

## Expression of doubt

This document should be read in conjunction with section 81 of the VAT Consolidation Act 2010 (VATCA 2010)

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## Table of Contents

Introduction .....	3
1. Letter of expression of doubt.....	3
2. Details included in the letter of expression of doubt.....	4
3. Time limit for submission of a letter of expression of doubt .....	4
4. Details included in the VAT return when an expression of doubt is lodged .....	4
5. What is the position regarding the issue of a VAT invoice .....	4
6. What is the position regarding recurring transactions.....	5
7. Circumstances when a letter of expression of doubt is not accepted as genuine ....	6
8. Appeal .....	6
9. Interest .....	6
10. Persons not registered for VAT .....	7
11. Document and record keeping.....	7

## Introduction

This guidance sets out the circumstances in which a letter of expression of doubt can be lodged by a person who is in doubt about the application of VAT to a transaction.

Section 81 of the VAT Consolidation Act 2010 allows a person who is in doubt about the application of VAT law to a transaction to lodge a 'letter of expression of doubt' with Revenue. If the expression of doubt is accepted by Revenue as genuine, interest will not apply to any VAT found due following Revenue's examination of the application of VAT law to the transaction.

This provision does not affect the taxpayer's right to contact Revenue in the normal way for advice on the VAT treatment of any transaction. It is also important to note that the expression of doubt facility does not displace or override the normal obligations of an accountable person as provided for in the VAT Act.

### 1. Letter of expression of doubt

A person who wishes to use this provision must submit a letter of expression of doubt on time to the Revenue Branch that normally deals with the tax affairs of the accountable person. The letter of expression of doubt can be in the form of electronic communication or letter. The Revenue Branch will issue an acknowledgement of receipt of the letter of expression of doubt. The VAT return in respect of the period in which the transaction occurs must be lodged separately and on time with the Office of the Collector-General in the normal way.

If the expression of doubt is not accepted as genuine the person will be advised accordingly, in writing, within 14 days of its receipt by the Revenue Branch. The taxpayer should then submit a supplementary VAT return to the Collector-General with any additional VAT liability due for the period in which the transaction took place. Interest will be payable on any additional liability in such circumstances and, therefore, arrangements should be made to submit the supplementary return without delay.

If the expression of doubt is accepted as genuine the Revenue Branch will make a ruling as soon as possible as to the correct VAT treatment of the transaction. In these circumstances, where additional VAT liability is identified, it must be included in the VAT return as if it were tax due for the period in which the ruling is given. Interest will not apply in respect of the VAT due on that transaction in these circumstances, provided that the return is submitted and the VAT paid by the relevant due date.

## 2. Details included in the letter of expression of doubt

A letter of expression of doubt must be clearly identified as such and must:

- set out full details of the circumstances of the transaction in doubt
- provide the basis on which doubt is being expressed
- identify the amount of tax due or deductible in doubt in respect of the taxable period to which the expression of doubt relates
- make reference to the provisions of the law giving rise to the doubt
- be accompanied by any relevant supporting documentation
- state whether relevant professional advice has been taken on the matter.

## 3. Time limit for submission of a letter of expression of doubt

A letter of expression of doubt must be submitted to the Revenue Branch responsible for a trader's tax affairs at the time the VAT return for the period in which the transaction occurred is submitted to the Collector-General. An expression of doubt will not be accepted unless the VAT return is lodged by the due date, being the nineteenth day of the month following the end of the taxable period in question.

## 4. Details included in the VAT return when an expression of doubt is lodged

The transaction giving rise to the doubt should be included or excluded in the VAT return on the basis of the treatment which the accountable person, or agent, feels is correct. For example, if an accountable person is lodging an expression of doubt about a VAT rating issue but considers that a rate lower than the standard rate applies, then he/she may account for VAT in the return at the lower rate. However, that person must also lodge the expression of doubt with the Revenue Branch at the same time.

If an accountable person has a doubt about whether a transaction is taxable at all, or exempt from VAT, then this transaction may be excluded from the VAT return, however, details should be included in the letter of expression of doubt.

Again, if an accountable person considers that he or she is entitled to deductibility in respect of any transaction then a VAT credit may be claimed in the return subject to a letter of expression of doubt being furnished.

## 5. What is the position regarding the issue of a VAT invoice

Where an accountable person lodges an expression of doubt in relation to the tax treatment of a transaction in respect of which a VAT invoice must issue, the VAT details on the invoice must be consistent with the tax treatment that the taxpayer

decides to adopt. In this regard it should be noted that the outcome of the expression of doubt could be that additional VAT is payable in respect of the transactions in question.

## 6. What is the position regarding recurring transactions

Transactions which give rise to a letter of expression of doubt can be recurring. These recurring transactions can arise in two different situations as follows:

- Firstly, where the same type of transaction recurs during a taxable period.
- Secondly, where the same type of transaction recurs during a taxable period subsequent to the taxable period in respect of which a letter of expression of doubt has been lodged. This situation will only arise where Revenue has not yet given a ruling on the transaction in question.

In the first instance, it is necessary only to submit one example of the documentation on the type of transaction involved with the letter of expression of doubt. However, the full amount of the VAT in doubt in respect of the total of all the recurring transactions during that period must be mentioned in the letter of expression of doubt.

In the second instance, where sample documentation has already been submitted with the first letter of expression of doubt, and Revenue's ruling is awaited, it is only necessary in the subsequent letters of expression of doubt to refer to the first letter of expression of doubt. However, the amount of tax in doubt in each return must be identified in each subsequent letter.

## 7. Circumstances when a letter of expression of doubt is not accepted as genuine

A letter of expression of doubt will not be accepted where -

- Revenue has issued general guidelines such as the Revenue website, Tax and Duty Manual guidance, Notes for Guidance, or VAT Rates Database entries about the application of the law in similar circumstances.
- Revenue is of the opinion that the matter is sufficiently free from doubt as not to warrant an expression of doubt.
- Revenue is of the opinion that the accountable person was acting with a view to the evasion or avoidance of tax.

Where Revenue does not accept that a letter of expression of doubt is genuine, the accountable person will be informed in writing of the reason(s) for the non-acceptance of the letter by Revenue.

## 8. Appeal

Where an accountable person is aggrieved by a Revenue ruling regarding the VAT treatment of the transaction which is the subject of the letter of expression of doubt, he/she can appeal the ruling by giving notice in writing within 30 days from the date of notice of the decision.

As VAT is governed by EU law, the Tax Appeal Commissioners or any of the courts may refer the case to the Court of Justice of the European Union (CJEU).

## 9. Interest

Where Revenue accepts that a genuine expression of doubt has been lodged by an accountable person, interest charges will not apply to any additional liability arising from the matter in doubt. However, this treatment only applies provided that the additional liability is included in the return as if it were tax due in the taxable period in which Revenue's ruling on the VAT treatment of the transaction in question is issued.

Conversely, interest charges will arise in situations where Revenue does not accept an expression of doubt is genuine. Interest will apply from the day after the due date for submission of the return for the period in which the transaction occurred, not from the date of the Revenue decision.

Interest will also apply in situations where the Appeal Commissioners uphold a decision of Revenue that a particular letter of expression of doubt is not genuine. Interest in these situations will apply from the day after the due date for submission of the return for the period in which the transaction occurred.

Where -

- a genuine expression of doubt is lodged
- Revenue (or, where appropriate, the Appeal Commissioners) determine that VAT is due on a transaction or that VAT claimed by a taxpayer was not, in fact, deductible on a transaction, and
- VAT is not paid (or accounted for) by the due date for the VAT return covering the taxable period in which the Revenue ruling is issued,

interest will apply from the day after the due date for submission of the return for the period in which the Revenue ruling is issued.

## 10. Persons not registered for VAT

The legislation also provides that a person not registered for VAT who is in doubt as to whether he/she is an accountable person may avail of the expression of doubt mechanism. In these circumstances the person must lodge the letter of expression of doubt not later than the nineteenth day of the month following the taxable period in which the transaction giving rise to the doubt occurred.

## 11. Document and record keeping

The accountable person must keep the Revenue acknowledgement of his or her expression of doubt as part of his or her records. A letter of expression of doubt shall be deemed not to have been made unless its receipt is acknowledged by Revenue and that acknowledgement forms part of the records kept by the accountable person for the purposes of section 84 of the VAT Consolidation Act 2010. An accountable person should contact the local Revenue Branch in the event that an acknowledgement of the letter of expression of doubt is not received.