



VAT on children's clothes

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Clothing and footwear for young children are charged a zero rate of VAT. Articles must be both designed for young children, *and* suitable only for young children. In meeting these criteria, articles cannot exceed certain maximum sizes which accord with an average 13 year old child. This note gives a short summary of the law, before looking at certain criticisms have been made of the zero rate, and the case that has been made for extending it to all school uniforms. Detailed guidance on the scope of the zero rate is published by HM Revenue & Customs.¹

There have been concerns that the UK might be required to abolish the zero rate on children's clothes to comply with EU-wide agreements on VAT rates. Member States first agreed provisions to set parameters for VAT rates across the EU in 1991; this permitted the UK to maintain its existing zero rates, although it precluded any State introducing new zero rates. Proposals for further harmonising VAT rates were made by the European Commission in 2003, and if adopted would have meant the end of this zero rate. However, they were strongly opposed by many countries including the UK; as a consequence the changes that have made to these rules since then have been relatively minor in scope, and have allowed for the UK to continue to apply all its existing zero rates. The last section of this note gives a short summary of these events; the issue is addressed in detail in a second Library note.²

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¹ HMRC, *VAT Notice 714: Young children's clothing and footwear*, June 2011

² *VAT: European law on VAT rates*, Library standard note SN02683, 6 September 2011

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1 Summary of the law

Clothing and shoes for young children have been charged a zero rate of VAT since the introduction of the tax on 1 April 1973. Initially it had not been proposed that these supplies should be zero-rated, although young children's clothing was relieved of purchase tax which VAT replaced. In his Budget statement on 6 March 1973 the then Chancellor Anthony Barber announced that both children's footwear and clothing *would* be zero-rated, although the criteria for assessing whether items were tax-free would have to be more restrictive, to prevent the kind of abuse to which purchase tax was subject:

One of the aspects of this matter which has throughout troubled successive Chancellors has been the very considerable abuse of the relief for young children's clothing. It has been estimated as much as 25 per cent of so-called young children's clothing which is exempt from purchase tax is in fact worn by adults. This is, of course, to make a complete nonsense of the relief, and unfortunately it is no part of my responsibility as Chancellor of the Exchequer to add to the many advantages already enjoyed by slim and nubile young women.

I therefore asked Customs & Excise³ to see whether they could not work out a more restrictive scheme, in order to cut the abuse to the minimum. This they have done, though they will, I suspect, have needed all their ingenuity to deal with a situation where, for instance – so the Customs experts tell me – the waist measurement of the current Miss World is that of an average young girl of 12.⁴

At this time those goods and services to be zero-rated were set out in a number of groups to schedule 4 to the *Finance Act 1972*; under secondary legislation a new group was added to this schedule, consisting of "articles designed as clothing or footwear for young children and not suitable for older persons."⁵ In the Budget the next year the then Chancellor Dennis Healey announced a number of extensions to the list of zero rates, including protective boots and helmets for industrial use, and to motorcycle helmets; a similar Order added these items to the list of zero-rated supplies.⁶ These provisions are now consolidated in the *VAT Act (VATA) 1994* – and the current law retains the original wording regarding the scope of zero-rating for children's clothes and shoes.⁷

At the time of the 1973 Budget, the department also published guidance (Notice 714) on whether clothes and footwear would meet the two tests for zero rating: that articles were both designed for young children (the design test), and suitable only for young children (the suitability test); in a press notice to accompany this, Customs gave details of how zero-rating would differ from the old relief from purchase tax:

As under purchase tax, the basic criteria for determining the scope of the relief will be a set of measurements for clothing. The zero-rate will apply to broadly to the same items as the purchase tax relief, but in particular the manufacturing and design tolerances which were incorporated in the measurements of garments have in certain cases been

³ The department, which administered VAT and other indirect taxes at this time, was merged with the Inland Revenue to form HM Revenue & Customs in spring 2005.

⁴ HC Deb 6 March 1973 cc275-6

⁵ Under SI 1973/367 – which added group 17 to schedule 4.

⁶ Under SI 1974/822 – which added these items to group 17.

⁷ This is now item 1 to group 16, schedule 8 of *VATA 1994*. In the notes to group 16 provision is made for any articles made wholly or partly out of fur skin (any skin with fur, hair or wool attached) to be standard-rated.

reduced. The relief will also apply to certain items which were taxed under purchase tax eg, ties and school caps. In addition, however, the new scheme specifically excludes from the zero rate clothing for older persons; and clothing which is sold by retailers (and in departments and sections of shops) catering exclusively for adults will thus be taxable, irrespective of size.⁸

In 2000 the department established a working group to look at the operation of the zero rate, and if these tests could be improved:

At present, the zero-rating of young children's clothing and footwear is determined with reference to a schedule of maximum sizes, detailed in VAT Notice 714A. There have been concerns raised over the operation of the zero rate. Firstly, that a small number of children under 14 years of age are not receiving the benefit due to their size and secondly, that the administrative arrangements are over-complex. As a result, Customs and the British Retail Consortium have agreed to set up a joint Working Group.⁹ The Group will examine and identify alternative methods for administering the zero-rating which will be simpler to operate, but continue to meet the legal criterion of not including items suitable for older persons.¹⁰

In March 2001 a number of changes were announced to update the tests for zero-rating, while retaining the basic principle that garments or footwear had to meet both the design test and the suitability test to be zero-rated:

(a) The *design* test **At present**, the design test is met where: a garment falls within certain maximum sizes; and footwear satisfies certain size **and** styling criteria. **In future** suppliers will still continue to be able to satisfy the design test in this way, but the list of sizes is simpler and has been updated. The new list of sizes is at [Annex A(ii) of this document].

However, suppliers will be able to ignore maximum **garment** sizes, where they can show that the garment has been designed to fit the body size of a young child. The list of body sizes is at [Annex A(i) of this document]. In the case of **footwear**, all sizes, up and to including adult size 3, will be treated as meeting the design test. Some restrictions have been retained for girls shoes sized 3½ to 5½ to exclude styles which are clearly not *designed* for young children and/or are *suitable* for older persons.

(b) The *suitability* test. Suppliers can meet the *suitability* test by labelling the garments or otherwise ensuring the garments and footwear are held out for sale **only** to young children. This is explained in greater detail in paragraph 5 of Notice 714 and it is in the supplier's own interests to make certain that it is clear who the articles are intended for.¹¹

At this time a marginal change was made in the coverage of the zero rate, so that the supply of cycle helmets to both adults and children could be zero-rated. Item 3 to group 16, schedule 8 of *VATA 1994* initially read "protective helmets for wear by a person driving or riding a motorcycle" so that motorcycle helmets and cycle helmets designed and marketed

⁸ HM Customs & Excise press notice 215, 6 March 1973

⁹ [The Group consisted of Customs, the British Retail Consortium, British Clothing Industry Association Ltd and National Childrenswear Association. Invitations to contribute to its work were invited up to 31 October 2000.]

¹⁰ HM Customs & Excise Business Brief 12/2000, 8 September 2000

¹¹ *VAT information sheet 1/01: VAT relief for young children's clothing and footwear*, March 2001 para 3.

specifically for young children could be zero-rated, but normal cycle helmets could not. In the November 2000 *Pre-Budget Report* the Labour Government announced it would “[remove] VAT from the purchase of cycle helmets with effect from 1 April 2001 to encourage road safety and encourage cycle use,” as part of its wider efforts to promote green travel.¹²

The wording of this provision was amended by statutory instrument to “protective helmets for wear by a person driving or riding a motorcycle or riding a pedal cycle.”¹³ This Order also revised the manufacturing standards cited in the notes to Group 16 of *VATA 1994*, updating those for motor cycle helmets, and including standards for pedal cycle helmets. However it did not extend zero-rating to protective riding hats – although riding hats fitted, adapted and appropriate for young children were zero-rated already.¹⁴ As noted above, European VAT law places restrictions on Member States’ discretion in setting VAT rates and prohibits the introduction of any new zero rate.¹⁵ Zero-rating cycle helmets did not contravene these rules, as it represented a *marginal adjustment* and updating of the existing zero rate – not the creation of a new zero rate.¹⁶

The Labour Government did not make any further changes to the zero rate after this; the rationale for the rules as they stand was set out in a written answer in July 2004:

Bob Russell: To ask the Chancellor of the Exchequer if he will amend the Value Added Tax regulations for children's clothing to enable clothing for larger children to be exempt from VAT; and if he will make a statement. [182279]

John Healey: Under the long-standing formal agreements with our European partners, we are not able to extend or add to the current list of zero rates. The EU law provides for zero-rating of "Articles designed as clothing or footwear for young children and not suitable for older persons".

The relief is limited to children under 14 and following a review which the Government undertook with the industry and others, the scope of the zero rate was simplified and modernised in Budget 2001 to reflect more accurately the size of the average 13-year-old child. Some children under 14 who are above average size will still not benefit from relief, but their measurements will be largely indistinguishable from those of many adults.

The current rules ensure that the retailer knows exactly which items are zero-rated and which are standard-rated, and can set their prices accordingly. This also ensures a consistent application of the relief, and prevents children's clothes being treated differently by different retailers.¹⁷

The department’s guidance to the scope of the zero rate is published online; it makes the following comments on the application of the zero-rate to children’s uniforms:

¹² Cm 4917 November 2000 p 130

¹³ SI 2001/732 This Order extending was subject to approval under the ‘negative procedure’ and not debated in Standing Committee. For details see, HM Customs & Excise Budget Notice 37/01, 7 March 2001.

¹⁴ HMRC, *VAT Notice 714*, June 2011 para 4.4

¹⁵ At this point, the zero-rating of children’s clothes and motorcycle helmets was provided for under group 17 to schedule 5 of the *Value Added Tax Act 1983*.

¹⁶ Under section 30(4) of *VATA 1994*, amendments to any of the descriptions used in Schedule 8 may be made by Order.

¹⁷ HC Deb 6 July 2004 c627W

There is no specific relief for items of school uniform, they are subject to the normal rules for children's clothes. However, if you supply garments under a specific agreement with a school catering exclusively for pupils under 14 years of age you may be able to apply the zero rate beyond the garment measurements [set out in this guidance.] The garments must be unique to that school by design, such as a prominent badge or piping in school colours, and held out for sale as being for that school only. If these conditions are met, you may apply the zero rate irrespective of garment size.

The same principles apply to clothing items which form the uniform of other children's organisations catering exclusively for the under 14s, such as Beavers and Brownies. These may be zero-rated irrespective of size provided they are:

- designed exclusively for the organisation;
- worn only by under-14s, and
- clearly identifiable to the organisation.

Zero rating does not apply to items which may also be worn by older groups such as Scouts.¹⁸

2 Zero-rating school uniforms

The scope of zero-rating has often been criticised as being unfair to older school children and to larger than average-sized children in general. In December 1997 Tim Loughton MP introduced a Ten Minute Rule Bill to extend zero-rating to all school children's clothing; an extract from Mr Loughton's speech is reproduced below:

I believe [the Bill] addresses an anomaly in VAT law that was never intended. The problem stems from the fact that there is no definition of the term "young children" in VAT law. Consequently, VAT relief is subject to a schedule of maximum sizes for clothing and footwear that is based on the children's average size to their 14th birthday. In detail, that means that children with a size 14.5 in collar upwards or wearing jumpers with a 34 in chest upwards, trousers with a 20 in waist upwards or skirts with a 26 in waist upwards will be subject to 17.5 per cent. VAT on the value of those items of clothing.

... It is a medical fact that children today are larger than when the so-called average figures were devised. Worse still, those outdated schedules positively discriminate against larger children, who may already be suffering from weight problems through no fault of their own. Moreover, today's fashion is to wear baggier outfits. School outfitters are constantly faced with the absurd situation in which two children of the same age, say 13, are fitted out with the same type of uniform for the same school, and in which one child with a size 14 in collar will enjoy zero VAT on his or her uniform whereas the other, with a size 14.5 in collar--only half an inch more--will be clobbered for the full 17.5 per cent. VAT.

There are worse anomalies. One of the few reliefs is for garments that can be shown as intended to be worn only by members of organisations that cater exclusively for under 14-year-olds. In the case of school uniforms, a prominent crest or logo must be worn. Under 14 means that the relief can apply only to private prep schools, which cater typically for children up to the age of 13. They will attract no VAT. The uniform for

¹⁸ HMRC, [VAT Notice 714: Young children's clothing and footwear](#), June 2011 para 6.1

typical state secondary schools in my constituency, catering for 12 to 16-year-olds in Worthing and, by definition, usually for less well-off parents, will be subject to full VAT at 17.5 per cent., even when dealing with children of identical size and age. There are other extreme cases such as that of a firm of hat producers in Nottingham. It produces bonnets for babies which can be liable for the full rate of VAT because it is possible to stretch them across the head of an adult. That is the anomaly in the law ...

The law can easily be amended to exempt from VAT those elements of school uniform clearly identified with a particular local school, regardless of the age and size of the children. It could be policed by the production of a school identification card, or the uniform could be ordered through the school. I hope that the House agrees on the benefits of a school uniform. The Prime Minister has spoken in favour on many occasions. It engenders pride in the school and a sense of identity and discipline. It has been shown that a uniform can lead to better results in schools that have taken it up. A uniform is useful against truancy, it is a good security measure against strangers coming on to school premises and it cuts down the emotional blackmail that children use on their parents because they want the latest designer gear. It also avoids peer pressure about who is the school fashion icon ...

My Bill is anti-sexist, anti-ageist, anti-sizeist and anti-elitist. As such, I am sure that it will find support from all corners of the House, even from the most politically correct zealots on the Government Benches. I commend the Bill to the House.¹⁹

In February 1998 the then Financial Secretary, Dawn Primarolo, confirmed in a written answer that the Government did not support the Bill,²⁰ and, as with this type of Bill generally, no further progress was made.

The problem of operating this zero rate relief was considered in a report by HM Customs & Excise in 1980.²¹ The review concluded that the main criticisms against the present system, that is the discrimination against above average-sized children and the administrative complexity, were valid but that none of the proposed modifications (including linking the relief to age) would help the administration or prevent the abuse of the system. One doubts if the arguments have changed significantly since its publication. In a Lords written answer given in December 1995, Lord Mackay of Ardbrecknish, replying for the then Conservative Government, noted "any further extension of zero-rating to larger sizes of clothing or footwear could provide scope for misapplication of the relief to older persons for whom it was never intended. Refunds of VAT would not be an appropriate way of giving relief. Help for poorer families is better targeted through the benefits system."²²

The department's report also looked at the possibility raised in Tim Loughton's Bill for zero-rating school uniforms. Although it acknowledged there were several advantages to doing so – given that for many parents, uniforms are a regular, compulsory and often expensive outlay – the authors argued that it was hard to see how a zero rate could not be exploited, given "the impossibility of conclusively identifying items in sizes which are worn by adults as being worn solely as school uniform by reason of style alone." An extended extract from the report is reproduced below:

¹⁹ HC Deb 16 December 1997 cc 159-161

²⁰ HC Deb 4 February 1998 c 714W

²¹ HM Customs & Excise, *Review of the operation of the zero rating relief of young children's clothing and footwear*, July 1980

²² HL Deb 20 December 1995 c 157WA

RELIEVING SCHOOL UNIFORM

14. It is often suggested, especially by members of the public, that all school uniforms should be relieved of VAT. This might be thought to go some way towards meeting the problems of control which a wider extension of size limits would involve, and would provide some relief to all school children. The advantages of such an extension are clear: some items of school uniforms are expensive and need frequent replacement; they are often compulsory and do not therefore represent discretionary expenditure; they are a physical manifestation of childhood, or at least of minority, being firmly associated in the public mind with children's clothing generally; and their relief would partially restore in an obvious way the original concept of providing as much relief as possible for those under school-leaving age.

15. On the other hand, the weight of the disadvantages, concerned primarily with equity and problems of definition and control, seems decisive. These are as follows.

16. First, not all schools have uniforms and not all school children are obliged to wear uniforms. The Child Poverty Action Group has suggested that a system of uniforms common to, for instance, a Local Education Authority would obviate any tax discrimination. It is not within the ambit of this review to comment on the desirability of compulsory and common school uniforms. Even though it is self-evident that if all school children wore the same uniform there would be no discrimination and fewer problems of definition, there is as yet no such system. In present circumstances a relief directed specifically at school uniform would discriminate against those who have no uniform to wear.

This often applies in the case of sixth formers particularly and it is noticeable that suggestions for relieving uniforms in practice come almost entirely from parents of above average-sized children in the 11 to 15 age range. If, as seems likely, relatively few 16 year olds wear uniform, this would substantially reduce the number of additional children who would be able to benefit from an extension of the relief to uniform without effectively reducing the control problems, as it would be necessary to relieve the full range of sizes in order to ensure relief for all who wore it.

17. The second problem is to identify the group for which relief would be intended. There are two possibilities: either the relief should be extended to school uniforms for all school-goers or it should be extended only to uniform for those under the school-leaving age, in line with the original aim of the relief under purchase tax. To restrict school uniform relief to those under 16 would perpetuate, if only on a reduced scale, the anomalies of the existing relief which have led to the pressure for zero-rating school uniform. However, while a scheme for relieving all school uniform would be both fairer and easier to administer by virtue of having no borderline between different sizes or different ages, it would increase the scope for misapplication.

18. The crux of the problems of definition and control (which has been recognised in a small proportion of letters from members of the public) is the impossibility of conclusively identifying items in sizes which are worn by adults as being worn solely as school uniform by reason of style alone. School uniform could be said to comprise all those articles of clothing and footwear which have to be worn at school, eg jackets and trousers, or suits, shirts and ties and blouses, pullovers, overcoats and (less frequently) shoes. Some schools also have lists of compulsory sports wear. Few of these articles, however, belong exclusively to school wear: a dark coloured belted raincoat is a normal item of menswear, as are (more obviously) plain white or blue shirts, and grey, black or dark blue trousers.

Equally, particularly with the general trend in school uniforms away from strictly utilitarian or traditional styles of the type epitomised by the gym slip and towards more fashionable wear, many blouses, pinafore dresses, skirts and knitwear which form part of a schoolgirls uniform are quite acceptable as women's everyday wear when they are viewed in isolation and away from the school environment. Even some of the more traditional items of girls' uniform such as dark pleated skirts and white blouses are worn by a significant number of women.

Similarly, although school shoes may incline towards the "sensible", they are not usually restricted to a specific pattern and are suitable for wear by adults. The garment for which additional relief is most commonly felt to be appropriate as being unique to school wear is the school blazer. In recognition of this, slightly larger size limits are already allowed for blazers (and for 'regulation' raincoats). It is by no means unknown for these items to be purchased by adults, however, and there have been reports highlighting a vogue for their purchase amongst foreign tourists and "punk" followers, for example.

19. Thus a relief restricted to those items of school uniform which are unlikely to be worn by adults would cover little more than school ties and would rightly be regarded as laughable. On the other hand, a relief administered in the same way as the current relief and which encompassed all or most items of school uniform would still leave scope for many adults to buy zero-rated clothing. An alternative method of allowing relief on production of identifying documents is considered in Paper II. However, if such a method were to be adopted there would be little point in applying relief to school uniforms alone.

20. It is not known how much a relief for all items of school uniform which are currently taxed would cost. If it is assumed that it would extend to 1½ million more children than come under the relief at present and that each child has £100 a year spent on it by way of school uniform, then the cost of relieving the intended beneficiaries alone would be about £20 million a year, to which must be added the cost of any additional misapplication of the relief to adults.²³

The case for zero-rating school uniforms has been raised occasionally over the last few years; for example, in March 2008 Nigel Evans MP put down an EDM supporting a campaign run by a trade body, the Schoolwear Association, that some elements of school uniform should be charged VAT at 5%.²⁴ Similarly in January 2009 Lindsay Hoyle MP put down an EDM calling for the abolition of size limits to VAT relief and the extension of zero-rating to uniforms for primary and secondary schools as "the change in law would be just, logical and affordable for the Government with huge financial benefits for parents."²⁵ However, it seems very unlikely that a zero rate on school uniforms is on the cards; in answer to PQs on this issue Ministers of both the Labour government and its Coalition successor have simply referred to the fact that the UK has no discretion under EU-wide agreements to introduce a new zero rate of VAT or extend the scope of an existing rate.²⁶ The implications of EU VAT law for setting VAT rates are discussed in more detail below.

²³ HM Customs & Excise, *Review of the operation of the zero rating relief of young children's clothing and footwear*, July 1980 pp 20-22

²⁴ Specifically "upper body, badged items": EDM 1118 of 2007-08, *VAT on school-specific uniforms*, 5 March 2008. 64 Members signed the motion.

²⁵ EDM 409 of 2008-09, *VAT on school uniforms*, 12 January 2009. 63 Members signed this motion.

²⁶ See for example, HC Deb 8 December 2008 c15W & HC Deb 28 February 2001 c41W

3 Zero rating and EU VAT law

The harmonisation of VAT systems across Member States has been seen as an important part of achieving a Single European Market for many years. In October 1992 the European Council agreed to Directive 92/77/EEC which established new rules limiting the discretion of all States to set VAT rates. The directive amended the sixth EC VAT directive (77/388/EEC), which had been adopted in May 1977 and had first established the VAT base across all Member States. Under these provisions all Member States have had to apply a standard VAT rate of 15% or more, but have had and have the option of applying one or two reduced rates, no lower than 5% to certain specified goods – a list set out in Annex H to the sixth directive.²⁷ States may continue to charge any lower rates, including zero rates, that were in place on 1 January 1991, though they cannot introduce any new rate under 5%. In October 1999 the Council agreed an amendment to these rules giving States the option, should they wished, to apply a reduced VAT rate to certain ‘labour-intensive’ services. Any amendment to these rules – as with any VAT directive – must be agreed *unanimously*.

In July 2003 the European Commission published proposals for simplifying the EU rules on reduced VAT rates.²⁸ From the UK’s perspective the proposals were controversial as they would not have allowed for certain zero rates to be maintained, including the zero rate on children’s clothing.²⁹ In its initial proposals the Commission argued that abolishing the zero rate on children’s clothes and shoes would not hurt families on lower incomes, and its maintenance distorted competition:

Only two countries, the UK and Ireland, currently apply a zero rate on these goods, while Luxembourg applies a rate of 3%. Every other Member State applies the standard rate ... [However] a survey of prices in the Community shows that zero or super-reduced rates do not mean a better price to the consumer: for example, if the average price of children's shoes in the EU is 100 (taking purchasing power parity into account), in Luxembourg (rate: 3%) the same shoes are 126, 119 in Denmark (rate: 25%) and 116 in the UK (rate: 0%) ...

[These zero or super-reduced rates] are also liable to cause distortions of competition as they allow businesses in the Member States concerned to undercut the prices of businesses in other Member States which apply the standard rate or they allow them to maintain higher profit margins because of the advantage they enjoy in terms of VAT rates. Findings also show that children's clothing and footwear in the countries concerned are not significantly cheaper than adults' clothing and footwear despite the much lower rate of VAT. The same trend can be found in all the other Member States where the standard rate applies to all these goods.³⁰

The then Paymaster General, Dawn Primarolo, set out the Labour Government’s position on this issue when the Commission’s proposals were debated in European Standing Committee B in October that year:

Currently, member states can apply up to two reduced rates of VAT, of not less than 5 per cent., to the supply of certain goods and services listed in annexe H of the sixth

²⁷ This list is now consolidated in Annex III to VAT Directive 2006/112/EC, which consolidated the sixth VAT directive with the other principal provisions of EC VAT law.

²⁸ COM (2003) 397 final, 23 July 2003

²⁹ “Tax proposal on children’s clothes upsets UK”, *Financial Times*, 17 July 2003

³⁰ European Commission, *Reduced rates of VAT: frequently asked questions MEMO/03/149*, 16 July 2003

VAT directive. In addition, member states have been able since their accession to retain by derogation some zero and sub-5 per cent. rates. The proposal seeks to do away with member states' specific derogations for their zero and other reduced rates, while extending annexe H to cover only those reliefs that a majority of member states apply. Member states would be allowed to continue their zero and sub-5 per cent. rates only if the supplies in question fell within the new annexe H. Of course, once annexe H applied, it would be open to all member states to apply a reduced rate of 5 per cent. or more if they wished to do so.

As a result of that approach, well-off Parisians could pay a reduced rate of VAT for eating in restaurants and buying flowers, while UK parents would bear an additional 17.5 per cent. VAT when buying clothes and shoes for their children. In addition to the rate on children's clothing, a number of our zero rates for supplies to charities and disabled groups would also be rendered illegal. The Commission's proposal would add more than £1 billion in VAT to annual expenditure in the UK, much of it falling on low-income families, charities and disabled people.

Frankly, the Commission's proposal beggars belief, and we have said that, if necessary, we will veto it Our system of zero and reduced rates means that VAT in the UK is a broadly neutral tax across the income spectrum and helps us to achieve our social objectives, such as minimising the tax burden on lower-income families. The Commission appears to have seriously underestimated the national importance and political sensitivity of zero rates for us and others.³¹

On this occasion Ms Primarolo went on to take issue with the Commission's case that the UK's zero rate distorted competition:

The Commission has provided no evidence that our zero rates cause distortion or that a reduced rate for restaurant services [or] cut flowers ... would not create such distortion ... The most recent data from EUROSTAT and the Office of National Statistics, which Customs and Excise collects, show—I believe that I am correct in saying—that, on clothing, we are round about the European average, and, on footwear, we are below that average. The argument that there is a distortion in the single market as a result of zero rates has not been substantiated. Indeed, the Commission goes slightly further and its argument is internally inconsistent. On the one hand, it argues that the zero rates produce a distortion, and, on the other, it argues that that distortion is being passed on to the consumer anyway in the price.³²

The Government also took issue with the suggestion that families did not benefit from the zero rate – or, as the *Guardian* quoted³³ one diplomat saying at the time, “the British zero VAT rate is little more than a 17.5% subsidy for Mothercare”:

Mr. Andrew Turner: To ask the Chancellor of the Exchequer (1) what guarantees have been obtained from the European Commission that zero-rating of children's clothes for VAT purposes may continue beyond 2007; (2) what research he has collated on the cost of (a) children's and (b) adults' clothing in each EU country.

John Healey: The Government does not need guarantees from the European Commission about the future of the UK's VAT zero rates. Any amendment to the EC Sixth VAT Directive must be agreed unanimously by all member states in the Council

³¹ European Standing Committee B, *Reduced rates of VAT*, 27 October 2003 cc 1-2

³² *op.cit.* c2, 9-10, 9

³³ “UK to veto kids' clothes tax”, *Guardian*, 16 July 2003

of Ministers, and the Government will not agree to changes which go against our national interests and social objectives. The Government remains committed to retaining the UK's zero rates on children's clothing and footwear. Data on the cost of children's and adults' clothing in the UK is routinely gathered by the Office for National Statistics and by the European Commission. In addition, Customs and Excise have collected pricing information on children's and adults' clothing and footwear from UK retailers. This evidence shows that the benefits of the VAT zero rates for children's clothing and footwear in the UK are passed on to consumers.³⁴

As it transpired other Member States also had very strong objections to the proposals and negotiations ground to a standstill for over two years. A final agreement was only reached in February 2006: a minimalist package that allowed for existing reduced and zero rates to continue.³⁵ In July 2008 the Commission suggested a number of other supplies to be added to the list of goods and services eligible for reduced rates;³⁶ once again it proved very difficult to obtain consensus for a change in the rules, and the next year European Finance Ministers finally agreed to make just two minor additions.³⁷ Since then the Commission has not made any further legislative proposals for harmonising VAT rates, though this may form part of its strategy for the long-term future of VAT which is expected by the end of 2011.

³⁴ HC Deb 20 October 2003 c 392W

³⁵ Directive 2006/18/EC of 14 February 2006

³⁶ COM(2008) 428/3, 7 July 2008

³⁷ Directive 2009/47/EC of 5 May 2009