

Treasury Committee: VAT Inquiry
Evidence from the Low Incomes Tax Reform Group (LITRG)

1 Executive Summary

- 1.1 LITRG welcomes the opportunity to provide a written submission to the Treasury Committee's inquiry into VAT, which covers the issues of VAT and the tax gap, VAT and Brexit, and VAT and business. Our submission primarily focusses on the first question under VAT and Brexit, viz *'What opportunities and challenges for the UK VAT regime are presented by the UK's exit from the European Union?'*
- 1.2 One in six working-age adults reports a disability.¹ We hope that this inquiry could lead to a fairer VAT framework for disabled people. This would mean that people purchasing items solely because of their disability are not penalised by the tax system for having to do so. The current system fails to do this in a number of respects and undermines the effectiveness of more direct financial assistance to disabled individuals.
- 1.3 We raised a number of inequities relating to the UK VAT rules in our January 2007 report: *'VAT and disabled people – the case for removing the barriers'*.² Following publication of the report, we had some engagement with HM Treasury to discuss implementation of our recommendations. Unfortunately, it was felt that by doing so the UK may contravene EU law and so our suggestions were not taken forward.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/663399/improving-lives-the-future-of-work-health-and-disability.PDF, page 3, paragraph 7.

² <https://www.litrg.org.uk/sites/default/files/vat-and-disabled-people.pdf>

- 1.4 Over ten years have passed since the publication of our report and we take this opportunity to revisit these recommendations in light of updates to the law which have taken place in that time, the fact that the UK is scheduled to leave the EU in March 2019 and the stated government objectives in the November 2017 publication 'Improving Lives: The Future of Work, Health and Disability'.¹ The parliamentary review is also timely and we hope that our recommendations will feed into its report ahead of the Global Disability Summit in July 2018.
- 1.5 Accordingly, we make the following specific recommendations:
- Although UK VAT law has been amended by Finance Act 2017² to replace references to 'handicapped' to 'disabled', we continue to maintain that the Equality Act 2010 definition of disability should be incorporated in the VAT Act 1994 (3.1ff).
 - UK VAT law should be reviewed to assess whether VAT reliefs for certain constructions services for disabled people could be widened (3.2ff).
 - The Government should amend the provisions which limit VAT relief to goods 'designed' solely for disabled people (3.3ff).
 - The UK should introduce equality of VAT treatment by introducing VAT reliefs aimed at alleviating or treating mental impairment, as most reliefs relate to physical disability. The range of current reliefs does not currently align with the modern-day definition of disabled, which includes mental impairments (3.4ff).
 - Consideration should be given to extending VAT reliefs on certain transportation costs (3.5ff).
 - VAT reliefs available for modifications to private residences of disabled people should apply equally to workplace modifications (3.6ff). This would assist greatly in the Government's objective to get more disabled people into work.
- 1.6 In addition to reform of the law itself, steps should be taken to make VAT reliefs more accessible, by reducing or removing the administrative and practical inconvenience of claiming the reliefs, making HMRC literature simpler and more widely available, and active promotion of the reliefs by HMRC.³
- 1.7 Our recommendations in this document support the Government's objective of seeing one million more disabled people in work over the next ten years. They also help towards building a society where VAT does not represent a barrier to disabled people being placed

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/663399/improving-lives-the-future-of-work-health-and-disability.PDF

² s16, Sch 7 para 7(a)

³ See Section 9 of the LITRG report 'VAT and disabled people – the case for removing the barriers'

on a par with their non-disabled counterparts as far as possible. This chimes squarely with one of the principal objectives of good tax policy: fairness.

2 About Us

- 2.1 The Low Incomes Tax Reform Group (LITRG) is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998, LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes. Everything we do is aimed at improving the tax and benefits experience of low income workers, pensioners, migrants, students, disabled people and carers.
- 2.2 LITRG works extensively with HM Revenue & Customs (HMRC) and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not designed with the low-income user in mind and this often makes life difficult for those we try to help.
- 2.3 The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

3 Recommendations for reform

3.1 *The definition of 'disabled'*

- 3.1.1 Since the publication of our original report, the Equality Act 2010 has replaced the Disability Discrimination Act 1995, but the definition of 'disabled' has remained the same, i.e. someone who:

*'has a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.'*¹

- 3.1.2 The VAT Act 1994 historically referred to 'the handicapped' but this was replaced by references to 'disabled' under changes introduced by Finance Act 2017. We welcome this change given that the term 'handicapped' is not generally used and can cause offence. However, the changes do introduce a circular reference because 'disabled' is defined as 'chronically sick or disabled'. This is not ideal. In addition, it seems that the HMRC guidance

¹ Equality Act 2010, s6

contained within HMRC Notice 701/7 (December 2014) has not been updated to reflect the change.

- 3.1.3 HMRC and GOV.UK guidance¹ each go on to define 'disabled' for VAT purposes in line with the Equality Act definition, but it would be preferable for the VAT legislation itself to cross-refer to it so there is only a single definition. Especially in the case of those with mental impairments, and in light of the bias in existing reliefs towards those with physical disabilities, an individual may be confused about whether they can access the reliefs.
- 3.1.4 HMRC Notice 701/7 (December 2014) appears to have introduced a restriction on the scope of VAT reliefs for disabled people, which under the previous notice (published August 2002), were accessible by those who were terminally ill.² The change is a furtive one, as it is not highlighted in the 'changes to the previous version' in paragraph 1.1. We suggest that the Government's intention is clarified in this regard.
- 3.1.5 As a result of the above points, we feel that the Government can go further and legislate the definition of 'disabled' in the VAT Act 1994 or otherwise in the Interpretation Act 1978. These further changes would provide greater certainty to those who consider themselves to have the required physical or mental impairment or fall into the additional categories mentioned, but who may not consider themselves 'disabled' for a variety of reasons. More importantly, it would allow these groups access to VAT reliefs statutorily and hence with more certainty.

3.2 ***VAT relief for works to a disabled person's residential accommodation***

- 3.2.1 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.
- 3.2.2 A case in point is the Tribunal case of *Commissioners for Customs and Excise v Mrs L J Brailsford*,³ 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

¹ <https://www.gov.uk/financial-help-disabled/vat-relief>

² HMRC Notice 701/7 (August 2002), paragraph 3.2.1

³ VATTR 13472

under the strict literal interpretation 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 and appliances.

3.2.3 Furthermore, while 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,¹ 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. Accordingly, we recommend that consideration is given to extending VAT reliefs on construction services for disabled people, including in the case where modifications are carried out on a DIY basis by friends and family.

3.3 ***The limitation of the 'design' requirement***

3.3.1 Currently, the UK allows VAT relief to be applied to a range of goods supplied to disabled people,² but only in restricted circumstances. For example, VAT relief is only available for medical or surgical appliances when those goods have been *designed solely for the relief of a severe abnormality or severe injury*,³ while other equipment and appliances are also only eligible for relief when *designed solely for use by a disabled person*.⁴

3.3.2 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.

3.3.3 For example, in the VAT Tribunal case of *Commissioners for Customs and Excise v Posturite (UK) Limited*,⁵ 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 ... 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

¹ VAT Act 1994, Sch 8, Group 12, Item 10

² VAT Act 1994, Sch 8, Group 12

³ *ibid*, Item 2(a)

⁴ *ibid*, Item 2(g)

⁵ VATTR 7848

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.

3.3.4 In *Commissioners for Customs and Excise v BO Symons*,¹ 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. 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.

3.3.5 The Government’s policy states that it is committed to reducing the barriers placed before those with disabilities.² However, this policy can only be hindered by the inclusion of the phrase “designed for the sole use of the disabled” 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 which is contrary to the Government’s stated policy. We recommend that the Government revisits the scope of this relief to ensure that its application is fair and reasonable.

3.4 ***Physical v mental disabilities***

3.4.1 Despite the Equality Act definition placing mental health impairments on a par with physical ones, and advances in general awareness of mental health issues by employers and the public in recent years, the VAT legislation has not caught up. While equipment and appliances ‘designed solely for the use of a disabled person’ are zero-rated,³ and HMRC does interpret this as including those with mental impairments, all of the more specific VAT provisions (such as the construction of ramps, widening doorways, adapting a bathroom, etc.) focus on providing zero-rating for construction services in overcoming physical impairments. They do not cover any specific services which would help alleviate mental health problems.

¹ VATTR 18534

² Ministerial foreword, *Improving Lives: the future of Work, Health and Disability*

³ Sch 8, Group 12, Note 2(g)

3.4.2 The April 2017 report by Shelter entitled 'The impact of housing problems on mental health'¹ highlights that inadequate and inappropriate housing, such as homes with damp or disrepair, can be either a sole cause or exacerbating factor of mental health problems, so the availability of VAT concessions for adaption of housing can be as important as for a person with a physical disability.

3.4.3 Research conducted for the report suggested that, of those English adults who reported that their mental health was negatively impacted by a housing issue, 38% quoted the repair or condition of the property as being a cause. However, it is doubtful that any of the existing VAT reliefs would apply to an individual in this position. Given that the number one issue for this group is housing affordability, it would seem that VAT relief could go some way to alleviating the impact of both factors.

3.5 ***Transportation***

3.5.1 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.

3.5.2 Cars leased from the charity Motability are also zero-rated, but such leases will only be granted if the disabled person receives the enhanced rate mobility component of the Personal Independence Payment (PIP) or other specific benefits.² But a disabled individual who is not in receipt of one of these benefits and 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", is unable to access any relief. Although the law was changed in April 2017 to state that lower limb amputees are deemed to be wheelchair users for this purpose³, we feel that the relief should be defined by reference to the individual's actual need for an adapted vehicle, not by reference to the type of mobility aid he or she uses.

3.5.3 The restrictions of VAT relief in this area have, unfortunately, been exacerbated by the April 2017 changes which mean that an individual can only benefit from the relief once every three years. There are some instances when this limit can be exceeded, such as when the car

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https://england.shelter.org.uk/data/assets/pdf_file/0005/1364063/Housing_and_mental_health_-_detailed_report.pdf

² <https://www.motability.co.uk/contact-and-support/faqs/am-i-eligible-to-join-the-motability-scheme>

³ VAT Notice 1002, paragraph 3.2.1

is written off or stolen or if the vehicle has ceased to be suitable for the disabled person's use because of changes in the person's condition. But the relaxations do not go far enough. For example, it seems unduly harsh that a disabled person should be denied tax relief on the extra costs they incur when changing their motor vehicle for life changes, such as their family having grown so that they require a larger vehicle.¹

3.6 **Workplace accessibility**

- 3.6.1 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.²
- 3.6.2 To align the VAT law with the Government's stated policy and strategy for disabled persons generally, it is recommended that this disincentive be removed by introducing VAT relief for modifications in the workplace, where the zero-rate would not otherwise apply. Such changes would also act as a further incentive for employers to sign up to the Government's Disability Confident employer scheme, which is designed to help employers recruit and retain disabled people for their skills and talent.

LITRG
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¹ <https://www.litrg.org.uk/latest-news/news/170214-press-release-concern-new-restrictions-vat-relief-disabled-people-buying>

² LITRG raised this point in its submission to the disability green paper:
<https://www.litrg.org.uk/latest-news/submissions/170217-improving-lives-work-health-and-disability-green-paper>