

Response of the Chancery Bar Association to HMRC Consultation on the Extra-Statutory Concession applied to Barrister's Fees

1. This is the Response of the Chancery Bar Association ("The Association") to HMRC's consultation on this topic, which invites views as to the impact of a proposal to withdraw the extra-statutory concession that currently applies to fees billed by counsel to solicitors acting for foreign clients and the VAT treatment of those fees. The consultation particularly asks:
 - a. For what percentage of your supplies do you use the concession?
 - b. What would be the impact on your business if the concession was to be withdrawn?
2. The Association is a specialist Bar association. Its 1,700 or so members practice Chancery law, which covers finance, business and property work (contentious and non-contentious).¹ That umbrella includes banking, financial services and consumer credit law, charities law, company and partnerships law, insolvency law, civil fraud, intellectual property law, pensions and tax law, real property and landlord and tenant law, and wills and probate and trusts law.
3. In light of the subject matter of our members' expertise, the work undertaken by the Association's members is often international. Very often, even where our members are instructed in relation to a dispute being litigated in England and Wales, the lay client may be domiciled overseas and the concession would apply. Further, as a result of the importance of English law worldwide, members often undertake services to overseas clients which include:
 - a. Advising on English law, which is frequently adopted by choice between contracting parties as the law governing transactions and relationships in an international context, and which may also be highly relevant to an understanding of other common law systems;
 - b. Appearing before courts and tribunals in England and Wales as well as foreign jurisdictions. For example, in light of the historic spread of English law and the breadth of Chancery work, our members regularly appear before courts and

¹ See <https://www.chba.org.uk/about-us/the-association/the-work-of-the-chancery-bar>

tribunals in the Cayman Islands, British Virgin Islands, Bermuda,² Jersey, Guernsey, Isle of Man, Gibraltar, Singapore, Hong Kong, and the 'offshore' courts in the Middle East. Barristers often appear either through ad hoc admission to the bar in that jurisdiction or by holding permanent local rights of audience before those courts. A number of these jurisdictions are those for which the Judicial Committee of the Privy Council serves as the final court of appeal, where our members may also appear for foreign clients;³

- c. Acting as arbitrators and mediators in disputes sited in foreign courts and tribunals; and
 - d. Acting as expert witnesses on English law in foreign courts and tribunals.
 - e. Typically, our members' fees are charged on an 'hourly rate' basis. A barrister will set their hourly rate at which services are billed. For clients to which the concession does not apply, VAT is then charged on top of that rate and accounted for to HMRC. Where the concession applies, VAT is not charged and so the client only pays the 'net' hourly rate, making the overall cost cheaper. The Bar Council's detailed guidance followed by our members is at Part Six of its Taxation Handbook.⁴
4. The individual practices of our members vary widely, and will change year-on-year depending on the cases on which our members are instructed. As such, it is not possible to state generically for what percentage of work undertaken by members of the Association the concession is used. However, anecdotally, we can say that for many members who undertake some international practice, the concession is applied in at least 50% of cases on which they are instructed and for some of our members it is as high as 75% of their annual fee income.
5. In the Association's view, the VAT concession is important and should be retained. It is an important reason why the specialist services supplied by members of the Association are attractive to foreign-registered clients. It keeps our services competitive and attracts international business. Foreign-registered clients cannot recover VAT as part of their own accounting as they do not pay UK tax. As such, the payment of VAT would amount to an effective 20% increase of the cost of services provided by the barrister, compared to the fees paid by a UK-domiciled lay client for the same work. Removing the concession would therefore remove a market advantage for barristers competing for the services of foreign-registered clients.

² And other Caribbean jurisdictions which historically are closely aligned to English trusts and/or company law such as St Kitts & Nevis, the Bahamas., Anguilla and Turks & Caicos.

³ E.g. Dubai International Financial Centre, Abu Dhabi Global Market, Qatar Financial Centre.

⁴ <https://www.barcouncilethics.co.uk/documents/taxation-handbook/>

6. We do not think the importance of remaining attractive to foreign-registered clients can be understated. One of the reasons parties chose English law and jurisdiction, or the related common law jurisdictions, is because of the reputation of its dispute resolution systems, including the availability of specialist counsel. There are, increasingly, other dispute resolution options available to international parties and the English legal system must continue to adapt to make itself attractive. We cannot support taking a step which makes access to English law qualified specialist counsel more expensive, as this could be a reason why parties chose not to adopt English law or jurisdiction in their contracts in future.

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Chancery Bar Association, March 2026