

**DISABILITY IN TAX AND RELATED BENEFITS: THE CASE  
FOR A MODERN AND COHERENT APPROACH**

**A report by the Low Incomes Tax Reform Group of the  
Chartered Institute of Taxation**

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# **PART 1 INTRODUCTORY**

## **A Background**

**1.1.1** Nobody knows how many people with disabilities there are in the United Kingdom.

**1.1.2** Nobody has produced a universally accepted definition of what it means to be 'disabled'.

**1.1.3** What is agreed is that there are very many people in the UK whose ability to carry out 'normal day to day activities' (in the words of the Disability Discrimination Act 1995 – 'DDA') is affected by some form of disability.

- One in six people have a mental health problem.<sup>1</sup>
- There are 8.7 million adults who are deaf and hard of hearing<sup>2</sup>.
- There are around 2 million people with eyesight problems that are likely to affect their everyday life<sup>3</sup>.
- There are 11 million people aged 16 or over within the definition of disabled under the Disability Discrimination Act<sup>4</sup>.
- 3.77 million people were in receipt of disability living allowance or attendance allowance in November 2002, and 60,000 families benefiting from the disabled worker premiums in working tax credit in July 2003<sup>5</sup>.

**1.1.4** The DDA has begun removing barriers for people with these kinds of disability. The Disabled People (Duties of Public Authorities) Bill, which got as far as its Second Reading in the 2002-03 Parliamentary Session before running out of time, would have carried this improvement a stage further. It was designed to require public bodies to make the consideration of the needs of disabled persons an integral part of the policy-making and decision-making process. It is good news that the substance of that measure will be reintroduced as part of the Disability Discrimination Bill in the 2003-04 Session.

**1.1.5** It is with all this in mind that we (The Low Incomes Tax Reform Group (LITRG)) have carried out a review of how 'disability' is dealt with across a segment of the tax and related benefits system with which we are familiar. Our objective has been to understand how and why there is no coherent and consistent 'joined up' approach; to encourage informed discussion on how best to close this 'policy gap'; and to help policy makers identify key issues for decision and implementation.

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<sup>1</sup> Office of the Deputy Prime Minister, 5 March 2003; Social Exclusion Unit, 21 May 2003.

<sup>2</sup> Source: RNID.

<sup>3</sup> Source: RNIB.

<sup>4</sup> DWP/National Centre for Social Research, January 2003.

<sup>5</sup> Inland Revenue, news release 'Further evidence of success of new tax credits: publication of new statistics', 10 September 2003. An earlier press release had claimed tax credits to be a 'huge success': but in fact, the Revenue cannot assess whether tax credits are a huge success as far as disabled people in work are concerned because they have no idea how many people with disabilities are potential claimants, and therefore have nothing against which to measure their estimates of take-up.

**1.1.6** This report represents our contribution to the European Year of the Disabled in 2003.

### ***Scope***

**1.1.7** We were immediately faced with two questions:

- What do we mean by disability?
- How much of the tax and related benefits system should we cover?

**1.1.8** On the first question, we are not medical experts and so have had to turn to medical expertise for an answer (in section B below). On terminology, we have tended to follow the legislation and general usage in choosing the word 'disability', while recognising that other terms may be appropriate in particular cases. For instance, the word 'impairment' probably recognises better that, whatever the disadvantage the individual has to work under, they are not excluded in any general sense from achievement and nor are they stigmatised.

**1.1.9** On the second question, we have concentrated on income tax, tax credits, VAT and council tax alongside related benefits such as disability living allowance and council tax benefit.

### ***Our approach***

**1.1.10** In the context of changing perceptions of 'disability', our Report:

- reviews legislation on tax and related benefits intended for people with disabilities (as at 1.1.9 above), its purpose and application in practice;
- identifies omissions, inadequacies and other aspects where the law could be improved;
- assesses the delivery of their services for people with disabilities by the major tax departments and how this might be improved.

**1.1.11** Finally, our recommendations aim to:

- produce a more coherent and consistent policy on tax and related benefits for people with disabilities;
- correct existing anomalies and shortcomings in that area so as to improve work opportunities;
- standardise statutory definitions across the relevant legislation on the basis of the DDA;
- identify possible improvements to the service provided by the revenue departments so as to give greater support to these particularly vulnerable people.

## **B What is disability?**

**1.2.1** Our reference to medical expertise has led us to examine a developing series of 'models' of disability – the 'medical', 'social', 'economic' and 'cultural' – culminating in a single, composite model – the 'biopsychosocial'. In this section we discuss these models, and in the rest of the Report we relate them to what has happened in our own world of legislation, administrative practice and customer service for tax and tax-related benefits.

### **Models of disability**

**1.2.2** In discussing the range of models for looking at disabilities and associated behaviour, we have predominantly drawn from Dr Gordon Waddell's booklet 'Models of Disability Using Low Back Pain as an Example'<sup>6</sup>. This was developed from a paper initially prepared for the Department for Work and Pensions, and the underlying thinking has moved across to the Inland Revenue as that Department has assumed responsibility for tax credits.

#### ***Medical***

**1.2.3** For many people, the concept of disability does not go beyond the obvious - the visually impaired; wheelchair users. But in reality, these are a minority, while 'disability' embraces a wide range of conditions, not all of which are immediately apparent.

**1.2.4** Traditionally, people with disabilities get medical treatment and are paid 'compensation' for their disabilities through the welfare system. This has been the basis of social security since, probably, the First World War. It is assumed that a professional evaluation of disability is needed and that the medical practitioner can be relied upon to sort out real from unreal medical conditions.

**1.2.5** However, by their very nature, many disabilities are self-reported and based on the degree of the main symptoms – pain and performance – and over-reliant on the patient's own reaction. Modern medical thinking deals with the concepts of pain, disability and incapacity for work: these are linked but the correlation is not statistically strong. Health care is about helping the patients with their pain and other symptoms, not about regulating their contracts of work or access to benefits and the associated taxation rules. In the past there has been a tendency to produce exhaustive lists of maladies that either did or did not 'count' in various scenarios. People do have different attitudes and levels of tolerance to pain, and it is now generally recognised that there is a need to go beyond the medical to understand disability.

#### ***Social***

**1.2.6** The first model offered which goes beyond the medical model is the social model. This presents the concept that problems of access to the world of work lie not with the individual's disability but rather with society's inadequate capability to provide the necessary conditions for access.

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<sup>6</sup> 2002, Royal Society of Medicine Press Ltd.

**1.2.7** Again, care must be taken not to be too simplistic about what is meant by access. The issue of access is often seen purely in terms of how people in wheelchairs can access buildings. Access in its widest sense means access to activities and ideas as well as physical structures. Moreover only around 5% of disabled people are actually wheelchair users<sup>7</sup>.

**1.2.8** Disability groups first proposed the social model in the early 1970s. It is based significantly on the views of disabled people themselves and has gained wide social and political acceptance. This is reflected in such developments as the Disability Discrimination Act 1995 (DDA) and the 2000 revised World Health Organisation (WHO) classification of functioning, disability and health.

**1.2.9** The altruistic aim is to do away with stigma and replace it with the opportunity for all people to maximise their potential. Applying this model in practice to overcome access problems can however be hindered by ingrained social attitudes and limited resources. The model may not be a sufficiently sound basis on its own.

### ***Economic***

**1.2.10** The traditional economist's view of the world is that everyone is constantly motivated to optimise their financial position, balancing incentives and risks. Over time, campaigns for greater rights for disabled people and increased national wealth has meant bigger disability payments for more people with fewer questions. In their turn, governments have needed to balance incentives and disincentives in encouraging people to become more self-supporting, so keeping down costs for the general taxpayer – hence the 'economic' model. This has led to access to benefits and other state assistance (through rules, tests, forms and so on) being more closely controlled.

**1.2.11** Direct economic factors will of course influence behaviour, but the way people with disabilities make choices is likely to be much more complex than bureaucratic assumptions might suggest. Waddell<sup>8</sup> compares the medical, social and economic models as shown in the Table below:

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<sup>7</sup> Resource Disability Action Plan: Achieving equality of opportunity for disabled people in museums, archives and libraries 2002.

<sup>8</sup> Op cit.

**Table: Comparison of the medical, social and economic models of disability (from Waddell)**

Medical model	Social model	Economic model
Disabled people are disadvantaged directly by their impairments	Disabled people are disadvantaged by society's failure to accommodate everybody's abilities	Social security benefit trends reflect economic pressures and incentives more than actual disability
Disabled people are pitied as victims of personal tragedy (accident or disease)	Disabled people are oppressed by current social and economic institutions	Recipients of benefits are advantaged by the social security system, at a high cost to society and the taxpayer
Disability is best overcome through medical treatment and rehabilitation	Disadvantage is best overcome by society adapting itself to everyone's abilities	Current social security trends are best overcome by adjusting the incentives and control mechanisms of the social security system.
Both these models imply that disabled people are passive victims who bear little responsibility for their incapacity or recovery		This model implies that social security trends are a matter of economic forces and individual choices

## **Cultural**

**1.2.12** Individuals do not arrive at their beliefs and behaviours in a vacuum; they tend to be influenced by the groups to which they belong. Collective attitudes, customs and traditions that endure over time and are passed on to new group members may be called the culture of the group. Different work environments, families, ethnic backgrounds, social class, social groups and genders carry their own set of cultural norms.

**1.2.13** Waddell<sup>9</sup> quotes evidence of 470 studies of social influence on low back pain and disability which demonstrates that social influences impact on such behaviours as sickness absence, pain behaviour, health care and sick certification and early retirement. He views these as complex and interactive and as calling for more research.

**1.2.14** Those favouring the cultural model believe that policy makers need to recognise that no one single factor can explain social patterns of incapacity. This line of thinking brings us more or less logically to what at present is the final model in the continuum.

<sup>9</sup> Op cit.

## ***Biopsychosocial***

**1.2.15** The biopsychosocial model attempts to deal with the complexity of disablement issues by incorporating all the physical, psychological and social factors involved in the earlier, single perspective disability models. In this way, it sets out to evaluate the response by individuals with a disability or impairment to the situation in which they find themselves.

**1.2.16** In this context it is interesting to note that the World Health Organisation now define disability as:

‘the outcome of the interaction between a person with an impairment and the environmental and attitudinal barriers he/she may face.’

**1.2.17** Under the biopsychosocial model, disability is not static: it is a process. A distinction is drawn between the acute stage of an impairment, when medical action is most needed, and the sub-acute and chronic stages where enabling people to live with their condition requires increasing attention to the social, economic and cultural factors.

## **Application of models of disability to tax and tax-benefits legislation and practice**

**1.2.18** We understand that, as part of its evidence-based policy making, the DWP is applying the thinking behind the biopsychosocial model to broaden its approach to benefits management. Arguably, any design for tax and benefit systems based on only one single-perspective disability model carries a significant risk of failure.

**1.2.19** At the end of the 1990s, the Inland Revenue along with other Government departments sought to reduce sickness absence rates. The Department introduced new internal management and training initiatives consistent with the biopsychosocial model of sickness.

**1.2.20** The Revenue is also administering the tax credits programme, a means of delivering work-related welfare payments through the tax system rather than the social security system. It is hoped in this way to eliminate the stigma associated with claiming benefits. The link with work, rather than welfare, is further emphasised by paying the working tax credit to employees through their employer’s payroll.

**1.2.21** In this project, we have been looking for evidence that the Government applies a similar modern approach in both the developing legislative framework for tax and related benefits and the application of good customer service. Parts 2 to 4 examine what we have found.

## PART 2

# WHAT IS DISABILITY? THE LEGISLATIVE FRAMEWORK

### 2.1 Introduction

**2.1.1** In this Part we survey the ways in which ‘disability’ is defined in tax law; we look at the Disability Discrimination Act 1995 (DDA) for a modern view of disability; we examine to what extent this approach is being reflected in tax legislation; and we make recommendations for change and review.

**2.1.2** In general, we have found that tax legislation has a purpose-specific approach to defining ‘disability’. There is no general definition of ‘disabled’ or ‘disability’ in the Taxes Acts, nor in VAT legislation. Each definition that is given (and often the term is used without definition) focuses on the particular requirement imposed, or (more usually) relief granted.

**2.1.3** The result is a fragmented and disjointed approach to defining disability, while ways are sought of recognising the financial and other disadvantages faced by the taxpayer with a disability, yet keeping to a minimum the costs borne by the Exchequer. If we compare the different approaches in the tax legislation with the ‘model’ formulation in the DDA, the ideas about disability that underpin them seem to fit a variety of descriptions:

- The **unreconstructed approach**, evident mostly in enactments of ancient pedigree.
- The **untargeted approach**, evident where the tax system can have a regressive effect by giving most to those who need least or by creating arbitrary ‘winners and losers’.
- The **discretionary approach**, giving officials the say in whether an individual fits a (generally) loose statutory definition of disability which makes them eligible for some form of favourable treatment or relief from tax.
- The **search for neutrality**. This is best exemplified in the tax treatment of costs incurred by employees and businesses. Both groups in trying to eliminate the additional barriers facing those with disabilities are faced with an incoherent mixture of measures.
- The **means tested approach**, which appears in the tax credits rules, and is drawn from the world of benefits where more detailed and comprehensive definitions of disability are the norm.
- The **modern approach**, evidenced by recent tax legislation which actually reflects the DDA formulation.

**2.1.4** We begin by looking at the model approach in the DDA, then consider examples in the tax law for the variety of descriptions identified above.

## 2.2 The model: the Disability Discrimination Act 1995

**2.2.1** The purpose of the Disability Discrimination Act 1995 (DDA) is to ensure that disabled people are not discriminated against by reason of their disability in their employment, in their access to services, and in other matters affecting their normal activities.

**2.2.2** Section 1 of the DDA (as supplemented by regulation) 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'.

**2.2.3** The Secretary of State has issued guidance, under section 3(3) of the DDA ('section 3(3) Guidance'), about factors which a court or tribunal must take into account in assessing whether a person meets the relevant requirements of the definition.

**2.2.4** The section 3(3) Guidance breaks down this definition into four distinct tests (italics supplied):

- the person must have an *impairment* that is either physical or mental;
- the impairment must have *adverse effects* which are *substantial*;
- the substantial effects must be *long-term*; and
- the long-term substantial effects must be adverse effects on *normal day-to-day activities*.

### **'Impairment'**

**2.2.5** To fall within the definition, the effects which a person may experience must arise from an 'impairment'. Sensory impairments, such as those affecting sight or hearing, are included. Mental impairments which result from or consist of a mental illness are included if that illness is a clinically well-recognised illness, ie recognised by a respected body of medical opinion. Certain conditions, such as substance addiction, are excluded; but an impairment may be included even if it was caused by a condition which is excluded, for example liver disease resulting from alcohol addiction.

### **'Substantial' adverse effect**

**2.2.6** To be 'substantial', an effect must be more than 'minor' or 'trivial'. It must go beyond the normal differences in ability that may exist among people. However, a sequence of minor impairments which are not by themselves substantial may become so when taken cumulatively. The acid test is the time the person with the impairment takes, or the way they carry out the activity, when compared with the time they would take, or the way they would carry it out, if they did not have the impairment.

**2.2.7** Where a person has a progressive condition, one which is likely to change and develop over time, they are treated as having an impairment from the moment when

the condition first has some effect on their ability to carry out normal day-to-day activities. Thus, a progressive condition can be treated as having a substantial adverse effect before it actually does so.

### ***'Long-term'***

**2.2.8** A long-term effect of an impairment is one:

- which has lasted at least twelve months; or
- where the total period for which it lasts, from the time of the first onset, is likely to be at least twelve months; or
- which is likely to last for the rest of the life of the person affected.

**2.2.9** It is not necessary for the effect to be the same throughout the period; it can vary in severity, at times might even disappear temporarily, or the effects might change over time. If a substantial effect has ceased, but is likely to recur, it is treated as continuing. If medical treatment delays or prevents recurrence, but does not cure the impairment, the treatment is to be ignored and the effect is to be regarded as likely to recur.

### ***Normal day-to-day activities***

**2.2.10** The DDA states that an impairment is only to be treated as affecting a person's ability to carry out normal day-to-day activities if it affects one of the following:

- mobility;
- manual dexterity;
- physical co-ordination;
- continence;
- ability to lift, carry or otherwise move everyday objects;
- speech, hearing or eyesight;
- memory or ability to concentrate, learn or understand; or
- perception of the risk of physical danger.

**2.2.11** These headings are exhaustive, in that the person must be affected in one of these ways. The section 3(3) Guidance gives examples of conditions which might indicate a 'substantial adverse effect' under each of the above heads. For instance, a person who cannot travel a short journey as a passenger in a vehicle may well experience a 'substantial adverse effect' on mobility, but not if they merely cannot travel in a car for more than two hours without discomfort. Similarly, inability to write a cheque without assistance might normally be regarded as having a 'substantial effect' on 'day-to-day activities', while inability to fill in a long, detailed, technical document without assistance would not.

**2.2.12** This very short account of the DDA definition gives an inkling of how broad its scope is. If all other legislation designed to assist people with impairments were in line with the DDA definition, and could be adapted to any changes in that definition, its inclusiveness would not be in doubt. The DDA definition is therefore the yardstick, the model, by which we can judge the statutory formulations in the tax, tax credits and VAT codes.

## **2.3 The unreconstructed approach: the Taxes Management Act 1970**

**2.3.1** If consonance with the DDA definition is the ideal, the nadir must be those enactments which cling to views on disability which passed out of vogue in the nineteenth century, or earlier.

**2.3.2** The Taxes Management Act 1970 is still, in 2003, the principal enactment on matters of tax administration. It deals, among other things, with the question of whether a person with certain types of disability or impairment is expected to file a tax return, make a claim in person, or is able to cope with managing their own tax affairs.

**2.3.3** It is unfortunate that the tax statute has been allowed to remain untouched so that we currently have a definition of an 'incapacitated person' as<sup>10</sup>:

'any infant, person of unsound mind, lunatic, idiot or insane person'.

Whatever impact twentieth century reforms in mental health may have had on other parts of the tax legislation, that which deals with the very basic question of claims and returns – the prime means of communication between the Inland Revenue and the taxpayer – remains rooted in the philosophy and attitudes of another epoch.

**2.3.4** The Taxes Management Act 1970 is a consolidating statute of the kind which simply repeats the language of earlier statute<sup>11</sup>. More recent consolidation in the tax field, managed by the Tax Law Rewrite Project, aims to rewrite tax law in more up-to-date and clearer English. This enlightened approach has hitherto produced good results, and we recommend that the Tax Law Rewrite team urgently turn their attention to this and similar anachronisms which reflect outdated views on disability.

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<sup>10</sup> TMA 1970, s118(1).

<sup>11</sup> A prime example in tax legislation of consolidating statutes perpetuating ancient phraseology was section 198 of the Taxes Act 1988, which until its amendment in 1998 continued to give tax relief to employees who were obliged to keep a horse to enable them to fulfil the duties of their employment!

## **2.4 The untargeted approach: blind person's allowance and disablement pensions**

**2.4.1** The blind person's tax allowance (BPA) now found in Taxes Act 1988, s265 is a way of channelling help through the tax system to people with a specific impairment. A historical sketch will illustrate the weakness in this approach, which has not been replicated.

**2.4.2** The BPA was introduced by Finance Act 1962, s9 in response to pressure from various disability groups. The Government of the day, however, were reluctant to introduce an allowance at all for any kind of impairment, let alone one that recognised only one particular type. The following quotations from the Treasury spokesman of the day illustrate the point:

'Special help to the disabled, however they are disabled, should be given in a way that will bring the greatest benefit to those who need help most. Frankly, I must say that this cannot be done by fiscal means.

'There are 11,000 blind people in employment. It is believed that about 4,000 of those are in sheltered employment, so there would be 7,000, who, as it were, are ordinarily employed. Some of those may be earning quite high salaries. It is very difficult to say that those people should be singled out from all other classes of disabled for tax relief.

'[It does not] seem right to single out one class of disabled men and act for them while neglecting others. . . There are only three countries in the world that provide a tax allowance for blind people, singling out blind people as distinct from all others. That is why I cannot advise the Committee to accept that clause.'

**2.4.3** An allowance for the registered blind was considered together with an alternative allowance for all deemed gravely disabled (a suggestion from the 1954 Royal Commission on Taxation). Both propositions failed at Committee stage, but the Government reluctantly reintroduced an amendment to cover the blind. It was stated that a general concession for the disabled would be too difficult to administer but that as blind people are readily and objectively identifiable, a distinction could be drawn.

**2.4.4** The original BPA recognised that those 'blind' people who qualified for the allowance, being registered as blind, might also receive State assistance through other benefits, so the allowance was restricted in those circumstances and could be eliminated. The relief, originally set at £100, was reduced by 7/9ths of any tax-free disability payments received.

**2.4.5** The amendment effectively only benefited those whose blindness was attributable to reasons other than injury, either at work or in battle, as these other causes had already been recognised by welfare payments. It was aimed at those who wanted to work. On introduction the BPA was worth just over 70% of the personal allowance for a single person.

**2.4.6** For many years subsequently the BPA remained largely unchanged. Just when it was thought by some that the BPA was being left to wither on the vine through inflation, the Government of 1981 changed the rules, doubling the BPA from

£180 to £360 and removing the provision which required a deduction of tax-free disability payments. This favourable development was introduced at the same time as the suspension of the automatic inflation increase for all other allowances. It was the Budget which the then Chancellor of the Exchequer, Sir Geoffrey Howe, later described as 'the most unpopular budget'. Some good news, which cost little, was helpful in that context<sup>12</sup>. As Sir Geoffrey Howe stated:

'There is one group to whom we should pay special attention this year, despite the economic constraints that we face. I refer to the disabled, for this is the International Year of Disabled People.'

**2.4.7** After 1981 there were long periods of little change in the BPA until in 1989-90 it had dropped in value to below 20% of the single person's allowance. In the Finance Act 1990 (another difficult Budget which followed a critical report on the Government's policies towards the disabled) the allowance was again doubled from £540 to £1,080.

**2.4.8** The BPA now stands at £1,510 for 2003-04 and represents just over 32% of the single person's allowance. This provides no relief for those on the lowest incomes; £2.90 per week for those on the lower rate of tax and £6.39 per week for those at the basic rate of tax. For those with incomes chargeable to tax of more than £30,500, the relief given is £11.61 per week.

**2.4.9** There are 359,000 people in the UK who are registered as 'blind' and the RNIB estimates that a further 750,000 people are eligible to register but have not yet done so<sup>13</sup>. Inland Revenue sources give an annual amount for the value of the BPA of between £10m and £15m<sup>14</sup>, from which we can infer that of the 359,000 who have registered, less than 50,000 have actually claimed the BPA.

**2.4.10** This is significant when set against the RNIB's estimate that 90 per cent of blind people are in receipt of benefits, suggesting that most of this group are on incomes too low for them to pay tax, and are therefore incapable of benefiting from the BPA. It is also worth noting that the BPA does not extend to those who are partially sighted. However, partially sighted people are deemed to be disabled for the purposes of the DDA<sup>15</sup>.

**2.4.11** From the above we conclude that the BPA:

- adds complexity to the tax system being one of the very few allowances now remaining after a deliberate drive to eliminate tax allowances for social purposes;
- is a misunderstood allowance and restrictive in its application – for example, it is not given to all those with significantly impaired sight, but only to those who are 'registered' (who in turn do not need to be blind, or without sight, in lay terms)
- provides the most financial help to those who need it least and is not related to actual need;
- as a tax allowance is out of reach of the majority of the blind population.

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<sup>12</sup> Another change in that Budget was the widow's bereavement allowance, since declared incompatible with the European Convention on Human Rights by Moses J in *R (on the application of Wilkinson) v IRC* [2002] BTC 97, on the grounds that it discriminated against widowers.

<sup>13</sup> Source, RNIB press centre.

<sup>14</sup> National Statistics Item 2 Tax Expenditure and Ready Reckoners Table B1; IR press office.

<sup>15</sup> SI 2003 No.712 The Disability Discrimination (Blind and Partially Sighted Persons) Regulations 2003.

**2.4.12** If it is intended to give extra cash help to blind people on the grounds that they as a group are particularly prone to be on low incomes, it would surely be better to redistribute the funds for their benefit within the social security or tax credits systems, thereby at least ensuring that they reached those who are in the greatest financial need.

### ***War disablement pension***

**2.4.13** A different set of questions come to mind when considering the tax position of the war disablement pension (WDP).

**2.4.14** You can receive a WDP without having served in wartime or having been a member of HM Armed Forces. For example, a member of the Home Guard, a civil defence volunteer or a nursing auxiliary may qualify. The level of pension is dependent upon the extent of the disability, whether arising as a result of an accident, a disease, an injury or a wound.

**2.4.15** The pensions are regarded by the DWP as compensation rather than earnings replacement. Hence WDPs (and associated widow's pensions) are tax free<sup>16</sup>.

**2.4.16** Thus, an aid agency worker, a journalist or an engineer disabled in hostilities in Iraq would pay tax on their employer's disability pension whilst a civil defence volunteer disabled on an exercise in the UK would not. Nevertheless, the former groups may be entitled to industrial injuries benefits and other tax free state benefits.

### ***Lessons from comparing the BPA and WDP***

**2.4.17** Our review of the BPA and WDP raises delicate questions as to whether tax allowances, or tax exemption, are the right vehicles to respond to the needs of individuals with specific impairments. Why should a source of public funds set aside for a particular group be so structured that it is inaccessible to those on very low incomes, who nevertheless form the majority? And should one person disabled in identical circumstances to another but having a less favoured employer be denied a more favourable tax exemption?

**2.4.18** We recommend that the interaction between the tax regime and the supporting benefits system should be reviewed to see whether it is still appropriate to use tax advantages for delivering partial compensation to some groups with disabilities or impairments, but not others.

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<sup>16</sup> ITEPA 2003, s. 641.

## **2.5 The discretionary approach: council tax disability reduction, PAYE for carers, attorneys**

**2.5.1** Discretion can play an important part in determining whether people with certain types of disability get a relief, or favourable treatment, on offer.

### ***Council tax disability reduction (CTDR)<sup>17</sup>***

**2.5.2** If a council tax payer has a room, an extra kitchen or bathroom, or a space for a wheelchair, set aside in their house for 'meeting the needs' of a disabled person for whom the house is their only or main residence, then a council tax reduction is available. This consists of reducing the valuation of the property for tax purposes by one valuation band.

**2.5.3** For CTDR, a disabled person is one who is 'substantially and permanently disabled (whether by illness, injury, congenital deformity or otherwise)<sup>18</sup>'. References to 'meeting the needs' of a disabled person mean 'essential or of major importance to his well-being by reason of the nature and extent of his disability'<sup>19</sup>. The actual concept of 'disability' is not explained further, leaving scope for different Councils to adopt different – and not always consistent - approaches.

**2.5.4** By contrast, council tax benefit (CTB) disability premiums are awarded by reference to receipt of specified qualifying benefits or being registered as blind. True, the legislation is not aimed specifically at the disabled person but rather at low income groups with limited savings, whereas the CTDR targets those with a need for extra space because of their disability, regardless of income.

### ***PAYE and carers***

**2.5.5** The Tax Law Rewrite team have recently rewritten the regulations that govern the operation of PAYE<sup>20</sup>. One such rewritten regulation, reg 34, enables an employer of a 'personal employee' to operate a simplified deduction scheme for PAYE if (among other things) the personal employee is employed to assist the employer with a business, profession or course of study which, solely because of a 'physical or mental disability' (not defined), the employer could not carry on without such assistance<sup>21</sup>. As this regulation makes the employer's right to use the simplified scheme dependent on how the Revenue exercise their discretion, it is important that the scope of 'physical or mental disability' be clearly defined.

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<sup>17</sup> The Council Tax (Reductions for Disabilities) Regulations 1992, SI 1992/554.

<sup>18</sup> *Ibid*, reg. 1(2).

<sup>19</sup> *Ibid*, reg. 3(2).

<sup>20</sup> Income Tax (Pay As You Earn) Regulations SI 2003/2682.

<sup>21</sup> *Ibid* reg 34(3)(b).

## **Attorneys**

**2.5.6** The internal Revenue guidance Manuals<sup>22</sup> set out procedures for deciding whether and when to accept signatures other than that of the claimant on claim forms, and whose signatures may be accepted. Broadly, those who may sign on behalf of others are donees of a power of attorney, and in certain cases of old age, illness or incapacity, others such as next of kin or near relatives. This may involve an element of discretion on the part of the Revenue.

**2.5.7** For example, the donee of a general power of attorney may sign a claim form if the taxpayer is physically unable to sign, or is too old or ill to sign, provided that the donee has sufficient knowledge of the taxpayer's affairs. Where the taxpayer is too old or ill to sign, the attorney may sign on the taxpayer's behalf if the taxpayer is too ill to exercise control, or cannot be bothered with business matters because of age. In the latter case, the taxpayer must understand why the claim is being made, have a reasonable grasp of his affairs, and have asked the attorney to take over complete management of them. All this requires satisfying the Revenue official dealing with the application, and the official exercising appropriate judgement.

**2.5.8** Similarly, for tax credits claims, the holder of a power of attorney, whether general or enduring, has no automatic right to make a claim on behalf of the donee, but must apply to the Inland Revenue or the DWP to be recognised as the claimant's appointee. All the regulations<sup>23</sup> require is that the claimant must be 'unable for the time being to make a claim for a tax credit' – there is no specific reference to disability or incapacity.

## **Recommendations**

**2.5.9** Where disability is not clearly defined, administrative discretion necessarily plays a crucial role in determining who gets the relief or exemption intended. Unless internal guidance procedures are watertight and closely followed, the benefit of the relief or exemption becomes less of a statutory right, more of a privilege conferred by an administrative body.

**2.5.10** If the Disability Discrimination Bill (see 1.1.4) is passed in the 2003-04 Parliamentary Session in its present form, it will require public bodies to exercise their public functions in accordance with the principles of the DDA.

**2.5.11** To that extent, we support the Bill as part of the Government's commitment to update and extend the scope of the DDA, and recommend that the revenue raising authorities be required to exercise their powers in a consistent way, particularly where the absence of clear definitions of disability leaves room for administrative discretion.

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<sup>22</sup> RM3560ff., RE3072ff..

<sup>23</sup> Tax Credits (Claims and Notifications) Regulations SI 2002/2014, reg 18.

## **2.6 The search for neutrality: costs incurred by employees and businesses**

**2.6.1** The test for a deduction of an expense incurred when carrying out one's employment has remained virtually unchanged since its introduction in 1853.

**2.6.2** The general rule<sup>24</sup> is that a deduction from earnings is allowed for an amount if: (a) the employee is obliged to incur and pay it as holder of the employment, and (b) the amount is incurred wholly, exclusively and necessarily in the performance of the duties of the employment.

**2.6.3** These words have been the subject of innumerable cases before the Courts and in a judgment from 50 years<sup>25</sup> ago, which is still true today, the judge remarked:

‘the words are indeed stringent and exacting: compliance with each and every one of them is obligatory if the benefit of the rule is to be claimed successfully’.

**2.6.4** In particular the word ‘necessarily’ has been held to be an objective test applicable to all people carrying out those duties and:

‘cannot be performed without incurring the particular outlay’<sup>26</sup>.

**2.6.5** One of the main purposes of the DDA is to ensure that disabled people are not discriminated against in their employment. Long before enactment of the DDA, there was – and still is – a range of exemptions from tax relating to disabled people's earnings from employment, focusing on matters such as home to work travel, adaptation of motor vehicles for business use, early retirement on ill health grounds, and so forth.

**2.6.6** As a rule, people with disabilities need to spend more money than those without in performing the same tasks. Where additional expense is incurred solely by reason of their disability one would expect a tax neutral effect.

**2.6.7** Whether such additional expense has to come out of their own pocket, or be paid or reimbursed by a sympathetic employer, the logical end result should be that those with disabilities should either receive an expenses deduction for tax purposes, or should not be assessed on any employer subsidy as a ‘benefit in kind’.

**2.6.8** But matters are not as simple as that, for we do not have ‘a disabilities exceptions’ rule. We have the strict words of the law set out above, and a series of attempts to ameliorate the harshness of the rule in a piecemeal way.

### ***Costs incurred by employees***

**2.6.9** At least one attempt has been made to neutralise, across the board, the restrictive effects of the expenses rule on employees with disabilities. Any employment-related benefit provided to a disabled employee, the purpose of which is

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<sup>24</sup> ITEPA 2003, s336(1).

<sup>25</sup> Lomax v Newton 34 TC 558.

<sup>26</sup> Brown v Bullock 40 TC 1.

to enable that employee to perform the duties of their employment, is exempt from income tax on earnings<sup>27</sup>. The benefit must 'consist in the provision of a hearing aid or other equipment, services or facilities'. The benefit must be provided under the Government's Access to Work Programme, or any other statutory provision or arrangements, whether or not the employer has a legal duty to provide the benefit.

**2.6.10** The one flaw in this exemption, which prevents it from being truly universal, is that it is confined to benefits provided under statutory arrangements such as the Access to Work scheme.

**2.6.11** Other attempts to alleviate the restrictiveness of the rule have been more 'ad hoc', targeted on particular disabilities. We do not deny the need for these provisions. But as a way of recognising the special needs of those with disabilities, they do not add up to a coherent and exhaustive approach. Indeed we have seen practical examples of people covered by the working tax credit definition of disability (see para 2.7.1ff) being refused income tax deductions for expenditure which enabled them to work or being assessed under the benefit in kind rules on extra expenditure incurred by a sympathetic employer.

**2.6.12** Examples of this piecemeal approach are:

- An extra-statutory concession for directors or higher paid employees who, if they have 'precarious health', may take their wives with them on an overseas business trip at the expense of their employer without tax charge<sup>28</sup>. Note that this concession is not replicated for business women in precarious health who take their husbands abroad with them on business trips, nor for unmarried couples.
- Special 'equipment to enable a disabled person to use a company car' is exempt from the tax charge on the taxable benefit arising when car accessories are provided by an employer<sup>29</sup>. The expression 'equipment to enable a disabled person to use a car' is fairly carefully defined. The first part of the definition requires the equipment to be 'designed solely for use by a chronically sick or disabled person', but does not go on to define chronically sick or disabled. The second part of the definition requires the equipment to be 'made available for use with the car because it enables a disabled employee to use the car in spite of the disability'; a 'disabled employee' is one who holds a disabled person's badge, and 'the disability' is the disability entitling the disabled employee to hold the disabled person's badge. This provision was introduced in 1995.
- Disabled persons' home to work travel (previously 'severely disabled')<sup>30</sup>. This gives an income tax exemption on the provision of the benefit or any contribution towards the cost of journeys from home to work for disabled employees, provided the journeys are 'substantially ordinary commuting'. The enactment of this relief in ITEPA 2003 (previously an extra-statutory concession) brought the definition of 'disabled employee' into line with the DDA: 'an employee who has a physical or mental impairment with a

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<sup>27</sup> Income Tax (Benefits in Kind) (Exemption for Employment Costs Resulting from Disability) Regulations SI 2002/1596.

<sup>28</sup> ESC A4(d).

<sup>29</sup> ITEPA 2003 s125(2)(c) and 172 (formerly ICTA s168AA).

<sup>30</sup> ITEPA 2003, s246 (formerly ESC A59).

substantial and adverse long-term effect on the employee's ability to carry out normal day-to-day activities'. We return to this point later on.

- Provision of cars for disabled employees<sup>31</sup>. No tax charge arises on the provision of a car, or fuel, or the payment or reimbursement of expenses incurred in connection with it, to a disabled employee, if (inter alia) the car is specially adapted for the employee's use, or fitted with automatic transmission because the employee cannot use a manual gearbox, and the employee uses it only for business travel or for ordinary commuting between home and work. Note that the DDA-style definition of 'disabled employee' is not enacted here as it is in the provision above.

**2.6.13** We recommend that a holistic, neutral approach to the work-related rules be considered whereby all employed people who come within the DDA definition of 'disabled' should be able to claim as an employment expense the costs of putting themselves, as far as possible, on a par with non-disabled people who are subject to the employment expenses rule. The same ought to apply to the slightly less restrictive allowable expenses rule for the self-employed.

**2.6.14** Similarly, any costs incurred by an employer in enabling an employee with a disability to perform the duties of their employment, whether or not under the Access to Work programme, should not give rise to a taxable benefit in kind.

### ***Costs to business of DDA compliance***

**2.6.15** We have seen good examples of joined-up government where initiatives to foster socially responsible behaviour have been encouraged by various government departments, working in tandem with the Treasury and the Inland Revenue. For example, in 1971 the Home Office wished to promote alterations to buildings in order to enhance fire prevention measures. In 2003, the Department for Environment, Food and Rural Affairs wished to encourage businesses to invest in environmentally beneficial plant and machinery.

**2.6.16** In both of these examples the tax reliefs for buildings, plant and machinery were favourably adjusted to encourage businesses to invest appropriately.

**2.6.17** This contrasts with the investment that business is encouraged to make in order to put in place the access improvements recommended in the DDA. In 2004, under the provisions of that Act, many organisations may have to make 'reasonable adjustments' to their premises to overcome barriers to access. This will require adjustments to such things as steps, stairways, kerbs, parking areas, reception and waiting areas, doors, gates, toilet and washing facilities, lighting, ventilation and lifts where tax relief is not automatic or immediate.

**2.6.18** We recommend that the treatment accorded to fire prevention measures and the environmentally friendly plant and machinery rules be applied to all expenditure incurred in compliance with the DDA.

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<sup>31</sup> ITEPA 2003, s247 (formerly ESC A59).

## **2.7 The means-tested approach: disability elements in the new tax credits**

**2.7.1** With the advent of the new tax credits, child tax credit (CTC) and working tax credit (WTC), the philosophy of support for people with disabilities that underpins the social security system – ie that of compensating people for extra costs, or loss of earning potential, brought about by their disability – entered the tax system. The disability aspects take their lineage from the disabled person's tax credit (DPTC) and before that the disability working allowance (DWA). Like those in the tax system proper, the definitions of disability in the WTC and CTC are purpose-specific, for WTC aims to provide work incentives by making work pay better than being on benefits, while CTC, coupled with child benefit, is now the main vehicle of child support. But unlike the tax legislation, the definitions of disability associated with these policy objectives are detailed and comprehensive.

### ***Working tax credit (WTC)***

**2.7.2** The WTC is payable to people in paid employment or self-employment. It consists of eight 'elements', two of which are payable to people who have a disability<sup>32</sup>.

**2.7.3** To get the 'disability element' a claimant must meet three conditions:

- they must undertake 'qualifying remunerative work' for 16 hours a week or more;
- they must be, or previously have been, in receipt of certain disability benefits or statutory payments, or been credited with Class 1 or 2 National Insurance contributions; and
- they must have a condition which puts them at a disadvantage in the labour market. This means they must have one of the disabilities listed in the regulations, or (in the case of an initial claim) be undergoing a period of habilitation or re-habilitation following an illness or accident.

**2.7.4** Fulfilling this last condition categorises the claimant as 'having a physical or mental disability that puts them at a disadvantage in getting a job'<sup>33</sup>. Hence the requirement, like the benefit itself, is work focused, making it more likely that the person will experience loss of earnings, or incur extra costs to keep up with their non-disabled colleagues.

**2.7.5** The specific disabilities which are treated as putting the claimant 'at a disadvantage in getting a job' are 20 in number, and range from simple lack of dexterity at one extreme (eg inability to pick up a coin 2.5 centimetres in diameter with one hand, or to reach behind one's back to tuck in a shirt or put on a jacket), to blindness, deafness or immobility at the other. Learning disabilities also are included, ranging from personality problems which drive the person affected to hit people or damage property, to simply being confused or forgetful.

**2.7.6** The 'severe disability element' of WTC is available where the care component of disability living allowance (DLA) is payable at the highest rate because the

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<sup>32</sup> Working Tax Credit (Entitlement and Maximum Rate) Regulations SI 2002/2005, reg 9, 17 and Sch 1.

<sup>33</sup> SI 2002/2005, reg 9(1)(c).

claimant needs supervision or care both day and night, or where attendance allowance is payable at the highest rate. The severe disability element is also available where DLA or attendance allowance is suspended or abated because the claimant is in hospital.

### ***Disability living allowance compared***

**2.7.7** The main characteristic of the disabilities which qualify a person for WTC is that they are geared to the person's performance in the labour market. By contrast, the disabilities needed to qualify for the care component of disability living allowance (DLA), and by extension the severe disability element of WTC, focus on the claimant's ability to cope in the home without some level of care or supervision. They are linked to living as opposed to working. There are three levels of benefit:

- The lower rate, payable where the claimant requires attention with bodily functions for a significant proportion of the day (such as getting up and going to bed), or could not prepare a cooked meal for himself if he had the ingredients (more a case of inability to manoeuvre kitchen utensils, or to read or understand instructions on packets, than a simple lack of culinary technique!);
- The middle rate, payable where the claimant requires prolonged, repeated or frequent attention with bodily functions, or continual supervision either by day or by night;
- The highest rate, payable where the claimant is terminally ill, or requires attention or supervision both by day and by night.

**2.7.8** DLA is touched on here because it is alluded to not only in the tax credit regulations, as we have seen, but also in certain mainstream tax statutes.

### ***WTC 'Fast Track'***

**2.7.9** While the disability element of WTC is primarily intended to encourage people with disabilities into work, the 'Fast Track' rules are geared to those who fall sick while in work, and on going back to work their earning capacity is reduced because of the illness.

**2.7.10** To qualify for the disability element under the Fast Track rules, three highly bureaucratic requirements must be fulfilled:

- The claimant must have received statutory sick pay, occupational sick pay, short-term incapacity benefit at the lower rate, or income support, for a period of 140 days (which can be made up of any two periods separated by no more than 8 weeks<sup>34</sup>); or been credited with Class 1 or Class 2 NICs for 20 weeks, the last day of receipt falling within the 56 days preceding the claim;
- The claimant's disability must be likely to last for at least six months, or for the rest of his or her life;
- The claimant's gross earnings must be at least 20 per cent less than they were before the disability began, with a minimum reduction of £15 a week.

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<sup>34</sup> SSCBA 1992, s152; DPTC/FS2 and T2.6.1 Notes.

**2.7.11** Problems with the Fast Track procedure are:

- the length of time claimants have to be off work before they can claim the disability element under it makes the expression 'Fast Track' something of a misnomer;
- it does not help people whose treatment is complete within the time but who still experience loss of earnings;
- nor does it help those who continue working despite their disability, or who develop a debilitating condition (such as deafness) over time while in work;
- in general, the rules are too hedged about with bureaucratic restrictions to be of any real assistance.

**2.7.12** There is also a serious issue about the inflexibility of the basic rule of WTC which says that a person has to be in remunerative work for at least 16 hours a week to qualify at all. This means that if a person goes on short hours because they are undergoing treatment or convalescence, they have no real protection against the loss of credit beyond the statutory sick pay period, unless they can make some arrangement with their employer that will keep their 'usual' working hours at 16 plus per week<sup>35</sup>.

**2.7.13** Loss of credit in these circumstances could lead to problems keeping up mortgage payments and other debts, a situation made worse for self-employed claimants who would not have the backing of an understanding employer. An urgent review is called for, to consider a more sympathetic and less bureaucratic approach to those who want to work but are not able currently to meet the 16-hour rule.

**2.7.14** That review should incorporate a reappraisal of the Fast-Track eligibility rules. What is required here is an acceptable substitute eligibility test. We understand the Inland Revenue's reluctance to rely solely on a self-assessing version of the disability function test outlined in 2.7.2, so we have proposed some options, which we repeat here.

- For certain claimants, eligibility should be determined by receipt within the previous two years of DLA.
- For others, a professional opinion on their disability, based on the disability function test, should be sought from –
  - GPs (with some balance in workload terms from the ending of their previous responsibilities in supporting applications to do therapeutic work);
  - professionals in the general extension of the New Deal for disabled people (occupational psychologists);
  - employment-based occupational health professionals.

These more flexible requirements would also support the Government's job retention programmes.

**2.7.15** We are not alone in taking this line. In its submission to the Government on DPTC (from where the Fast-Track rules emanated), the RNID proposed that:

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<sup>35</sup> See the debate on this issue during passage of the Tax Credits Bill through the House of Lords: Hansard, H of L, 12 June 2002, col 354.

- people should be able to satisfy the rules by passing the disability function test without having to take sick leave or demonstrate a reduction in earnings;
- the same test should be used for periodic retesting of claimants who qualify for Fast-Track.

**2.7.16** In support of their first proposal, RNID instanced those people who lost their hearing while at work –

‘The vast majority of people who lose their hearing will do so gradually over a long period of time, as a consequence of the ageing process or exposure to noise. People who gradually lose their hearing may require time off work on particular occasions, eg to attend audiology clinics. However, they will not necessarily require lengthy periods of sick leave unless they also suffer from related problems, such as depression. They may instead be able to remain in work through adjustments (eg communication aids and support, allocation of duties to other staff, reduced hours, redeployment). If people have lost their hearing whilst in work, but have not taken sick leave, they will not satisfy the proposed Fast-Track [Gateway]. . . If someone becomes disabled at work it does not necessarily follow that they will experience an immediate drop in their hours or earnings. The impact of disability on earnings may instead be less direct eg affecting career development and future earnings prospects.’<sup>36</sup>

### ***Child tax credit***

**2.7.17** Child tax credit, or CTC, is akin to WTC but is paid to families with children whether or not they are in remunerative work. Though it is essentially part of the tax system, its origins lie in social security benefits and it complements the universal child benefit (now also within the jurisdiction of the Inland Revenue).

**2.7.18** Under CTC, there are premiums, or ‘elements’, which increase the amount of credit for families with disabled or severely disabled children. To be eligible for those, a claimant’s child must be in receipt of ‘gateway’ benefits – DLA for the disabled child element; care component of DLA at the highest rate for the severely disabled child element – or be registered or certified as blind (or have ceased to be so within the past 28 days).

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<sup>36</sup> RNID, 9 February 1999.

## 2.8 A mix of old and new: VAT law and practice

**2.8.1** The standard expressions denoting disability in the VAT legislation are 'handicapped persons' and 'chronically sick or disabled'. The VAT legislation, originally passed in the early 1970s and consolidated as recently as 1994, is thus as unreconstructed in its vocabulary as the Taxes Management Act 1970 (see chapter 2.3). Nevertheless, the official interpretation shows a more modern and sensitive approach (see below).

**2.8.2** The VAT Act 1994 provides for supplies of certain goods and services for the 'handicapped' to be *zero-rated*<sup>37</sup>, thereby enabling the traders who supply them to recover their input tax, for example, specially adapted equipment such as beds or chairlifts.

**2.8.3** 'Handicapped' is defined<sup>38</sup> as 'chronically sick or disabled', not in itself a clear or helpful definition; but Customs and Excise themselves interpret the phrase as meaning 'disabled' according to the DDA definition<sup>39</sup>.

**2.8.4** VAT *exemption* is available where a charity, state-regulated private welfare institution, or public body, supplies welfare goods or services. Exemption for VAT does not bring suppliers within the scope of VAT registration and they cannot therefore recover their input tax. Exemption includes the provision of 'care, treatment or instruction designed to promote the physical or mental welfare of elderly, sick or disabled persons'<sup>40</sup>.

**2.8.5** The expressions used in VAT legislation – 'chronically sick or disabled', 'handicapped' – are explained in Customs and Excise Notice 701/7, which uses language directly borrowed from the DDA definition. The relevant extract reads:

'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'.

**2.8.6** There is an interesting gloss in notice 701/7 under terminology in relation to the word 'disabled':

'The term 'disabled' is used throughout this notice and means 'handicapped' or 'disabled or chronically sick'.

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<sup>37</sup> VATA 1994, Sch 8, Group 12.

<sup>38</sup> In *ibid*, Note (3).

<sup>39</sup> Published in Notice 701/7.

<sup>40</sup> VATA 1994, Sch 9, Group 7, item 9, note (6).

**2.8.7** While Notice 701/7 does not, like some other Customs and Excise Notices, have statutory force, it is bound to be persuasive and can be cited on behalf of a disabled person seeking to benefit from the zero-rating or exemptions available. It is an example of the more modern approach to defining disability which we would like to see followed in other parts of the tax law.

### ***Limitations of the VAT approach***

**2.8.8** But even within the contemporary official interpretation of the VAT rules, there remain irksome restrictions on the extent to which people with disabilities may benefit from the available reliefs. Defining disability consistently with the DDA does not of itself deliver a completely level playing field. This is partly due to the restrictive European rules to which national authorities are subject when operating the VAT system<sup>41</sup>.

**2.8.9** The following supplies are free of VAT to someone within the adapted DDA definition in 2.8.5 above:

- certain building work done in the home, such as providing or adapting a bathroom, building a ramp or widening a doorway;
- installation of a lift in the home;
- certain equipment bought or hired that has been designed especially for use by disabled people, such as pick-up sticks, hoists, long handled taps, commodes;
- repairs and maintenance of specially designed equipment;
- wheelchairs;
- adaptations to other goods that they may be used by a disabled person;
- the lease of a car from Motability.

**2.8.10** The equipment involved must have been designed or adapted specifically for the use of the disabled population and it primarily falls to the manufacturer to make that decision. This causes difficulty where it is found that ordinarily designed equipment may be beneficially used by disabled people to overcome their disabilities. For example, the use of some of the latest telephone, computer or display technology may overcome hearing or visual problems, but as it was not specifically designed to benefit those with disabilities, the VAT exemption is not available.

**2.8.11** We would like the VAT authorities to be absolutely sure that they have no scope to extend the VAT reliefs to cover any equipment used by someone within the

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<sup>41</sup> As an example of how restrictive the underlying European law can be, and how unfair to the disabled, see *d'Ambrumeneil and Anor. v C&E Commrs, Unterpertinger v Pensionsversicherungsanstalt de Arbeiter* (Case C-212/01). Here, the European Court of Justice concluded that services consisting of medical examinations and the drafting of expert medical reports and certificates were exempt from VAT as the provision of medical care only if their principal purpose was therapeutic and not if it constitutes a step in the making by another of a decision having legal consequences; such as, for example, medical reports prepared for personal injury law or for deciding entitlement to a disability pension.

DDA definition to overcome a disability, whether or not it was designed specifically for that purpose. We recognise however that because of the primacy of European law, and the restrictive nature of that law in its application to the disabled within the VAT system, the mischief may only effectively be tackled at European level.

## 2.9 Towards a modern statutory framework

**2.9.1** There are a few instances in the tax and VAT statutes where the developing understanding of disability issues is reflected in the statutory wording or its official interpretation. The VAT source considered above is one such case. Other examples can be found in the Income Tax (Earnings and Pensions) Act 2003 ('ITEPA'). Section 406<sup>42</sup> exempts from tax any termination payment made to an employee 'on account of injury to, or disability of, [the] employee'. Because the term 'disability' follows 'injury' in the legislation, the Revenue originally interpreted it as being qualified by 'injury', thus including only conditions brought on by a sudden affliction, not a gradual decline owing to chronic illness. They abandoned this view after losing a case before the Special Commissioners<sup>43</sup>.

**2.9.2** The ITEPA was enacted as part of the Tax Law Rewrite project, an exercise in re-writing the tax legislation in more ordinarily intelligible English. The drafters of the ITEPA have updated the statutory wording to incorporate the more modern understanding of disability reflected in the DDA. Thus in section 246 – disabled persons' home to work travel – a disabled employee is defined, in line with the DDA, as 'an employee who has a physical or mental impairment with a substantial and adverse long-term effect on the employee's ability to carry out normal day-to-day activities'. This, coupled with fact that the rule in its earliest form catered only for employees who were 'severely disabled', shows how the process of consolidating and updating statute law provides a framework for keeping pace with modern thinking.

**2.9.3** Sadly, the official commentary to the ITEPA did not comment on why the DDA definition was adopted, nor does it say why that definition is not adopted in other rewritten provisions in ITEPA. One possible explanation is that the other provisions do not need to provide their own definitions of disability because they simply incorporate other definitions by cross-reference. Their function is to give tax exemptions where, say, a pension is paid to a person, or a car is adapted for use by them, because they have already been identified as disabled by virtue of another enactment.

**2.9.4** We therefore recommend that the entire body of tax and VAT legislation should be reviewed in order to update definitions of 'disabled' and related expressions, where appropriate, by incorporating the DDA definition. This could be done as a separate exercise by the Tax Law Rewrite project team. Where an update is not done, for policy or other reasons, the official commentary on any enactment should say so, and explain the reasons.

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<sup>42</sup> Formerly ICTA 1988, Sch 11, para 3(b) and prior to that ICTA 1988, s 188(1)(a).

<sup>43</sup> The Revenue's revised view following the Special Commissioners' decision was published in Statement of Practice 10/81.

## **PART 3**

### **SERVICE DELIVERY TO PEOPLE WITH DISABILITIES**

#### **3.1 Customer service standards in the three departments**

**3.1.1** The next part of our review was to examine how the Government departments that were the focus of our research looked after those of their customers who were disabled, and people making enquiries on their behalf. All those departments set standards and make claims relating to customer service to those with disabilities.

**3.1.2** We concentrated our researches on the Inland Revenue. We noted claims made in local directories for Customs and Excise and for the Department for Work and Pensions and spoke to officials in those departments about their approach to customer service for those with disabilities. We also tested the approach of local authorities to those eligible for the council tax disability reduction.

**3.1.3** Customs are seeking to have consistent standards with the Revenue, although the nature of their service is that it involves little direct interface with the general public.

**3.1.4** In contrast the Department for Work and Pensions have always had extensive direct contact with a variety of claimants, principally now through Jobcentre Plus and The Pension Service. Both of those organisations are new, and both have already started to develop their own mystery shopping activities to test service delivery – although not specifically service to people with disabilities. We are encouraged to note that The Pension Service is offering a combination of telephone enquiry and home visits. Jobcentre Plus employ Disability Employment Advisers to help, claiming on their website<sup>44</sup>:

‘In the 12 months between April 2000 and March 2001, they supported 18,754 people into employment, and helped 5,781 disabled people keep their existing job.’

**3.1.5** We have also been concerned at how well the various departments advertise their services or provide critical information for those with disabilities. An indicator is the level of prominence given to disability issues in their published literature. It did after all take the Revenue close to 40 years to produce a leaflet on the blind person’s allowance.

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<sup>44</sup> <http://www.jobcentreplus.gov.uk/cms.asp?Page=/Home/Customers/HelpForDisabledPeople> as at 26 August 2003.

## **3.2 Mystery shopping with the Inland Revenue**

**3.2.1** Members of LITRG made telephone calls and visits to Inland Revenue Enquiry Centres (IRECs), checked entries in telephone directories and rang helplines. We also reviewed the Revenue's website and a few widely publicised leaflets. The number of such contacts was small owing to the limited resources available to us, and while we make no claims that the results offer a statistically robust analysis, they do present a flavour of how the Department deals with people with disabilities day to day. It also confirms our day-to-day experiences of contact with the Revenue.

### ***The helplines***

**3.2.2** The helpline experiences were generally very good in that where staff did not know they offered to put themselves out to try to find the answers. In the end the solution was generally satisfactory.

**3.2.3** Bad practice was encountered only rarely. Our caller to a national helpline about facilities for the hearing impaired was told 'the Minicom is in a building next door, there is no point in giving the number', and received the suggestion that the hearing impaired customer should ring the helpline number and the member of staff 'would try to speak loudly and clearly so the customer can hear'! This kind of response was atypical.

### ***Visits to offices – access to premises – home visits***

**3.2.4** Responses of staff to queries about wheelchair access to Revenue premises ranged from the helpful to the very helpful. Again, respondents did not always know the answer, even where the telephone number called was advertised as that of the local office in question. Sometimes this was a function of Area Management – for example, the member of staff who answered for the Huntingdon office was in Leicester, 60 miles away, and unsurprisingly did not have the requisite local knowledge.

**3.2.5** Where Revenue offices did not have wheelchair access, home visits were usually offered – except where the office in question was not resourced to deal with home visits at that time because staff were needed to deal with the tax credits backlog. One official faced with this problem offered the practical solution of getting the local Business Support Team<sup>45</sup> to pay a visit instead.

**3.2.6** When we visited offices, we found that most were well adjusted for people with mobility impairments, and comfortably accessible to those in wheelchairs. Also, staff were prepared to be accommodating, and in one case offered to switch off the lights in reception for a customer who was sensitive to light. A less positive feature was the lack, in some offices, of clear fire instructions for people who cannot move quickly, such as the signs which direct people to use the stairs in case of fire but give no advice to those unable to use the stairs. Also there appears to be a dearth of public disabled toilet facilities.

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<sup>45</sup> The services of the Inland Revenue Business Support Teams are there to help small, medium and new businesses with their tax affairs.

### ***Equipment for the hearing impaired***

**3.2.7** Revenue staff showed a general lack of awareness about basic telephonic equipment for the hearing impaired – amplifiers, minicom, textphone, typetalk – even in their own offices. Most were willing to find out from colleagues and later came back with sensible replies. Others tried to find out, but with less success. A minority were able to say straight away what equipment was available. By no means all offices researched possessed such equipment. Induction loops were, however, available in most offices.

**3.2.8** We looked up a small sample of Inland Revenue offices listed in the directories on the Revenue website, Thomson, BT and Yellow Pages, to find out whether they had textphone or similar technology. While (again) allowing for the fact that our survey was small, only a third of Revenue offices were shown as having such facilities, as contrasted with 100 per cent of Customs and Excise offices. We also found evidence of directories showing incorrect entries for local tax offices, thus making it harder for people who are not already taxpayers to make contact with their local office.

### ***Access to information***

**3.2.9** One of the problems for people with disabilities is finding out what barriers have been removed for them, so as to give them the confidence to contact the Revenue. There is no centrally-produced leaflet which sets out the steps the Revenue have taken to address special needs.

**3.2.10** We reviewed four leaflets produced or revised in the last 18 months and which are expected by the Revenue to have wide circulation:

- COP1 Putting things right How to complain
- P3 (2003) Understanding your tax code
- WTC1 Child Tax Credit and Working Tax Credit
- IR121 Income tax and pensioners

We wanted to see how helpful these leaflets were to someone with a sight, hearing or mobility impairment.

**3.2.11** Three out of four leaflets give prominence to the Orderline to which, in our earlier research, Inland Revenue Offices tended to refer us if they could not answer a leaflet problem. This is a centralised distribution point for almost all Revenue leaflets and is open for telephone calls from early morning to late evening, seven days a week. It has a textphone facility, so overall a very good service.

**3.2.12** If, however, you ring the Orderline you will be told that they cannot supply large print, audio or braille versions of their leaflets and they will refer you to your tax office. If you have a hearing impediment then that can be a problem in itself as we have previously identified. The Inland Revenue website entry on leaflets for the visually impaired also directs people to their tax office and not to the Orderline.

**3.2.13** So the individual is left to the mercy of the service in local tax offices and the wide variety of responses that this will produce. A small sample from November 2003 will perhaps illustrate the issue:

- When we rang the telephone number for a collection of local London tax offices (and Inland Revenue Head Office) we got through to an automated service which invited us to press 3 if we needed a leaflet. On doing so we were given the Orderline number and were then cut off.
- When we rang the central Enquiry Centre for another major city, we were told that they did not stock many leaflets for the visually impaired, and gave us the Orderline number.
- Four large provincial centres we contacted did not know but undertook to ring us back with another number as they supplied only a few leaflets anyway.
- Another large local office had on the day we rang them changed their phone number to a centralised one (not updated on the Revenue website). This number had an automated message offering to ring back if we left our name and number.
- A further six offices contacted said they did not provide leaflets but told us to ring 01274 539646, which is the direct line for the Visually Impaired Unit.
- The three remaining offices we spoke to said they did not distribute such leaflets but gave us the number for the Accounts Office in Shipley (01274 530750). On ringing this number we were referred on to the Visually Impaired Media Unit.
- The Visually Impaired Media Unit told us that the proper course was to speak to our local tax office who would go to them internally for what was needed.

**3.2.14** Turning to the information contained in the four leaflets themselves, which are all issued by Marketing & Communications division of the Inland Revenue, three show the following in large font:

‘We have a full range of services for people with disabilities, including leaflets in braille, audio and large print. For details, please ask your local Inland Revenue office or Enquiry Centre.’

On the WTC1 and the IR121 those words are included prominently on the inside front cover; on the COP1 it is tucked away in the middle; the P3 does not show this message at all, but indicates prominently that a large print version is available from local tax offices.

**3.2.15** We would have expected that ‘the full range of services for people with disabilities’ would have been explained more fully, or a central enquiry point provided – for example, to find out about help for those with hearing impairments or home visits for the housebound. Leaving that to the mercy of local offices is an inappropriate way of helping those with impairments.

**3.2.16** The four leaflets we selected, with their wide distribution, should be an indicator of how seriously the Revenue prioritise their help to those with hearing impediments.

- The P3 makes no reference to any assistance that can be given to anyone with a hearing impediment and all phone numbers given are

without reference to textphone access. Indeed when the leaflet refers to the Adjudicator's details, the information that the Adjudicator has Typetalk is omitted.

- In the WTC1 there is a textphone reference to one of the three telephone lines mentioned. The fact that the Orderline has a textphone is omitted.
- The one telephone number in the IR121 has an accompanying textphone number.
- The COP1 takes the prize for thoughtlessness with regard to hearing impediment. Herein are listed the telephone numbers of 21 Directors in the Inland Revenue whom one should ring to make a complaint. Not a single one has a textphone.

**3.2.17** Finally we reviewed the leaflets to establish what help would be given on request to someone who was housebound. Despite this being a clear policy of the Revenue, only one of the four leaflets had any reference to the possibility of a home visit for help. Even then it was tucked away at the bottom of page 43 of IR121.

### ***Summary and recommendations***

**3.2.18** Our overall impression is of a Department whose local office staff are pleased to help and willing to put themselves out for their customers with disabilities. However, individual goodwill needs boosting with much better training to provide both an improved understanding of the help available and, even more importantly, a stronger grasp, particularly at management level, of customers' access needs and Government's responsibility to meet them imaginatively.

**3.2.19** We recommend that:

- All front line staff (on helplines, in local offices etc) have sufficient training in disability issues to deal themselves with the commonest queries to the standards of best practice, and quickly and efficiently refer more detailed queries to a customer service representative with the requisite knowledge;
- A seamless and consistent system of supplying large print, audio and braille products be introduced and followed by all parts of the Revenue.
- The Orderline should be able to take orders for large print editions of the most commonly requested leaflets and forms and arrange for delivery.
- All offices open to the public should have adequate equipment available for those with hearing impediments.
- All enquiry offices should have textphone or similar communication aids.
- A Revenue leaflet should be produced (a) in hard copy, and (b) held on a special part of the Revenue website, covering all Revenue help for those with special needs and indicating the main areas of tax legislation giving reliefs for those with disabilities (see Part 2).
- A Disabilities Helpline should be established where taxpayers and voluntary sector intermediaries could access immediate help as to where to find information or resource on disability issues in the Revenue. This helpline would have the dual purpose of supplying information, and helping callers get what they want from the organisation. For instance: not only would the staff of such a helpline advise on how to secure a home visit, they would take the initiative in setting one up.
- Every leaflet produced by the Revenue should have regard to best practice in relation to dealing with people with disabilities.

- The policy of home visits for those incapable of easily reaching a Revenue office should be properly advertised in leaflets and on the Revenue website.
- Customers should be able to rely on finding comprehensive and up-to-date information on facilities for those with disabilities in all external directories and the Revenue website.
- The Inland Revenue should check that directories carry the correct information about local offices to help those who do not already have a named tax office and would otherwise find it difficult to break into the 'loop'.

### **3.3 The council tax disability reduction: testing the services of local authorities**

**3.3.1** We describe the legislative base for the council tax disability reduction (CTDR) in paras 2.5.2 to 2.5.4.

**3.3.2** We enquired of a sample of local authorities what information they provided to council tax payers in their leaflets and online services about:

1. the availability of the CTDR generally;
2. the reduction for dwellers in Band A properties;
3. whether the CTDR could be extended to a room for a carer.

**3.3.3** The responses were relatively uniform on question 1, but the answers to 2 and 3 showed a remarkable degree of variation.

1. Where a council tax payer is eligible for the CTDR, the council tax payable is based on the valuation band one lower than the band at which the property is assessed. Responses all matched the legislation. Some were more helpful than that (two explained the reduction by reference to examples), some were less so (one stated that there was a discount but gave no details).
2. Where the property in question is in the lowest band, Band A, the reduction is to 5/9 of Band D. This has applied since April 2000 – previously, no reduction could be made for properties in Band A. Not all councils acknowledge that Band A can be reduced at all. Of those that do, some express it in different percentages – some (but not all) of which give identical results to the legislation, while others do not quantify it at all.
3. Since 1999, a room set aside for a carer has qualified for the CTDR. But none of the councils noted this fact on their information to council tax payers. A note commenting on this decision by Disability UK indicated that in obtaining the reduction much depended on the local council's view towards disability.

**3.3.4** In general, we found that the local councils contacted gave details of the CTDR to a lesser or greater degree in the leaflet which accompanied the council tax bill, and online. But the information given is often sparing, particularly on the detailed requirements, and sometimes at variance with the actual legislation. Usually the CTDR does not feature prominently in the literature, but is relegated to a short paragraph within the general notes.

**3.3.5** We recommend that more central guidance is issued by the DWP and that local councils be required to display more prominently to potential claimants the CTDR qualifying rules. It is particularly important that information about the reduction available to disabled occupants of Band A properties be universally publicised, as failure to do so places the poorest council tax payers at a disadvantage compared with the better-off.

## **3.4 Medical assessment of incapacity and disability benefits within the tax system**

**3.4.1** When they took over administrative responsibility for the disabled person's tax credit (DPTC) in 1999, the Inland Revenue inherited the processes, procedures, computer support and some of the staff used by the Benefits Agency to administer the former disability working allowance (DWA). Included in those were the arrangements for the medical assessment of incapacity and disability benefits as provided for by section 54 of the Social Security Administration Act 1992.

**3.4.2** The National Audit Office had examined these arrangements and reported<sup>46</sup> on the need for the Department of Social Security (now the DWP) to improve performance and value for money of this outsourced service.

**3.4.3** In its 27<sup>th</sup> Report of the 2000-2001 session in April 2002, the Public Accounts Committee (PAC) drew three overall conclusions:

1. Despite some improvements, the DWP had been too slow in tackling delays and inaccuracies in the work of the Benefits Agency. As a result, more than 40% of appeals against decisions by the DWP were successful and a quarter of successful appeals were due to failures of decision-making by Benefits Agency staff.
2. Each year more than 25,000 people were called unnecessarily for examination because of difficulties in obtaining accurate and up-to-date information; and over 17,000 people were turned away from scheduled examinations because of a policy of deliberate over-booking of applicants.
3. The lack of quality stemmed from the absence of quality targets from outsourcing contracts.

**3.4.4** Specific PAC concerns included:

- poor management information and outdated information technology;
- failure to use healthcare professionals to offset shortage of doctors for medical examinations;
- difficulties in obtaining accurate and up-to-date medical evidence from GPs;
- misinterpretation of evidence by BA decision-makers;
- lack of oversight of the quality of medical assessment.

**3.4.5** After taking evidence from DWP as well as from the SEMA Group<sup>47</sup>, which supplied the medical expertise, the PAC<sup>48</sup> continued to draw attention to these weaknesses and their consequences. The PAC Chairman concluded that:

'claimants have a right to expect prompt and accurate decisions, and an efficient and considerate handling of their claims by doctors undertaking medical assessments and providing medical information. The delays and inaccuracies in decision making by the Benefits Agency, weaknesses in the medical assessment process leading to unnecessary examinations, people turned away from booked appointments and poor advice represent a significant shortfall in the quality of public service to some of the most disadvantaged people in society.'

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<sup>46</sup> HC 280 Session 2000-2001, 9 March 2001.

<sup>47</sup> The organisation to which the service was outsourced by DWP.

<sup>48</sup> Press Notice of 10 April 2002.

**3.4.6** From October 1999, the medical assessment arrangements applied to DPTC cases and accordingly to that extent became the departmental responsibility of the Inland Revenue. The LITRG had been looking into the reasons for the low take-up of DPTC and began coming across evidence of the impact on DPTC claimants of those aspects of the arrangements criticised by the National Audit Office and the PAC.

**3.4.7** We learned, for example, of the perpetuation by the Inland Revenue staff of the old Benefits Agency practice for on-going claims of disregarding evidence acquired in earlier years, thereby putting claimants each year to the trouble and expense of re-establishing afresh each time medical and personal facts. A TUC policy officer told us that, in his experience, claimants turned away because of over-booking were sometimes denied reimbursement of travel expenses. All this seemed to us an attritional approach to claims by people with disabilities that the Inland Revenue would not tolerate in its approach to annual tax liabilities.

**3.4.8** While a claim to a disability-related element in WTC does not itself require subjecting a person to this procedure, the claimant has to be in receipt of a benefit that is so subject in order to qualify (see 2.7.3). Hence, in April 2002, the Inland Revenue confirmed to us that its DPTC claimants were indeed subject to the arrangements under the on-going outsourcing contract. They undertook to see what could be done to improve performance and remove any deterrent effect for vulnerable claimants. We are disappointed to have received no news of such improvements, despite repeated requests to the Inland Revenue.

## **3.5 The current state of the three departments on disability issues**

**3.5.1** We have looked at each of these key departments to see

- how they are organised for tackling disability issues;
- what current or recent disability initiatives they have taken;
- where, in our opinion, their thinking is in relation to the changing concepts of disability.

**3.5.2** The Inland Revenue share customer service standards with Customs & Excise and therefore have a common aim on delivery to people with special needs. They are, however, quite differently set up to achieve that, and their policy input processes are different. The DWP is different again.

### ***Inland Revenue***

**3.5.3** Following a partial move to 'business streams' in the late 1990s and merger with parts of the old Department of Social Security, the Inland Revenue is very fragmented in its service delivery. While accountability comes together at the top of the organisation, there is no commonality further down on cross-cutting issues such as disability. It is quite possible, therefore, to find one sector using different standards or even different wording in its documentation. There is little read-across from service delivery to internal human resources, where disability issues appear to be pursued with greater vigour and commitment.

**3.5.4** The linkages between policy-making and service delivery are also tenuous. Where the policy relates directly to disability matters, for example in the new tax credits, there is a strong input from people imported from the DWP. And it is in this context that we heard an intention that the Revenue would follow the modern thinking set out in Prof Waddell's booklet (see para 1.2.2). But in relation to more general tax legislation, individual policy sections are expected to conduct an 'equalities' check against new legislation, and that is the only way in which disability as a generic issue will be given attention. We do not know if the more modern thinking introduced by the DWP has been adopted in other parts of the Department.

**3.5.5** Our mystery shopping revealed a fragmented approach to disability issues which is also evident in policy-making. This leaves us uneasy and suggests that there is no driving force to adopt, or adapt to, modern concepts of disability. It also suggests that dealing with any access shortcomings following the recent sale of the department's estate will be harder to co-ordinate.

**3.5.6** Recent initiatives include:

- the ability to set a signal on tax records to identify customers to whom the in-house Visually Impaired Media Unit should send large print or braille versions of forms and correspondence;
- local managers undertaking a benchmarking exercise to establish where they are on disability matters, and to identify targets for improvement.

## ***Customs & Excise***

**3.5.7** Customs & Excise have a central Equality and Diversity team which has an overseeing responsibility among other things for disability. There is a similar division of responsibilities for employees and customers as in the Inland Revenue, but less fragmentation on the customer side. This is partly because progressively the first port of call for all customers is becoming the helpline. Staff operating the helpline have recently received disability awareness training and have a link to the central team for advice on, or upward communication on, disability issues. Two other initiatives give opportunity for input to disability policy, though neither is designed primarily for that and little is coming through yet. One is a Complaints Analysis process, and the other is the Small Business Initiative to identify any issue worthy of Finance Bill attention.

**3.5.8** The people we spoke to in the central unit were personally alert to modern views of disability, but it was unclear how widely this understanding spread into general policy-making sections.

## ***Department for Work & Pensions***

**3.5.9** Although the DWP is similar to the Inland Revenue and Customs & Excise in having separate responsibilities for employee and customer disability issues, the relationship with customers with disabilities is not affected by fragmentation as it is in the Revenue. One of the ways this is achieved is by having an internal Disability Modernising Group, comprising people from the different 'client groups', to co-ordinate thinking and actions across the department.

**3.5.10** But perhaps the most powerful influence on departmental attitudes to disability is the recent move of the governmental Disability Rights Unit (DRU) into the department. It now has overall responsibility for the formulation of government policy on disability issues, and as such is well-versed in modern thinking on the subject. But it is not clear exactly what the linkages are between the DRU and other departmental policy sections. At another level, the way policy on benefits for people with disabilities develops is through appeals decisions, where current thinking is quite likely to be explored. These cases are reviewed by the departmental Policy & Legal team.

**3.5.11** Recent practical initiatives include:

- a special number within the helpline for disabled people's representatives to use;
- special keypads in Job Centre Plus for disabled people to use;
- input from GPs into disability claims reduced because of ineffectiveness;
- each PC operator in the department having the facility to produce large print output.

## ***Summary and recommendation***

**3.5.12** There is much to be commended in all three departments. They are generally alert to the sensitivities of disability issues and are making genuine if unco-ordinated attempts to improve their service to customers with needs. There is less evidence of radical thinking on tax or benefits policy. And of the three, the Inland Revenue look to be the least well organised for establishing a consistent departmental line on disability. This is unfortunate, given that they have become in recent years the main

conduit by which government support for the citizen in work and for children is administered.

**3.5.13** We believe that the Inland Revenue could learn lessons from their colleagues in Customs and Excise and the DWP, and indeed this seems to be happening in some areas (notably tax credits). The DWP's more co-ordinated approach at policy level could, if followed by the Inland Revenue as a whole, result in a better informed and more uniform approach throughout the organisation.

**3.5.14** We therefore recommend setting up, within the Department, a central monitoring group, similar to the Disability Modernising Group of the DWP, and with similar co-ordinating functions. This would be supplemented by the appointment at Board level of a 'disabilities champion' with responsibility for the Revenue's service delivery to people with disabilities.

## **PART 4**

### **CONCLUSION: A BLUEPRINT FOR FUTURE POLICY MAKING**

#### **4.1** Our review has shown that:

- thinking about what disability means has changed significantly over the past 30 years;
- there has been limited acknowledgement of this changed thinking in recent tax and tax benefits legislation;
- on the whole we have an unreconstructed mixture of legislation which carries with it much from the past;
- Government centrally through the Disability Rights Unit is modernising its approach to disability issues;
- but this has not yet knocked down into co-ordinated policy reviews in the tax departments;
- the lack of co-ordination at policy level is seen in a fragmented and patchy approach to disabled people in service delivery sectors;
- it seems that the same could be said of the revenue raising functions of local authorities and (while not central to our review) to benefits provided by them and by the DWP.

**4.2** Policy-makers are rarely given the opportunity to start with a blank sheet, so we do not underestimate the difficulty of radically modernising the legislation. However, the task of eliminating exclusion and discrimination based on disability, and removing obstacles to equal opportunities and full participation by people with disabilities, is one that can only be achieved by incorporating disability issues into the formulation of all policy proposals. This approach reflects the philosophy of the European institutions in this European Year of Disabled People, and of the European laws which will govern the programme of reform.

**4.3** In the course of our review, we have identified a number of broader issues which we think policy-makers should take on board as they consider how best to apply this reform process to the tax and related benefits law and practice.

#### ***Should they be using the tax system at all in relation to disability issues?***

**4.4** We saw in Part 2 how assistance targeted through the blind person's allowance had the perverse effect of giving most help to those who needed it least, and none to those who needed it most (see para 2.4.8). If people have no taxable income, they cannot benefit from any help that is targeted through tax allowances.

**4.5** We saw too how a restrictive rule about tax deductibility of expenses incurred in employment put employees with disabilities at a disadvantage, which a series of piecemeal reliefs went only some of the way to correcting (paras 2.6.9ff). In addition, the costs to business of complying with the DDA are not recognised by the tax system, while the costs of complying with fire prevention measures, or investing in environmentally beneficial plant and machinery, are (para 665ff).

**4.6** Perhaps a more assertive championing of the DDA in its widest reaches would achieve more of what people with disabilities seek from the tax system. The DDA seeks to address disability issues not just in a medical sense, but also societally, and

in theory at least a successful operation of that Act should make some other approaches redundant.

4.7 That is a long-term objective. Meanwhile, our Report raises other questions for policy-makers.

***What broadly do policy-makers aim to achieve through the ‘tax’ system in relation to disability issues?***

- Is it practical help in overcoming obstacles?
- Is it to provide a generic payment to cover the assumed extra costs of disability?
- Is it to create or improve incentives for disabled people to enter work?
- Is it to redress the disadvantages experienced by disabled people in the employment market?

4.8 Let us look more closely at some of these questions.

***Could the tax system be used to help remove obstacles?***

4.9 The answer in theory is yes. Successive Chancellors of the Exchequer have considered the tax system to be capable of influencing behaviour. They have used it to encourage different types of investment over the years. While some of those intentions have been rendered nugatory by a distorted behavioural response, the scope for artificiality must be less in disability issues than elsewhere.

4.10 If so, the tax system could be better used to encourage businesses through tax reliefs that are otherwise not available, or through business credits, to remove obstacles and pursue excellence in their treatment of disabled customers and employees alike.

4.11 Moving on to the second question posed at para 4.7 above:

***Is the best way of removing obstacles for people with disabilities to provide a generic payment to cover the assumed extra costs of disability?***

4.12 We have seen how some modern tax legislation acknowledges the extra costs faced by those with disabilities or impairments (see para 2.6.9ff). To some extent this covers the same ground as the removal of obstacles: ensuring that the tax system recognises those extra costs and gives appropriate relief for them.

4.13 But much of the legislation we identified in Part 2 is not targeted at individual financial need, and therefore creates invidious situations between different types of impairment and between individuals with the same impairment. The CTDR, for instance, gives relief for people, whatever their financial status, who need to set aside space in their homes to cater for their disability, while leaving unassisted those who do not need extra space, but do nevertheless have disabilities and, in addition, may be on a low income.

**4.14** As for creating work incentives, or redressing labour market disadvantage, has the disability element in WTC gone far enough? There are reasons for arguing that it has not.

**4.15** First, it misses out an important group of people - those who become disabled while continuing to work and who may well incur additional costs to overcome their disability. While not actually excluded under current legislation from the disability element of working tax credit, the conditions of their inclusion via the curiously named 'Fast Track' procedure are hopelessly bureaucratic (as shown at para 2.7.9ff). For employers the economic – as well as social – costs of supporting an already trained and experienced employee who falls sick are far less than the costs of recruiting and training a replacement. Yet there are few incentives in the present structure to the employee who becomes sick or disabled to stay in work, where to do so would entail fewer hours or lower pay.

**4.16** Secondly, the rule which requires a person to engage in 'remunerative work' for at least 16 hours a week in order to qualify for working tax credit is a further disincentive to stay in work in those circumstances. A person who contracts a progressive condition while in work is often forced to reduce his or her working hours gradually to below 16 hours a week – for example, those who have muscular skeletal conditions. If they work only 15 hours a week, they are automatically excluded from the support to which they would have been entitled had they been able to manage just one hour more.

**4.17** As we have seen from the different models of disability, there are many factors other than finance which influence whether people with disabilities take up, stay at, or return to work. The most influential factor is that long-term benefits are secure, whereas work is insecure (even if better paid); and once work is lost, it is not easy to get back into the benefits system. This situation is exacerbated by the known practical difficulties faced by claimants trying to establish their entitlement to disability benefits (see para 3.4.1ff).

**4.18** Thirdly, it is doubtful whether take-up of the disability element of WTC, though greater than either of its predecessors DPTC or DWA, reaches as far as it might or should. As we observed at 1.1.1, nobody knows how many people with disabilities there are in the UK. And while we know – for instance – that 60,000 families benefited from the disabled worker premiums in working tax credit in July 2003, we have no way of knowing how many potential claimants there are (see 1.1.3 and footnote).

**4.19** Such considerations suggest a further question:

***Is there room for innovative target-setting to improve take-up?***

As a preliminary, it may be useful to surmise what obstacles may currently be preventing people from taking up their entitlement.

1. It could be that many people do not identify themselves as 'disabled'. This may be because of communication difficulties or fear of making false claims, or simply personal value-systems which prevent them from taking money that has that label.
2. Yet others may have been deterred by the indignities that attend the process of claiming disability-related benefits, as we have shown in 3.4.1ff.

3. People who have shown themselves to be 'disabled' for one legislative purpose have to keep doing so for others, filling in different forms for different purposes, often repeating the same information several times. Yet a once-for-all 'passporting' ought to be possible. With the moves to integrate tax and benefits through tax credits it is essential that the overall approach across all government agencies is coherent if people are not to slip 'between the cracks'. With the DDA providing a modern yardstick for defining disability, this should be feasible.

**4.20** We have devoted much of this concluding Part to policy questions that arise from recent moves to integrate work incentive payments with the tax system, as herein are perhaps some of the biggest challenges to policy-makers in the coming years.

**4.21** But returning to the tax system in the broad, we have highlighted in this Report the need to revise the statutory terminology and rethink customer service delivery in line with modern legislation on disability. To conclude, we quote a telling passage from the DWP's own explanatory notes to the Disabled People (Duties of Public Authorities) Bill mentioned at 1.1.3:

'This Bill is intended to ensure that bodies which exercise public functions . . . when making decisions, or when developing or implementing a new policy, must make a consideration of the needs of disabled persons an integral part of the policy making or decision making process – with a view to improving opportunities for, and eliminating discrimination against, such persons.'

**4.22** In the context of this Report, those words, better than any others, encapsulate what we are urging the revenue authorities, through our recommendations, to do in order to eliminate the shortcomings we have tried to identify, and to put the needs of their disabled customers centre stage.

**4.23** The Low Incomes Tax Reform Group would be happy to work with the key departments in developing research and formulating future policy on the issues raised in this Report.

## APPENDIX 1

### SUMMARY OF RECOMMENDATIONS

Recommendation	Reference
In managing future consolidations of tax statutes, the Tax Law Rewrite team should get rid of outdated language such as that of TMA 1970, s118(1) (defining an ‘incapacitated person’ as ‘any infant, person of unsound mind, lunatic, idiot or insane person’) and similar anachronisms which reflect outdated views on disability.	<b>2.3.4</b>
In the context of our review of the blind person's allowance and the tax treatment of the war disablement pension, the interaction between the tax regime and the supporting benefits system should be reviewed to see whether it is still appropriate to use tax advantages for delivering partial compensation to some groups with impairments, but not others.	<b>2.4.18</b>
If the Disability Discrimination Bill (see 1.1.4) is passed in the 2003-04 Parliamentary Session in its present form, we recommend that the revenue raising authorities should follow it in exercising their administrative powers. This is particularly important where disability is not clearly defined in legislation, so that administrative discretion necessarily plays a crucial role in determining who gets the relief or exemption intended.	<b>2.5.9 – 2.5.11</b>
A holistic, neutral approach to the work-related rules should be considered whereby all employed people who come within the DDA definition of ‘disabled’ should be able to claim as an employment expense the costs of putting themselves, as far as possible, on a par with non-disabled people who are subject to the employment expenses rule. The same ought to apply to the slightly less restrictive allowable expenses rule for the self-employed. Similarly, any costs incurred by an employer in enabling an employee with a disability to perform the duties of their employment, whether or not under the Access to Work programme, should not give rise to a taxable benefit in kind.	<b>2.6.13 – 2.6.14</b>
The favourable tax treatment accorded to fire prevention measures and the environmentally friendly plant and machinery rules should be applied to all expenditure incurred in compliance with the DDA.	<b>2.6.18</b>
An urgent review of the working tax credit ‘fast track’ rules, geared to those who fall sick or disabled while in work, is called for. That review would consider a more sympathetic and less bureaucratic approach to those who want to work but because of their disability are not able currently to meet the 16-hour rule. The review should also incorporate a reappraisal of the Fast-Track eligibility rules to find an acceptable substitute eligibility test.	<b>2.7.13 – 2.7.14</b>
The entire body of tax and VAT legislation should be reviewed in order to update definitions of ‘disabled’ and related expressions, where appropriate, by incorporating the DDA definition. This could be done as a separate exercise by the Tax Law Rewrite project team. Where an	<b>2.9.4</b>

<p>update is not done, for policy or other reasons, the official commentary on any enactment should say so, and explain the reasons.</p>	
<p>Our review of the Inland Revenue's service delivery to customers with disabilities leads us to recommend that:</p> <ul style="list-style-type: none"> <li>• All front line staff (on helplines, in local offices etc) have sufficient training in disability issues to deal themselves with the commonest queries to the standards of best practice, and quickly and efficiently refer more detailed queries to a customer service representative with the requisite knowledge;</li> <li>• A seamless and consistent system of supplying large print, audio and braille products be introduced and followed by all parts of the Revenue.</li> <li>• The Orderline should be able to take orders for large print editions of the most commonly requested leaflets and forms and arrange for delivery.</li> <li>• All offices open to the public should have adequate equipment available for those with hearing impediments.</li> <li>• All enquiry offices should have textphone or similar communication aids.</li> <li>• A Revenue leaflet should be produced in hard copy (and a copy should be held on a special part of the Revenue website) covering all Revenue help for those with special needs and indicating the main areas of tax legislation giving reliefs for those with disabilities (see Part 2).</li> <li>• A Disabilities Helpline should be established where taxpayers and voluntary sector intermediaries could access immediate help as to where to find information or resource on disability issues in the Revenue. This helpline would have the dual purpose of supplying information, and helping callers get what they want from the organisation. For instance: not only would the staff of such a helpline advise on how to secure a home visit, they would take the initiative in setting one up.</li> <li>• Every leaflet produced by the Revenue should have regard to best practice in relation to dealing with people with disabilities.</li> <li>• The policy of home visits for those incapable of easily reaching a Revenue office should be properly advertised in leaflets and on the Revenue website.</li> <li>• Customers should be able to rely on finding comprehensive and up-to-date information on facilities for those with disabilities in all external directories and the Revenue website.</li> <li>• The Inland Revenue should check that directories carry the correct information about local offices to help those who do not already have a named tax office and would otherwise find it difficult to break into the 'loop'.</li> </ul>	<p><b>3.2.19</b></p>
<p>More central guidance should be issued by the DWP, and local councils should be required to display more prominently to potential claimants the qualifying rules for council tax disability reduction (CTDR). It is particularly important that information about the reduction available to disabled occupants of Band A properties be universally publicised, as failure to do so places the poorest council tax payers at a disadvantage compared with the better-off.</p>	<p><b>3.3.5</b></p>

<p>A central monitoring group should be set up within the Inland Revenue, similar to the Disability Modernising Group of the DWP, and with similar co-ordinating functions. This would be supplemented by the appointment at Board level of a 'disabilities champion' with responsibility for the Revenue's service delivery to people with disabilities.</p>	<p><b>3.5.14</b></p>
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## **APPENDIX 2**

### **CONTRIBUTORS AND ACKNOWLEDGMENTS**

#### **Contributors**

John Andrews

Leonard Beighton

Keith Deacon

Martin Hodgson

Janet Layne

Hazel Mazelin-Forbes

Brian McGinnis

Hannah Robins

Janet Tish

Robin Williamson

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