

An Leas-phrìomh Mhinistear agus Ath-shlànachadh
Cobhid
Deputy First Minister and Cabinet Secretary for Covid
Recovery
John Swinney MSP



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Rt Hon Michael Gove MP
Secretary of State for Levelling Up, Housing and
Communities
2 Marsham Street
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31 January 2023

Dear Jeremy and Michael,

I am writing to express the Scottish Government's grave concerns about the unacceptable delay by the UK Government in confirming the VAT treatment for Scotland's deposit return scheme (DRS), which will go live on 16 August 2023, and to raise with you the need for very rapid agreement on the approach required to overcome any barriers to successful implementation created by the Internal Market Act (IMA).

Let me start by commending the constructive working relationships that have been maintained between officials over many years on the design and interoperability of our different DRS systems. The Scottish Government agrees with the goal of promoting long term alignment of schemes, while also respecting the different policy ambitions across devolved nations. We have already taken a number of decisions to enable this interoperability, and we are committed to close working to achieve this outcome, as other systems come on line in 2025.

However, despite intensive and prolonged official and ministerial engagement we continue to face two significant risks to successful delivery that are fully dependent on decisions by UK Government.

The first concerns how VAT applies to deposits within live DRS systems. This is an issue which I understand has been actively considered by HMT over a very extended period of time, and is an issue of great concern to industry given the ramifications for their accounting systems and management. It was for that reason that the Scottish Government requested clarity on the matter by July 2022 at the latest. It is an issue that my colleague Lorna Slater, the Minister for Green Skills, Circular Economy and Biodiversity has consistently raised with UK Ministers in both correspondence and meetings.

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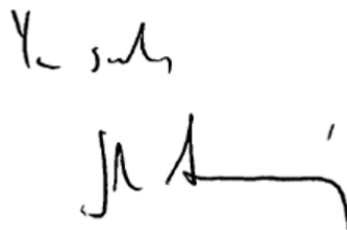
Clearly, the preferred position of the Scottish Government remains that VAT should not be applied to deposits under DRS. At this late stage, this is the only risk-free option for the successful operation of Scotland's DRS given the simplicity of applying this solution and, therefore, the reduced implications for business. However, in the absence of your agreement to that, **I am asking you to ensure that HMT/HMRC provide an update to business by the end of January, and offer explicit guidance to business on how you wish VAT to be applied to DRS by 9 February at the very latest.** This date would allow information to be shared with producers ahead of the scheme administrator's registration window for producers closing on 28 February. Lack of clarity on this matter is a fundamental issue in businesses' ability to prepare for scheme launch in August 2023, which is already undermining business confidence and impeding producer registration. The lack of clarity from UK Government about the proposal to be implemented leaves us with serious doubts that any changes to accounting systems will be deliverable without critical impacts to business and to Scotland's DRS. I am sure this is a situation that you would both wish to avoid.

The second urgent matter I wish to raise with you is the IMA. While we will continue to seek long term alignment of DRS schemes, it is unavoidable that there will be a time-limited period of non-alignment due to the different launch dates of the Scottish and rUK schemes and, in the longer term, because of the broader scope of the Scottish and Welsh schemes, which will contain glass. I understand that a constructive workshop took place this week, and further engagement is underway to support fuller understanding of the clear risks the IMA poses for Scotland's DRS. While clear steps have been agreed to establish a way forward, **I remain concerned about the time available to bring in any required UK regulations and to communicate how the interactions between IMA and Scotland's DRS should be handled by businesses.**

I am sure the UK Government will not want to cut across the Scotland's ability to establish a fully-effective DRS that will contribute directly to our shared climate goals, and deliver on the Scottish Parliament's intentions. Therefore, this should be a straightforward issue to resolve between governments, and **I am seeking your assurance now that UK Ministers will expedite a rapid solution, including an exclusion to the IMA if that is required,** and avoid the type of protracted negotiations required to achieve the single-use plastics IMA exclusion last year.

I look forward to your confirmation before 9 February on this matter and of the UK Government's proposed approach on VAT, and any actions you propose to mitigate business impacts given the delay to UKG decisions to date.

I am copying this letter to Thérèse Coffey MP, Secretary of State for Environment, Food and Rural Affairs and to the First Minister, Cabinet Secretary for Net Zero, Energy and Transport and Minister for Green Skills, Circular Economy and Biodiversity.



JOHN SWINNEY

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