

Have a tax break ... have a Kit Kat? Taxing the sweet shop in the Swinging Sixties and the difficulties making sense of the legacy in the 21st Century

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Keywords (five): Spirit of the law, purchase tax, value added tax,

“...there can be little confidence in the Government to continue to rule the country when they cannot give a sensible definition of a chocolate biscuit.”¹

“Always take a banana to a party, Rose: bananas are good!”²

1963 saw debates in the UK Parliament on the extension of Purchase Tax to food (including some chocolate biscuits); the genesis of Dr Who; the birth of the author of this paper; and The Beatles first number 1 single in the UK, Australia, and New Zealand.

Over 50 years later, Purchase Tax has long since regenerated into Value Added Tax (VAT) but UK taxpayers are still living with the consequences of the ephemeral need to tax Kit Kats like jelly babies rather than banana cakes.

Dr Who, on the other hand, has managed to escape the production and cultural limitations and expectations that existed at the time of its creation. Daleks, for example, appear in much larger numbers and are no longer defeated by a flight of stairs; and The Doctor is allowed a kiss. However, while many Whovians of the author's generation are content to live with the changes, we may be unwilling to accept that our sons, nieces or grandchildren can be true fans if they know nothing of the original series and we will insist on recounting to them the complete history of Tardis or The Doctor's antagonists. Worse still for the youngsters, we will explain how the Daleks can only be understood by going back to the original scriptwriter's experiences of the Cardiff Blitz in 1941. Are we too often the same with our students and colleagues? That only an understanding of wartime rationing and 1960s retail practices, will allow them, in 2016, to engage effectively with Excepted Item No.2, Group 1, Schedule 8, Value Added Tax Act 1994?

The paper argues that an appreciation of the history of tax system is usually of little assistance to students in passing professional examinations or advising clients. (But being introduced to the music of The Beatles, for example, in the course of a tax module could be of lasting value.) On the other hand, public debate about the tax system is sorely in need of more nerdy contributions. In the UK, myths surround the history and purpose of the likes of VAT, National Insurance, and Corporation Tax which are used inaccurately to promote or to stifle change. Many talk of “the spirit of the law” without no real idea what the purpose of the law originally was. Tax historians can make a meaningful contribution to this discourse.

¹ Douglas Houghton MP, Debate on Finance Bill 1963 *HC Deb 26 June 1963 vol 679 cc1347-95*

² The Doctor (2006, and/or 1727, and/or 51st Century), *The Girl in the Fireplace*

I Introduction

At some point during the undergraduate taxation module at the University of Central Lancashire (UCLan), the accounting students take a week or two out to have an extended picnic and explore the finer details of Group 1, Schedule 8, Value Added Tax Act 1994.³

Schedule 8 lists the items that are zero-rated for VAT (Value Added Tax) – the equivalent of GST-Free in Australia. Group 1 sets out the rules for "Food".

In our quest to understand the vagaries of the UK tax system, we show the same dedication as did the tribunal judges in a recent hearing. They reported that, as part of their fact-finding:

*We, [counsel] and a witness were each provided with a plate comprising a number of confections including one each of a Jaffa cake, Mr Kipling Bakewell Tart, Waitrose meringue, a tea cake manufactured by each appellant, a Lees snowball and a mini jam snow cake. We found that the plate looked like a plate of cakes. We were also left with samples of all of these together with Tunnock's snowballs. **We tasted all of them, in moderation, either at the hearing or thereafter.***⁴ [Emphasis added]

The point at issue was how to categorise those snowballs for the purposes of Excepted Item 2. This removes from zero-rating:

“Confectionery, not including cakes or biscuits other than biscuits wholly or partly covered with chocolate or some product similar in taste and appearance”

It was agreed by all parties that these snowballs were items of confectionery and so potentially attracting VAT at the standard rate, but if they were also cakes then they would be excluded from this Exception, and their sale zero-rated.



The distinction clearly mattered to the manufacturers⁵ and at least one officer of Her Majesty's Revenue and Customs but what are the benefits of asking accounting and general business undergraduates to explore in detail such an apparently trivial part of the tax system?

³ Value Added Tax Act 1994 (UK) c 24, sch 8, Group 1. The text for is reproduced in Appendix 1

⁴ *Lees of Scotland Ltd & Thomas Tunnock Ltd v Commissioners for Her Majesty's Revenue and Customs* [2014] UKFTT 630 (TC), paragraph 21

⁵ Lees had been denied a repayment of £800,000 (roughly A\$1.7 million) and Tunnocks, £2 million.

II Learning and Teaching with Chocolate Biscuits

As Heather Buchan and Karin Olesen have rightly observed:

“Taxation legislation is complex, so needs to be presented in a manner that the students can understand. This is done by changing difficult terminology into plain English and into a context to which they can relate, make a connection with and understand. Using everyday life experiences and current affairs in teaching is important in order to explain taxation issues”⁶.

At UCLan (a middle-ranking, former polytechnic in the North-West of England) most of our domestic undergraduates come from backgrounds where direct taxation issues such as the higher rate of income tax; worries about inheritance tax; or even the completion of a self-assessment tax return, will have formed no part of their experience growing up. For overseas students, their knowledge of British history and politics is often better than that of their local classmates, but their experiences of everyday life and tax in Lancashire are, naturally, even more restricted. On the other hand, all will have experience as consumers and payers (or avoiders) of VAT, even though they may not yet have recognized its influence on their everyday lives in, for example:

- the layout of clothing stores (to meet the detailed requirements to take advantage of the zero-rating of young children’s clothing)⁷
- the “Are you student or staff?” questions when buying hot food in the University coffee shops. (This constitutes an exempt⁸ supply of education to the students⁹, but is a standard-rated supply of catering to lecturers.)
- the disappointing selection of biscuits in “family” assortments, even at Christmas. (These can be zero-rated if the weight of standard-rated chocolate biscuits does not exceed 15% of the net weight of the whole¹⁰.)



By exploring mundane issues such as these, we can start from the students’ everyday experience and understanding. The students soon discover for themselves that the legislation can be complex and the terminology difficult – but that this is often because the world they live in is complex, and Plain English is not as useful as they may have thought.

⁶ Heather Buchan and Karin Olesen “Can teaching and learning taxation be fun while still maintaining standards?” (2015) 9 *Journal of the Australasian Tax Teachers Association* 253. Fun seems to be an overlooked dimension in the pedagogic literature. I’d much rather hear of the subjective impression as to whether or not any particular learning experience was enjoyable, than be presented tables of statistics on examination outcomes or survey responses. As Disney’s *Mary Poppins* (1964) sang, once you’ve found the element of fun “ev’ry task you undertake becomes a piece of cake.”

⁷ *Value Added Tax Act 1994* (UK) c 24, sch 8, Group 16

⁸ “Exempt” is the equivalent of “input-taxed” in Australian GST

⁹ *Value Added Tax Act 1994* (UK) c 24, sch 9, Group 6 and HMRC *VAT Notice 701/30: education and vocational training*, para. 8.2

¹⁰ HMRC *VAT Notice 701/14: food*, para. 6.2

With less than three pages of well-spaced text, Group 1 of Schedule 8 VATA 1994 does not immediately intimidate our students, But they very soon pass through the apparently plain English of terms such as “food” or “catering” to arrive at the introductory text to the exceptions.

“a supply of anything comprised in any of the excepted items set out below, unless it is also comprised in any of the items overriding the exceptions set out below which relates to that excepted item.”

To law scholars this short text may well present no difficulty, which they will understand it immediately. But to those unpractised in reading legislation, it presents a challenge which requires much more careful reading than has been required of them in the past. It is short enough, though, for us to tackle together comparatively quickly and for them to reassure themselves of their understanding as they work through the exceptions and the overrides. Having succeeded at this, they appear to be less afraid to at least attempt to read other primary legal sources where they might otherwise have refused even to open the file or pick up the book.

As they work further they begin to appreciate that the real challenges in tax are not so much the complex wording, whose ends up having an unambiguous meaning once carefully read. Rather the difficulty is with what the words they thought they understood and which they read without thinking. “Hot Food”, “Cake”, “Catering”, “Beverage” are not necessarily what they thought they were.

It does not take long for them to discover the problems caused by either careless reading (or careless drafting) of the provisions as they come to apply these to the foods in front of them. When they then go on to combine this with their experience of the muddle and diversity of everyday life they soon begin to appreciate the difficulties faced by all actors within the tax system when trying to make it work.

For the more diffident members of the cohort examining the taxation of food offers a number of benefits:

- They can hazard a guess at the VAT treatment without a fear of appearing stupid. They may not have decided the same way as the Supreme Court or Court of Appeal finally did, but there are very many cases where we can see that experienced judges came to exactly the same decision they did.
- It values the examination of everyday experience and the apparently trivial. This contrasts with other aspects of the taxation syllabus where it is the esoteric knowledge of those lucky enough to have had, say a placement or internship with the Big 4 that seems to be what really matters. The Tribunal in Snowball case, made 17 findings of fact after tasting their plate of “cakes” all of them potentially relevant to their decision – all of which in other circumstances would be completely mundane. How sweet? Did they make crumbs? Would I want a drink with my snowball? Are my fingers sticky?
- It allows the use of all senses – taste, smell, touch. Skills in which we give little opportunity to develop or show off elsewhere in the course.
- It values experience of other parts of the business curriculum – marketing, packaging, branding, manufacturing processes have all been held to be relevant considerations in determining the appropriate VAT category.

Discussions can flow naturally into economic concepts.

For example, the biscuit selection boxes available in the UK provide a very neat introduction to Joel Slemrod’s work on tax notches¹¹. With examples of tax-driven product innovation, welfare losses

¹¹ Joel Slemrod “Buenos notches; lines and notches in tax system design (2013) 3 *eJournal of Tax Research* 259-283

and tax voids can be readily identified by the students, even before they have been introduced to the jargon academics use to discuss these phenomena.



The difference between legitimate tax planning and avoidance can be explored in terms of developing offerings to the consumer which exploit the existence of these notches.

Even if the students learn nothing about taxation, we have at least had fun and along the way have introduced overseas students to some traditional delicacies and domestic students to their culinary heritage. Although not an explicit learning outcome, this may prove to be of more lasting benefit to the students than ephemeral tax knowledge.

III ...other than biscuits wholly or partly covered in chocolate...

At some point in the learning, the students will ask, very reasonably, why the VAT rules draw the lines in the places they do.

The short answer is that it, in commercial practice, it doesn't matter why. The appeal tribunal will rarely ask the question and will not look back at the origins and development of the provision to determine why we originally singled out chocolate covered biscuits to be taxed, but not triple choc chip cookies that may contain significantly more chocolate. Should we take the time out to help our students appreciate the history of the tax system, at the expense of knowledge that would more explicitly improve their employability?

As far as the current treatment of chocolate biscuits go we can trace the origins of the current VAT provision back to 1962 and the extension of Purchase Tax to confectionery, beverages and ice-cream.

A new Group 34 to the Purchase Tax Act 1940 comprised:

“Chocolates, sweets and similar confectionery (including drained, glaze or crystallised fruits); and chocolate biscuits and other confectionery having a case of coating of chocolate couverture, but not including cakes in such a case or coating”

The Chancellor of the Exchequer was brutally honest as to why he had extended purchase tax to these items – to raise revenue. Unlike recent tax innovations in the UK, there was no suggestion that it was being done to make an unpopular group pay their “fair share” or for the taxpayers own good to improve their health or environment. In fact, though, the idea that the tax was being used to raise revenue was challenged in some quarters not so much because it penalised schoolchildren, but because that was not what the tax was for. The traditional justification for the tax was that it was there to reduce consumer demand for particular goods and to control inflation; revenue raising was a very useful but secondary aim.¹² In contrast to the generally held view that a good value added tax should be universal, purchase tax was deliberately designed to be discriminatory between different classes of

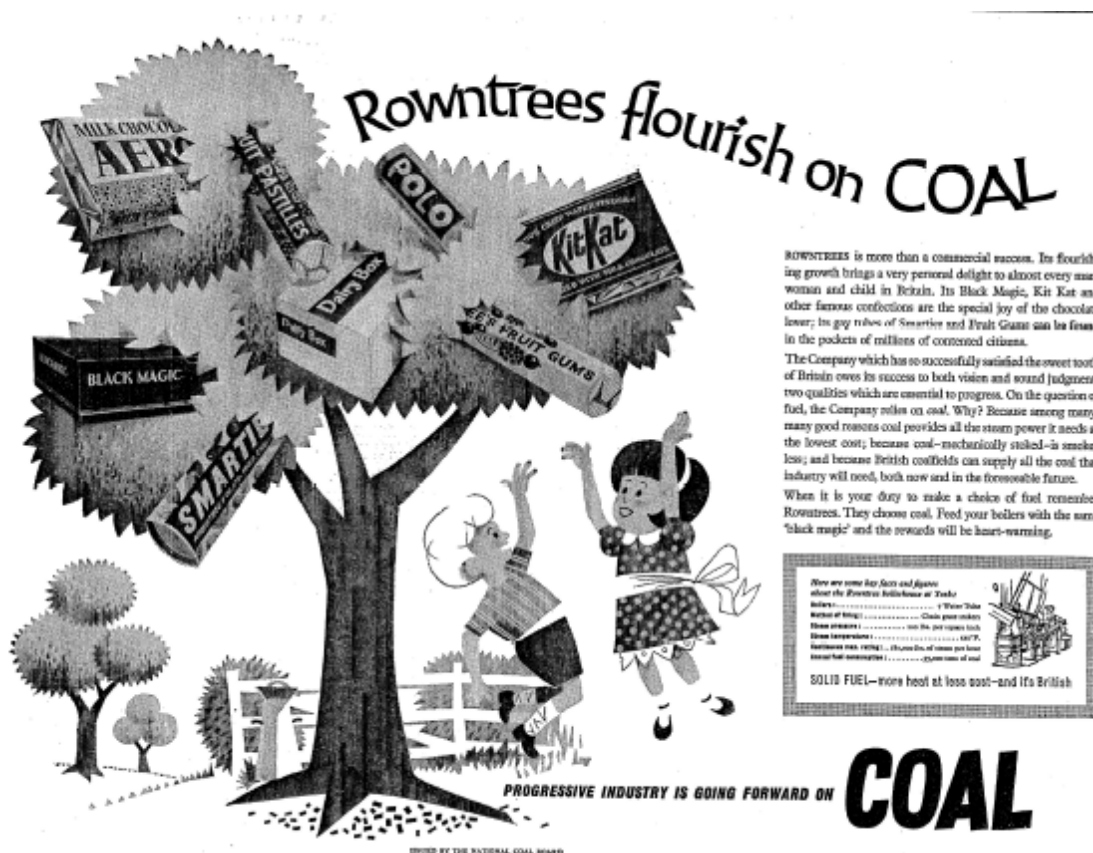
¹² See Arnold M Soloway “The purchase tax and fiscal policy” (1951) 4 *National Tax Journal* 304-324 for a discussion of the early history of purchase tax in the UK.

goods, and even within classes. The sort of anomalies this produced is illustrated by the poem reproduced in Appendix 2¹³

Why extend the tax to chocolate covered biscuits but not cakes or other chocolatey biscuits? As the Economic Secretary to the Treasury made clear during the Finance Bill debate:

“... if we had left out chocolate biscuits from the charge to tax there would have been serious distortion of the pattern of the confectionery trade”¹⁴

Exchanges elsewhere during the debate make it clear that it was the Kit Kat that was causing the problem.¹⁵



The Times (London, England) Tuesday, 11 April 1961, page 9

There was no particular intention to tax chocolate biscuits generally. But they had to tax the Kit Kat and this was felt to be the most effective place to draw the line.

¹³ Christopher Hollis “Per Cent, Per Scant” from *The Pick of Punch – An Annual Selection* Edited by Nicholas Bentley Readers Union, Andre Deutch. London 1958, page 85. One of the questions posed is “...why among the animal furs it should be/The Australian opossum that alone that goes free”. Is there anyone with local knowledge that might answer this?

¹⁴ Anthony Barber MP, Debate on Finance Bill 1962 *HC Deb 3 July 1962 vol 662 c442*

¹⁵ For insight into the confectionery industry at this time, see [Review of the “Chocolate Cases” in the Restrictive Practices Court to go here]

Why could they not have drawn that line with more precision?

It is reported that

The retail sales tax in the Canadian province of Ontario exempts basic food items such as flour but applies to other processed foods such as chocolate bars, requiring lines to be drawn, including one that subjects to tax “biscuits or wafers specifically packaged and marketed to compete with chocolate bars.” [emphasis added].¹⁶

The answer seems to be in the structure of the tax. Purchase tax was imposed and collected at the wholesale rather than the retail level. This potentially causes difficulties in determining how a product will be packaged and marketed. Looking back this shouldn't have been a problem for a brand such as the “Kit Kat” but this way of drawing lines does not yet seem to have been adopted by those responsible for drafting the rules in the UK. My researches so far seem to suggest that this kind of definition was not adopted in the UK until the system had, in the late 1960s, to cope with the newly fashionable mini-skirt, and a way had to be found to distinguish women's skirts (taxable) from that skirts of young schoolgirls (tax-free). The existing definition in terms of length was no longer effective in marking the line.

By this time the taxation of confectionery appears to have been accepted by the industry and the public so there was nothing to spur revisiting the definition even if a more effective one could have now been devised.

What did change was the replacement of Purchase Tax (and Selective Employment Tax) by VAT in 1973. If students were to rely on the popular press for their understanding of the transition they would be led to believe that:

“When VAT was introduced in 1973 as a requirement of Britain joining the Common Market, ministers excluded staple foods to ensure families could afford a healthy diet.

As a result, the tax was applied only to products such as confectionery, ice cream, soft drinks, biscuits, crisps and nuts, which had previously been hit by Purchase Tax.

However, changes in diets and the products on the shelves over the years means food and drink which appear to fall into the category of healthy staples are taxed in the same way as non-essential, often unhealthy, treats.

At the same time foods such as cake, which many assume leads to weight gain, are relatively cheap because they do not carry VAT.”¹⁷

What actually happened was that VAT was **not** applied to confectionery and the other snack foods in 1973. It was going to be, but a last minute change by the Conservative Chancellor of the Exchequer,

¹⁶ Christian Gillitzer, Henrik Kleven & Joel Slemrod “A Characteristics Approach to Optimal Taxation: Line Drawing and Tax-Driven Product Innovation” (2015). p.1 Available at http://www.henrikkleven.com/uploads/3/7/3/1/37310663/gillitzer-kleven-slemrod_sje_aug2015.pdf

¹⁷ Sean Poulter Consumer Affairs Editor For The Daily Mail “The great VAT mystery: Confusing rules mean healthy items such as raisins have food tax while chocolate cake does not (but do YOU know which ones have added cost?)” *Daily Mail*, 26 August 2015 <http://www.dailymail.co.uk/news/article-3212101/The-VAT-mystery-Confusing-rules-duty-food-means-eating-healthy-items-raisins-expensive-cakes.html#ixzz3x71uS6E1> [last accessed 13 January 2016]

Anthony Barber, led to these items remaining within zero-rating (along with the introduction of zero-rating of young children's clothing).

It was in 1974, under a new Chancellor, Denis Healey, that standard rate VAT was applied to confectionery, etc. After the February General Election Harold Wilson's Labour Party had formed a minority government with 301 seats in the House of Commons. Only narrowly ahead of the Conservatives on 297 seats, the Liberals 14, with 22 further seats shared between eight parties. Labour had stood on a platform that pledged it to oppose any increase in taxes on food¹⁸. But just days after forming a new administration it sought to impose VAT on a significant portion of food expenditure. With the *Value Added Tax (General) (No. 1) Order 1974 (S.I., 1974, No. 542)* the new Government extended VAT to confectionery, ice cream, soft drinks and potato crisps¹⁹.

What had forced the Government to abandon its commitments so swiftly and how did it go about introducing the provisions?

The taxes on food that it had complained about in its manifesto were not domestic taxes but rather the import levies which the UK had been obliged to impose on Commonwealth imports when it joined the EEC the year before and which the new Government was still committed to reducing. And the reason, as with the original extension of purchase tax to these foods was the simple need to raise revenue. The means for extending VAT were readily to hand in the provisions which were to have been imposed in 1973 and which in turn had been modelled, with very little amendment, on those of the Purchase Tax.

This was no considered judgement regarding the Nation's physical health, rather it was the natural inclination to use whatever methods were available at short notice to collect the tax required.

The Daily Mail article asserted in its leads that the "Majority of consumers have no idea which products are subject to VAT". This is very likely true (very few of us are sad enough to study the VATA and the HMRC notices), but not in the way the article goes on to suggest.

The trade press who picked up on the story are a bit more honest than the national tabloids²⁰ and have apparently just reprinted the original press release rather than pretending to have done any serious journalism. The "Report" referred to in the articles was little more than a marketing exercise. *World Bakers Digital*²¹, reported that:

¹⁸ The Labour Party (February 1974) *Let us work together - Labour's way out of the crisis*. Available at: <http://politicsresources.net/area/uk/man/lab74feb.htm>

¹⁹ Potato crisps = potato chips.

As an 11 year old living in a small Pennine village I was aware of the election, but not surprisingly have no recollection of the *Value Added Tax (General) (No. 1) Order 1974 (S.I., 1974, No. 542)* which removed our treats from zero-rating. Our concerns lay with the regeneration of Dr Who (from Jon Pertwee to Tom Baker) and who to support in the World Cup in West Germany after England's failure to beat Poland at Wembley the previous year. Apparently the Soccerroos did qualify for their first ever finals appearance, as did Haiti, Zaire and East Germany, but none of us at our Yorkshire really noticed.

²⁰ The Daily Mail was not alone in running this type of lazy (but all too common) journalism. **The Daily Mirror ran the article**, "How the Government taxes healthy stuff - but we can buy junk food VAT free" <http://www.mirror.co.uk/money/how-government-taxes-healthy-stuff-6338324>

²¹ "Majority of Britons feel confused by VAT healthy food rulings" *World Bakers Online* 26 August 2015 <http://www.worldbakers.com/business2/1670-majority-of-britons-feel-confused-by-vat-healthy-food-rulings> An almost identical article was run by Fish & Chips Fast Food magazine "Majority of Britons feel confused by VAT healthy food rulings" <http://www.fcffmag.co.uk/majority-of-britons-feel-confused-by-vat-healthy-food-rulings/>

“The government in the UK claims that unhealthy edible products will be subject to VAT in order to discourage purchases of junk food. When asked to guess whether food products fall under the VAT-free category, intended to bring down the costs of healthy and staple food products, and those which are accountable for VAT, to discourage people from buying unhealthy items; the majority guessed incorrectly.” ...

But the report then explains that the survey subjects were told before being asked to identify the VAT treatment of the chosen foods:

“As part of the research, the respondents were then provided with a short paragraph which explained that the government allows tax breaks for foods which are deemed to be healthy or staple items, in order to lower the cost of following a good diet. They were also advised that food products deemed to be unhealthy are subject to 20 per cent VAT, in order to discourage shoppers from buying what is deemed to be 'unhealthy'”²²

The survey was carried out by the team behind powdered food product Huel as part of their research into the understanding of healthy eating.”

Having been deliberately misled as to the nature of the policy behind the VAT rules it is not surprising that interviewees guessed wrongly in many cases. And it turns out that it's all in aid of a “food” manufacturer promoting their product and agitating for preferential VAT treatment.²³

The distinctions we make in the rules certainly do not make sense now. The changes in food manufacture, marketing and distribution, mean that the earnest attempts to avoid distortions in the 1960s marketplace have introduced new ones that we would never countenance if we were given a clean sheet on which to draft the provisions afresh. But I would rather that we weren't deceived by false narratives of tax policy. I can live with commercial advertising attempting this – most of us are skeptical enough to be wary of messages from these sources. But we have more sinister forces attempting to make changes to the way our food is taxed – with the medical establishment and giant charities lobbying Government to increase taxes on the foods they currently deem unhealthy (without acknowledging that their previous views on diet were often wrong but espoused with equal fervour and certainty). It is particularly pernicious where we are being persuaded to go along with this on the false basis that it is merely returning the tax system to normal rather than being a novel imposition that should be argued on its own merits.

Should I bore my students with the history of the tax they are studying?

Probably No, if all I wish is for them is that become mere technicians but who in the short-run may gain the narrow skills needed to secure graduate employment quickly for the purpose of the University's position in the League Tables.

But surely yes, if the purpose of a university education is help the youngsters entrusted to us to become effective citizens and wise taxpayers.

²³ I'm fairly certain that “Huel” falls to be treated as a supplement rather than food as so is not currently zero-rated, but I'm happy to be corrected.

Per Cent Per Scent

Mr Gerald Nabarro tabled fifty questions on purchase-tax during a recent session of Parliament

OH, WHY, if you fasten a grid to your grate
 Purchase tax should be charged at the
 maximum rate,
 And why if you perfume your elegant tan
 You must pay on the smell what you gain on
 the can,
 And why if there isn't a smell they relent
 And are willing to settle for 30 per cent,
 And why if a basket is bought at the stores
 You pay six times as much if you take it
 outdoors,
 And why when cold hair is quite cheap for a
 girl
 She must pay through the nose if she hots up
 her curl,
 And why if a mowing machine, at a guess,
 Cuts a foot and a half they should let you pay
 less,
 And why can all calendars freely be sold
 If the picture thereon is a hundred years old
 But you have to stump up under Sub-section 5,
 So long as the artist is nearly alive,
 Why Plan File Chests are at this time unable
 To earn the concession if fixed to a table,
 Why must Holders of Teeth-Brush pay
 maximum tax
 Minus 60 per cent if you keep them in Racks,
 And why if you wear a false beard they should
 say
 If it's all gummed together of course you must
 pay,

But gladly agree the whole thing is untaxable
 If each separate hair should be separately
 waxable,
 Why the privileged spinet, in grandeur, enjoys
 Exemption denied to other makers of noise,
 And if 30 per cent is no less of a scandal
 For prams with a Minimum Vertical Handle,
 And why a susceptible Chancellor still
 Lets the Cake Board escape while he soaks the
 Cake Frill,
 And why among the animal furs it should be
 The Australian opossum that alone that goes
 free –
 These jolly conundra (some fifty or so)
 Are the things that our Gerald is aching to
 know,
 Having sworn his great oath, by the bones of
 Nabarro,
 As straight as a die and as swift as an arrow,
 That he won't be put off by evasions and
 homilies
 Till he's killed the fool tax and exposed its
 anomalies
 Being wholly convinced it's bung full of
 absurdities –
 To which Echo respectfully answers, 'My
 word it is'.

CHRISTOPHER HOLLIS

Appendix 1

Value Added Tax Act 1994, SCHEDULE 8 *Zero-Rating*, Part II The Groups

Group 1--Food

The supply of anything comprised in the general items set out below, except--

- (a) a supply in the course of catering; and
- (b) a supply of anything comprised in any of the excepted items set out below, unless it is also comprised in any of the items overriding the exceptions set out below which relates to that excepted item.

General items

Item No

- 1 Food of a kind used for human consumption.
- 2 Animal feeding stuffs.
- 3 Seeds or other means of propagation of plants comprised in item 1 or 2.
- 4 Live animals of a kind generally used as, or yielding or producing, food for human consumption.

Excepted items

Item No

- 1 Ice cream, ice lollies, frozen yogurt, water ices and similar frozen products, and prepared mixes and powders for making such products.
- 2 Confectionery, not including cakes or biscuits other than biscuits wholly or partly covered with chocolate or some product similar in taste and appearance.
- 3 Beverages chargeable with any duty of excise specifically charged on spirits, beer, wine or made-wine and preparations thereof.
- 4 Other beverages (including fruit juices and bottled waters) and syrups, concentrates, essences, powders, crystals or other products for the preparation of beverages.

[4A Sports drinks that are advertised or marketed as products designed to enhance physical performance, accelerate recovery after exercise or build bulk, and other similar drinks, including (in either case) syrups, concentrates, essences, powders, crystals or other products for the preparation of such drinks.]

- 5 Any of the following when packaged for human consumption without further preparation, namely, potato crisps, potato sticks, potato puffs, and similar products made from the potato, or from potato flour, or from potato starch, and savoury food products obtained by the swelling of cereals or cereal products; and salted or roasted nuts other than nuts in shell.
- 6 Pet foods, canned, packaged or prepared; packaged foods (not being pet foods) for birds other than poultry or game; and biscuits and meal for cats and dogs.
- 7 Goods described in items 1, 2 and 3 of the general items which are canned, bottled, packaged or prepared for use--
 - (a) in the domestic brewing of any beer;
 - (b) in the domestic making of any cider or perry;
 - (c) in the domestic production of any wine or made-wine.

Items overriding the exceptions

Item No

- 1 Yoghurt unsuitable for immediate consumption when frozen.
- 2 Drained cherries.
- 3 Candied peels.
- 4 Tea, maté, herbal teas and similar products, and preparations and extracts thereof.
- 5 Cocoa, coffee and chicory and other roasted coffee substitutes, and preparations and extracts thereof.
- 6 Milk and preparations and extracts thereof.
- 7 reparations and extracts of meat, yeast or egg.

Notes:

- (1) "Food" includes drink.
- (2) "Animal" includes bird, fish, crustacean and mollusc.
- (3) A supply of anything in the course of catering includes--
 - (a) any supply of it for consumption on the premises on which it is supplied; and
 - (b) any supply of hot food for consumption off those premises;

. . . .

[(3A) For the purposes of Note (3), in the case of any supplier, the premises on which food is supplied include any area set aside for the consumption of food by that supplier's customers, whether or not the area may also be used by the customers of other suppliers.

(3B) "Hot food" means food which (or any part of which) is hot at the time it is provided to the customer and--

- (a) has been heated for the purposes of enabling it to be consumed hot,
- (b) has been heated to order,
- (c) has been kept hot after being heated,
- (d) is provided to a customer in packaging that retains heat (whether or not the packaging was primarily designed for that purpose) or in any other packaging that is specifically designed for hot food, or
- (e) is advertised or marketed in a way that indicates that it is supplied hot.

(3C) For the purposes of Note (3B)--

- (a) something is "hot" if it is at a temperature above the ambient air temperature, and
- (b) something is "kept hot" after being heated if the supplier stores it in an environment which provides, applies or retains heat, or takes other steps to ensure it remains hot or to slow down the natural cooling process.

(3D) In Notes (3B) and (3C), references to food being heated include references to it being cooked or reheated.]

- (4) Item 1 of the items overriding the exceptions relates to item 1 of the excepted items.
- (5) Items 2 and 3 of the items overriding the exceptions relate to item 2 of the excepted items; and for the purposes of item 2 of the excepted items "confectionery" includes chocolates, sweets and biscuits; drained, glacé or crystallised fruits; and any item of sweetened prepared food which is normally eaten with the fingers.
- (6) [Items 4 to 7] of the items overriding the exceptions relate to item 4 of the excepted items.
- (7) Any supply described in this Group shall include a supply of services described in paragraph 1(1) of Schedule 4.

NOTES

Derivation

Group 1: this Group derived from the Value Added Tax Act 1983, Sch 5, as amended by the Finance Act 1984, s 10, Sch 6, para 1, the Value Added Tax (Confectionery) Order 1988, SI 1988/507, art 2, and the Value Added Tax (Beverages) Order 1993, SI 1993/2498, art 2.

Amendments

Group 1: Excepted items: item 4A inserted by the Finance Act 2012, s 196, Sch 26, Pt 1, paras 1, 2(1), (2).

Date in force: 1 October 2012: see the Finance Act 2012, s 196, Sch 26, Pt 4, para 7(1).

Group 1: Note (3): words omitted repealed by the Finance Act 2012, s 196, Sch 26, Pt 1, paras 1, 2(1), (3).

Date in force: 1 October 2012: see the Finance Act 2012, s 196, Sch 26, Pt 4, para 7(1).

Group 1: Notes (3A)-(3D): inserted by the Finance Act 2012, s 196, Sch 26, Pt 1, para 1, 2(1), (4).

Date in force: 1 October 2012: see the Finance Act 2012, s 196, Sch 26, Pt 4, para 7(1).

Group 1: Note (6): words "Items 4 to 7" in square brackets substituted by the Finance Act 1999, s 14.

Date in force: this amendment is deemed always to have had effect: see the Finance Act 1999, s 14.

[Adapted from Tolley's Orange Tax Handbook]