given that in both cases there is a supply of services in consideration for receipt of payment (VATA s5(2))<sup>10</sup>.
- Hence, in both cases the providers of legal services receive VAT on their supply, which is used to offset any VAT they have been invoiced for in the course of business. Firms therefore will spend significant time preparing VAT returns and accounting for their input tax.

## VAT and Public Bodies

VAT is generally conceptualised as a tax designed to place a burden on final consumption<sup>11</sup>. It is therefore unsurprising that difficulties can arise in relation to public bodies which make VAT exempt supplies or those that are outside the scope of VAT (i.e. because they are a statutory function and thus non-business<sup>12</sup>). This is because a public body will not normally be able to claim a refund on the input tax incurred in the provision of these exempt or non-VAT supplies, such that the ultimate tax burden can no longer be passed on to the final consumer.

In the absence of VAT recovery schemes, these VAT costs are subsumed into departmental costs. The main disadvantage of this limitation on input tax rebates is the fact that it disincentivises public sector bodies from outsourcing services to private sector (VAT-able) suppliers in favour of procuring the same services internally, on which they will not have to pay VAT.

10. [Legal Aid Agency \(2018\) 'Cost Assessment Guidance: for use with 2018 Standard Civil Contracts' \[para 4.5\] Legal Aid](#)

s41 of VATA 1994 was introduced to enable eligible public sector bodies to reclaim input tax on goods and services they have purchased in respect of non-business or exempt supplies. The supplies for which they can claim back VAT paid are limited to those specified in the 'contracted out services' ('COS') HMRC directive.



It is presumed that the LAA, an executive agency of the Ministry of Justice (MOJ)<sup>13</sup>, falls within the remit of a s41 organisation<sup>14</sup>. It appears unlikely that the funding of legally aided legal services falls within the current 'COS' that attract an input tax refund. Although the HMRC directive does include receipt of legal advice by government departments<sup>15</sup>, the LAA can clearly not be conceptualised as receiving legal advice when they fund legal aid services. It is therefore understood that the LAA/MOJ are not, under the current s41 scheme, refunded for the VAT they pay on legally aided services. This seems a profoundly inefficient way for the MOJ to mobilise its departmental budget.

Indeed, both the MOJ and LAA Annual Account Reports note that "most of the activities of the department are outside the scope of VAT and in general output tax does not apply and input tax is irrecoverable"<sup>16</sup>. Crucially, the Accounts both note that the irrecoverable input tax they have incurred is included in their expenditure categories.

### A breakdown on what the LAA has spent on VAT over the last 7 years<sup>17</sup>:

	Criminal Legal Aid (inc. VAT)	VAT
2014 - 2015	£912,236,389	£143,444,722
2015 - 2016	£886,402,932	£140,603,680
2016 - 2017	£871,852,932	£138,062,430
2017 - 2018	£875,320,305	£139,256,942
2018 - 2019	£879,860,064	£140,017,617
2019 - 2020	£823,415,437	£130,557,058
2020 - 2021	£570,346,260	£90,294,664.4
2021 - 2022	£748,144,455	£118,499,178

11. Copenhagen Economics (2011)

12. [HMRC Guidance on NHS Healthcare](https://www.gov.uk/hmrc-internal-manuals/vat-health/vathlt1040) <https://www.gov.uk/hmrc-internal-manuals/vat-health/vathlt1040>

13. Ministry of Justice Annual Report and Accounts 2020-2021 (pg.4)

14. HM Treasury (2020) (para 1.8 "government departments and their executive agencies").

See also [www.gov.uk/guidance/public-bodies-reform](http://www.gov.uk/guidance/public-bodies-reform) which notes that executive agencies remain legally part of their associated government department, even if administratively distinct.

15. [HMRC Internal Manual, VAT Government and Public Bodies \(VATGPB10770\)](#)

16. [Ministry of Justice Annual Report and Accounts 2020-2021 \(para 1.2\)](#)

17. ['Criminal Legal Aid statistics England and Wales Completions by provider and area data to March 2022](#)

# HM Treasury's proposed reform to VAT Refund Rules

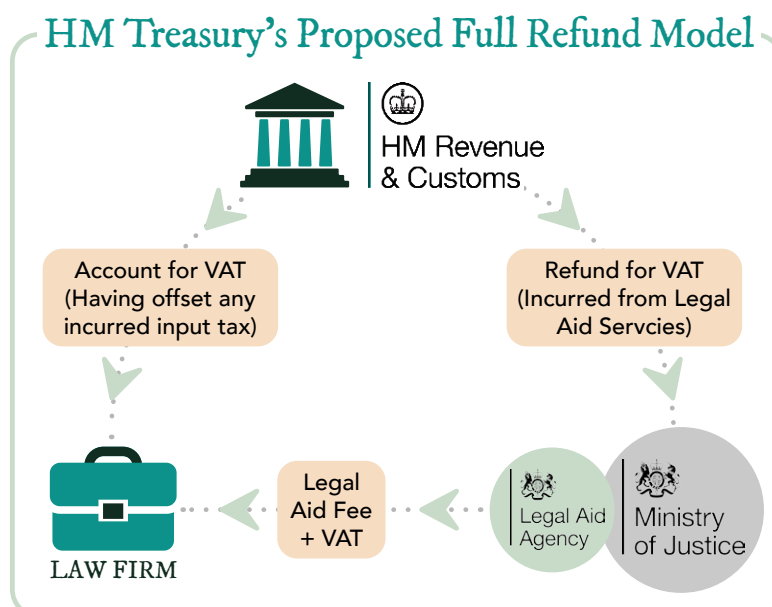
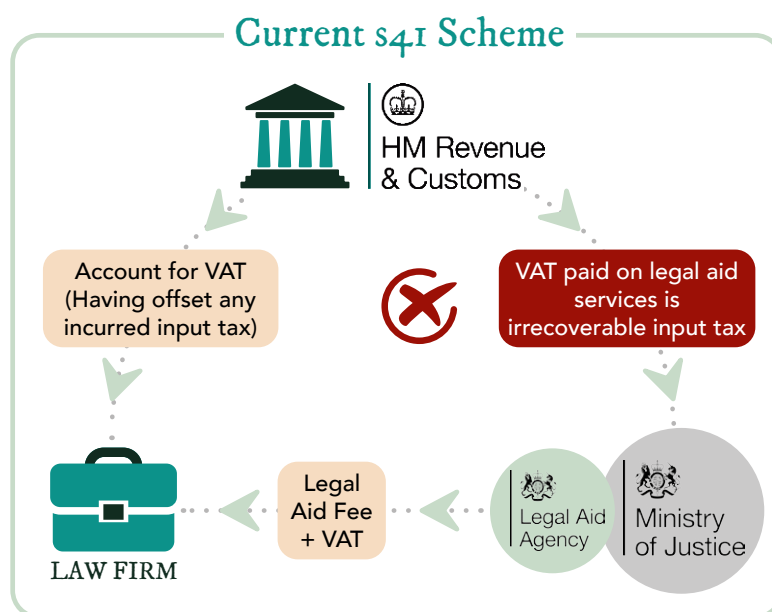


In 2020, HM Treasury published a report outlining the current s41 scheme, its deficiencies, and avenues of reform. The key message of the report is that the 'COS' rules are excessively complex and contribute a significant administrative burden to the accounting process of public bodies.

In particular, the report highlights the difficulty that s41 organisations have in discerning which activities fall within the scope of 'COS'.

The intricacy of the current regime is highlighted by the fact that consultants contracted by the Ministry of Defence to provide advice were eligible for an input tax refund, whilst the VAT incurred when the contracted consultants designed a vehicle trailer was irrecoverable and outside the scope of 'COS'<sup>18</sup>.

The Treasury has proposed a 'full refund model' (FRM). This would involve extending the scope of s41 so that public bodies will be able to receive refunds on VAT incurred on all the goods and services they incur in the course of VAT exempt or non-business activities. Given that the compliance of these compensation schemes with EU law has been somewhat controversial, the proposed extension of the scheme would take advantage of the UK's ability to implement more flexible VAT arrangements in the aftermath of Brexit.



18. [Dunne, P \(2018\) 'Growing the Contribution of Defence to UK Prosperity' \(pg. 54\)](#)



Applying the 'FRM' to the LAA/MOJ would appear to facilitate a full rebate on the VAT legal aid providers charge the LAA. This is in line with the approach adopted in some other countries, including certain Canadian provinces (next section). Though this would alleviate concerns associated with the VAT charged by legal aid providers being irrecoverable, the 'FRM' would require the LAA to make applications for input tax refunds and thus would result in additional administrative costs to the agency. The 'FRM' also does little to address the time spent by legal aid providers to organise and offset their VAT liabilities – a costly bureaucracy that firms bear as unnecessary overhead. In the context of legal aid, the proposed 'FRM' fails to secure the level of cost efficiency that tax payers have a right to expect in our criminal justice system.



## Constraints under EU Law

As previously noted, the implementation of the VAT regime was a pre-requisite to the UK's entry to the EEC. A harmonised VAT system is a key facet of a single market, designed to prevent distortive competition between goods and services providers in different Member States. The Common VAT System Directive (CVSD) is adopted by EU Member States via domestic legislation, which tends to either directly copy or generally reflect the provisions of the CVSD.

### Public Bodies:

- Article 13(1) of the CVSD stipulates that public bodies are non-taxable and thus outside the scope of VAT. The fact that the supplies of public bodies in the UK are beyond the scope of VAT or exempt is generally seen as achieving distributional social welfare aims. Nevertheless, their status as 'non-taxable' and the fact they are subsequently unable to reclaim input tax can be attributed to EU law. These provisions would prevent the UK from adopting a system akin to the full taxation system in New Zealand, where public bodies are generally fully taxable and subject to normal input tax offset procedures<sup>19</sup>.
- Eight EU Member States are recorded as implementing national input tax compensation schemes<sup>20</sup> - akin to the current s41 VATA scheme - designed to mitigate the impact of the non-taxable status of public bodies. Concerns have been expressed over these schemes and the risk that they breach EU competition rules<sup>21</sup>, especially since the specific scope of the individual schemes in Member States vary considerably<sup>22</sup>. Nevertheless, the Commission has generally regarded them as a 'financial operation' and outside the scope of the EU VAT system, not raising issues of compatibility.
- Some EU case law indicates that the European Court of Justice may look to apply limitations on state aid to the realm of VAT<sup>23</sup>. De Iar Feria (2009) has argued that it is "conceivable that the Court would regard these [refund] schemes as illegitimate state aid, in contravention of Article 87 of the EU Treaty"<sup>24</sup>.

19. [De Iar Feria, R. \(2009\) 'The EU VAT treatment of public sector bodies: slowly moving in the wrong direction'](#)

20. Copenhagen Economics (2011)

21. Compatibility of these regimes has been the subject of parliamentary questions see Common VAT System – Eight Directive Written Question P-2861/99 (2000) OJ C225E/211

22. De Iar Feria, R. (2009) (pg. 162)

23. Heiser v Finanzamt Innsbruck C-172/03

24. De Iar Feria, R. (2009) (pg.162)

# Case Study: Belgium



Up until 31 December 2013, Article 44(1) of the Belgian VAT code had provided that supplies of services made by lawyers in the course of their usual activities were exempt from VAT. This exemption was abolished in July 2013, taking effect the following January. Four applications to challenge this abolition were launched in the Belgian Constitutional Court, arguing that it disrupted the right to access to justice and equality of arms under the Charter of Fundamental Rights of the European Union. The Constitutional Court requested a preliminary ruling on these points from the ECJ.

Following *Commission v France* and a restrictive interpretation Annex III (outlined below), the court found that there is no possibility of a VAT exemption for national legal aid schemes, even where closely linked to welfare and social security work<sup>25</sup>. The court asserted that the right to access to justice is not affected by the VAT of legal aid. This conclusion is surely correct given VAT liability is borne by the state itself, not the recipient of the legal services. In making this observation the court acknowledges that this involves a “circular

payment”<sup>26</sup> – the tax being both levied and paid by the state. To avoid this and ensure the legal aid scheme remains cost-neutral for the state in terms of tax liabilities, Belgium had made the decision to zero-rate legal aid fees, whilst the right of firms to an input tax reduction remained intact.

In a footnote to the judgment, the court conceded that zero-rated legal aid supplies has the same result, from the state’s point of view, as leveraging VAT which is then fed back into the state. However, the judge expressed doubts as to whether zero-rating legal aid fees was compatible with the VAT Directive given that it might have had an “effect on the collection of the Union’s resources which includes a percentage of the harmonised VAT assessment bases”<sup>27</sup>.

The court also went on to generally assert that services provided by lawyers cannot be subject to a reduced rate<sup>28</sup>. Following this, as of 2017, the Belgian Federal Public Service-Finance announced that legal aid services would become subject to the standard 21% VAT rate<sup>29</sup>, in a move widely resisted by the legal sector<sup>30</sup>.

25. C-543/14 (para 110)

26. Ibid (para 69)

27. Ibid, footnote 20. Pursuant to Article 2(b) of Council Decisions 2007/336/EC.

28. Ibid (para.60)

29. [www.stradalex.com/nl/sl\\_src\\_publ\\_div\\_spffin/document/dec\\_divtva20161223.401681-fr](http://www.stradalex.com/nl/sl_src_publ_div_spffin/document/dec_divtva20161223.401681-fr)

30. <https://leuropeennedebruxelles.com/321227/imposition-vat-legal-assistance-postponed.html>

## Reduced / Zero-Rating:



- Article 98 of the CVSD allows states to introduce one or two categories of reduced rate VAT to services outlined in Annex III – organisations that are recognised as “being devoted to social wellbeing by Member States and engage in welfare or security work”.
- The Annex III exceptions have been interpreted narrowly and do not include the services of lawyers or their legal aid work<sup>31</sup>. Indeed, the ECJ has concluded that even if legal aid scheme work was related to “social wellbeing”, that would not in itself be sufficient to classify the supplying firm as an organisation generally devoted to social wellbeing<sup>32</sup>.
- The Court has made it clear that it should not be for individual Member States to apply a reduced rate to supplies provided by private entities “merely on the basis of an assessment of the nature of those services”<sup>33</sup> – the professional category of lawyers, as a whole, cannot be regarded as devoted to social wellbeing. Therefore, EU case law has previously appeared reticent to attempts by Member States to draw distinctions in the VAT treatment of private and legally aided legal services.
- Article 99(2) states that where a minimum rate does apply, it ought generally to be 5%, though a lower rate may be applied – pursuant to Article 110(1) - where there is a clearly defined social reason to do so. The circumstances in which states can opt for zero-rated VAT supplies are therefore restricted and were originally intended to be phased out completely<sup>34</sup>.
- Several Member States rely on zero-rated VAT goods and services. Like exempt services, the recipient of a zero-rated supply is relieved of the obligation to pay VAT. Zero-rating is however crucially distinct from a VAT exemption in that **providers of zero-rated taxable goods are still able to recover input tax**.
- In December 2021, EU Finance Ministers agreed to overhaul the current rules on reduced VAT, an apparent acknowledgment that the current rules are “outdated and inflexible”<sup>35</sup>. **A proposed addition to Annex III would be legal services under a legal aid scheme, allowing States to zero-rate legal aid supplies<sup>36</sup>. The Directive was adopted and published in early April 2022 and is expected to be applied from the 1st of January 2025<sup>37</sup>.**

31. Commission v France C-492/08

32. Ibid

33. Order of the French-speaking and German-speaking Bars v Council of Ministers C-543/14

34. [https://europa.eu/youreurope/business/taxation/vat/vat-rules-rates/index\\_en.htm](https://europa.eu/youreurope/business/taxation/vat/vat-rules-rates/index_en.htm)

35. [www.linklaters.com/en/knowledge/publications/alerts-newsletters-and-guides/2021/december/13/eu-finance-ministers-agree-on-update-of-vat-rates](http://www.linklaters.com/en/knowledge/publications/alerts-newsletters-and-guides/2021/december/13/eu-finance-ministers-agree-on-update-of-vat-rates)

36. [Council Directive 2022/542 of 5 April 2022](https://eur-lex.europa.eu/eli/dir/2022/542/oj)

37. [www.orbitax.com/news/archive.php/EU-Council-Directive-Published-49576](http://www.orbitax.com/news/archive.php/EU-Council-Directive-Published-49576)

# Case Study: Canada



The Canadian approach to legal aid services attracts nuanced VAT treatment. The Canadian legal aid model varies between the different provinces. The Federal Government does not provide direct legal aid services, though it does offer funding to the territories for legal aid through Access to Justice Service Agreements. Legal aid services can be supplied by employees of the legal aid administrator or private practitioners<sup>38</sup>.

This case study will focus on the supply by private practitioners, paid for by the legal aid administrator<sup>39</sup>, as this is the position most analogous to the UK's legal aid structure which is paid by the LAA but supplied by private law firms.

Where the legal aid plan administrator is not considered part of the territorial government, they are required to pay VAT on legally aided services supplied by private law firms. The client will be given a Legal Aid Certificate which functions as a

voucher, guaranteeing that legal aid will pay for the private lawyer for a specified number of working hours (including VAT). Under para 258(2)(a) of the Excise Tax Act 1985<sup>40</sup>, the legal aid administrator who supplies this voucher will be able to receive a rebate of the VAT they pay to private firms working for legal aid. This is broadly analogous to the full refund model (FRM) proposed by HM Treasury.

In some territories, legal aid plan administrators are considered part of the government for VAT purposes. Generally, provincial governments are not required to pay VAT. Therefore, where the legal aid administrator is part of the government, they will not pay tax on the purchase of taxable supplies of legal services from private firms. When contracting with private providers of legal services, the legal aid administrator in these territories will have an exemption certificate providing evidence that the supply is being purchased by the territorial government and is thus not to be subject to VAT<sup>41</sup>.

38. Supplies by employees of the legal aid administrator are VAT exempt.

39. [www.canada.ca/en/revenue-agency/services/forms-publications/publications/5-3/exempt-legal-services.html](http://www.canada.ca/en/revenue-agency/services/forms-publications/publications/5-3/exempt-legal-services.html)

40. <https://laws-lois.justice.gc.ca/eng/acts/e-15/page-86.html#docCont>

41. [www.canada.ca/en/revenue-agency/services/forms-publications/publications/13-2/rebates-legal.html#\\_Toc448837283](http://www.canada.ca/en/revenue-agency/services/forms-publications/publications/13-2/rebates-legal.html#_Toc448837283)

# Zero-Rating the Supply of Legally Aided Legal Services



The Treasury report offers several alternatives to the 'FRM', one of which is the possibility of allowing supplies to s41 organisations to be zero-rated. This would have the effect of removing VAT complications for public bodies at its source. A zero-rated supply, as distinct from an exempt one, still enables the supplier to receive input tax credit for the VAT liability they have incurred in the course of their business.

Given the previous restraints in EU law on which services can be subject to a reduced or zero-rate, the UK's exit from the EU provided an opportunity to be more flexible and discerning in which services are subject to zero-rated VAT in order to maximise administrative efficiency.

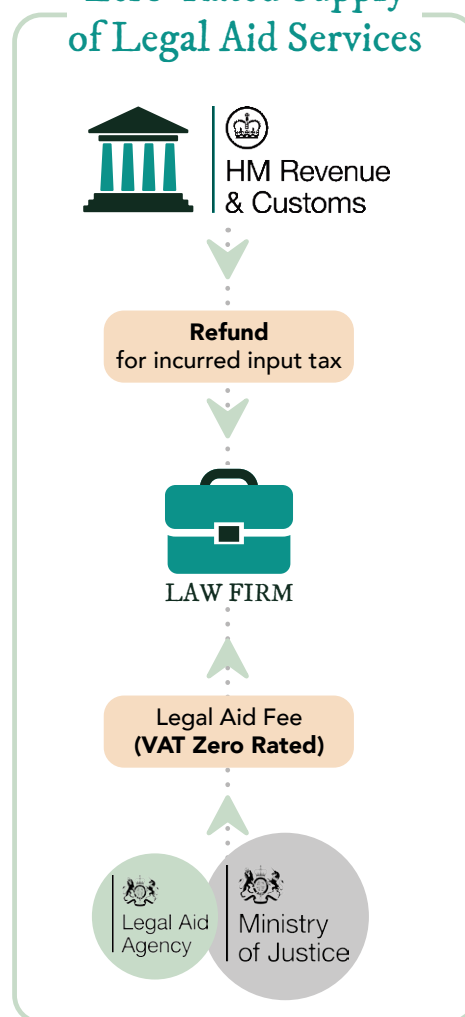
Without prompt action, it appears the UK may soon fall behind the EU VAT treatment of legal aid. Prominent legal commentator, Jonathan Goldsmith, has argued that the new EU VAT Directive (which adds legal aid services to those which can be zero-rated) provides a "great opportunity" and "precedent [with which]... to lobby our government to act similarly"<sup>42</sup>.

The option of zero-rating is dismissed within the initial Treasury proposal paper as "represent[ing] a significant departure from current VAT rules and principles"<sup>43</sup>. In the subsequent response paper this point is expanded, and it is argued that zero-rating public bodies would "introduce administrative complexity"<sup>44</sup> for suppliers.

The concern is that providers to public bodies will be burdened with the task of discerning between private contracts and those which are with public bodies, determining liability by reference to the customer rather than the nature of the contract<sup>45</sup>.

It is submitted that these concerns are too unnuanced, failing to account for the unique position of legal aid contract holders. Firms undertaking legal aid work will, by the very nature of legal aid funding, be prior authorised to submit funding applications and invoices to the LAA. Therefore, zero-rating these supplies would incur no additional administrative cost. There is of course no concern that the LAA may have to provide 'eligibility certificates' to legal aid providers, as is the case in certain supplies in the construction industry where customer-dependent zero-rated supplies currently operate<sup>46</sup>.

## Zero-Rated Supply of Legal Aid Services



Rather than receiving VAT from the LAA and offsetting their incurred VAT liabilities, firms will be able to receive a refund from the HMRC for input tax. This was the preferred solution of the Belgian Ministry of Justice, which chose to alleviate the circularity of payments involved where the government both levy and pay the VAT on legal aid services.



Zero-rating in the UK would relieve firms of the need to account and offset output tax liabilities received by the LAA. It would also prevent the imposition of an additional administrative burden on the LAA if they were required to apply for input tax refunds, as would be the case under the Treasury's preferred 'FRM'.

## Conclusion

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Recognising the distinct position of criminal legal aid providers offers a significant opportunity to alleviate administrative costs in the current VAT treatment of legal aid.

The HM Treasury report on the VAT treatment of public bodies does much to highlight the burden placed on public bodies by the current VAT scheme. However, ultimately the proposed 'full refund model' is not adequate for the legal aid sector, failing to optimise the administrative gains that could be enjoyed by both the LAA and legal aid providers if the supply of legal aid was zero-rated.

Our proposals to eliminate the absurdity of publicly-funded legal services being subject to VAT are in line with the recommendations of the Bellamy Report and the government's own desire to simplify the UK's tax system. Zero-rating the supply of legal aid services and allowing firms to claim direct input tax refunds from HMRC would remove the significant administrative cost and cashflow implications associated with the current regime, constituting an important step in shoring up the financial sustainability of the criminal legal aid scheme.

42. [www.lawgazette.co.uk/commentary-and-opinion/a-time-to-reconsider-vat-on-legal-services/5112088.article](http://www.lawgazette.co.uk/commentary-and-opinion/a-time-to-reconsider-vat-on-legal-services/5112088.article)

43. HM Treasury (2020) (para 3.2)

44. [HM Treasury \(2021\) 'VAT and the Public Sector: Reform to the VAT refund rules' \(para.227\)](#)

45. [Trotman, M \(2020\) 'Vat and the Public Sector – Reform of the VAT Refund Rules'](#)

46. Trotman, M (2020)



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