



Managing Indirect Taxes in the Financial Services sector

Global Indirect Tax Advisor webcast series

—

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Today's presenters



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Topics for discussion

Agenda



- 1 **5 VAT Truths Universally Acknowledged** — territoriality, tax policy, technology, training and transfer pricing
- 2 **Pride and Prejudice** — will/should the Financial Services VAT exemption be around forever?
- 3 **Sense and Sensibility** — VAT grouping — scanning the Skandia horizon — will it ever “Finnish”?
- 4 **Persuasion** — navigating the choppy waters of governance and controversy

Jane Austen

“”

Where an opinion is general, it is usually **correct**.

5 VAT Truths Universally Acknowledged



Polling Question 1



Which of the following do you see as having the most significant impact on how you manage global financial services indirect taxes?

- ◆ **Territoriality** — ie keeping up with increased registration and compliance burden
- ◆ **Technology** — using technology efficiently and successfully to manage data and compliance
- ◆ **Training** — keeping your business and tax teams on top of the rules and procedures
- ◆ **Transfer Pricing** — aligning your indirect tax and transfer pricing filing positions
- ◆ **Tax Policy** — planning ahead for and lobbying on changes in policy impacting the business

Truths Universally Acknowledged

1

Territoriality



2

Tax policy



3

Transfer pricing



4

Technology



5

Training



Polling Question 2



How good is the alignment between transfer pricing and indirect tax in your organization?

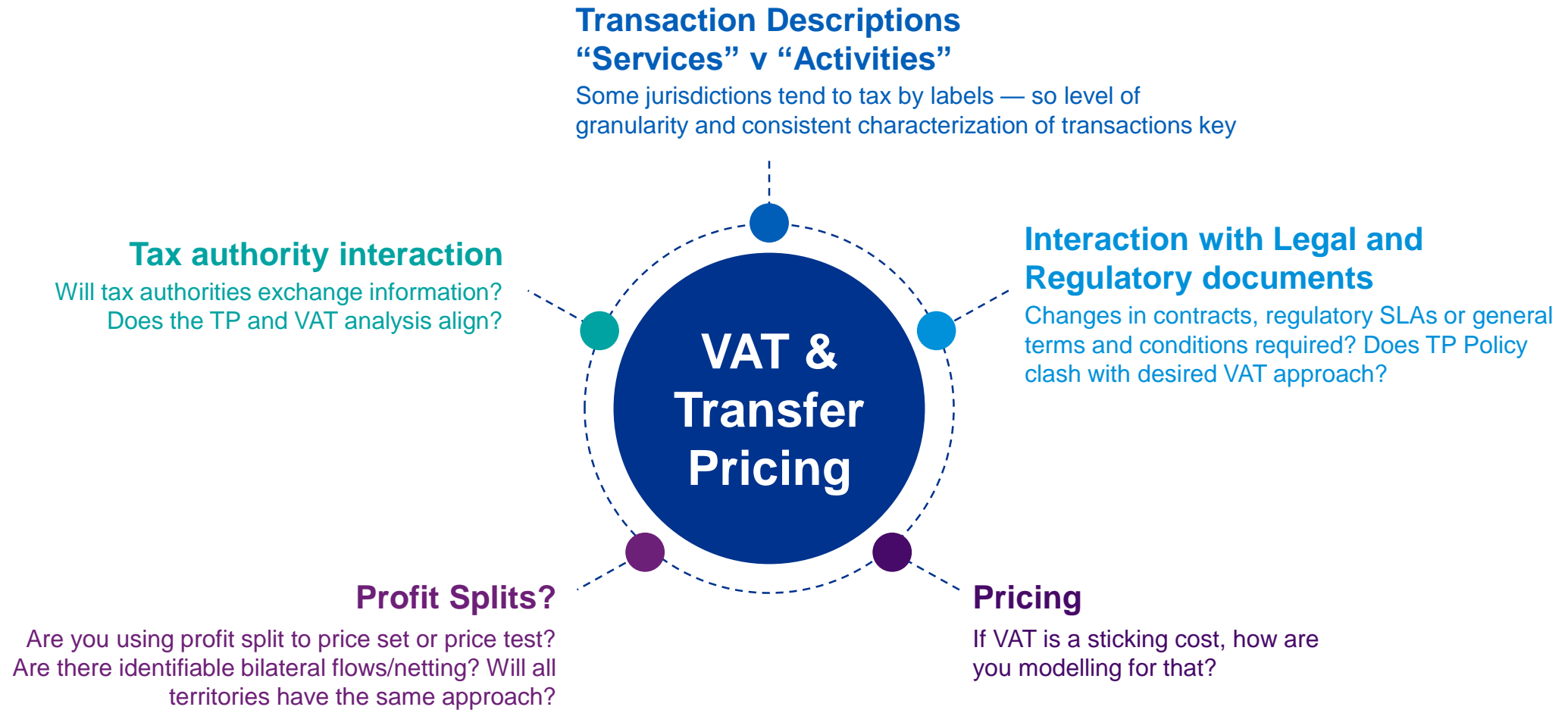
- ◆ No alignment — the two are never or rarely considered together
- ◆ Occasional working together on significant transactions or projects
- ◆ Frequent working together on major transactions or projects only
- ◆ Regular working together on most transactions and projects
- ◆ Seamless alignment — the two are joined at the hip

Transfer Pricing and Indirect Tax – common themes

Operational compliance

- ▶ **Pushes for global reform and harmonisation**
- ▶ **Need to align commercial, regulatory and tax analysis**
- ▶ **Managing disputes and controversy**
- ▶ **Keeping up with business model and product change**

Some Key Considerations



Jane Austen

“”

Nobody minds having what is **too good** for them.

Pride and Prejudice



Polling Question 3



What do you think the likely outcome for VAT and financial services will be in the next **five** years?

- ◆ No significant change
- ◆ Removal of exemptions — replaced by standard rating
- ◆ Shift to zero-rating or reduced rates
- ◆ Shift to exemption (with option to tax)
- ◆ Shift to sales tax model away from cascade VAT

The birthday cake dilemma

Mike Willesee:

“If I buy a birthday cake from a cake shop and GST is in place do I pay more or less for that birthday cake?”

John Hewson:

“Well, it will depend whether cakes today in that shop are subject to sales tax, or they're not — firstly. And they may have a sales tax on them. Let's assume that they don't have a sales tax on them... then that birthday cake is going to be sales tax free. Then of course you wouldn't pay — it would be exempt, would, sorry — there would be no GST on it under our system. If it was one with a sales tax today it would attract the GST, and then the difference would be the difference between the two taxes whatever the sales tax rate is on birthday cakes, how it's decorated, because there will be sales tax perhaps on some of the decorations as well, and then of course the price — the price will reflect that accordingly. But the key point is that there, the average Australian will have more money in their pocket — ”

Mike Willesee :

“Okay — it's just an example. If the answer to a birthday cake is so complex — you do have an overall problem with the GST, don't you?”

John Hewson :

“Well, people don't know how much tax they currently pay..”

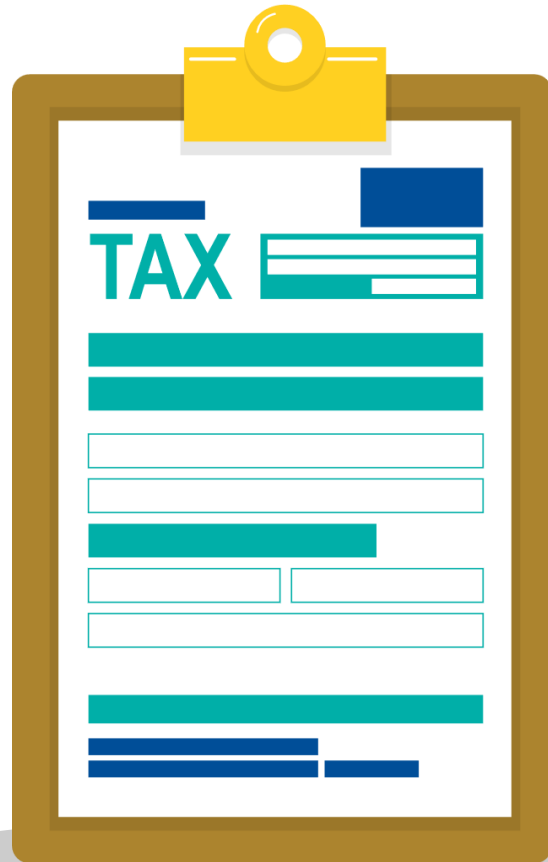


https://en.wikipedia.org/wiki/Birthday_cake_interview



<https://www.youtube.com/watch?v=a11EGkZFcXk>

What is the future for FS indirect taxation?



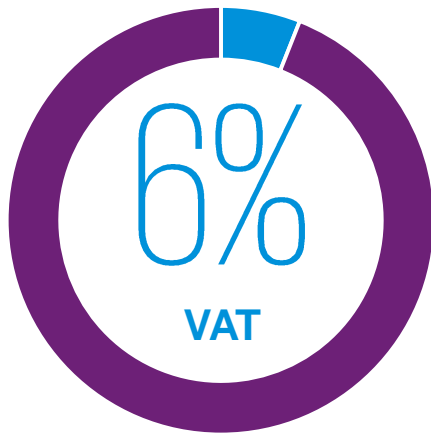
1 A look at China's experience with full taxation of the financial sector

2 Consideration of the EU and UK regimes and the battle to reform them

3 The view from the Americas

China VAT for financial service sector

On 1 May 2016, China completed its VAT reforms resulting in the replacement of Business Tax (BT) with Value Added Tax (VAT) for financial services sector. The reform is extremely ambitious and challenging for businesses and tax administrations. After the VAT pilot program, China's policy makers issued a draft consultation paper of PRC VAT law on 27 November 2019.



- ◆ Fee based services
- ◆ Insurance
- ◆ Financial products trading
- ◆ Loan Services

China's VAT system also presents the following unique characteristics:

- Input tax incurred on interest expenses by a general VAT taxpayer is not creditable
- Do not provide a general VAT exemption for exports of financial services



Experience and lessons learned

- China's ability to apply VAT to financial services was eased by the existence of BT prior to VAT. Many principles and features of BT have survived in the VAT rules applicable to the financial services.
- Businesses were only given a very short period of time, six weeks, to adapt to the changes and effectively implement the new rules.
- China's VAT rules are drafted too broadly and therefore do not address the specificities and complexity of many financial services businesses. Additional circulars were issued to clarify the VAT treatment of certain financial services.

Reform of FS indirect taxation?



EU FS VAT Review I



EU FS VAT Review II — more VAT, less VAT, fixed recovery, cost sharing, option to tax...



UK Consultation on VAT and Financial Services v Fund Management



Political nerves — the birthday cake dilemma



North and South — The View from the Americas



Next steps...

Polling Question 4



What do you think the likely outcome for VAT and financial services will be in the next **ten** years?

- ◆ No significant change
- ◆ Removal of exemptions — replaced by standard rating
- ◆ Shift to zero-rating or reduced rates
- ◆ Shift to exemption (with option to tax)
- ◆ Shift to sales tax model away from cascade VAT

Jane Austen

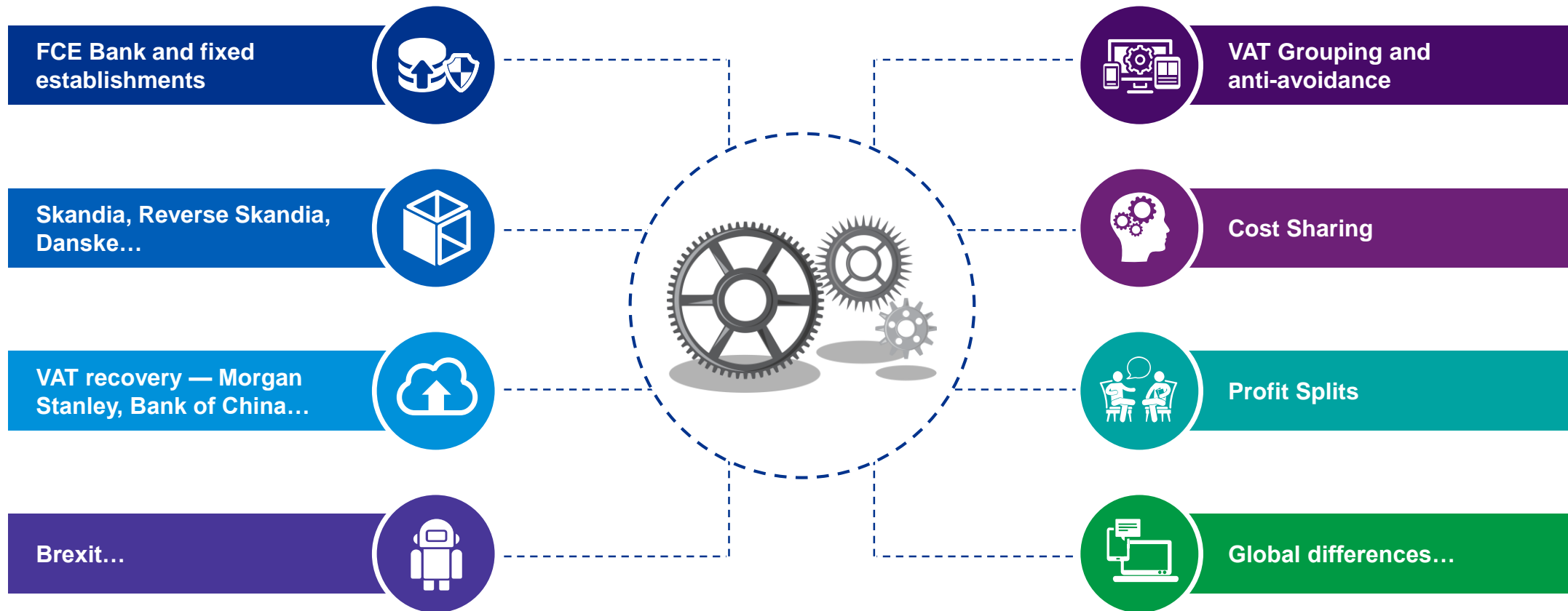
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What is right to be done, **cannot** be done too soon.

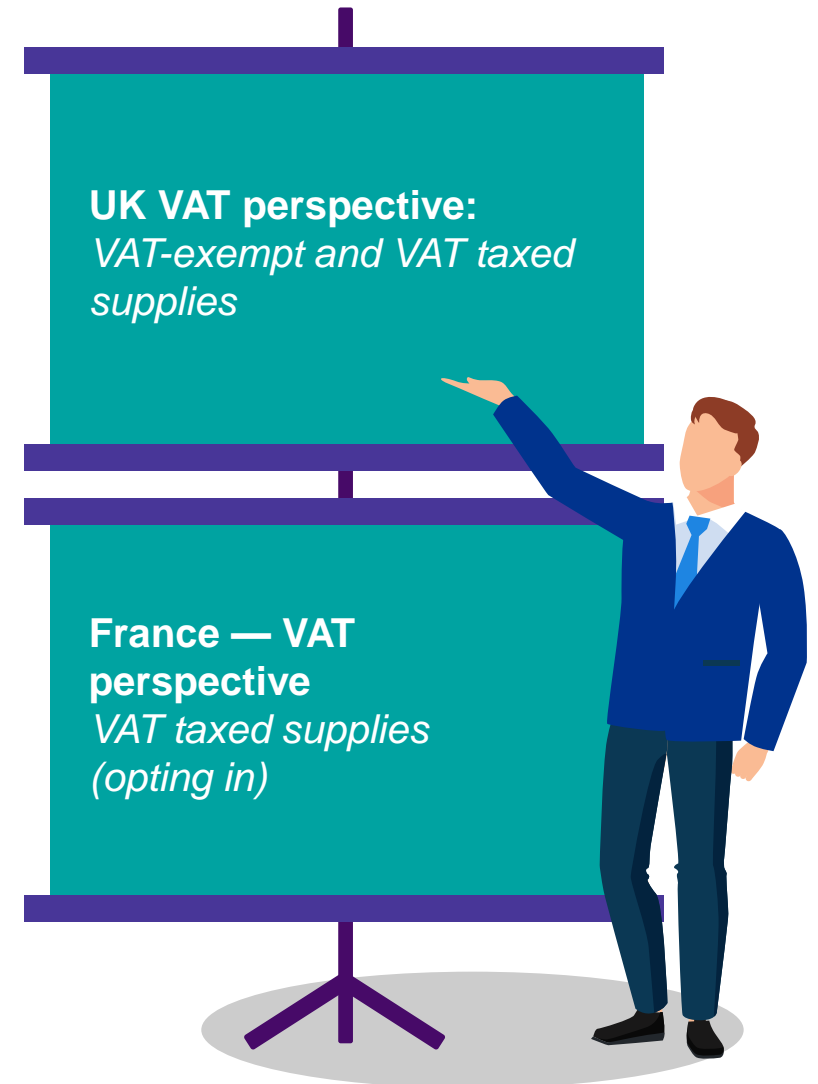
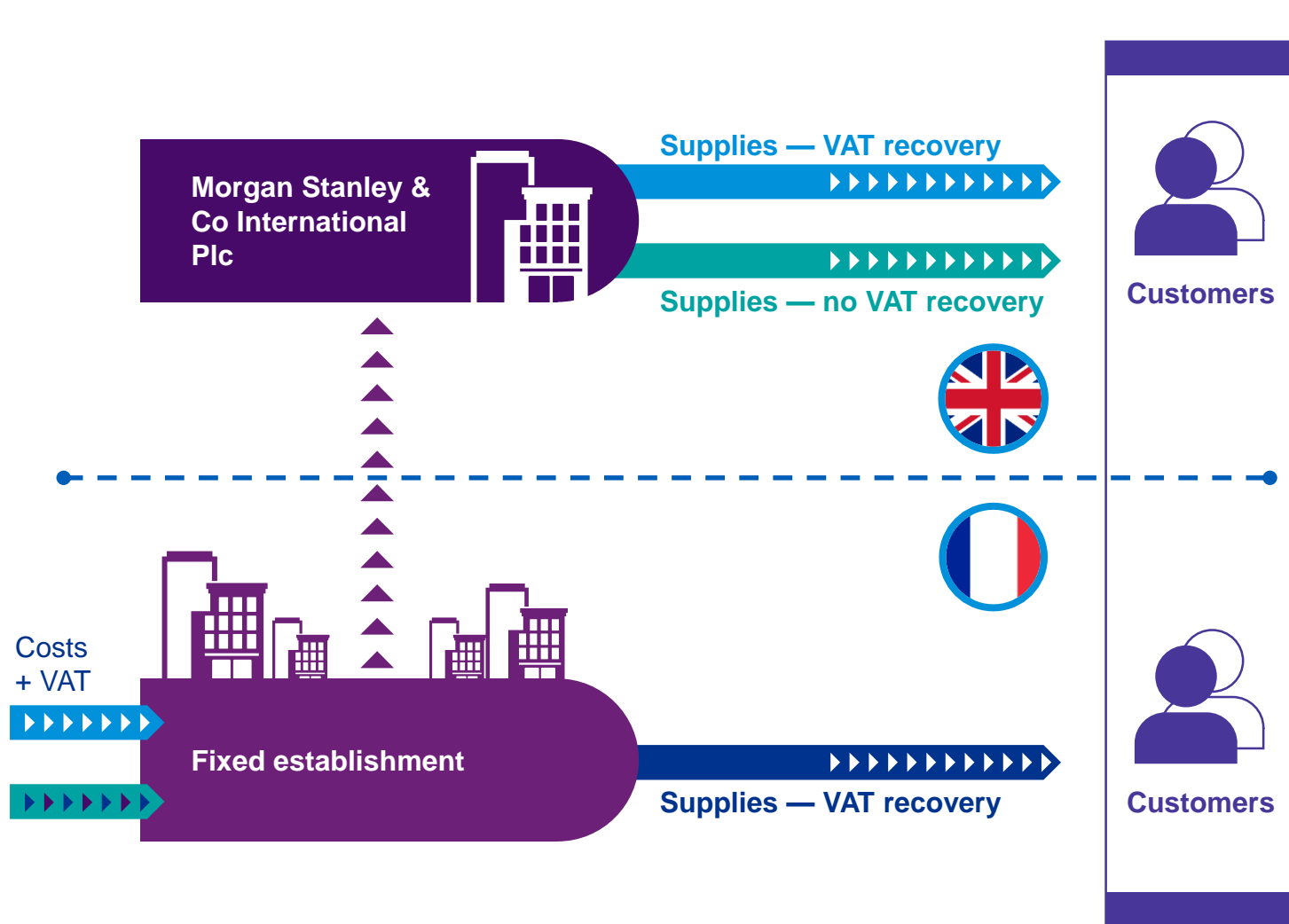
Sense and Sensibility



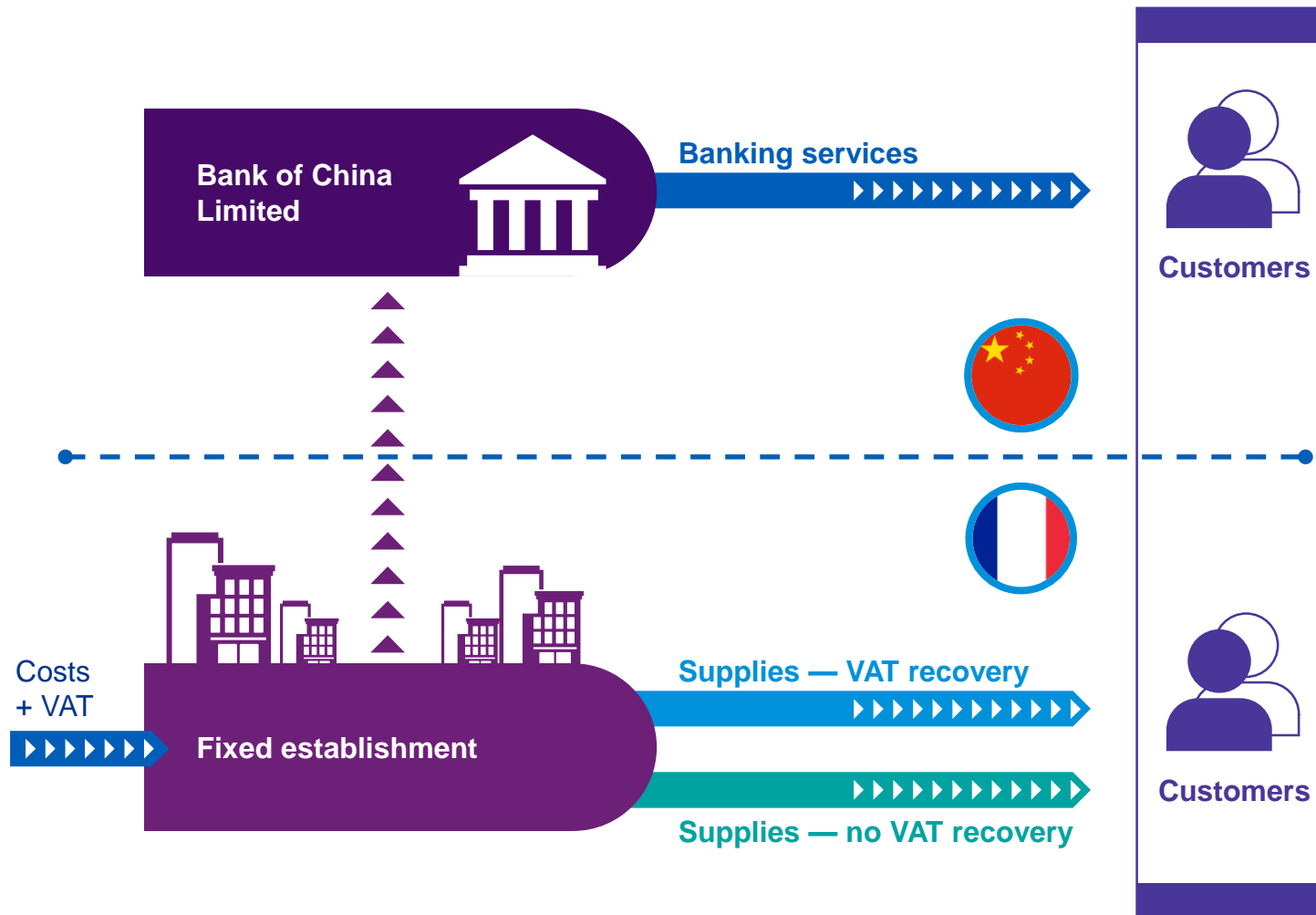
Spanners in the works...



VAT recovery: Morgan Stanley



VAT recovery: Bank of China



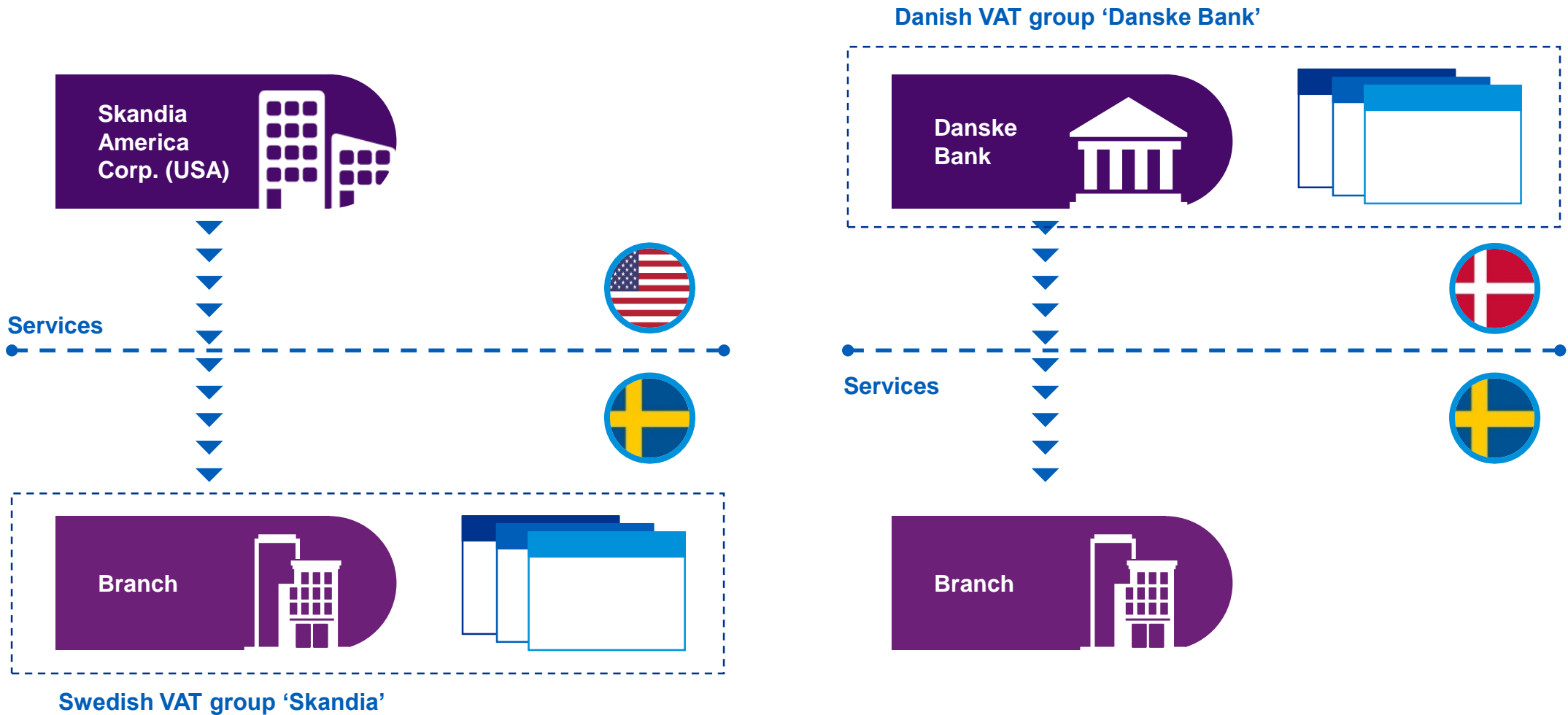
Preliminary questions:

Is the judgment in the case Morgan Stanley applicable if the head office of a fixed establishment is established outside the European Union

If so, under what conditions may banking transactions carried out by the head office established in a third country be regarded as giving rise to a right to recover input VAT in the fixed establishment's EU Member State of establishment?



Intra-entity charges: Skandia and Danske Bank



European Court of Justice cases with impact for FS

Number	Name	Topic	Status
C-692/17	Paulo Nascimento Consulting	Exemption — Granting, negotiation and management of credit	Decided
C-42/18	Cardpoint	Exemption — Services related to ATM	Decided
C-400/18	Infohos	Exemption — Cost share associations	Decided
C-547/18	Dong Yang Electronics	Fixed establishment	Decided
C-43/19	Vodafone Portugal	Supply of services	Decided
C-94/19	San Domenico Vetraria	Taxable transactions — Lending or secondment of staff to the subsidiary	Decided
C-231/19	Blackrock Investment Management	Exemption — Single supply of management services	Decided
C-242/19	CHEP Equipment Pooling	Transfer of goods — VAT refund	Decided
C-77/19	Kaplan International colleges UK	Exemption — Independent group of person	Pending
C-235/19	United Biscuits (Pensions Trustees)	Exemption — Supplies of pension fund management	Pending
C-459/19	Wellcome Trust	Taxable person carrying out a non-economic activity — Place of supplies	Pending
C-695/19	Rádio Popular	Exemptions — Financial transaction	Pending
C-58/20	K	Exemption — Management of investment funds	Pending
C-59/20	DBK	Exemption — Management of investment funds	Pending
C-737/19	Bank of China	Right to deduct — Fixed establishment	Pending
C-801/19	Franck	Exemption — Financial activity	Pending
C-812/19	Danske Bank	VAT group — Fixed establishment	Pending
C-868/19	M-GmbH	VAT group — Partnership	Pending
C-907/19	Q-GmbH	Exemption — Insurance	Pending
C-931/19	Titanium	Fixed establishment — Human and technical resource	Pending
C-269/20	Finanzamt T	VAT group — Services supplied by a public body	Pending

Polling Question 5



What do you think will happen **globally** with VAT grouping and cross-border intra-entity flows in the next 5 years?

- ◆ No significant alignment or change will occur and uncertainty will continue with more litigation
- ◆ VAT Grouping will become purely domestic or will be removed and all cross-border charges will come into scope of indirect taxation, including intra-entity
- ◆ OECD or other body will issue guidelines and we will end up with gradual global alignment, taking taxation at place of consumption as a guiding principle
- ◆ Regional alignment will grow but there will remain differences between regions globally
- ◆ Something else

Jane Austen

“”

Seldom, very seldom, does **complete truth** belong to any human disclosure; seldom can it happen that **something** is not a little disguised, or a little mistaken.

Persuasion



Polling Question 6



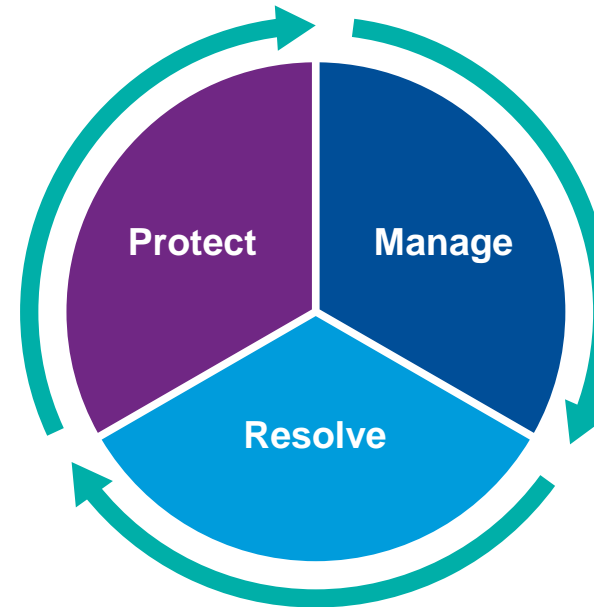
What is your sense of the trend in tax authority relationships in the last three years?

- ◆ Have become much more friendly and collaborative with business
- ◆ Have become somewhat more friendly and collaborative with business
- ◆ No change
- ◆ Have become somewhat less friendly and collaborative
- ◆ Have become aggressive and sometimes litigious
- ◆ Have become extremely aggressive and often litigious

The emerging global FS tax landscape

An integrated and collaborative approach is needed to help manage tax authority relationships and disputes

- Tax authorities around the world are gaining access to and sharing more information which is being used to identify potential risks and is driving an increase in audit activity
- The pace at which tax authorities have adapted collaboratively to take account of developments including the BEPS Multilateral Instrument, Country-by-Country Reporting and the Common Reporting Standard has been surprising
- Tax authorities have become more entrenched and are sharing information across the taxes, making settlement discussions more challenging and protracted
- Some leading multinational businesses have reacted to these developments by appointing people to tax controversy roles to manage disputes consistently



Jane Austen

“”

You have **delighted** us long enough.



Questions?



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