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VAT and disabled people - the case for removing the barriers

A report commissioned by the
Low Incomes Tax Reform Group -
a voice for the unrepresented

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VAT and Disabled People - The case for removing the barriers

Foreword

Placing disabled people as far as possible on a par with their non-disabled counterparts is a common objective of both the UK Government and the EU Commission. Public authorities in the UK now have a statutory duty to eliminate discrimination against, and to promote equality of opportunity for, disabled people, and each is required to draw up its own action plan to monitor how well they perform their new duties, and to publish the results.

Despite this, disabled people are still facing considerable extra costs in participating fully in society. Many such costs are met, wholly or partly, by grants or free provision. But where goods and services have to be paid for, VAT becomes yet another cost, which is sometimes alleviated – sometimes not – according to a set of rules which, though well intentioned, can be arbitrary and irrational in its results. This report will show that easing the VAT liability can be a practical way of reducing the burden on disabled people and one in which governments can contribute to the overall policy objective.

At European level, the Sixth Directive provides a framework within which VAT barriers can be lifted. The UK has used that framework to help both people with disabilities and the organisations that work for them. Inevitably though, when dealing with the complex legislative processes of the EU and its member states, fulfilling all of the objectives we set ourselves can be difficult, and the UK legislation does not yet achieve as much as it could do to remove the VAT barrier.

The Low Incomes Tax Reform Group (LITRG) is an initiative of the Chartered Institute of Taxation which gives a voice to those who cannot afford to pay for tax advice. This publication developed from an earlier report in which the LITRG explored how far the UK tax system as a whole was reflecting best practice in its service to and treatment of disabled people. That report was entitled Disability in tax and related benefits: the case for a modern and coherent approach and was published in December 2003. It is still available on LITRG's website at <http://www.litr.org.uk/reports/reports.cfm?id=72>.

The purpose of the present report is to examine, in greater detail, what more can be done in the field of VAT – the tax which arguably hits the pockets of disabled people the most – to bring about that modern and coherent approach. The Nuffield Foundation generously agreed to sponsor the project. PricewaterhouseCoopers LLP, who contributed professional and technical support, looked in detail at the current rules in the UK to compare them with those in other member states, and to examine the scope for change and improvement both nationally and at the pan-European level. We are grateful to them for their diligent analysis of a complex subject.

The conclusions and recommendations of this report have been presented to organisations and individuals concerned with disability, including the key UK Government departments. Those with whom we have discussed our findings recognise the issues we raise, and the potential to improve the current legislation. We hope therefore that this report will open up an important debate in a lesser known area of tax law, and will eventually benefit those who struggle financially with the costs of disability. Your comments are a vital part of that debate and will be most welcome.



John Andrews OBE
Chairman
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Contents

1	Introduction	2
	1.1 This report in the context of the LITRG's earlier report	2
	1.2 Scope of this report	2
2	Executive summary and recommendations	4
3	Government policy	6
	3.1 The UK Government's policy on disability	6
	3.2 The policy of the European Commission on disability	6
4	What is disability?	8
	4.1 Disability in the UK: The Disability Discrimination Act 1995	8
	4.2 Disability in European VAT law	8
	4.3 Implications of different definitions of disability	10
5	Setting the VAT scene	12
	5.1 Origins of European VAT law	12
	5.2 Specific VAT provisions concerning disability in the EU Directives	13
	5.3 European Directives into UK law	13
	5.4 How the UK Courts have construed the law	13
6	Anomalies and inequities under UK law	14
	6.1 VAT reliefs for works to a disabled person's residential accommodation	14
	6.2 The limitation of the "design" requirement within the UK	15
	6.3 Physical v mental disabilities	16
	6.4 Barriers outside the residence	16
	6.4.1 Transportation	16
	6.4.2 Accessibility of the workplace	17
7	Scope for amending UK legislation under EU law	18
8	Four case studies	20
	8.1 Vision impairment	20
	8.2 Hearing impairment	21
	8.3 Physical (mobility) impairment	22
	8.4 Mental impairment (including learning difficulties)	25
9	Administrative barriers	28
	9.1 Certification and other paperwork	28
	9.2 Accessibility	28
	9.2.1 Administration of UK VAT law and policy by HMRC	28
	9.2.2 How practical is it to obtain reliefs in the UK?	29
	9.3 Publicity	29
	9.3.1 What does HMRC do to promote the reliefs?	29
	9.3.2 How well known are the VAT reliefs by the broader community?	30
	9.4 Recommendations on reducing administrative barriers in the UK	31
10	The European perspective	34
	10.1 Different approaches in Europe	34
	10.2 Inconsistent VAT rates	34
	10.3 Aids for disabled people: consistencies and inconsistencies	34
	10.4 Physical and mental disabilities	35
	10.5 The need for further cohesion	35
	Appendix A Definition of disability in the Disability Discrimination Act 1995	38
	Appendix B European VAT legislation	40
	Appendix C UK VAT legislation	44
	Appendix D European summaries	50

Section 1 Introduction

1.1 This report in the context of the LITRG's earlier report

In 2003, the Low Incomes Tax Reform Group (LITRG) published *Disability in tax and related benefits: the case for a modern and coherent approach*, a review of how disability is addressed across a segment of the tax and benefits system, including VAT, tax credits and council tax. The aim of the review was to understand how and why there is no consistent and integrated approach towards disability across the system, and to prioritise areas for reform by policymakers.

In respect of VAT, the report recommended that:

- (a) further consideration be given to the scope for extending VAT reliefs to cover any equipment used by someone within the Disability Discrimination Act (DDA) definition to overcome a disability, whether or not it was designed solely for that purpose; and
- (b) a review be undertaken of the entire body of tax and VAT legislation in order to update the definitions of 'disabled' and related expressions, where necessary, by incorporating the DDA definition and, if appropriate, make explicit the policy reasons where such changes are not made.

On these recommendations, a further review was undertaken which focused specifically on the scope for extending reliefs in the VAT legislation in order to improve the lives of those with disabilities in the United Kingdom and EU to the extent they are disadvantaged by the VAT system. This report sets out the scope of the review and the recommendations for improvement.

1.2 Scope of this report

This report begins by looking at definitions of disability both within UK and EU legislation.

For VAT purposes, the starting point is the Council Directive 2006/112/EC (the recast of the EU Sixth VAT Directive), as the UK legislation, and the domestic VAT legislation of other EU member states, is intended to implement the community law and therefore must be consistent with it.

The report therefore includes a brief overview of the VAT reliefs provided for in Council Directive 2006/112/EC ("The Directive"). It then examines how the UK Government has implemented these reliefs in the Value Added Tax Act 1994 (VATA 1994) and Value Added Tax Regulations 1995, and what scope remains for extending the reliefs within the framework of the community law.

The domestic VAT legislation of a number of other EU member states is also examined, to compare how these member states have implemented The Directive, and identify whether the UK provisions can be improved by following the approach taken in other EU member states. The EU Member States consulted for the purposes of this review were Belgium, the Czech Republic, Germany, the Netherlands, Spain and Sweden.

The report also touches briefly on the possibility for improving the provisions of The Directive itself as a means of removing limitations common to all EU member states.

Finally, the administrative barriers preventing access to available reliefs in the UK are examined, with a view to making these VAT reliefs more accessible to the people they are intended to benefit. Particular attention is given to the VAT application of new initiatives being promoted by the Government for the benefit of those with disabilities.

Various anomalies and inequities are highlighted, particularly through the use of selected case studies focusing on four of the more common types of disability. These are used to illustrate and compare the application of the VAT provisions in the different jurisdictions, and to highlight areas where the law operates with inequitable results.

Section 2

Executive summary and recommendations

In general, this report shows that the impact VAT has on disabled people in the UK and throughout the EU is very inconsistent. There is an inherent skew in reliefs available for those with physical disabilities, which derives from:

- (a) the nature of VAT as a tax based on consumption (i.e. goods and services) rather than people; and
- (b) the provisions dating from an outdated understanding of disability and the social policy required to address the inequalities facing people with disabilities.

While direct subsidies or other financial assistance may be the preferable approach to removing the barrier for disabled people, VAT is an instrument of social policy in its own right. Moreover, the emphasis on direct financial assistance makes it even more important that VAT does not undermine its effectiveness.

In this regard, we have identified several areas where UK legislation and administration could be amended to allow greater VAT reliefs for disabled people, and so better support the Government's stated policy in respect of disabled people.

Within these general themes, specific recommendations include:

- UK VAT law should be amended to incorporate the DDA definition of disability (Section 4.1 of the report).
- The UK Government should seek to ensure that VAT legislation is interpreted in a way that is consistent with Government policy, as the current approach restricts the availability of VAT reliefs unnecessarily (5.4).
- UK VAT law should be reviewed to assess whether VAT reliefs for certain construction services for disabled people could be widened (6.1).
- UK VAT law should amend the provisions which limit VAT relief to goods designed solely for disabled people, which is more restrictive than the relevant EU provision, by introducing a reduced VAT rate for other goods which meet the EU criteria (6.2).

- The UK should introduce equality of VAT treatment by introducing VAT reliefs aimed at alleviating or treating mental impairment, as most existing reliefs relate to physical disability (6.3).
- Consideration should be given to extending VAT reliefs on certain transportation costs (6.4.1).
- VAT reliefs available for modifications to private residences of disabled people should apply equally to workplace modifications (6.4.2).
- HMRC literature should be made simpler and more widely available. The existence of the reliefs should be promoted more extensively by HMRC (9.3)
- Several other steps could be taken to make existing UK VAT reliefs more accessible, by reducing or removing the administrative and practical inconvenience of claiming those reliefs (9.4).

Recognising that the UK VAT law forms part of a broader EU-wide framework, this report highlights some of the inconsistencies throughout the Member States (see section 10). In this regard, we recommend that the European Commission seeks to harmonise the position and, as a starting point, adopts a consistent definition of 'disabled' for VAT purposes to ensure equality of treatment throughout the EU (section 4.2 of the report).

Section 3

Government policy

3.1 The UK Government's policy on disability

The UK Government's policy on disabled people is contained in the final report of the Prime Minister's Strategy Unit Improving the life chances of disabled people, published in 2005.¹ The report recommends that the UK Government should set "an ambitious vision for improving the life chances of disabled people", namely:

"By 2025, disabled people in Britain should have full opportunities and choices to improve their quality of life and will be respected and included as equal members of society."

The report proposes the following goals:

1. Helping disabled people to achieve independent living.
2. Improving support for families with young children.
3. Facilitating a smooth transition into adulthood.
4. Improving support and incentives for getting and staying in employment.

In each of these areas, the report states that the Government's strategy for achieving the vision should be based on:

- removing barriers to inclusion;
- meeting individual needs; and
- empowering people.

While the Government's report does not discuss the barriers imposed by taxation, or specifically VAT, it is evident that VAT can be a barrier where it imposes a cost upon an individual with a disability when the sole reason for incurring the primary outlay is to reduce or remove the barrier of the disability itself. To be consistent with stated Government strategy, therefore, to the extent VAT imposes a barrier on the inclusion in society of people with disability, the barrier should be removed.

3.2 The policy of the European Commission on disability

The European Commission also acknowledges that obstacles to the integration of people with disabilities into society continue to exist, citing by way of example:

- the exclusion from the labour market of working-age people with disabilities;
- the inaccessibility of transport systems and public buildings;
- the short supply and prohibitively expensive housing which is suitably adapted or adaptable to people with disabilities; and
- the provision of only minimum level support by the welfare system, falling short of the goal of integration.

While the historical approach has been one of social compensation through charity and the development of specialist caring services outside the mainstream of society, the Commission acknowledges that this approach compounds the problem of exclusion and under-participation.

Similar to the approach of the UK Government, the Commission's approach towards disability is increasingly one of identifying and removing the various barriers to equal opportunities and full participation in all aspects of life. The stated goal of the European Union is "a society that is open and accessible to all", to be achieved by the identification and removal of barriers to the integration of people with disabilities into society.²

¹ Department of Work and Pensions Written Ministerial Statement, 19 January 2005; Prime Minister's Strategy Unit, Cabinet Office Press Release, 19 January 2005

² 'The European Union Disability Strategy', http://www.europa.eu.int/comm/employment_social/disability/strategy_en.html

Although responsibility for eliminating exclusion and discrimination lies primarily with individual Member States, the Commission recognises that it has a role to play in co-ordinating the approach of the Member States and to take account of disability issues in all policy making and legislative work of the Commission. Its policy is among other things, to:

- incorporate disability issues into the formulation of community policy proposals through an interdepartmental group focused on issues relating to disability; and
- strengthen the measures to prevent long-term unemployment and integrate disabled people into working life in line with European employment strategy.

In the area of taxation policy, the European Commission cites³ the provisions in The Directive which exempt from VAT “certain activities in the public interest”⁴, including hospital and medical care, goods and services closely linked to welfare and social security work or the protection of children and young persons, education and training for young persons etc. While exemption for disability, and organisations which assist people with disabilities, are not specifically referred to in The Directive, the Commission states that many organisations in the field of disability are involved in the provision of the goods and services listed, and consequently are entitled to be exempt from VAT, provided they obtain prior authorisation from the Member State in which they are established.

The Commission also notes that zero-rating in a number of Member States for certain supplies related, among other things, to material and devices for disabled people is “authorised”.

The provisions of The Directive therefore provide the foundation for Europe’s VAT reliefs for people with disabilities. Whether this approach is effective depends on how the provisions are implemented in the EU Member States, including the United Kingdom. It is to this that the report now turns.

³ EU Policies: Taxation Policy, http://www.europa.eu.int/comm/employment_social/soc-prot/disable/tax_en.html

⁴ Article 132, Council Directive 2006/112/EC

Section 4

What is disability?

How disability is defined is fundamental to the extent to which VAT relief is available to disabled persons. We therefore looked at the definitions of disability that may be relevant in the context of VAT reliefs in the UK and in Europe.

4.1 Disability in the UK: The Disability Discrimination Act 1995⁵

Section 1 of the Disability Discrimination Act 1995 (DDA) defines a disabled person as one with “a physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities”.

Schedule 1 to the DDA supplements this by setting out definitions of areas such as impairment, substantial adverse effects, long-term effects and normal day-to-day activities. This is further supplemented by guidance⁶ issued by the Secretary of State pursuant to sections 3(A1) and 3(1) of the DDA, setting out factors that an industrial tribunal or court are to take into account in interpreting the DDA definition of a disabled person.

An impairment is recognised to have a long-term effect if it has lasted, or is likely to last, for at least 12 months, or is likely to last for the rest of the person’s lifetime (paragraph 2(1) of Schedule 1 to the DDA). Furthermore, an impairment which has had a substantial adverse effect on a person’s ability to carry out normal day-to-day activities, but which ceases, is treated as continuing if it is likely to recur (paragraph 2(2) of Schedule 1). Thus sporadic conditions such as epilepsy may still qualify if likely to recur for at least 12 months (paragraph C5, Guidance on matters to be taken into account in determining questions relating to the definition of disability).

Progressive conditions such as cancer, HIV or multiple sclerosis, which do not currently have a substantial adverse effect but are likely to result in substantial adverse impairment in future, are also deemed to have a substantial adverse effect for the purposes of the DDA.

It should be noted that UK VAT legislation refers to “the handicapped” rather than “disabled”, and the meaning of these terms is explored in HM Revenue & Customs (HMRC) guidance notes (see commentary below). While HMRC’s policy does achieve consistency with the DDA definition (see 4.3 below), we recommend that UK VAT legislation should be amended to adopt the same terminology and definitions as the DDA.

The relevant extracts of the DDA are contained in Appendix A.

4.2 Disability in European VAT law

The term “disabled” is not defined in The Directive and there is little consistency with regard to a definition in local VAT jurisdictions across Europe. In a number of territories, the term is not defined at all, except in very narrow circumstances. In others it is defined, but what it means for VAT purposes in one territory may be quite different to what is accepted in another. There are also instances where the accepted definition of disabled is not contained in VAT legislation but in other legislation such as social laws. The inconsistencies are highlighted in the summaries below of how – or whether – the term “disabled” is reflected in European and member states VAT legislation.

In UK VAT legislation, the reliefs are made available to the “handicapped” rather than disabled people. For these purposes, handicapped is defined as meaning “chronically sick or disabled”.⁷ However, the legislation does not define the term any further. Considerable case law exists on the interpretation of the term and the extent to which it can be applied for the purposes of VAT reliefs (refer section 6.2 below).

⁶ Guidance on matters to be taken into account in determining questions relating to the definition of disability

⁷ Value Added Tax Act 1994, Schedule 8, Group 12, note (3)

⁵ As amended by the Disability Discrimination Act 2005

Guidance published by HMRC in VAT Notice 701/7 interprets the term “disabled” consistently with, and using the terms of, the DDA definition:

A person is “chronically sick or disabled” if he/she is a person:

- with a physical or mental impairment which has a long term and substantial adverse effect upon his/her ability to carry out everyday activities;
- with a condition which the medical profession treats as a chronic sickness, such as diabetes; or
- who is terminally ill.⁸

In Belgium, the term “disabled” is not defined in VAT legislation except with reference to VAT reliefs applied to supplies of automobiles to disabled persons, who are described as military and civil disabled veterans of war that have a disablement pension of at least 50% and persons that are completely blind, completely paralysed at the upper limbs or whose upper limbs are amputated and persons with a permanent disability directly related to the lower limbs that amount to at least 50%. Belgian VAT legislation does not otherwise define disabled or disabled persons. In practice, disabled persons are responsible for determining whether they qualify for VAT reliefs, although the authorities may refer the person claiming relief to a medical practitioner who will use subjective tests to determine whether VAT relief will be appropriate. The VAT reliefs in Belgium are principally confined to aids for disabled people.

In the Czech Republic and Sweden, disabled is not defined at all in VAT legislation. Swedish VAT legislation has not implemented any specific regulations regarding disabled people.

In Germany, the VAT legislation itself does not define disabled, but relies on the definitions (including definitions for grades of disability) as set out in the German Code of Social Law.

In the Netherlands, the term is similarly undefined in VAT legislation, although the legislation does refer to several types of specific disabilities such as blindness, deafness and citing a number of aids that can be used by people with disabilities. These disabilities can also be temporary (for example, a broken leg), although the relief can only be applied in very restrictive circumstances.

Spain has defined disabled for tax (and not merely VAT) purposes. A disabled person is one who has a disability of “equal to or greater than 33%”, in accordance with the provisions on the matter as set out by the Social Security Regulations and by the Law 51/2003 related to equal opportunity, anti-discrimination and universal accessibility for disabled persons.

Taking these points into consideration, therefore, it appears that certain other EU Member States have a fairly wide interpretation of the definition of disabled in comparison to the UK. Thus, a person with a broken leg may be disabled under Dutch law and therefore eligible for VAT relief on the purchase of crutches in the Netherlands, but would not be considered handicapped in the UK and therefore be required to bear the standard rate of VAT for the same purchase.

We recommend that the EU adopts a consistent definition of disabled for VAT purposes, to ensure equality of treatment throughout the EU.

⁸ Notice 701/7, paragraph 3.2.1

4.3 Implications of different definitions of disability

It has been recognised that different contexts require different definitions of disability, such that a person may be disabled under one definition but not under another.⁹ Although definitions may differ, this may not be important provided the social institutions which implement and administer the various policies in the realm of disability co-ordinate their approaches to minimise gaps in the sphere of people covered by the range of policies.

While the definition of disability under the DDA differs from that under the VATA 1994, the administration of the VAT reliefs for disability by HMRC by reference to the DDA definition achieves alignment with the policies administered by the primary department responsible for disabled persons, the Department of Work and Pensions, and therefore ensures a coherent approach towards implementing the UK Government's strategic approach of removing barriers to full participation of disabled people. This has been commended by LITRG in its earlier report.¹⁰ We believe it would aid clarity and simplify matters if VAT legislation was amended to fully reflect the definitions used in the DDA.

From a pan-European VAT perspective, particularly under the unifying framework of The Directive, some degree of consistency of definition across the Member States of the EU is important to preserving the ability of disabled people to take advantage of one of the founding freedoms of the EC treaty, the free movement of people throughout the Union. While the European Commission does not require Member States to have identical definitions of disability, it does recognise the need for mutual understanding of the different definitions and provisions, so that the reliefs under each national legislation are non-discriminatory, i.e. offer the same (or comparable) level of social provision irrespective of the Member State in which the disabled person resides.¹¹

⁹ Brunel University, *Definitions of Disability in Europe: A Comparative Analysis* (2002), page 13

¹⁰ LITRG, *Disability in Tax and Related Benefits: the Case for a Modern and Coherent Approach*, paragraph 2.8.7

¹¹ Brunel University, *Definitions of Disability in Europe: A Comparative Analysis* (2002), pages 78-79

Section 5

Setting the VAT scene

5.1 Origins of European VAT law

VAT is a consumption-based tax charged throughout the EU and is generally levied on all supplies of goods and services, except those that are specifically excluded as either zero-rated (technically, these are subject to VAT but at 0%) or exempt. The VAT law is governed by a number of EU Directives, which are implemented in each of the EU Member States through domestic legislation.

The First and Second EU VAT Directives of 1967 set out the principles of the common system of value added tax and the structure and procedures for applying it. There was considerable scope at that time for EU Member States to act independently in formulating their respective VAT regimes, even though it was (and remains) a condition of EU membership that a VAT regime is operated.

The implementation of VAT in the UK in 1973 upon its entry into the EU was intended to be low-key. The Government at that time did not want VAT to be onerous and wanted to equate it, as far as possible, to the purchase tax it replaced in order to achieve approximately the same level of tax revenues. The UK set its own agenda in relation to its VAT legislation but this was nevertheless influenced by lobby groups which ensured that the scope for VAT reliefs was broadened at the outset.

At the time of implementation, supplies on which no tax fell to be levied to consumers (i.e. exempt and zero-rated supplies) included children's clothing; food; burials and cremations; books and printed matter; insurance and medicines and healthcare (including certain disability aids).

The push for greater harmonisation in the EU led to the adoption of the EU Sixth Directive in 1977. This replaced the Second Directive and set out more comprehensive provisions, not only in relation to the common system of value added tax and procedures for applying it, but also provisions for a uniform basis of assessment. This included clarification of the transactions chargeable to tax, extension of the tax base for services, extension

of the tax to retail transactions, abolishing certain derogations (i.e. permitted deviations in the national legislation from the EU Directive) previously allowed under the Second Directive, providing common exemptions etc. Member States were required to modify their existing VAT systems in accordance with the Sixth Directive so that the modified systems came into effect from 1 January 1978.

As the Sixth Directive afforded certain transitional measures, the UK was able to maintain the scope of a zero-rate as provided by the original, less prescriptive, European VAT legislation (only Ireland had a similar zero-rate at the time, although other Member States did apply exemption with the right of tax credit to certain supplies). However, new zero-rating provisions could not be introduced after that date, although certain categories of goods and services became eligible for taxing at a reduced rate of VAT.

The Sixth Directive, as amended from time to time or Council Directive 2006/112/EC as it has now become, remains the overarching framework within which the VAT law of any member state must operate. It is therefore within this context and these constraints that the UK VAT provisions, and any reform to them, must be considered. Comparisons with the implementation of The Directive in other EU Member States may be instructive in illustrating the scope for extending VAT reliefs for disabled people within the UK. Examination of The Directive itself may also highlight constraints which may require amendment at that higher level before any corresponding change could be made to the domestic VAT law of any EU territory.

5.2 Specific VAT provisions concerning disability in the EU Directives

Extracts from The Directive, which cover the rate of VAT applicable to taxable transactions (Articles 93-130 inclusive) and activities that are exempt from the tax (Articles 131-136 inclusive), are reproduced at Appendix B to this report.

The VAT reliefs that are appropriate specifically to disabled people can be found at Annex III to The Directive (in which supplies of goods and services which fall to be treated under a reduced rate of VAT are set out). Specifically, Category 4 provides for a reduced rate of VAT to apply to “medical equipment, aids and other appliances normally intended to alleviate or treat disability, for the exclusive personal use of the disabled, including the repair of such goods, and supply of children’s car seats”.

Under European law additional VAT reliefs may fall under Category 15, which covers the “supply of goods and services by organisations recognised as being devoted to social wellbeing by Member States and engaged in welfare or social security work, insofar as those transactions are not exempt pursuant to Articles 132, 135 and 136”, and Category 17, which covers the “provision of medical and dental care and thermal treatment in so far as those services are not exempt pursuant to points (b) to (e) of Article 132(1)”.

Note that the exemptions at Article 131-136 of The Directive, which are included in Appendix B for the sake of completeness, are available to all, not just disabled people.

5.3 European Directives into UK law

The UK legislation implements the EU disability provisions in the VATA 1994 as follows:

- Group 4, Schedule 8: Talking Books for the Blind and Handicapped and Wireless Sets for the Blind.
- Group 12, Schedule 8: Drugs, Medicines, Aids for the Handicapped.
- Group 15, Schedule 8: Charities etc.
- Group 7, Schedule 9: Health and Welfare.

A summary of the VAT reliefs available under UK VAT legislation through the UK’s interpretation of The Directive is reproduced at Appendix C to this report (with references to the overriding EU legislation).

5.4 How the UK Courts have construed the law

It should be noted that the UK courts have tended to take a literal rather than purposive approach to interpreting the zero-rating provisions. In other words, the courts have strictly applied the provisions based solely on the interpretation of the words used in the legislation rather than using a broader approach that takes into account the purpose behind the legislation. For example, modifications to a residence to accommodate medical equipment used by a disabled person are not, under a literal approach, “services necessarily performed in the installation of equipment or appliances [designed solely for use by a disabled person]”, and thus zero-rating is denied (see Section 6.1 of this report for further commentary on this issue). Such a limited approach clearly carries the risk that the needs of disabled people are not sufficiently or appropriately addressed, and that the stated aim of Government policy is not met, and we recommend that the authorities consider how best to ensure that Government policy is properly implemented.

¹² Directives 67/227/EEC and 67/228/EEC

¹³ Directive 77/388/EEC

¹⁴ Article 28

Section 6

Anomalies and inequities under UK law

The way in which the UK has implemented the EU Directives into its domestic legislation, and following on from this, the way in which HMRC and the Courts have construed and interpreted that legislation, leads to inconsistencies and anomalies. Worse, VAT barriers have been created which make it more difficult – or more expensive – for the community of disabled people to pursue their everyday lives. We have outlined below some of the more obvious issues, and then sought to illustrate the nature of the problems through four representative case studies.

6.1 VAT reliefs for works to a disabled person's residential accommodation

A major area of discrepancy in the VAT regimes reviewed is in respect of reliefs on works to a disabled person's residential accommodation. Only the UK allows zero-rating relief for certain works to a disabled person's residence, but these reliefs are limited to specified circumstances, with some obvious areas where a disabled person would bear the full VAT burden on even essential works and adaptations.

By way of background, the UK VAT relief for construction works in respect of residential accommodation prior to 1991 was far broader. However, as a result of infraction proceedings against the UK in the European Court of Justice,¹⁶ the UK was required to amend its existing legislation so as not to contravene the provisions of the EU Second and Sixth VAT Directives. This only permitted zero-rating to be maintained after 1 January 1991 if it was “for clearly defined social reasons and for the benefit of the final consumer”. As a result of this case, the UK legislation was amended to subject many supplies to standard rating which were previously subject to the zero-rate.

The existence of relief in respect of certain construction work in the UK but not in other jurisdictions may be an area in which reform in the other Member States might be explored to further level the playing field throughout the EU.

From the perspective of the UK, the current availability of VAT relief for only limited types of construction work has produced certain anomalies. For example, VAT relief is available to a disabled person for the construction of ramps and widening of doorways (and associated goods) to that person's private residence, but relief is not available in relation to any other construction or adaptation to a disabled person's private residence, even if that work is done as a direct result of that person's disability.

A case in point is the Tribunal case of *Commissioners for Customs and Excise v Mrs L J Brailsford*,¹⁷ where the Appellant commissioned extension work to her home to accommodate a renal dialysis unit for her husband. The work included the incorporation in the extension of a dialysis room, a lavatory and an enlargement of the existing hallway. The VAT Tribunal found that, apart from the provision of the renal dialysis unit and the provision of the lavatory in the extension, the remaining work did not qualify for zero-rating. Thus, the construction of the part of the extension occupied by the renal dialysis unit and the associated enlargement works to the existing building were subject to VAT in full, because under the strict terms of the UK law, VAT relief could only be applied to the equipment and appliances and to services necessarily performed in the installation of the equipment.

Furthermore, whilst VAT relief is available to a disabled person for the provision, extension and adaptation of a bathroom, washroom or lavatory (and associated goods) in that person's private residence, relief is not available in relation to the installation of, for example, a kitchen fitted out to suit the needs of a disabled person in his private residence.

This is illogical and inconsistent, and illustrates that VAT continues to be a barrier to a disabled person's accessibility throughout their home.

We recommend that consideration is given to extending VAT reliefs on construction services for disabled people. Section 7 below explores this further.

¹⁵ *Commissioners for Customs and Excise v Mrs L J Brailsford* (VATTR 13472)

¹⁶ *Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland* (C-416/85)

¹⁷ VATTR 13472

6.2 The limitation of the design requirement within the UK

Item 4 of Annex III of The Directive allows relief for:

“Medical equipment, aids and other appliances normally intended to alleviate or treat disability, for the exclusive use of the disabled, including the repair of such goods and children’s car seats.”

The UK’s implementation of item 4 allows for VAT relief to be applied to a range of goods supplied to disabled people, but only in restricted circumstances. The most obvious issue relates to medical or surgical appliances, for which VAT relief is available only when those goods have been designed solely for the relief of a severe abnormality or severe injury, while other equipment and appliances are also only eligible for relief when designed solely for use by a handicapped person.

This requirement can produce some arbitrary results, and could result in equipment and appliances which are in fact purchased specifically to aid or relieve the relevant disability, but which cannot be proved to be designed solely for this purpose, being excluded from VAT relief in the UK even though they would be eligible under the source provisions in The Directive.

Some examples of this in practice are highlighted below.

In the VAT Tribunal case of *Commissioners for Customs and Excise v Posturite (UK) Limited*,¹⁸ a company contested that supplies of a magnetic sloping board which had been designed to reduce back and neck pain when writing and reading should be zero-rated, as the boards were especially helpful to those people in wheelchairs. The Tribunal stated “we are of the opinion, however, that the particular value of the table to the chronically disabled is by no means sufficient to enable us to infer that the table was solely designed for them and an inspection of the table produced by the Appellants confirms our view. We asked ourselves does the appearance and method of operation of this table suggest to us, using the words with their ordinary and natural meaning, that it was designed “solely for use” by a chronically disabled person? We can only say that the table struck us as eminently practicable and convenient for all sorts of hospital patients and was not designed

with a particular class in mind.” The appeal of the company was thus dismissed.

In *Commissioners for Customs and Excise v BO Symons*,¹⁹ a woman who suffered from multiple sclerosis purchased an air purifier to ease her discomfort. The VAT Tribunal recognised that the woman was disabled and that the air purifier was intended for domestic use but the crucial question that had to be answered was whether the purifier was designed solely for use by a chronically sick or disabled person as required by the UK legislation. For this the Tribunal used the subjective test which asked the question “what had the designer intended the use of the item to be?” This of course was in these circumstances very difficult for the Appellant to show. The marketing of the product was considered in looking at the intention of the designer. The Tribunal agreed entirely with the Appellant that the fact that a product designed for a medical purpose was now more widely used did not alter the subjective intention of the designer. However, in this case there was no evidence to suggest that the designer had intended that the purifier should be used as a medical product. The appeal was, therefore, dismissed.

This report contends that the inclusion of the word “designed” in the UK provisions narrows the scope of VAT relief beyond that required by The Directive, which refers only to the need for the goods in question to be “normally intended to alleviate or treat disability, (and) for the exclusive use of the disabled”. The Directive does not require examination of the design of the equipment also.

The UK Government’s policy states that it is committed to reducing the barriers placed before those with disabilities. However, this policy can only be hindered by the inclusion of the phrase “designed for the sole use of the handicapped” in its implementation of item 4, which inevitably means that the VAT barriers faced by a disabled person can only be reduced or removed in very limited circumstances. The result is that, whenever relevant goods or services purchased by disabled people might also be used by those who are not disabled, people with disabilities suffer a VAT cost, contrary to the UK Government’s stated policy.

¹⁸ VATTR 7848

¹⁹ VATTR 18534

We recommend that the UK more closely aligns its legislation with the reliefs provided for in The Directive. We recognise that it will be impossible to extend zero-rating, but suggest that a reduced VAT rate of, say, 5% is introduced for items which are intended to alleviate disability and which are for the exclusive personal use of a disabled person.

6.3 Physical v mental disabilities

It has been noted in the report of the Prime Minister's Strategy Unit adopted as statement of the UK Government's strategy in the area of disability (the Strategy Unit Report) that "there is often a failure of physical disability services to take account of mental health needs, and vice versa, and a lack of communication between the two services. The failure of the services to meet the needs of people with learning disabilities and people who are deaf or hearing impaired, who also have mental health support needs, has also been well documented."

The same criticism may be made of the UK VAT provisions, which focus on providing zero-rating for specific goods and services relevant in overcoming physical impairments, but do not cover any of the services regarded as vital to overcoming mental disability. This is despite the fact that Item 4 of Annex III to The Directive implies that VAT reliefs should be available to all disabled persons, i.e. people with physical and mental disabilities.

By way of illustration, the Strategy Unit Report refers to advocacy support services as one such necessity for those with mental health needs and learning disabilities. Further, the Strategy Unit Report also notes that inadequate and inappropriate housing can worsen the condition of those with mental health problems, so the availability of VAT concessions for adaptation of housing can be as important as for a person with a physical disability. However, even if a person with a mental disability qualifies as 'handicapped' for VAT purposes, it is doubtful that any of the existing reliefs (except perhaps the zero-rating of the supply of alarm systems to directly alert call centres and corresponding call centre services) would be relevant for a person with a mental disability.

As a result, mentally disabled people are prejudiced through the UK's application of The Directive. The impact of this becomes more acute in light of the fact that there are increasing numbers of adults reporting mental illness and behavioural disorders, while the number of people reporting physical impairments is decreasing.

We recommend that, in line with the terms of The Directive, the UK Government introduces equality of treatment for mentally disabled people, by introducing VAT reliefs on goods and services that are intended to alleviate or treat mental impairment.

6.4 Barriers outside the residence

6.4.1 Transportation

The UK VAT law provides limited reliefs for the purchase and lease of certain cars.

Specifically, the purchase of a car can be zero-rated if it is designed or substantially and permanently adapted to enable a disabled person who usually uses a wheelchair to enter and drive or be otherwise carried in the car, or if the car has features (by reason of its design or being substantially and permanently adapted) whose design is such that their sole purpose is to allow a wheelchair used by a disabled person to be carried in the car. Modifications to the car to enable disabled people to use them can also be zero-rated.

Cars leased from the charity Motability are also zero-rated, but such leases will only be granted if the disabled person receives the higher rate mobility component of the Disability Living Allowance (DLA).

As many disabled people are capable of driving cars with automatic transmission which are otherwise unmodified, the availability of automatics under the Motability scheme arguably results in a bias towards leasing under that scheme rather than the outright purchase of such a car, which would not qualify for the zero-rating.

Furthermore, although the Motability scheme is advantageous to those that meet the eligibility criteria, it excludes disabled people not in receipt of the higher

rate mobility component of the DLA from the scheme. In particular, disabled people whose disabilities arise after the age of 65 are not eligible for the DLA, and therefore cannot access this relief when they most need it.

We recommend that a review of the eligibility criteria is carried out, with a view to increasing the accessibility of the VAT relief.

The VAT barriers to using a car are further compounded if the disabled person is ineligible to lease a car under the Motability scheme and he or she simply requires a car with automatic transmission, or minor modifications which do not meet the zero-rating requirement of “designed or substantially and permanently adapted to enable a person who usually uses a wheelchair to enter or be otherwise carried in the car”. In particular, people with prostheses or other disabilities which do not confine them to a wheelchair, and who are not eligible for a car under the Motability scheme, would not be entitled to any VAT reliefs for their transportation.

The sale of an adapted motor vehicle, providing certain conditions are met, can be zero-rated as well as the cost of modifications to cars to enable disabled people to use them, but the fact remains that many cars on Motability leases have not been modified, since a wide range of disabled people can use unmodified automatics.

To prevent mobility being impeded by the additional VAT cost to disabled persons we recommend that this anomaly is removed, by perhaps introducing a reduced VAT rate to any motor vehicle purchased by a person with a disability that requires relevant adaptations.

6.4.2 Accessibility of the workplace

For completeness, the Strategy Unit Report also recommends that strategies should be developed to remove barriers in the workplace which disadvantage disabled persons, such as financial assistance for employers to make the necessary workplace adjustments. This is particularly relevant given the European Commission’s focus in 2004-2005 on the promotion of employment of people with disabilities.

While zero-rating is available for modifications to certain areas of the home, no corresponding relief is available in the UK VAT law in respect of workplace modifications undertaken by an employer. Although this may not be an issue for employers who are able to recover input tax in full, real VAT costs would be incurred by partly exempt employers (e.g. banks and other financial institutions etc.). The VAT law therefore creates an artificial barrier, making it more expensive for some employers to employ physically impaired employees, but not others.

To align the VAT law with the UK Government’s stated policy and strategy for disabled persons generally, it is recommended that this barrier be removed by introducing VAT relief for modifications in the workplace, where the zero-rate would not otherwise apply.

²⁰ See for example Value Added Tax Act 1994, Schedule 8, Group 12, item 2, paragraphs (a), (g) and (h)

²¹ Council Directive 2006/112/EC Annex III, item 4

²² Prime Minister’s Strategy Unit, jointly with the Office of the Deputy Prime Minister, Department of Work and Pensions, Department of Health and Department of Education and Skills, ‘Improving the life chances of disabled people’ (January 2005)

²³ *ibid*, page 76

²⁴ *ibid*, page 70

²⁵ *ibid*, page 49

²⁶ VAT Notice 701/7 ‘VAT Reliefs for disabled people’, para 3.2.1

²⁷ VAT Act 1994, Schedule 8, Group 12, Items 19 and 20

²⁸ The Strategy Unit Report, page 33

²⁹ VAT Act 1994, Schedule 8, Group 12, Item 2A and Note 5L

³⁰ VAT Act 1994, Schedule 8, Group 12, Item 3

³¹ VAT Act 1994, Schedule 8, Group 12, Item 14 and Note 6

³² Strategy Unit Report pages 18 and 155

³³ European Commission, COM(2003)650: Equal Opportunities for People with Disabilities: a European Action Plan (30 October 2003)

Section 7

Scope for amending UK legislation under EU law

The extent to which the UK VAT legislation may be amended to extend the scope of relief for disabled people must be considered within the constraints of alignment with The Directive.

In this regard, there may be some scope for extending limited relief through reduced-rating for items under Item 3 of Annex III to The Directive, namely “pharmaceutical products of a kind normally used for health care, prevention of diseases and treatment for medical and veterinary purposes, including products used for contraception and sanitary protection”. (This was the authority, or vires, under which the UK legislation recently introduced reduced-rating for feminine hygiene products.)

Furthermore, Item 10 of Annex III also permits reduced-rating for the “provision, construction, renovation and alteration of housing, as part of social policy”. This may also permit the UK to extend some reduced-rate relief to works on other parts of a disabled person’s residence that are currently subject to the full rate of VAT (for example alterations to the kitchen and other areas of the home). This should be feasible, as such work would be “for clearly defined social reasons” and “for the benefit of the final consumer”.

Outside legislative amendment, a potential solution could be to provide or increase grants for disabled people (or, as in Germany, increase the level of tax allowances permitted through taxpayers’ income tax returns). It has been argued that social benefit should not be applied through a tax system but through a benefit system.

Section 8

Four case studies

To provide a practical focus on how the VAT reliefs for persons with disabilities apply, four aspects of disability have been chosen to form the basis of case studies. These are:

- vision impairment;
- hearing impairment;
- physical (mobility) impairment; and
- mental impairment (including learning difficulties).

8.1 Vision impairment

Claire, 49, has age-related macular degeneration (AMD) and lost her sight very suddenly at the age of 48. She is blind in one eye and partially sighted in the other. Her sight will become much worse as time passes.

Claire currently works 30 hours per week in the editor's office of a local weekly newspaper. She writes articles and features for publication but her job also involves a great deal of mail sorting and photocopying of documents. She earns approximately £17,075 per year, i.e. £311.87 per week in net wages, supplemented by the Disability Living Allowance of £16.50 per week.

Claire is single and was worried that in time she would have to give up her job.

However, her employer has been very supportive. He has provided a CCTV in the office, which can be used for reading and looking at pictures, and sometimes for handwriting. The magnification can be adjusted to suit the job.

Claire has special glasses and a hand-held magnifier for reading when she is away from her desk. She is soon to receive a new word processor with magnification software that will help her with the articles she has to write. Claire's employer has received assistance through the Access to Work scheme, which is administered by the Employment Service. He received a grant towards the cost of the equipment, and towards the training Claire will need in order to use the magnification software effectively.

Claire's sight loss has affected her more noticeably at home and in the costs of specialised goods that she has had to buy. As her sight loss was sudden, she had to replace many items at once in order to make life easier and safer, including the following:

- a talking mobile phone with no visual display (her mobile phone, which she considers to be essential, cost at least £150 more than a normal model);
- a leather case, batteries and charger for the phone;
- a magnifying filter screen for her computer;
- a big button telephone;
- tactile kitchen scales;
- an easy to see wall clock; and
- a magnifying mirror for applying her make-up.

The VAT burden in the UK and across the EU

Claire's purchase of the talking mobile phone with no visual display, and its charger, qualify for zero-rating because it is "designed solely for use by a handicapped person" (item 2(g), Gp 12, Sch 8, VAT Act 1994). The magnifying filter screen for her computer and tactile kitchen scales have also been designed solely for the use of a disabled person, so these items will be zero-rated.

However, the leather case and batteries for the mobile phone, the big button telephone, easy to see wall clock, and magnifying mirror for applying her make-up were not designed solely for the use of a disabled person, so they are subject to 17.5% VAT.

In contrast, if Claire lived in some of the other EU territories examined in this report, she would not be entitled to full relief in the form of zero-rating on any of her purchases. However, some territories provide for a reduced rate for certain purchases designed for people with disabilities.

For example, Spain provides for a reduced rate of 7% for the talking mobile phone because it is designed mainly for use by disabled persons. The magnifying filter screen

for the computer and the tactile kitchen scales will also qualify for the reduced rate if they are designed solely or mainly for the use of disabled persons. However, as in the UK, the leather case, batteries, mobile phone charger (if purchased separately from the talking mobile phone), the big button telephone, the easy to see wall clock and the magnifying mirror would be subject to the standard VAT rate (16%), on the basis that they are not designed solely or mainly for the use of disabled persons or to supplement their physical deficiencies.

The Netherlands provides for a reduced rate of 6% to apply to equipment (including computer software and hardware) specially designed for personal use by blind persons, so the magnifying computer screen and easy-to-see wall clock could qualify for the reduced rate. The Czech Republic also provides for some partial relief of the VAT burden in the form of a 5% reduced rate. This would apply to Claire's purchase of the scales, if with voice output and designed for the partially sighted or blind. Computers designed or adapted or with output or hardware designed to enlarge letters will also be liable to the reduced rate of 5%. Furthermore, items accompanied by a written declaration that it is a specific medical device for the sick may also qualify for the reduced rate of 5%. However, the standard rate of 19% would apply to the other purchases made by Claire if she lived in the Netherlands or the Czech Republic.

No specific reliefs are available in Belgium and Sweden for Claire's purchases, so she would incur VAT on her purchases of 21% and 25% respectively if she lived in those territories. Germany also does not have any specific reliefs for Claire's purchases, so VAT would apply at the standard rate of 19% on her purchases.

It can be seen from the above that the VAT burden faced by Claire would differ depending on which territory she lived in, not only because the extent to which reliefs are available varies, but also because the full or reduced rates which apply to certain purchases vary quite significantly.

8.2 Hearing impairment

Agnes is a 73-year old widow who lives alone in her own house. Agnes has been hard of hearing since her early twenties but her hearing loss has accelerated and she is now severely deaf. She is registered as deaf with her local health authority.

She has savings of £2,000. Her total income and benefits per week is approximately £132.05, or £6,866 per year.

Agnes relies heavily on her hearing aid (supplied by the NHS) but also requires a number of specialist products to help with everyday living. Whilst some of these goods can be borrowed from the RNID, Agnes prefers to pay for as much as possible herself as she believes that this is the right thing to do.

The goods that Agnes has bought in recent months include:

- a flashing doorbell;
- an amplified telephone;
- a teleflash, which flashes when the phone rings;
- a portable monitor to let her know when the phone or the doorbell rings;
- a flashing alarm clock;
- batteries for her hearing aid and the doorbell (one per week); and
- a video recorder so that she can record TV programmes with subtitles.

Agnes would like to replace her NHS hearing aid with a more modern version. The more modern version must be bought privately and is very expensive. In the meantime, Agnes is considering taking sign-language and lip-reading tuition so that she does not need to rely so heavily on her hearing aid.

The VAT burden in the UK and across the EU

In the UK, the items purchased by Agnes which qualify for zero-rating on the basis that they were designed solely for the use of a disabled person include a flashing doorbell, amplified telephone, a teleflash (which flashes when the phone rings) and a flashing alarm clock.

However, the portable monitor, batteries for the hearing aid, the doorbell and video recorder have not been designed solely for use by a disabled person, so they are subject to 17.5% VAT. Although hearing aids dispensed free by the NHS as part of its provision of healthcare are outside the scope of VAT, the private supply of hearing aids (other than those designed for the auditory training of deaf children) and their repair, batteries, accessories and spare parts are subject to 17.5% VAT.

In contrast, the Netherlands will apply a reduced rate of 6% to all the goods purchased by Agnes with the exception of the amplified telephone and video recorder (which will be subject to the standard rate of 19%). Unlike the UK, the hearing aid will qualify for the reduced rate of VAT.

Like the Netherlands, Spain also provides for the hearing aid to be subject to the reduced rate (7%), on the basis that it is designed solely or mainly for the use of disabled persons. For this reason, the flashing doorbell, amplified telephone, teleflash, flashing alarm clock and portable monitor could also qualify for the reduced rate. However, the video recorder and the batteries will be subject to the general 16% VAT rate since these items are not expressly designed for use by disabled persons or to supplement their physical deficiencies.

The reliefs available in the Czech Republic differ again. The telephone constructed for Agnes will be liable to the reduced rate of 5% VAT. However, the remaining goods are likely to attract VAT at 19%. The goods could qualify as special acoustic or visual devices for the deaf (or blind/partially sighted) and therefore the lower rate of 5% would apply. This will depend on the particulars of the unit and its customs classification.

Again, as no specific VAT reliefs for Agnes's purchases are available in Belgium and Sweden, Agnes will face a VAT burden of 21% and 25% respectively on her

purchases if she lived in those territories. VAT at the standard rate of 19% would also apply to her purchases if she lived in Germany.

In relation to the sign-language and lip-reading tuition, these services are exempt in the Netherlands and may be exempt in the UK and Spain if certain conditions relating to the provider of the services are satisfied. However, the exemption arises under a different policy ground, namely the exemption for education services rather than any specific VAT relief for services required by disabled people.

8.3 Physical (mobility) impairment

Billy, aged 28, was 25 when he was told that he had Progressive Muscular Atrophy, a form of motor neurone disease (MND). MND affects the motor neurones (nerve cells) in the brain and spinal cord. As the motor neurones gradually die, the muscles stop working. Billy is now unable to walk and uses a wheelchair.

Billy has one of the milder forms of MND but it is still likely that he will not live beyond 30. Life expectancy for most people with MND is just two to five years from diagnosis. This has not prevented Billy from leading as full a life as possible and he married his girlfriend last year and they have a new baby boy aged three months.

Billy is very concerned that he should leave as much cash as possible to his wife and son after his death. Therefore, as a family, they spend money on essentials only and always try to save cash wherever possible.

As his disease has spread, Billy has had to obtain many items of equipment, including:

- neck collars;
- a wheelchair;
- a reclining chair (purchased before realising that it would be supplied routinely by the MNB Association);
- an orthopaedic bed;

- a computer system with specialised items for his disability;
- extensive modifications to his house have also been required. These include:
 - the construction of new doorway to allow the wheelchair to be brought to the garden as the existing doorway could not be widened;
 - the installation of a stair lift designed for use with the wheelchair;
 - the installation of a lifter chair for the bath;
 - the installation of a specialised toilet hoist;
 - the resurfacing of internal floors to be suitable for the wheelchair; and
 - the installation of low surface temperature radiators.

Billy has also had to rely on specialist taxis for transport.

Billy works as a software support technician in London. When he became increasingly reliant on the wheelchair, Billy had to take leave while his workplace was modified to allow him access to his desk and the office facilities. His employer, an independent mortgage broker, has been very supportive, but as a small business in an old office, has found the modifications required quite costly and disruptive.

The modifications required to the office included:

- the widening of doorways and construction of ramps to allow the wheelchair to pass through;
- the modifications of the office fitout to widen corridors and workspaces to accommodate the wheelchair;
- the resurfacing of floors to be suitable for the wheelchair; and
- the installation of a toilet suitable for the wheelchair on the floor on which Billy works.

The VAT burden in the UK and across the EU

(a) Medical aids and appliances

In the UK, Billy's purchase of neck collars and a wheelchair are zero-rated because they have been designed solely for use by a disabled person. However, the reclining chair and orthopaedic bed, although of great assistance to Billy, have not been designed solely for use by a disabled person, and accordingly will be subject to 17.5% VAT. In contrast, if Billy had purchased an electrically or mechanically adjustable bed designed for invalids, this would have qualified for relief from UK VAT (item 2(b), Gp 12, Sch 8, VAT Act 1994).

In comparison, Billy's purchase of the wheelchair and neck collars will be subject to the reduced rate if Billy lived in Belgium, the Netherlands or the Czech Republic (6%, 6% and 5% respectively). German VAT law also applies a reduced rate of 7% to Billy's purchase of the wheelchair, and under certain circumstances, to his purchase of the neck collars. All other purchases would be subject to the standard rate of 19%.

Spain also provides for a reduced rate of 7% to apply to the neck collars, and applies a 4% reduced rate to the wheelchair.

Belgian and Spanish VAT law also apply the reduced rate (6% and 7% respectively) to the orthopaedic bed, as does the Netherlands VAT law if the bed is normally used in hospitals and nursing homes (if not, the bed would be subject to the standard rate of 19%). The Netherlands also applies the reduced rate to the reclining chair (standard rated in Belgium, Spain and Germany). The Czech Republic provides for a reduced rate to apply to both the bed and the reclining chair if they are accompanied by a written statement that they are a specific medical means for the sick.

(b) Computer system with specialised items for Billy's disability

The UK VAT treatment of the computer depends on whether an entire package or a specific item is being supplied. Where the supply is a complete package, HMRC's VAT Notice 701/7 VAT Reliefs for disabled people provides for two concessions for suppliers. The first

permits the zero-rating of the central processor of the computer if it is sold as part of a computer system, and it has software installed which enables a disabled person to use the computer system or other software effectively, or to carry out tasks effectively when otherwise they could not. The second concession permits the use of a composite rate of VAT, based on supplies of computer packages made by that supplier over a representative period and treating the central processing unit and installation and training costs as zero-rated in addition to the zero-rated parts. Thus it is possible that the computer package supplied may be subject to 4.4% rather than 17.5% VAT.

The treatment of the computer in the other EU territories examined in this report also differs. The Czech Republic will apply a reduced rate of 5%. Spain will also apply a reduced rate of 7% provided it is designed to help disabled people and is solely or mainly for their use. A reduced rate of 6% will apply in the Netherlands only if the computer system was designed for the blind (otherwise the standard rate of 19% applies). Under Belgium, Swedish and German VAT law, the standard rate will apply to the computer system.

(c) Construction works in Billy's residence

In respect of the modifications to Billy's home, the stair lift, lifter chair for the bath, and specialised toilet hoist are zero-rated under UK VAT law (items 2(c), (d) and (e), Gp 12, Sch 8, VAT Act 1994). However, such modifications would be standard rated if undertaken at his place of employment (see below).

The construction of a new doorway to the garden will be subject to 17.5% VAT, as this falls outside the zero-rating provision for the construction of ramps or widening of (existing) doorways and passages for the purpose of facilitating entry to or movement within his private residence (item 8, Gp 12, Sch 8, VAT Act 1994).

The resurfacing of the floor would also be subject to 17.5% VAT unless it could be argued that it was a service of adapting goods to suit Billy's condition (item 3, Gp 12, Sch 8, VAT Act 1994).

Low surface temperature radiators are generally regarded as not designed solely for use by a disabled person, although there has been a Tribunal case in which a low surface temperature radiator was held to be zero-rated because the heating system in its entirety had been designed specifically for the qualifying recipient.³⁴ Where the radiator is installed in a bathroom, washroom or lavatory, it may be zero-rated as the supply of goods in connection with the zero-rated supply of the service of "providing, extending or adapting a bathroom, washroom or lavatory in his private residence, where such provision, extension or adaptation is necessary by reason of his condition" (items 10 and 13, Gp 12, Sch 8, VAT Act 1994).

In contrast, the standard rate would apply to the construction services if Billy's home was in the Netherlands, Belgium, Sweden or Germany (respectively, 19% 21%, 25% and 19%).

Like the UK, Spain provides relief for the stair lift, lifter chair for the bath and specialised toilet hoist in the form of the 7% reduced rate. However, while the other modifications to Billy's home would fall outside the scope of the reduced rate specifically applicable to disabled persons, they may qualify for the 7% reduced rate applicable to labour intensive works (not specific to disabled persons).

A reduced rate of 5% applies to renovation services if Billy lived in the Czech Republic, although this is under a general reduced rate for all such services provided in respect of a residence rather than any specific relief for disabled people. The stair lift, chair lifter for the bath and the specialised toilet hoist placed in Billy's home, if located in the Czech Republic, would also be subject to the reduced rate. The standard rate of 19% would apply to all other costs.

(d) Construction works in Billy's workplace

For Billy's employer, the modifications to the office are subject to VAT at 17.5%. As an independent mortgage broker only making supplies exempt from VAT, none of the VAT incurred on its costs can be recovered, so the cost of the modifications required are effectively inflated by 17.5%. While VAT would not be a real cost to a fully

³⁴ The David Lewis Centre (VTD 10860)

taxable business (e.g. a software company), the delay between paying the VAT on the construction costs and recovering the input VAT may cause cash flow issues for a small business. Furthermore, if such modifications had been made to Billy's private residence, no VAT would have applied in the first place.

It is evident, therefore, that the limitation of VAT reliefs to certain construction works within the private residence produces arbitrary results. For Billy, not all the construction work required to his private residence will qualify for VAT relief. For his employer, construction work which would have been zero-rated if carried out on Billy's home is standard rated when carried out on the workplace.

The position is the same across the EU territories examined in this report: the standard rate of VAT would apply to construction works undertaken by Billy's employer if Billy's office was located in Belgium, the Netherlands, the Czech Republic, Germany, Spain or Sweden.

(e) Transportation to the workplace

In the UK, the specialist taxi service will be subject to VAT at the standard rate of 17.5%. However, if Billy or his wife wished to drive their own car, Billy may be able to lease a car under the Motability scheme, which would entitle Billy to full VAT relief as such leases are treated as zero-rated under UK VAT law. However, Billy would need to receive the higher rate mobility component of the Disability Living Allowance to qualify. Alternatively, Billy may be able to purchase a car at the zero-rate if it is designed or substantially and permanently adapted to enable a disabled person who usually uses a wheelchair to enter and drive or be otherwise carried in the car, or if the car has features (by reason of its design or being substantially and permanently adapted) whose design is such that their sole purpose is to allow a wheelchair used by a disabled person to be carried in the car.

The Netherlands and Spain apply a reduced rate (6% and 7% respectively) to all local transport, so the VAT burden for Billy is lessened if he lived and worked in the Netherlands or Spain, although this arises from a relief available for other social policy reasons. Furthermore, if Billy purchases a car in Spain, it may be possible for

the 4% reduced rate to apply, provided the car qualifies as a special vehicle for the disabled normally used for the transport of disabled persons in a wheelchair or with a reduced mobility (this relief includes ordinary cars, whether adapted or not).

The standard rate of VAT would apply to the specialised taxi service if Billy lived and worked in Belgium, the Czech Republic, Sweden or Germany.

8.4 Mental impairment (including learning difficulties)

David is 19 and lives with his mother, Sarah. David has a speech problem and a learning disability. He has problems with reading and writing and has great difficulty communicating with other people. As a result, he did not go anywhere without his mother, apart from occasional visits to the local shop.

David does not work and relies on benefits of approximately £128 per week, or £6,656 per year. His mother is a single parent and has no contact with her ex-husband. She looks after David and also works five hours per week for £30 net. In addition to her wage, she receives benefits of £198 per week, which brings her total income to £11,845 per year. She has no savings.

David has recently taken receipt of a Pathfinder Communication Device, a small laptop computer that enables him to write messages that can be read by other people when he is with them, as well as sending messages to other computer users. He is now able to interact with people who do not understand his speech and has been able to start going to more places without his mother. The Pathfinder was very expensive at £8,750, paid jointly by a local charity and the Primary Care Trust. David and his mother could not afford to pay for the Pathfinder themselves.

David requires information in simple language with pictures and symbols, on audio or videotape. Recorded books are useful but the information needs to be simple as well as audible. Sarah finds that there is not a great selection of these materials available, but those that are available can be quite expensive.

In the past, Sarah has bought many books and audiotapes for David. She recently bought David a ReadOn CD-ROM, which had been recommended by a teacher friend. This enables a pupil with learning disability to more easily understand grammar. The product cost £117.

Sarah also enrolled David at a privately operated college called DDAT, which seeks to help children and adults with learning difficulties.

The VAT burden in the UK and across the EU

In the UK, if the Pathfinder Communications Device has been designed solely for use by disabled persons, then it will qualify for zero-rating. However, if it is comprised of general use computer parts and other items designed solely for use by disabled people, then the VAT applicable to the device will be reduced, but not entirely eliminated. In contrast, the device will qualify for the 7% reduced rate in Spain if it has been designed expressly for the sole or main use of disabled people. However, it will be subject to the standard rate in Belgium, the Netherlands, Germany and Sweden, although it could qualify for the reduced rate in the Czech Republic if it is accompanied by a written declaration that it is a specific medical device for the sick (in the absence of which the standard rate would apply).

Books are generally zero-rated in the UK as printed matter (subject to the reduced rate in Belgium, the Netherlands, the Czech Republic, Sweden and Germany, and the 4% reduced rate in Spain), but the standard rate of VAT will apply to the CD-ROM and audio-tapes (also the position in Belgium, the Netherlands, the Czech Republic, Sweden and Germany, although arguably a reduced rate could apply in the Czech Republic if accompanied by a written declaration that they are a specific medical means for the sick). It may also be possible to apply the reduced rate of 7% to the CD-ROM in Spain, if it has been specially designed for pupils with learning disabilities, but this would be more difficult to argue in the case of the audio-tapes, which would be subject to the standard rate of 16%.

The UK VAT relief for specially designed items for disabled people will not apply to CDs and audio-tapes because the provision is only in respect of equipment and appliances, provided, of course that the items are designed solely

for use of disabled people. However, if the audiotapes were produced for the blind and severely handicapped, and supplied to the Royal National Institute for the Blind, the National Listening Library or other similar charity, they would be zero-rated.³⁵ It is unclear what additional restriction the adjective “severely” adds, and it would suggest that a learning difficulty would not qualify for the relief as a “severe handicap”. This is another example of how the UK VAT reliefs recognise the needs of physically disabled people, but fail to address the needs of mentally disabled people, even though broader government policy gives equal recognition to both.

Whether the learning course is subject to VAT will depend on the status of the course provider. Private colleges will be eligible to make exempt supplies of education provided they are defined as non profit-making organisations.³⁶ Similarly, the courses may also be exempt under Belgian, Dutch, German, Spanish and Swedish VAT law, provided certain conditions are met.

We note that the reliefs available in this case study for items other than those designed solely for the use of disabled people are those which arise from other aspects of social policy (e.g. literature and education), rather than any relief directed at the needs of mentally disabled persons. While the availability of these reliefs does alleviate some of the VAT barriers for mentally disabled people, it masks the inequalities produced by restrictive VAT reliefs which are appropriate only for the needs of physically disabled people. It would be unfair for the alleviation of the VAT burden suffered by mentally disabled people to depend on reliefs available to the general public, while the needs of physically disabled people are specifically addressed in the VAT law.

³⁵ VAT Act 1994, Schedule 8, Group 12, Item 1

³⁶ VAT Act 1994, Group 6, Schedule 9, Item 1 and Note 1(e)

Section 9

Administrative barriers

9.1 Certification and other paperwork

There are a number of instances where UK VAT legislation requires a person to certify that they qualify for VAT relief. For example, where all or part of a building is intended for use solely for a relevant residential or relevant charitable purpose, the legislation requires that the recipient of a qualifying supply issues a certificate in a form prescribed by the VAT authorities to the supplier before the supply is made.³⁷ There are other instances where HMRC's public notices have the force of law in requiring a certificate to be issued for relief to be appropriate, e.g. in relation to the supply to a charity of a right to promulgate an advertisement by means of a medium of communication with the public.³⁸

HMRC's Public Notice 701/7/02, suggests that a disabled person issues a certificate to a provider of relevant goods and services to substantiate that the supplies will be used by a qualifying person, and are thus eligible for VAT relief, even though this is not actually required by the legislation or public notices. Whilst this does not mean that HMRC is necessarily seeking to apply a restrictive interpretation to the available reliefs, it potentially provides an additional administrative burden for the disabled person which may, in itself, prove a barrier to the provision of VAT relief.

Different provisions apply throughout the European countries included in this review. For example:

For VAT relief to be obtained in Belgium, disabled persons are required to certify the disability through a medical document issued by their own general practitioner. However, if there is a dispute, the tax authorities are able to request a second opinion from a recognised competent authority.

In the Czech Republic, there is no requirement to obtain certification under the VAT Act although, as the VAT legislation refers to the Acts on Healthcare, Public Health Insurance and Social Insurance, disabled persons may need to certify their disability according to these Acts.

In Germany, a disabled person must be able to certify his

or her disability, although the VAT treatment depends on the activity and on who performs the activity. By contrast, there are no requirements for certification for disabled persons in the Netherlands, where goods available for VAT relief are very narrowly defined and detailed.

In Spain, any disability has to be recognised and certified by the competent Social Assistant Authorities pursuant to the Royal Decree 1971/1999 regulating the procedure for the recognition and classification of the level of disability.

It is therefore easier to access VAT reliefs in those Member States – such as the Netherlands and Czech Republic – where disabled people are not required to obtain certification.

9.2 Accessibility

9.2.1 Administration of UK VAT law and policy by HMRC

The Government policy stated in HMRC's internal guidance³⁹ is that disabled people should not have to bear VAT on the additional cost of:

- goods specially designed or adapted to suit their condition; or
- services specifically intended to help them cope with their disability.

While certain goods and services used by disabled people have been included in the zero-rating provisions, there is no general relief from VAT for everything that disabled people might buy in order to alleviate or overcome their disability.

Although the general tone of HMRC's internal guidance is sympathetic to the case for zero-rating, it does require the law to be strictly interpreted "by reference to the letter of the law rather than to any presumed spirit which a European or purposive approach might be inclined to give it"⁴⁰, citing the judgements in *Stichting Uitvoering*

³⁷ VAT Act 1994, Schedule 8, Group 5, Item 12

³⁸ VAT Act 1994, Schedule 8, Group 15, Item 8

³⁹ Customs & Excise Manuals, Volume 12, Section 2.3

⁴⁰ *ibid*

⁴¹ Case 348/87, [1989] ECR 1737

⁴² [1979] STC 570

⁴³ *ibid*, Section 1.5

Financiële Acties v Staatssecretaris van Financiën⁴¹ and Tynewydd Labour Working Men’s Club and Institute Ltd.⁴²

While HMRC is alert to the political sensitivity of decisions, its policy does not allow officers to make ad-hoc concessions on a case-by-case situation, even if the merits of the case for zero-rating are persuasive.⁴³

A specialist charities and health care team exists within HMRC to advise officers in VAT offices and the National Advice Service about the VAT liability of goods and services in situations not covered by Notices 701/7 or 701/59 or the relevant policy manual.

9.2.2 How practical is it to obtain reliefs in the UK?

As can be seen from the legislation attached at Appendix C, the availability of the relief depends on:

- the characteristics of the purchaser;
- the use to which the goods or services are to be put; and
- the characteristics of the goods or services supplied.

Generally, a supplier would know whether or not the goods or services supplied fall within the items listed in the VAT law. In the event of uncertainty, HMRC recommends that the manufacturer obtain a ruling and retailers seek written confirmation from manufacturers (HMRC will generally not accept a ruling application from a retailer unless in “exceptional circumstances”).

In respect of the other criteria for zero-rating, suppliers are recommended to “obtain written declaration from each customer claiming entitlement to VAT relief [which] contains sufficient information to demonstrate that a customer fulfils all the criteria for eligibility”.⁴⁴ HMRC also provides a suggested declaration form for suppliers to use,⁴⁵ and recommends that this be separate or clearly

distinguishable from any order form or invoice against which the services are supplied. HMRC will accept electronic declarations and declarations signed by a parent, guardian, doctor or other responsible person where the disabled person is unable to sign the declaration.⁴⁶

While HMRC warns against zero-rating a supply if the supplier believes the declaration to be inaccurate or untrue, it will accept zero-rating where the supplier has “taken all reasonable steps to check the validity of a declaration” and makes the supply at the zero-rate in good faith, having failed to identify an inaccuracy.

9.3 Publicity

9.3.1 What does HMRC do to promote the reliefs?

HMRC has published several VAT Notices and information sheets explaining the VAT reliefs. There is no obvious gateway for those with disabilities through the HMRC home page on its website in order to access this information. Inserting an appropriate word (such as disabled or disability) in the search facility provides an array of offerings which are internally inconsistent and do not provide a coherent guide.

The primary published guidance notes, when they can be located, are Leaflet 02/CD/018, Notice 701/7 and Notice 701/59. The Leaflet is short and written for a person with a disability. However, it has a number of drawbacks:

- It introduces the subject but then refers the reader to the two complex Notices for more information (the Notices themselves are not written for the lay reader).
- It has not been updated for over three years.
- It is confusingly assembled back to front on the website and is only available through a download rather than being available alternatively in html format.

⁴⁴ *ibid*, section 3.7

⁴⁵ *ibid*, section 10

⁴⁶ *ibid*, sections 3.8 and 3.9

- It does not cover how to access services such as Typetalk or the provision of information on CD.

When the hard copy availability of these leaflets/notices was tested through the HMRC recommended route of contacting the National Advice Service Helpline on 0845 010 9000, a lay person would be sent the two Notices identified above.

We recommend that the HMRC website is urgently reorganised to have a specific section which explains clearly all the reliefs available to those with disabilities (including a section on VAT reliefs). It should be updated at least annually and should be available in all formats. We also recommend that a simple help sheet, outlining the major VAT reliefs for those with disabilities, be available in hard copy.

Where rulings are sought by manufacturers in respect of the eligibility of specific goods, HMRC's internal guidance instructs officers to:

- ask the manufacturer to ensure the ruling is brought to the attention of all distributors and retailers of the product, including sending them a copy of the ruling (which should be self-contained in respect of references to the products concerned) or including a reference to the ruling in their product catalogues; and
- include the other conditions for zero-rating and references to the appropriate VAT Notices to ensure the Notices are brought to the attention of the distributors and retailers to whom the ruling is passed.⁴⁷

Accordingly, procedures are in place for HMRC to promote indirectly the availability of the relief for goods for which its guidance was sought, through the supply chain for the goods themselves.

However, it is recommended that HMRC publishes a central list of all goods which it has ruled on, together with the decision, in order to further promote awareness of potential VAT relief in respect of eligible goods through direct action.

9.3.2 How well known are the VAT reliefs by the broader community?

As a gauge of the awareness of VAT reliefs by the broader community, the websites of a number of community groups were reviewed. In the main, the websites did not contain any reference to VAT reliefs. Information was available from the website for the Royal National Institution for the Blind, although this was in the context of its online shop.⁴⁸

We therefore recommend that, to improve the consistency of information displayed on websites, a standard explanation of the VAT reliefs be produced and displayed on all relevant websites. Such an explanation could be developed by one of the umbrella bodies serving the needs of those with disabilities, in conjunction with HMRC and the tax voluntary sector.

As mentioned previously, a number of websites selling goods for people with disabilities were identified which do provide information about zero-rating sales of goods, including declarations for disabled purchasers to complete in order to obtain goods at the zero-rate.

Some retailers do not include VAT information on their home pages but a detailed search usually locates the information in other pages such as customer services, order form or service delivery. As a result, in most cases, a potential customer using websites to purchase equipment would be made aware of the possibility of VAT relief on the price paid.

In general, retailer websites explain that VAT would not be charged provided purchasers complete a simple declaration that they are 'chronically sick or disabled' and specify the nature of the illness or disability. For customers buying via the Internet, this declaration can be completed usually online and sometimes simply by ticking a box. Most retailers are willing to apply the VAT exclusive price but some retailers may choose to include VAT and then give a VAT refund within 28 days.

The conclusion is that those that know that reliefs exist will probably be able to find relevant information on most retail sites. This does not, however, adequately address the needs of those who are not aware that any reliefs exist.

For completeness, a general search of the internet was conducted with a view to gauging the availability of information for those with ready access to the internet and sufficient awareness of the reliefs to search for specific information. The search readily identified that information about VAT reliefs is available from the HMRC website (but see below), the website of the Department for Work and Pensions, and a number of local councils. Furthermore, information given in relation to VAT and/or the VAT exemption ranged from the fairly basic to the more comprehensive in websites such as www.helptheaged.org.uk,

The UK government maintains a reasonably good coverage of the VAT reliefs under the Disability section of Directgov (www.direct.gov.uk).

Overall this suggests that it is not difficult for those with internet access to locate information about the VAT reliefs if they happen across one of the better sites and they have a basic awareness that VAT relief exists. Those who are not aware of the existence of reliefs may not stumble across the relevant information.

With that in mind, a small survey of the VAT relief obtainable by disabled persons purchasing goods from physical outlets or over the telephone was conducted by LITRG. Generally, goods on display in these shops were displayed at VAT exclusive prices, with retailers explaining that VAT would not be charged provided the customer fulfilled the routine formality of completing the VAT exemption claim and declaration. This exemption can be claimed by retailers if they obtain a written declaration from each customer claiming entitlement to VAT relief. This declaration must contain sufficient information to demonstrate that the intended customer fulfils all the criteria for eligibility.

This survey showed that the certification process was being adhered to and actively promoted by retailers both online and in traditional sales. The VAT exclusive price is given wherever possible by various retailers. However, it was shown that on a number of occasions a retailer would be happy for a customer to sign the

declaration that he or she is 'chronically sick or disabled and obtaining the goods for personal or domestic use', and to obtain the VAT reduction, whether or not they were indeed eligible in strict law. It would seem that retailers are unlikely to be penalised if they sell goods at a price that excludes VAT as long as those goods are sold in good faith.

In cases where VAT information was not shown, or where the retailers operated business by telephone, enquiries were made by telephone to establish the standard of information that could be obtained. Once again, in most cases the salespeople readily explained the procedure for obtaining VAT exemption and thus a lower purchase price. Without exception, the customer was advised that the Declaration process would be followed in order to confirm VAT exemption. Finally a selection of catalogues and other sales literature was obtained for review. Most contained a sample of the VAT exemption claim and declaration.

The conclusion from these small surveys is that most high street and telephone-based retailers selling goods to overcome or alleviate disabilities are well aware of the appropriate VAT reliefs.

9.4 Recommendations on reducing administrative barriers in the UK

It is our belief that in general, people with disabilities seeking to obtain VAT relief on goods that they require are able to obtain that relief with relatively little inconvenience to their shopping arrangements. For example, information provided by retailers to enable the disabled customer to obtain VAT relief is generally sufficient to those shopping via the phone or in person. Furthermore, internet retailers provide relevant VAT information for disabled potential customers although the degree and location of the information can vary.

⁴⁷ *ibid*, Section 2.5

⁴⁸ <http://onlineshop.rnib.org.uk/tandc.asp>

Furthermore customers without ready access to the internet are able to obtain VAT relief as readily as those who are able to shop online.

Nevertheless, administrative and practical inconvenience could still be reduced if some things were done differently, such as:

- Standardised information about the VAT reliefs available and how they may be accessed should be made easily accessible on the websites of all relevant stakeholders, including HMRC, the bodies serving the needs of disabled people, community groups and retailers.
- Where a retailer sells a mix of products, some of which are capable of zero-rating and some of which are not, a clear indication should be given of the products to which the VAT exemption can apply.
- VAT inclusive and VAT exclusive prices should be displayed on all products to which the VAT exemption can apply.
- Where VAT exemption is available, the customer should pay the VAT exclusive price at point of sale rather than paying the full price and having to await a refund at a later date.
- Information on how to claim the VAT exemption should always be included in sales catalogues and brochures, whether on line or in printed form.
- Where products are advertised or sold via the Internet, all the above details should be shown clearly on the Home Page of the Website so that it can be easily seen at the outset.
- For Internet sales, the customer should be able simply to tick a box indicating that VAT exemption is sought. This box should link directly to the Exemption Claim Declaration, which can then be completed on line.

Section 10

The European perspective

10.1 Different approaches in Europe

Whilst certain comparisons with European VAT treatment have been included in various sections of this report, this section considers more generally how the other Member States we have looked at in the European Union apply the overarching VAT rules of The Directive. We look, in particular at the in-country rules applicable to those with disabilities, comparing and contrasting the different treatments in order to identify whether the UK has something to learn from other European territories, or whether a more fundamental change is required at the European level to address barriers created by VAT.

Summary reviews of the VAT reliefs available for the EU Member States consulted for the purposes of this review, can be found at Appendix E to this report.

At the outset, it should be noted that the Swedish definition of “taxable person” is somewhat different from the definition in The Directive. According to the Swedish VAT Act, a taxable person is someone who performs taxable transactions in a commercial business. Non-profit making organisations are not considered as being commercial businesses and their transactions are, therefore, under certain criteria, outside the scope of the tax. The relevant legislation is about to change to be aligned with The Directive. However, the wording has not been finalised and it has not yet been decided when the new legislation will be implemented. No specific regulations concerning disabled people have therefore been implemented in the Swedish VAT Act apart from the implementation of the exemptions in accordance with Articles 131-136 of The Directive (see Appendix B).

10.2 Inconsistent VAT rates

VAT rates vary across the sampled EU Member States and these need to be taken into consideration when considering distortions in the available reliefs around Europe.

In the UK, most reliefs for disabled people qualify to be treated as zero-rated. Therefore, whilst certain reliefs may appear to be narrowly applied, the financial benefit of any relief to a disabled person in the UK might be

greater on the basis that the other territories’ rate of relief is a positive rate of VAT (albeit one that is lower than the standard rate applicable in that territory). The rates of VAT in other territories applicable to reliefs for disabled people are as follows:

Belgium	6% and 12%	(standard rate 21%)
The Czech Republic	5%	(standard rate 19%)
The Netherlands	6%	(standard rate 19%)
Germany	7%	(standard rate 19%)
Spain	4% and 7%	(standard rate 16%)
Sweden	N/A	(standard rate 25%)

10.3 Aids for disabled people: consistencies and inconsistencies

The selected EU Member States take a broadly consistent view of VAT reliefs in certain areas. For example, Belgium, the Czech Republic, Germany, the Netherlands, Spain and the UK all allow, in some measure, relief from VAT in relation to aids for disabled people. These VAT reliefs generally extend to goods such as prostheses, walking frames, wheelchairs, equipment for the deaf and blind and other disabled persons.

In addition, the application of exemptions from VAT are also applied on a broadly consistent basis in these territories. For example, supplies such as hospital and medical care (including closely linked services), services provided by dentists etc. are exempt throughout the EU.

As ever, however, there are exceptions. For example, the UK does not allow VAT relief for hearing aids whereas Belgium, the Czech Republic, the Netherlands, Germany and Spain all do.

The UK, the Netherlands and Germany do not extend VAT relief to spectacles whereas Spain and the Czech Republic offer some relief where the spectacles are for the blind or partially sighted, and Belgium has a relief mechanism for supplies of spectacles to certain people, e.g. children, although this is not a specific VAT relief.

10.4 Physical and mental disabilities

It should also be noted that the VAT reliefs allowable by the sampled EU Member States usually apply to physically disabled people rather than those who are mentally disabled (although the Spanish reliefs are applicable to those with both physical and mental disabilities). In addition, those reliefs that are available are generally applicable to equipment for disabled persons. Whilst mentally disabled people do not necessarily require specialist equipment to aid their conditions, they do invariably incur costs on services such as specialist care. Mentally disabled individuals may find that, given the definition of disabled in certain Member States, they do not qualify to be treated as disabled and hence, are unable to receive relief from VAT.

In respect of Germany, the reliefs summarised in Appendix D are also applicable with respect to mentally disabled people. However, the status of the supplier is important in determining whether the reduced rate or an exemption applies. For the determination of the status of the supplier the provisions of the German Social Law and the German welfare system are decisive.

Certain Member States, however, do differentiate between physical and mental disabilities. For example, VAT legislation in Belgium provides that, where certain conditions are met, a reduced rate of VAT (12%) can be applied for social housing for mentally disabled people and work on immovable goods in social housing for mentally disabled persons, people with a psychiatric disturbance or psychiatric patients.

10.5 The need for further cohesion

Our review of the national legislation of a number of European Member States has evidenced that it is very difficult to draw comparisons between the ways in which different territories have implemented the overriding European VAT legislation that provides VAT reliefs for disabled people.

However, it is clear that factors such as:

- the wide variety of VAT rates applicable to supplies of goods and services used by disabled people;
- the lack of consistency in defining disability for VAT purposes; and
- the varied approaches taken by the EU member states in the implementation of VAT reliefs allowed under The Directive;

all point strongly to a need for a more integrated and consistent approach to this area. As long as the current situation remains, VAT will continue to be a barrier to the free movement of (disabled) people throughout the EU.

Appendices Contents

Appendix A	Definition of disability in the Disability Discrimination Act 1995	38
Appendix B	European VAT legislation	41
Appendix C	UK VAT legislation	46
Appendix D	European Summaries	52

Appendix A

Definition of disability in the Disability Discrimination Act 1995 ⁴⁹

1. (1) Subject to the provisions of Schedule 1, a person has a disability for the purposes of this Act if he has a physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities.

3. (A1) The Secretary of State may issue guidance about matters to be taken into account in determining whether a person is a disabled person.

(1) Without prejudice to the generality of subsection (A1), the Secretary of State may, in particular, issue guidance about the matters to be taken into account in determining -

(a) whether an impairment has a substantial adverse effect on a person's ability to carry out normal day-to-day activities; or

(b) whether such an impairment has a long-term effect.

(2) Without prejudice to the generality of subsection (A1), guidance about the matters mentioned in subsection (1) among other things, give examples of -

(a) effects which it would be reasonable, in relation to particular activities, to regard for the purposes of this Act as substantial adverse effects;

(b) effects which it would not be reasonable, in relation to particular activities, to regard for such purposes as substantial adverse effects;

(c) substantial adverse effects which it would be reasonable to regard, for such purposes, as long-term;

(d) substantial adverse effects which it would not be reasonable to regard, for such purposes, as long-term.

...

Schedule 1 – Provisions Supplementing Section 1

Impairment

1. (2) Regulations may make provision, for the purposes of this Act-

(a) for conditions of a prescribed description to be treated as amounting to impairments;

(b) for conditions of a prescribed description to be treated as not amounting to impairments.

(3) Regulations made under sub-paragraph (2) may make provision as to the meaning of "condition" for the purposes of those regulations.

Long-term effects

2. (1) The effect of an impairment is a long-term effect if-

(a) it has lasted at least 12 months;

(b) the period for which it lasts is likely to be at least 12 months; or

(c) it is likely to last for the rest of the life of the person affected.

(2) Where an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur.

(3) For the purposes of sub-paragraph (2), the likelihood of an effect recurring shall be disregarded in prescribed circumstances.

(4) Regulations may prescribe circumstances in which, for the purposes of this Act-

(a) an effect which would not otherwise be a long-term effect is to be treated as such an effect; or

(b) an effect which would otherwise be a long-term effect is to be treated as not being such an effect.

Normal day-to-day activities

4. (1) An impairment is to be taken to affect the ability of the person concerned to carry out normal day-to-day activities only if it affects one of the following-

- (a) mobility;
- (b) manual dexterity;
- (c) physical co-ordination;
- (d) continence;
- (e) ability to lift, carry or otherwise move everyday objects;
- (f) speech, hearing or eyesight;
- (g) memory or ability to concentrate, learn or understand; or
- (h) perception of the risk of physical danger.

(2) Regulations may prescribe-

- (a) circumstances in which an impairment which does not have an effect falling within sub-paragraph (1) is to be taken to affect the ability of the person concerned to carry out normal day-to-day activities;
- (b) circumstances in which an impairment which has an effect falling within sub-paragraph (1) is to be taken not to affect the ability of the person concerned to carry out normal day-to-day activities.

Substantial adverse effects

5. Regulations may make provision for the purposes of this Act-

- (a) for an effect of a prescribed kind on the ability of a person to carry out normal day-to-day activities to be treated as a substantial adverse effect;
- (b) for an effect of a prescribed kind on the ability of a person to carry out normal day-to-day activities to be treated as not being a substantial adverse effect.

Progressive conditions

8. (1) Where-

- (a) a person has a progressive condition (such as cancer, multiple sclerosis or muscular dystrophy or HIV infection),
- (b) as a result of that condition, he has an impairment which has (or had) an effect on his ability to carry out normal day-to-day activities, but
- (c) that effect is not (or was not) a substantial adverse effect,

he shall be taken to have an impairment which has such a substantial adverse effect if the condition is likely to result in his having such an impairment.

(2) Regulations may make provision, for the purposes of this paragraph-

- (a) for conditions of a prescribed description to be treated as being progressive;
- (b) for conditions of a prescribed description to be treated as not being progressive.

⁴⁹ As amended by the Disability Discrimination Act 2005

Appendix B

European VAT legislation

The Directive sets out the overriding VAT legislation for all EU Member States.

A taxable person is a person who independently carries out any specified economic activity (Article 9, The Directive), where “economic activity” includes all the activities of producers, traders, and persons supplying services including mining and agricultural activities and activities of the professions.

Taxable transactions are supplies of goods and of services as defined by Articles 14-19 and 24-29 inclusive, The Directive.

The rate of VAT applicable to taxable transactions is determined by Articles 93-130 inclusive of The Directive. This provides that, in addition to applying a standard rate of VAT, Member States may also apply one or two reduced rates of VAT. The application of the reduced rates of VAT is restricted to specific supplies of goods and services, as set out in Annex III to the Directive. Annex III is reproduced below. For the purpose of identification, the categories relevant to disabled people are highlighted.

Annex III, Council Directive 2006/112/EC

Category	Description
1	Foodstuffs (including beverages but excluding alcoholic beverages) for human and animal consumption; live animals, seeds, plants and ingredients normally intended for use in the preparation of foodstuffs, products normally used to supplement foodstuffs or as a substitute for foodstuffs.
2	Supply of water.
3	Pharmaceutical products of a kind normally used for health care, prevention of illnesses and as a treatment for medical and veterinary purposes, including products used for contraception and sanitary protection.
4	Medical equipment, aids and other appliances normally intended to alleviate or treat disability, for the exclusive personal use of the disabled, including the repair of such goods, and supply of children's car seats.
5	Transport of passengers and their accompanying luggage.
6	Supply, including on loan by libraries, of books (including brochures, leaflets and similar printed matter, children's picture, drawing or colouring books, music printed or in manuscript form, maps and hydrographic or similar charts), newspapers and periodicals, other than material wholly or predominately devoted to advertising.
7	Admission to shows, theatres, circuses, fairs, amusement parks, concerts, museums, zoos, cinemas, exhibitions and similar cultural events and facilities.
8	reception of radio and television broadcasting services.
9	Supply of services by writers, composers and performing artists, or of the royalties due to them.
10	Provision, construction, renovation and alteration of housing, provided as part of a social policy.
11	Supply of goods and services of a kind normally intended for use in agricultural production but excluding capital goods such as machinery or buildings.
12	Accommodation provided in hotels and similar establishments including the provision of holiday accommodation and the letting of places on camping and caravan sites.
13	Admission to sporting events.
14	Use of sporting facilities.
15	Supply of goods and services by organisations recognised as being devoted to social wellbeing by Member States and engaged in welfare or social security work, in so far as these supplies are not exempt pursuant to Articles 132, 135 and 136.
16	Supply of services by undertakers and cremation services, and the supply of goods related thereto.
17	Provision of medical and dental care and thermal treatment in so far as these services are not exempt pursuant to points (b) to (e) of Article 132(1).
18	Supply of services provided in connection with street cleaning, refuse collection and waste treatment, other than the supply of such services by bodies referred to in Article 13.

Articles 131-136 inclusive of The Directive is the overriding VAT legislation for the EU that requires Member States to allow for exemptions from VAT in their respective territories.

Articles 132, 133, and 134, Exemptions for certain activities in the public interest, are reproduced below. The paragraphs that allow for reliefs from VAT for disabled people are highlighted.

Council Directive 2006/112/EC

Exemptions for certain activities in the public interest

Article 132

1 Member States shall exempt the following transactions:

(a) the supply by the public postal services of services other than passenger transport and telecommunications services, and the supply of goods incidental thereto;

(b) hospital and medical care and closely related activities undertaken by bodies governed by public law or, under social conditions comparable to those bodies governed by public law, by hospitals, centres for medical treatment or diagnosis and other duly recognised establishments of a similar nature;

(c) the provision of medical care in the exercise of the medical and paramedical professions as defined by the Member State concerned;

(d) the supply of human organs, blood and milk;

(e) the supply of services by dental technicians in their professional capacity and dental prostheses supplied by dentists and dental technicians;

(f) the supply of services by independent groups of persons who are carrying on an activity which is exempt from VAT or in relation to which they are not taxable persons, for the purpose of rendering their members the services directly necessary for the exercise of that activity, where those groups merely claim from their members exact reimbursement

of their share of the joint expenses, provided that such exemption is not likely to cause distortion of competition;

(g) the supply of services and of goods closely linked to welfare and social security work, including those supplied by old people's homes, by bodies governed by public law or by other organisations recognised by the Member State concerned as being devoted to social wellbeing;

(h) the supply of services and of goods closely linked to the protection of children and young persons by bodies governed by public law or by other organisations recognised by the Member State concerned as being devoted to social wellbeing;

(i) the provision of children's or young people's education, school or university education, vocational training or retraining, including the supply of services and of goods closely related thereto, by bodies governed by public law having such as their aim or by other organisations recognised by the Member State concerned as having similar objects;

(j) tuition given privately by teachers and covering school or university education;

(k) the supply of staff by religious or philosophical institutions for the purpose of the activities referred to in points (b), (g), (h) and (i) and with a view to spiritual welfare;

(l) the supply of services, and the supply of goods closely linked thereto, to their members in their common interest in return for a subscription fixed in accordance with their rules by non-profit-making organisations with aims of a political, trade-union, religious, patriotic, philosophical, philanthropic or civic nature, provided that this exemption is not likely to cause distortion of competition;

(m) the supply of certain services closely linked to sport or physical education by non-profit-making organisations to persons taking part in sport or physical education;

(n) the supply of certain cultural services, and goods linked closely thereto, by bodies governed by public law or by other cultural bodies recognised by the Member State concerned;

(o) the supply of services and goods, by organisations whose activities are exempt pursuant to points (b), (g), (h), (i), (l), (m) and (n), in connection with fund-raising events organised exclusively for their own benefit, provided that exemption is not likely to cause distortion of competition;

(p) the supply of transport services for sick and injured persons in vehicles specially designed for the purpose, by duly authorised bodies;

(q) the activities, other than those of a commercial nature, carried out by public radio and television bodies.

Article 133

Member States may make the granting to bodies other than those governed by public law of each exemption provided for in points (b), (g), (h), (i), (l), (m) and (n) of Article 132 subject in each individual case to one or more of the following conditions:

(a) the bodies in question must not systematically aim to make a profit, and any surpluses nevertheless arising must not be distributed, but must be assigned to the continuance or improvement of the services supplied,

(b) those bodies must be managed and administered on an essentially voluntary basis by persons who have no direct or indirect interest, either themselves or through intermediaries, in the results of the activities concerned,

(c) those bodies must charge prices which are approved by the public authorities or which do not exceed such approved prices or, in respect of those services not subject to approval, prices lower than those charged for similar services by commercial enterprises subject to VAT,

(d) the exemptions must not be likely to cause distortion of competition to the disadvantage of commercial enterprises liable to VAT.

Member States which, pursuant to Annex E of Directive 77/388/EEC, on 1 January 1989 applied VAT to the transactions referred to in Article 132(1)(m) and (n) may also apply the conditions provided for in point (d) of the first paragraph when the said supply of goods or services governed by public law is granted exemption.

Article 134

The supply of goods or services shall not be granted exemption, as provided for in points (b), (g), (h), (i), (l), (m), and (n) of Article 132(1), in the following cases: (a) where the supply is not essential to the transactions exempted,

(b) where the basic purpose of the supply is to obtain additional income for the body in question through transactions which are in direct competition with those of commercial enterprises subject to VAT.

Appendix C

UK VAT legislation

VAT reliefs for disabled people appear throughout the UK VAT legislation. Set out below is a summary of the reliefs that are available for disabled people through the UK VAT legislation with reference to the overriding European legislation.

UK legislation - Glossary of terms

“Handicapped” means chronically sick or disabled.

“Disabled” includes mental disability, blindness or visual impairment and acute hearing loss. For the purpose of this appendix, disabled means those qualifying for relief.

“Charity” has no precise meaning in law. In England and Wales, most charities are registered with the Charity Commission under the Charities Act 1993. Certain charities such as universities are exempt from registration but are still charities. Charities in Scotland and Northern Ireland are not required to register with the Charity Commission. There is no distinction for VAT purposes between those charities registered with the Charity Commission and those that are not. However, unregistered charities claiming VAT relief may need to demonstrate that they have “charitable status”, which may be achieved from their written objects or by the recognition of their charitable status by the tax authorities.

An activity is a “business” or “economic” activity if it is concerned with the making of supplies for a consideration, has a degree of frequency or scale and is continued over a reasonable period. Activities which are “non-business” include donations, voluntary services performed free of charge, free supplies of goods, grants, legacies etc.

UK Implementation of Articles 93-130 and Annexe III to Council Directive 2006/112/EC

The following supplies are zero-rated for UK VAT purposes:

- talking books for the blind and disabled, including the letting on hire of eligible goods (item 1, Group 4, Schedule 8, VAT Act 1994);
- wireless sets for the blind (item 2, Grp 4, Sch 8, VAT Act 1994);

- aids for disabled persons, including:
 - medical or surgical appliances designed solely for the relief of “severe abnormality” or “severe injury” (Note 4, item 2(a), Grp 12, Sch 8, VAT Act 1994);
 - electrically or mechanically adjusted beds designed for invalids (item 2(b), Grp 12, Sch 8, VAT Act 1994);
 - commode chairs and stools, devices incorporating a bidet jet and warm air drier and frames or other devices for sitting over or rising from sanitary appliances (item 2(c), Grp 12, Sch 8, VAT Act 1994);
 - chair or stair lifts designed for use in connection with invalid wheelchairs (item 2(d), Grp 12, Sch 8, VAT Act 1994);
 - hoists and lifters designed for use by invalids (item 2(e), Grp 12, Sch 8, VAT Act 1994);
 - motor vehicles designed or substantially and permanently adapted for the carriage of a person in a wheelchair or on a stretcher and of no more than 11 other persons (item 2(f), Grp 12, Sch 8, VAT Act 1994);
 - equipment and appliances not within items (a)-(e) of Grp 12, Sch 8, VAT Act 1994 designed solely for use by a disabled person (item 2(g), Grp 12, Sch 8, VAT Act 1994);
 - parts and accessories designed solely for use in or with goods described in paragraphs (a)-(f) of Grp 12, Sch 8, VAT Act 1994 (item 2(h), Grp 12, Sch 8, VAT Act 1994);
 - boats designed or substantially and permanently adapted for use by handicapped persons (item 2(i), Grp 12, Sch 8, VAT Act 1994);
- the supply of a motor vehicle to:
 - a disabled person who usually uses a wheelchair or who is usually carried on a stretcher, for domestic or personal use; or

- a charity for making available, by sale or otherwise, to such disabled persons for domestic or personal use (item 2A, Grp 12, Sch 8 VAT Act 1994);
- the supply:
 - to a disabled person of services of adapting general purpose goods to suit his or her condition; and
 - to a charity of services of adapting general purpose goods to suit the condition of a disabled person to whom the goods are made, by sale or otherwise, by the charity;

and to any goods necessarily supplied in connection with the services of adaptation (items 3 and 4, Grp 12, Sch 8, VAT Act 1994);

- the supply to a disabled person or charity of a service of repair or maintenance of:
 - any goods which were zero-rated on supply under items 2, 2A (see above) and 18 or 19 (see below) of Group 12, Sch 8, VAT Act 1994 (item 5, Grp 12, Sch 8 VAT Act 1994);
 - any goods supplied in connection with zero-rated adaptation services supplied under items 3 and 4 of Group 12 Sch 8, VAT Act 1994, including the repair and maintenance of those goods (item 6, Grp 12, Sch 8, VAT Act 1994);
- the supply to a disabled person or to a charity of services necessarily performed in the installation of equipment or appliances (including parts and accessories for them) specified in item 2, Grp 12, Sch 8, VAT Act 1994;
- the supply:
 - to a disabled person of a service of constructing ramps or widening doorways or passages (but not constructing new doorways or passages) for the purpose of facilitating his or her entry to, or movement within, his private residence; and

- to a charity of such services for the purpose of facilitating a disabled person's entry to, or movement within, any building (not just a private residence)

together with a supply of goods in connection with the supply of those services (items 8, 9 and 13, Grp 12, Sch 8, VAT Act 1994);

- the supply:
 - to a disabled person of a service of providing, extending or adapting a bathroom, washroom or lavatory in that person's private residence where such provision is necessary by reason of his or her condition (item 10, Grp 12, Sch 8, VAT Act 1994);
 - to a charity of a service of providing, extending or adapting a bathroom, washroom or lavatory for use by disabled persons:
 - in a residential home or self-contained living accommodation, in either case provided as a residence (whether on a permanent or temporary basis or both) for handicapped persons (but not including an inn, hotel, boarding house or similar establishment or accommodation in any such type of establishment; or
 - in a day-centre where at least 20% of the individuals using the centre are disabled persons;

where such provision, extension or adaptation is necessary by reason of the condition of the disabled persons (item 11, Grp 12, Sch 8, VAT Act 1994);

- to a charity of a service of providing, extending or adapting a washroom or lavatory for use by disabled persons in a building (or part of a building) used principally by a charity for charitable purposes (e.g. a church hall, day centre or village hall) where such provision is necessary to facilitate the use of the washroom or lavatory by disabled persons (item 12, Grp 12, Sch 8, VAT Act 1994);

- the supply of goods in connection with the supply of services within items 10, 11 and 12 of Group 12, Sch 8, VAT Act 1994 (item 13, Grp 12, Sch 8, VAT Act 1994);
- the letting on hire of a motor vehicle for a period of not less than 3 years to a disabled person in receipt of a disability living allowance by virtue of entitlement to the mobility component or of mobility supplement where the lessor's business consists predominately of the provision of motor vehicles to such persons (item 14, Grp 12, Sch 8, VAT Act 1994);
- the sale of a motor vehicle which had been let on hire in the circumstances described in item 14, Group 12, Sch 8, VAT Act 1994, where such sale constitutes the first supply of the vehicle after the end of such period of letting (item 15, Grp 12, Sch 8, VAT Act 1995);
- the supply to a disabled person of services necessarily performed in the installation of a lift for the purpose of facilitating his or her movement between floors within his private residence (item 16, Grp 12, Sch 8, VAT Act 1994);
- the supply to a charity providing a permanent or temporary residence or day-centre for disabled persons of services necessarily performed in the installation of a lift for the purpose of facilitating the movement of disabled persons between floors within that building (item 17, Grp 12, Sch 8, VAT Act 1994);
- the supply of goods in connection with a supply described in items 16 and 17 of Group 12, Sch 8, VAT Act 1994 (item 18, Grp 12, Sch 8, VAT Act 1994);
- the supply to a disabled person for domestic or his personal use, or to a charity for making available to disabled persons by sale or otherwise for their domestic or personal use, of an alarm system designed to be capable of operation by a disabled person and to enable him or her to alert directly a specified person or a control centre (item 19, Grp 12, Sch 8, VAT Act 1994);
- the supply of services necessarily performed by a control centre in receiving and responding to calls from an alarm system specified in item 19, Group 12,

Sch 8, VAT Act 1994 (item 20, Grp 12, Sch 8, VAT Act 1994);

Where goods which fall within the zero-rated criteria above are imported from outside the EC by a disabled person for domestic or his personal use, or by a charity for making available to disabled persons (by sale or otherwise), they can be relieved of the VAT due on importation under the same conditions as for a zero-rated supply of such goods in the UK (note 1, Group 12, Sch 8, VAT Act 1994).

- the supply of relevant goods* to an eligible body which is a charitable institution providing care or medical or surgical treatment for disabled persons (item 5, Grp 15, Sch 8, VAT Act 1994);
- the repair and maintenance of relevant goods owned by an eligible body and any goods supplied in connection with the repair and maintenance, provided:
 - the supply is paid for with funds which have been provided by a charity or from voluntary contributions; and
 - where the owner or hirer of the goods repaired or maintained is not a charity, it must have contributed, wholly or in part, to those funds.

(items 6 and 7, Grp 15, Sch 8, VAT Act 1994);

By concession, zero-rating also applies to relevant goods supplied to a charity:

- whose sole purpose and function is to provide a range of care services to meet the personal needs of disabled people (for example, a charity established to: provide care or welfare services to disabled people; lobby on behalf of disabled people; or fund medical research into the causes, prevention or cure of disablement); or
- which provides transport services predominately to disabled people.

Zero-rating also applies to the repair and maintenance of those goods and the supply of any further goods in connection with that repair and maintenance.

*Relevant goods means medical, scientific, computer, video, sterilising, laboratory or refrigeration equipment for use in:

- medical or veterinary research (i.e. original research into disease and injury of human beings or animals);
- medical or veterinary training (i.e. training doctors, nurses, surgeons (including dental and veterinary surgeons) and other professionals involved in medical or veterinary diagnosis or treatment. The overall programme of training must include the physical application by the students of theoretical knowledge so that the teaching of subjects such as biology or zoology, where the trainee has no practical medical or veterinary involvement with patients, is not regarded as training for these purposes); or
- medical or veterinary diagnosis or treatment (i.e. the diagnosis and treatment of a physical or mental abnormality by a medical or paramedical practitioner or a veterinary surgeon).

Included are parts and accessories for use with any such equipment.

UK Implementation of Articles 131-136 of Council Directive 2006/112/EC

In common with all citizens, disabled people can benefit are from the following VAT exempt supplies:

- The supply of services of persons registered or enrolled in any of the following:
 - the register of medical practitioners or the register of medical practitioners with limited registration;
 - either of the registers of ophthalmic opticians or the register of dispensing opticians;
 - the register kept under the Health Professions Order 2001;
 - the register of osteopaths under the Osteopaths Act 1993;

- the register of chiropractors under the Chiropractors Act 1994;
- the register of qualified nurses, midwives and health visitors under the Nurses, Midwives and Health Visitors Act 1997;
- the register of dispensers of hearing aids or the register of persons employing dispensers under the Hearing Aid Council Act 1968 ;

(item 1, Grp 7, Sch 9, VAT Act 1994);

- the supply of any services or dental prostheses by:
 - A person registered in the dentist's register;
 - A person enrolled in any of dental auxiliaries under the Dentists Act 1984;
 - A dental technician;

(item 2, Grp 7, Sch 9, VAT Act 1994);

- the supply of any services by a person registered in the register of pharmaceutical chemists under the Pharmacy Act 1954 or the Pharmacy (Northern Ireland) Order 1976 (item 3, Grp 7, Sch 9, VAT Act 1994);
- the supply of care or medical or surgical treatment and, in connection with it, the supply of any goods in any hospital or other approved institution (as defined) (item 4, Grp 7, Sch 9, VAT Act 1994);
- the provision of a deputy for a person registered in the register of medical practitioners or the register of medical practitioners with limited registration (item 5, Grp 7, Sch 9, VAT Act 1994);
- human blood (item 6, Grp 7, Sch 9, VAT Act 1994);
- products for therapeutic purposes, derived from human blood (item 7, Grp 7, Sch 9, VAT Act 1994);
- human (including foetal) organs or tissue for diagnostic or therapeutic purposes or medical research (item 8, Grp 7, Sch 9, VAT Act 1994);

- the supply by:
 - a charity;
 - a state-regulated private welfare institution (or agency);
 - a public body;

of welfare services and of goods supplied in connection with those welfare services (item 9, Grp 7, Sch 9, VAT Act 1994);

- the supply, otherwise than for a profit, of goods and services incidental to the provision of spiritual welfare by a religious community to a resident member of that community in return for a subscription or other consideration paid as a condition of membership (item 10, Grp 7, Sch 9, VAT Act 1994);
- the supply of transport services for sick or injured persons in vehicles specially adapted for that purpose (item 11, Grp 7, Sch 9, VAT Act 1994).

UK Implementation of Articles 98-122 of Council Directive 2006/112/EC

The following, from which disabled persons can either directly or indirectly benefit, are zero-rated:

- the first grant of a major interest in, or in any part of, a building or its site by a person constructing a building intended for use solely for a relevant charitable purpose (see footnote below for the definition of “relevant charitable purpose” and how it may be appropriate for disabled people) (item 1(a), Grp 5, Sch 8, VAT Act 1994);
- services supplied in the course of construction of a building intended for use solely for a relevant charitable purpose (see footnote as above)(item 2(a), Grp 5, Sch 8, VAT Act 1994).

The following, from which disabled persons can either directly or indirectly benefit, are subject to the reduce rate of VAT in the UK (5%):

- supplies of fuel and power used for relevant charitable purposes (see below).

“Relevant charitable purpose” means use by a charity

- otherwise than in the course or furtherance of a business; or
- as a village hall or similarly in providing social or recreational facilities for a local community.

Appendix D

European summaries

United Kingdom - Summary of Reliefs

Zero-Rated

- Talking books for the blind and disabled.
 - Wireless sets for the blind.
 - Aids for disabled persons (excluding hearing aids and spectacles/contact lenses).
 - Motor vehicles supplied to a disabled person who uses a wheelchair or is usually carried on a stretcher (or to a charity which makes such goods available to disabled people).
 - Services (and necessary goods) of adapting general purpose goods for disabled people.
 - Repair and maintenance services on zero-rated goods to disabled people.
 - Repair and maintenance services on zero-rated adaptation services.
 - Installation services on equipment or appliances to disabled people.
 - Construction of ramps, widening of doorways (and associated goods) etc to a disabled person for his private residence.
 - Construction of ramps, widening of doorways (and associated goods) etc to a charity for the benefit of disabled people.
 - Providing, extending or adapting a bathroom, washroom or lavatory (and associated goods) in a disabled person's residence.
 - Providing, extending or adapting a bathroom, washroom or lavatory (and associated goods) for a charity for the benefit of disabled people in living accommodation or a day centre.
 - Providing, extending or adapting a washroom or lavatory (and associated goods) for a charity for use by disabled persons in a building used for charitable purposes.
 - Motor vehicles provided on hire to a disabled person in receipt of a disability living allowance.
 - First post-lease sales of motor vehicles that have been let to disabled people as above.
 - Installation of lifts (with associated goods) for disabled persons in their private residences.
 - Installation of lifts (with associated goods) for charities providing residence or a day-centre for disabled persons.
 - Alarm systems provided to disabled persons for their private use.
 - Relevant goods provided to eligible bodies providing care or surgical treatment for disabled people.
 - Repair and maintenance (with associated goods) of relevant goods owned by an eligible body.
 - Relevant goods supplied to a charity whose sole purpose is to provide care services to disabled persons (concession).
 - Relevant goods supplied to a charity which provides transport services predominately to disabled persons (concession).
- Other Zero-Rated Services (from which disabled people can benefit)
- The first grant of a major interest in a building (or part of it) intended for a relevant charitable purpose by a person constructing it.
 - Services supplies in the course of construction of a building intended for relevant charitable use.
 - Other Reduced-Rate Services (from which disabled people can benefit).

- Supplies of fuel and power used for relevant charitable purposes.
- Exempt (from which disabled people can benefit).
- Supplies of services by qualifying persons (e.g. medical practitioners etc).
- Supplies of services or dental prostheses by dentists etc.
- Supplies of services by pharmaceutical chemists.
- Care/medical or surgical treatment provided in a hospital or other approved institution.
- Human blood.
- Products derived from human blood for therapeutic purposes.
- Human organs or tissue for diagnostic/therapeutic purposes or medical research.
- Welfare services (and associated goods) provided by a charity/state-regulated private institution/public body.
- Transport services for sick or injured persons.

Commentary

It would seem at first glance that the UK's VAT reliefs for disabled people are fairly wide and reasonably comprehensive. However, it should be observed that the available reliefs can often only be applied narrowly, especially in comparison to reliefs available in some of the other EU Member States sampled. For example, in the UK relief is available for works of providing, extending or adapting a bathroom, washroom or lavatory when carried out in a disabled person's residence. Other EU Member States, for example, Belgium, permit relief, albeit at a reduced rate rather than the zero-rate, for "work on immovable goods in private houses for disabled persons".

Whilst the relief in Belgium is restrictive in that it is only appropriate for relevant works, it would still appear to be a much wider interpretation of the relief than in the UK.

Another area of disparity between the UK and other Member States concerns whether a disabled person is required to certify his disabilities to ensure the application of the VAT reliefs. In the UK, a person is required to certify his disability in order to claim relief (as with Belgium). However, in the Netherlands, there is no requirement to certify the disability. The requirement to certify can be seen to narrow the scope of the application of the reliefs.

An area where disabled people in the UK do benefit concerns supplies of spectacles and contact lenses. Spectacles and contact lenses are, in themselves, standard rated.

However, UK VAT case law dictates that the dispensing (i.e. measuring and fitting) of spectacles/contact lenses is a separate supply and, when provided by a qualifying optician, can qualify as VAT exempt. Thus, supplies of spectacles may fall to be apportioned. Other EU Member States automatically standard rate spectacles and contact lenses.

Belgium - Summary of Reliefs

Reduced-Rated (6%)

- Pharmaceutical products (including blood products, registered medicines, bandages etc, condoms, needles for insulin).
- Automotives for transport of disabled persons (inc parts etc for the automotives).
- Sundry goods (e.g. orthopaedic appliances, dentures, prostheses, hearing aids, walking frames, wheelchairs etc).
- Goods supplied by organisations with a social purpose.
- Private houses for disabled persons and work on immovable property in such private houses.
- Work on immovable goods for housing projects for institutions for disabled persons.
- Services supplied by organisations with a social purpose.

Reduced Rate (12%)

- Social housing for (e.g.) mentally disabled persons and work on immovable goods in such social housing (subject to specific conditions).

Exempt (from which disabled people can benefit)

- Supplies of qualifying services by qualifying persons (e.g. medical practitioners etc).
- Closely linked services and goods supplied in their regular activities by hospitals etc, services for family aid, transport of the sick in specially designed vehicles.
- Supplies of human organs, human blood and mother milk.

- Goods and services closely linked to social security work by old peoples' homes in Belgium and by organisations linked to the protection of children etc.
- Putting at disposal of persons by religious and philosophical institutions for qualifying activities.
- Goods and services supplied by organisations whose activities are exempt under all of the above in connection with fund raising events exclusively for their benefit.
- VAT paid on the acquisition of a car under specific conditions be refunded to certain categories of disabled person. This exemption by way of VAT refund is only available to persons described as military and civil disabled war veterans that have a disablement of at least 50% and persons that are completely blind, completely paralysed at the upper limbs or whose upper limbs are amputated and persons with a permanent disability directly related to the upper limbs that amount to at least 50%. The VAT refund can be revised during the three year period.

Commentary

In practice, disabled persons are required to certify their disability through a medical document certified by their own doctors in order to obtain VAT relief. Occasionally, a "contra examination" might be requested by the Belgian authorities.

It is interesting to note that Belgium applies the reduced VAT rate to blood products for therapeutic purposes, where the UK applies exemption. Whilst the benefit to individual is wider in the UK, the benefit to the supplier in Belgium is likely to be wider given the right of input tax recovery.

The reduced rate of VAT relief and the VAT exemption by way of VAT refund with regard to automotives is restrictive in Belgium. It is only available to persons described as military and civil disabled war veterans that have a disablement of at least 50% and persons that are completely blind, completely paralysed at the upper limbs or whose upper limbs are amputated and persons with a permanent disability directly related to the under limbs

that amount to at least 50%. These restrictions suggest that the relief in Belgium is narrower than relief available for disabled people in the UK.

The reduced rate relief for goods supplied by organisations with a social purpose relates to goods which are produced by disabled persons that would be unable, because of their disabilities, to gain employment in commercial circumstances. The organisations must be appropriately licensed. A similar relief is not available in the UK.

The relief for private houses for disabled persons and work on immovable property in such private houses is not appropriate for certain luxury features such as swimming pools, saunas, hot tubs etc.

The reduced rate of 12% for social housing is only available to housing for mentally disabled persons.

Czech Republic - Summary of Reliefs

Reduced-Rated (5%)

- Radioactive pharmaceuticals, sorbitol for diabetics, aspartagines, saccharin and its salts, antibiotics, pharmaceutical products – only for health care, prevention of diseases and human medicine therapy.
- Certain aids for disabled people (e.g. Braille paper, equipment for conveyance of several disabled persons confined to wheelchairs, specified equipment for the blind, deaf and handicapped, child safety seats and related parts).
- Industrial services and works for healthcare means - equipment and instruments including healthcare devices.
- Repairs of healthcare means as laid down in the Annex of goods subject of the reduced rate, and of wheelchairs (standard production classification code 35.43.92).
- Healthcare referred to in SKP85.1 unless exempt as set out below.
- Social welfare referred to in SKP85.32 unless exempt as set out below.
- Cleaning services carried out in households referred to in SKP74.70.12 and SKP74.70.13.
- Home care for children the elderly, ill and handicapped persons referred to in SKP85.3 or 95.0.

Exempt (from which disabled people can benefit)

- Services provided by the Health Care Sector and thereto relating services provided by authorized (licensed) persons to patients and other persons to whom such care is determined, and settled pursuant to the General Health Insurance Act, except for taxable supplies effected by opticians; supplies of human blood and its components for direct clinical use, and supplies of human organs, tissues and mother's breast milk; supplies of dental products classified as health care products pursuant to other statutory provisions from stomatological laboratories including repairs of such dental products; except for the dispensation or sale of pharmaceuticals, foodstuffs for special nutrition or health care products.
- Social services, institutional social care, institutional social care for old citizens, institutional social care for handicapped (disabled) citizens, institutional social care for children and youth, institutional social care for other citizens, other social care, social day-care for children and youth (except for those who are disabled), social day-care for disabled children and youth, advisory and educational services of the social care provided for the sake of children and youth, social support services, services involving work adaptation to disabled people or unemployed and other social care without accommodation, provided pursuant to other statutory provisions by public bodies or other legal entities that have not been founded or established for the purpose of undertaking business activity.
- Services and supplies of goods in connection thereto provided, in consideration of membership fees, for own members of political parties, churches etc, civic societies etc, professional associations and non profit making bodies providing competition is not distorted.

- Supplies of goods and services that are closely linked to the protection of children and youth by bodies governed by public law or charities.
- Supplies of staff by religious or similar organisations for activities closely linked to the protection of children and youth or to training and education, health care services and social welfare pursuant to the respective exemption provisions with a view to spiritual welfare.
- Supplies of services closely linked to sports or physical education by non-profit making bodies to persons carrying out sporting or physical activities.
- Supplies of cultural services or goods linked closely thereto if supplied by a qualifying entity.
- Services of legal bodies and charity organisations exclusively and directly serving public welfare, charitable or church purposes, except those services executed in the scope of an economic business, and, in relation to charity organisations (not listed as an officially acknowledged organisation), is performed for charitable purposes.

Exempt (from which disabled people can benefit)

Germany - Summary of Reliefs

Reduced-Rated (7%)

- Delivery and renting out of trained guide dogs for the blind.
- Delivery and renting out of invalid carriages and similar means of transport for disabled persons whether or not fitted with engines or means of mechanical propulsion.
- Delivery and renting out of artificial body parts and orthopaedic appliances for human beings, i.e. artificial joints, orthopaedic apparatus and other orthopaedic appliances including surgical belts, excluding parts and accessories, hearing aids, pace-makers and other appliances to compensate for a defect or a disability which are worn or carried or implanted in the body, excluding parts and accessories.
- Services of a dental technician as well as deliveries or repair of dentures and orthodontic devices as far as those are manufactured or repaired in the enterprise of the supplier (refer below).
- Supplies resulting from activities as a physician, dentist, non-academic medical practitioner, physiotherapist, midwife or similar activity in a healing profession.
- Services of membership bodies of the above professions to their members to the extent the services are used directly to make exempt supplies referred to above.
- Supplies by a hospital chemist.
- Supplies of a physician arising from the course of business in a hospital if they comprise delivery or repair of dentures and orthodontic devices, to the extent they are manufactured or repaired in the course of the supplier's enterprise.
- Supplies of funding institutions of social insurance groups, local or regional social welfare institutions, and administrative bodies and other bureaus of war victim support, including war victim welfare institutions – amongst each other or to the insured, recipients of social welfare or individuals entitled to support, excluding the supply of glasses and parts of glasses and their repair through self-distributive agencies run by funding institutions of social insurance groups.
- Supplies closely related to the operation of hospitals, diagnostic clinics and other institutions of medical treatment, of diagnostics or medical analysis, facilities for obstetrics, old age homes, old age hostels, nursing homes and institutions designed for the temporary ambulatory care of sick and nursing-dependent individuals if (a) the institutions are run by legal persons of the public law, or (b) meet qualifying criteria set out in the legislation.

- Deliveries of human organs, human blood and mother's milk.
- Transportation of sick and injured individuals by vehicles especially designed for this purpose.
- Services of officially acknowledged organisations of public welfare and the public welfare-service legal bodies, general partnerships of people or fortunes connected by membership to a public welfare organisation, if they meet qualifying criteria set out in the legislation, and services performed by officially acknowledged charity organisations if performed for charitable purposes.
- Supplies by the blind (as proven in accordance with income tax provisions) who do not employ more than two employees ('employees' specifically does not include spouse, minor descendents, or the parents of the blind individual and trainees). Tax exemption does not apply to deliveries of mineral oils and spirits if the blind individual had to pay mineral oil tax or spirits tax on the products.
- Supplies by entrepreneurs of acknowledged blind individual' workshops which are not otherwise listed in another provision and acknowledged associations of blind individuals' workshops meeting the requirement of the Law on the Distribution of Merchandise Made by Blind Individuals.
- Deliveries of merchandise produced by blind individuals and complementing merchandise in the sense of the Law on the Distribution of Merchandise Made by Blind Individuals and other services as far as they have been provided exclusively by blind individuals.
- Allocation of members of religious societies and members of mother care houses for the aim of public welfare, charity, church or schooling purposes.
- Allocation of farm and forestry work force through legal persons of private or public law to enterprises in farming and forestry with at most three full-time workers in substitution of the entrepreneur or full-time working family members who are absent due to illness, accident, pregnancy, limited working ability or incidence of death, and the allocation of assisting staff working in enterprises or households to legal bodies of social insurance groups.
- Deliveries of goods if the entrepreneur uses the delivered goods exclusively in a tax exempt activity referred to above.

Commentary

There is no definition of "disabled" in the German VAT law, although the term is defined in the German Code of Social Law (which includes definitions for grades of disability).

There is only one regulation where it is expressly said the VAT treatment depends on the status of the recipient. This is Article 4 Nr. 17b German VAT Code according to which the transportation of sick and injured individuals by vehicles especially designed for this purpose is tax exempt. This applies to the transportation of the physically disabled as well.

According to the German VAT Code the status of the supplier is important as concerns several of the reliefs provided by the VAT Code. The status follows the welfare system and the Social Law. Supplies by "normal" businesses to charity/ welfare organisations and/ or to the national or regional social insurance organisations are either taxable at the standard rate of 16% (19% from 1 January 2007) or reduced rated at 7%. The supply by the organisation to the private person is either reduced rated or tax exempt. If it is tax exempt the organisation cannot deduct the VAT charged by the business to the organisation.

There are no zero-rated supplies presently, and in this respect German law is narrower than the UK.

In principle, supplies which qualify for exemption in the UK are also exempt in Germany. However, the scope of relief is broader in Germany than the UK in respect of blind persons, as the tax exemption extends to goods and services supplied by blind individuals and certain supplies in relation to farm and forestry work force.

German courts and VAT authorities generally take a more sympathetic rather than restrictive interpretation where the scope of tax exemption is unclear, particularly in respect of whether an organisation or activity is charitable. However, following the ECJ case C-384/98 and other ECJ judgements, the VAT guidelines were made stricter in confining the exemption to those medical services intended principally to protect the health of the person concerned. The exemption would not apply to those medical services effected for a purpose other than that of protecting, including maintaining or restoring, human health.

The Netherlands - Summary of Reliefs

Reduced-Rated (6%)

- Medical equipment normally intended to alleviate or treat disability.
- Aids and “other appliances” for disabled people, e.g. Braille products, white sticks, artificial limbs, hearing aids and orthopaedic aids (not including spectacles etc), heart and muscle stimulators, orthopaedic shoes and corsets.
- Specific aids for the blind, including wireless sets etc and special computer software, guide dogs for the blind.
- Electrically or mechanically adjusted beds designed for invalids.
- The supply, including letting and repair, of invalid chairs (i.e. means of transport which substitutes the function of walking for invalids).
- Repairs of goods which qualify for relief under these provisions.
- Medical goods such as medicine and pharmaceutical preparations.

Exempt (from which disabled people can benefit)

- Supplies of services by qualified medical practitioners and dental technicians.

- Nursing and care of people who are admitted in a hospital, nursing home, old person’s home, etc.
- Supply of dental prostheses.
- Supply of blood, human organs and mothers milk.
- Welfare services (and associated goods) provided by State-recognised bodies (e.g. charities, institutions, public bodies), including home help.
- Ambulance transport of sick and injured persons.

Commentary

Disabled is not defined for VAT purposes in the Netherlands. For the purposes of reduced rate supplies qualifying for relief, disabled and disability in Dutch VAT law apply to specific disabilities such as blindness, deafness or other various disabilities, which may include temporary handicaps. The inclusion of temporary handicaps might appear to widen the relief net, but it should be noted that the reliefs only apply to specific circumstances, i.e. to the supply of relevant aids for persons with the temporary handicaps, for example the supply of a walking stick to a person with a broken leg will qualify for the reduced VAT rate relief.

Diabetics are classed as “invalid persons” which suggests a wider application of the definition than in the UK.

Services of psychologists are exempt in the Netherlands as are services of domiciliary care (homehelp). The latter services are not exempt in the UK.

Otherwise, VAT reliefs for disabled people in the Netherlands are very narrow compared with the reliefs available in the UK. For instance, whilst reliefs are available for general aids for the handicapped, there are no reliefs for chair or stair lifts, hoists, motor vehicles for disabled people (a motor vehicle will, however, qualify for relief if it qualifies as an invalid chair), the adaptation of general goods to suit the condition of a disabled person, the installation of goods etc.

There is no relief available for the provision of spectacles or contact lenses (supplies in the UK can be apportioned to reflect the standard rated goods and the exempt services of the consulting opticians).

The only areas where the availability of reliefs would appear to be wider (albeit only in very defined circumstances) in comparison to the UK would be in relation to persons with temporary disabilities.

It should also be noted that disabled persons are not required to certify their disability in order to the relief to apply. Rather, the onus is on the supplier of the goods and/or services to prove that the supply is made to a disabled person for the exemption or reduced rate to apply.

Spain - Summary of Reliefs

Reduced-Rated (4%)

- Cars and wheelchairs for the exclusive use of disabled people, including the repair thereof.
- Vehicles to be used as auto taxis or special vehicles for the transport of disabled people in a wheelchair, as well as ordinary cars, whether adapted or not, which are normally used for the transport of the disabled in a wheelchair or with a reduced mobility, including the adaptation services thereof.
- Prostheses, orthoses and internal implants for disabled people.

Reduced Rate (7%)

- Devices and aids, including prescription glasses and contact lenses, for human disabilities.
- Healthcare products, material, equipment and other appliances to be solely used to prevent, diagnose, treat, alleviate or cure the diseases or ailments.
- Medical and dental care as well as thermal treatment insofar as these services are not exempt.

* All other supplies will be subject to the Spanish standard rate of 16%

Exempt (from which disabled people can benefit)

- Hospital and medical care and closely related activities undertaken by bodies governed by public law or by recognised medical establishments.
- Medical care in the exercise of medical professions, including psychologists, speech therapists and opticians.
- Supplies of blood, blood plasma and other human fluids and human organs for medical or research purposes.
- Services supplied by stomatologists, odontologists and dental technicians in their professional capacity, including the supply and repair of dental prostheses.
- Goods and services closely linked to welfare and social security work by the Social Security Public Body or by its collaborator entities.
- Transport services for the sick and injured in ambulances or vehicles specially designed for such purposes.
- Special education and social assistance to disabled people rendered by bodies governed by public law or social private entities.
- Services rendered to individuals who practice sport or physical education by Spanish Paralympics Committee.
- Supplies of goods and services closely related to such services directly to its members by non-profit entities of a political, labour union, religious, patriotic, philanthropic, or civic nature for the purposes of its specific aims.
- Certain supplies of staff by religious entities for the purpose of hospital and medical care activities and closely related activities, special education and social assistance to disabled people and education services.

Commentary

The general definition of “disabled” in Spain for tax purposes refers to a person with a disability equal to or higher than 33% and also covers mentally disabled people. This is a lower ratio of disability to other EU Member States.

The UK’s definition does not provide guidance in terms of a percentage of disability, where handicapped means chronically sick or disabled. The UK definition can be considered to be more restrictive, given the inclusion of “chronically”.

A disabled person has to be recognised and certified by the competent Social Assistant Authorities to obtain VAT reliefs.

A reduced VAT rate of 7% is applicable to supplies of prescription spectacles and contact lenses. This is a wider relief than in any of the other sampled EU Member States.

Otherwise, VAT reliefs for disabled people in Spain is relatively restrictive.

Sweden - Summary of Reliefs

Summary

The Swedish definition of “taxable person” is somewhat different from the definition in Arts 9-13 , The Directive. According to the Swedish VAT Act a taxable person is someone who performs taxable transactions in a commercial business. Non-profit organisations are not considered as commercial businesses and their transactions are therefore, under certain requirements, outside the scope of the tax. The legislation on this area is about to change to be in accordance with the Directive. However, the wording of the legislation has not been finalised and it has not yet been decided when the new legislation will be implemented.

No specific regulations regarding disabled people have therefore been implemented in the Swedish VAT Act apart from the implementation of the exemptions in accordance with Arts131-136, The Directive. exemptions in accordance with Art 13 EC Sixth VAT Directive

Exempt (from which disabled people can benefit)

- Services (and associated goods) which constitute healthcare, dental care and social care (not including glasses, other visual aids or goods supplies by a pharmacy).
- Mother milk, human blood and human organs.

* Generally, Sweden exempts supplies which fall to be treated as exempt under UK VAT legislation.

** Supplies by charitable organisations and other similar bodies are not exempt from VAT. However, as such organisations are normally classified as non-profit organisations, their supplies are normally outside the scope of VAT.

Commentary

The legislation in Sweden is the process of change.

For the purposes of exemption, healthcare is defined as actions for medical prevention, diagnosing and treatment of diseases, physical effects and injuries. Such actions are exempt if performed at a hospital, at another approved establishment or by someone with a license to perform as a healthcare professional.

Transportations of patients is VAT exempt.

Social care is defined as actions performed by the public or private as regards childcare, geriatric care, support and services to functionally disabled or other comparable social care.

In general, because non-profit making organisations’ activities are outside the scope of VAT, disabled people can receive relief from VAT, albeit outside the scope of the tax.

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The Institute was established in 1930 and received its Royal Charter in 1994. It enjoys a high international standing in taxation affairs and is a UK member body on the Confederation Fiscale Europeenne (CFE), the umbrella body for 150,00 tax advisers in Europe.

The LITRG was set up in the Spring of 1998 by the Chartered Institute of Taxation to give a voice to the unrepresented in the tax system. It aims to help those on low incomes to cope with the tax system, by challenging the Government to simplify the rules and by encouraging the Revenue to make its processes and services more friendly to the needs of people on low incomes. Its reports and recommendations are available at www.litrg.org.uk, along with practical help for those on low incomes.

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