

Clause 43 and Schedule 14 – VAT: zero-rating of adapted motor vehicles
Consultation on draft clauses for Finance Bill 2017
Response from the Low Incomes Tax Reform Group (LITRG)

1 Executive Summary

- 1.1 We note from the Tax Information and Impact Note (policy paper)¹ relating to this measure that it is designed to counter abuse of the current law. To do so, it limits (subject to a very few exceptions) eligibility for a zero-rated adapted vehicle to one per eligible person every three years.
- 1.2 No clear case has been made for the choice of a three-year limit. If designed to counter the activities of those purchasing adapted vehicles, removing adaptations and then selling for a profit multiple times in a year – that is, very short term transactions – then a shorter limit of, say, one year would seem sufficient to counter such abuse.
- 1.3 Further, rather than limit application of the relief for genuine users, it should be possible in the digital age for HM Revenue & Customs (HMRC) to: automate collection of data regarding users of the scheme; match that data quickly so as to identify abuse; and take swift compliance action where necessary.
- 1.4 As is stands, the proposals seem very much like a blunt instrument to prevent abuse, but regretfully may equally prevent genuine users from obtaining relief – either by meaning they do not qualify, or as a result of the complexity of the rules meaning they think they do not qualify (or perhaps even the threat of a penalty for getting it wrong putting them off

¹ <https://www.gov.uk/government/publications/vat-relief-on-adapted-motor-vehicles-for-disabled-wheelchair-users/vat-relief-on-adapted-motor-vehicles-for-disabled-wheelchair-users>

claiming). The lack of a full equality impact assessment, or even addressing equality impacts in the TIIN such as the added burdens and intrusions into personal privacy noted in 1.5 below, is regrettable and also unacceptable. A full assessment should be published.

- 1.5 Furthermore, the new para 5P(b) imposes a burden of having to satisfy HMRC that a vehicle is no longer suitable for their use because of changes in their condition. We have a number of problems with this: there is no right of appeal; it is not clear how it is to be administered, for instance we query what expertise HMRC staff have to judge suitability; it relies upon the user potentially having to disclose detail about their condition which seems intrusive; and finally it does not cater for changes in personal circumstances – only changes in the person’s condition.
- 1.6 In summary, we recommend:
 - 1.6.1 Instead of restricting the relief, HMRC instead improve the administration of the existing relief, gathering/matching data and taking compliance action against abuse. This could be largely automated in the modern world, and so not resource intensive. We appreciate penalty provisions might be needed to aid enforcement.
 - 1.6.2 Failing that, a one year timeframe should supplant for the proposed three years.
 - 1.6.3 Failing that, there should be further exceptions to the single vehicle limit: to allow more than one vehicle to be purchased if the user has a particular need; and to allow replacement of a vehicle within three years if the user’s circumstances have changed (not just their condition), rendering the existing vehicle unsuitable.
 - 1.6.4 A right of appeal is crucial and should be put in place so that HMRC are not the sole judge of whether or not a vehicle is no longer suitable.
 - 1.6.5 The legislation should be clarified so that the statute shows that the supply does not have to be to the disabled person, but may be to another person provided the disabled person is the key beneficiary. Currently, this is made clear in HMRC guidance only.
 - 1.6.6 HMRC guidance should be improved urgently, particularly relating to those who due to advances in prostheses no longer need to regularly rely on wheelchairs for mobility. This is essential in view of the proposed penalty for incorrect certificates. Furthermore, HMRC’s guidance should be reviewed and amended in the context that it narrows the terms ‘domestic or personal use’ in the legislation to mean ‘domestic or **private** use’, which we do not believe is justified.
 - 1.6.7 An apparent duplication in the legislation should be considered and addressed (see section 9 below).
 - 1.6.8 Whatever changes are made in Finance Act 2017, a commitment should be given to review this relief more widely with the intention of reforming it to give relief to all of those who need substantial adaptations, not just wheelchair (or stretcher) users. It is anomalous in today’s world to define relief by reference to the type of mobility aid the person uses rather

than their actual need. Such changes may be possible in the wake of 'Brexit' where they might not be at present due to relief being allowed by virtue of a derogation from the principal VAT Directive.

2 About Us

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

3 General comments

- 3.1 Ten years ago, LITRG published a report entitled 'VAT and disabled people – the case for removing the barriers'.¹ This gave a number of recommendations as to improving the system. Action on many points was stymied due to zero-rating being permitted by derogation from the Principal EU VAT Directive; so some of our recommendations might be resurrected in the run-up to, and in the wake of, 'Brexit'.
- 3.2 Particular comments were made on transportation issues at 6.4.1 of our 2007 report. As regards the purchase of motor vehicles, it was noted that there are problems with people obtaining relief, for instance:
 - 3.2.1 Relief on purchasing a vehicle is the only option available if the disabled person does not qualify for the lease scheme 'Motability' (which depends on entitlement to the higher rate mobility element of disability living allowance, or the enhanced rate of the mobility

¹ See our website, published 30 January 2007: <http://www.litrg.org.uk/latest-news/reports/070130-vat-and-disabled-people-case-removing-barriers>

component of the personal independence payment (PIP)).¹ This is a particular problem for those whose disabilities first arise from age 65, who are not eligible for the PIP;²

- 3.2.2 If a disabled person is able to drive an automatic (or semi automatic) transmission car without special adaptation, then they do not qualify for zero-rating (despite the fact that they are not on a par with someone who could drive a manual transmission vehicle, which can be usually purchased at a lower cost than an automatic);³
- 3.2.3 The definition for zero-rating limiting eligibility to disabled persons who usually use a wheelchair or who are usually carried on a stretcher⁴ seems excessively narrow. Advances in prostheses and other mobility aids mean that people who were previously confined to wheelchairs are no longer, so it seems anomalous that the legislation is defined by reference to the type of mobility aid they require rather than the severity of their condition and need for adaptation.
- 3.3 We note that the proposals introduced by clause 43 stop short of the further reform of this relief that was consulted in on 2014.⁵ That paper included questions surrounding the availability of the relief, and there was support for change – for instance to deal with the issue raised in 3.2.3 above. We note in fact that the consultation response promised that HMRC’s guidance would be changed to confirm that those using prostheses but not necessarily reliant on a wheelchair *would* qualify for the relief.⁶ Over two years since the publication of that response, it is therefore disappointing to note that the guidance leaflet VAT1615 does not cover that point (and indeed says the contrary – that ‘A person who occasionally uses a wheelchair... does not normally use a wheelchair and is therefore not

¹ See <http://www.motability.co.uk/about-the-scheme/personal-independence-payment-and-the-scheme/>

² See <https://www.gov.uk/pip/eligibility>. Note, attendance allowance may be available instead, but this does not qualify the claimant for Motability – see <https://www.gov.uk/attendance-allowance/overview>

³ For example, see <http://www.parkers.co.uk/cars/advice/buying/2013/september/automatic-versus-manual/>

⁴ Schedule 8 VATA 1994, Group 12, new item 2A(a), maintained in the new item 2A(4)(a) and (b)

⁵ See <https://www.gov.uk/government/consultations/vat-relief-on-substantially-and-permanently-adapted-motor-vehicles-for-disabled-wheelchair-users>

⁶ See response document, para 2.75:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/388536/141216_Adapted_Motor_Vehicles_Summary_of_Responses_FINAL.pdf

eligible for the relief’).¹ We recommend that this guidance is now updated as a matter of urgency and, in the run up to ‘Brexit’ that the government considers further changes that could be made to make the relief more accessible to those who need it, on the assumption that change would be easier in the event of leaving the EU.

- 3.4 Another point made in our 2007 report was that access to the existing reliefs was often administratively burdensome for those intended to benefit. It is therefore of concern that the provisions in Schedule 14, introduced by clause 43 of the draft Finance Bill 2017 appear immensely complex. There is therefore a significant danger that they will increase the difficulty of understanding entitlement to the relief and the administrative burden in claiming it. This is all the more concerning given that a penalty for giving an incorrect certificate is to be introduced.
- 3.5 We outline below a number of concerns. It is worth noting that the points we make are not necessarily limited to those relating to people with low incomes or of limited means. When thinking about recognising the costs related to disability and how the system works to put people on a level playing field with those who do not have disabilities, the comparator for the relief is not affordability; it is *equality*. The basic premise of the VAT relief, as we understand it, is that qualifying disabled people should not have to pay more for their car than another person in otherwise comparable circumstances who is not disabled. Zero-rating the purchase of the vehicle itself is a broad-brush attempt to level the playing field. The three-year rule, only applicable to a single vehicle per person, therefore means that the relief does not achieve what we assume was its principal aim – of putting disabled people on a par with those without disability. The latter are still free to change their car more frequently and to have more than one vehicle.
- 3.6 Finally in terms of general points, we note that the TIIN says ‘Following publication of the responses document in December 2014... HMRC has worked closely with external stakeholders to ensure the amendments to the legislation do not negatively affect genuine beneficiaries of this relief.’² Given the points we raise below about possible impacts, we are not certain with whom HMRC have been consulting – particularly, for example, given that no mention of the changes has been made in any recent Disabled Customers Consultation Group meeting.³ It would be helpful if the TIIN were to make the consultation process since December 2014 transparent. Moreover, a full equality impact assessment should be

¹ VAT1615, page 1 ‘Definition of ‘wheelchair’ and ‘wheelchair user’’:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/552692/VAT1615.pdf

² See ‘Background to the measure’ section, third para:
<https://www.gov.uk/government/publications/vat-relief-on-adapted-motor-vehicles-for-disabled-wheelchair-users/vat-relief-on-adapted-motor-vehicles-for-disabled-wheelchair-users>

³ See Minutes on GOV.UK: <https://www.gov.uk/government/groups/disability-customers-consultation-group>

published (and open to consultation/comment), given that the new measures impose significant additional burdens on potential claimants of this relief (as we outline below).

4 Person to whom the supply is made

- 4.1 The proposed wording of the new item 2A of Schedule 8 Group 12 VATA 1994 refers to the supply being to a person 'P' and that it is 'P' who is the disabled person. This is subtly different from the existing wording, though that too implies that it is the disabled person themselves to whom the supply must be made in order for zero-rating to apply.
- 4.2 HMRC's guidance, however, in VAT1615 is that zero-rating will be allowed where the supply is to someone other than the disabled person, provided the direct benefit is to the disabled person. This reflects that some disabled people would not be capable of having the vehicle registered to them, or that someone else such as a parent might be purchasing the vehicle for the disabled person's benefit.¹
- 4.3 We can see no comment in the explanatory note to the draft legislation or elsewhere that the intention is that this guidance will continue to apply. The legislation should be clarified so that the statute reflects that a supply to another person may qualify, provided that the beneficiary is the disabled person.

5 Three-year rule

- 5.1 Our 2007 report outlined that the rules for zero-rating of cars for disabled people were in fact seemingly unnecessarily restrictive and argued the case for widening them; particularly in the modern world where those formerly reliant on wheelchairs for mobility may no longer be so restricted.
- 5.2 The imposition of a 'one car every three years' rule (subject to limited exceptions for where a car has been written off or stolen, or that the user's condition has changed thus rendering an existing vehicle unsuitable) seems an unnecessary restriction for genuine users of the rules. While we note that the summary of responses to the 2014 consultation² stated that

¹ See VAT1615, page 3:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/552692/VAT1615.pdf

² See

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/388536/141216_Adapted_Motor_Vehicles_Summary_of_Responses_FINAL.pdf

many respondents favoured change and support was found for a three-year rule, our response was not supportive of the latter and the burden it would place on genuine users.¹

- 5.3 While we understand and support the objective to prevent abuse, we do not think the case has been sufficiently made to support the level of restriction imposed by the draft legislation. Surely the serial abusers of the current law could be adequately hampered by a one-year restriction rather than a three-year one? This would lessen the burden on genuine users, and particularly minimise the need for anyone to have to satisfy HMRC that an existing vehicle has ceased to be suitable for their needs due to changes in their condition (new para 5P(b)).
- 5.4 Abuse could still be countered, through HMRC mandating use of the eligibility forms found on GOV.UK and gathering data about supplies from motor dealers (as per the TIIN, Proposed revisions section, paras 3 and 4).² Swift collection and matching of that data should allow HMRC to respond rapidly to any instances of abuse, instead of clamping down the rules unnecessarily tightly for genuine users.
- 5.5 We are concerned about the requirement in new para 5P(b), as noted above:
- 5.5.1 First, there seems to be no right of appeal against this provision³ – so is HMRC’s decision to be final? This is not acceptable – a right of appeal to the tribunal must be available.
- 5.5.2 Secondly, how is this to be administered – if the user declares to the motor dealer that this is a second supply in three years, will the motor dealer have to pass the claim to HMRC to approve before they can make the supply? If so, a fast track process would be necessary, and a further fast track review if the relief were declined. And indeed what expertise do HMRC staff have to judge suitability in such cases?
- 5.5.3 Thirdly, this seems to be an intrusion on the individual’s privacy – ie they would have to describe the change in condition that renders their existing vehicle unsuitable and explain why.
- 5.5.4 Fourthly, the provision only takes account of the individual’s **condition** having changed, such that the vehicle is unsuitable. It may, however, be that other circumstances have changed – for example, they have moved to a rural location and now need a four wheel drive vehicle to negotiate a dirt track to their house. Or it may be as simple as their family having grown, so a larger vehicle is required to accommodate overall need. While we appreciate the need for the new car in those situations is not because of disability *per se*, the need for an adapted

¹ See <http://www.litrg.org.uk/latest-news/submissions/140919-vat-relief-substantially-and-permanently-adapted-motor-vehicles>

² See <https://www.gov.uk/government/publications/vat-relief-on-adapted-motor-vehicles-for-disabled-wheelchair-users/vat-relief-on-adapted-motor-vehicles-for-disabled-wheelchair-users>

³ No right of appeal is included in the draft legislation, nor appears to be given through S83 VATA 1994

vehicle remains to accommodate the disabled user's needs. Indeed, to deny the relief in such circumstances as a baby arriving would seem to infringe the disabled user's right to enjoyment of family life.

6 Single vehicle

6.1 Our reading of the draft legislation is that it assumes that a person needs only one car if they have a disability. This may not be the case, for example someone living in a rural location such as on a farm might need a four wheel drive on the farm but use something else in the urban areas.

6.2 We recommend that a further exception should be added to the legislation to cater for this.

7 Transitional rules

7.1 There is no transition to the three-year rule as we read it. This means that if a person already has an adapted car that they bought on or after 1 April 2014 on which they were entitled to zero-rating, they could buy another one and obtain zero-rating before 31 March 2017 but otherwise only on the third anniversary.

7.2 We suggest that the three-year rule should not apply where a person bought a car prior to 5 December 2016 (publication of the draft legislation) because presumably such a purchase would not have been motivated by the three-year rule.

8 New penalty for an incorrect certificate

8.1 A penalty is to be introduced for giving an incorrect certificate for the purposes of claiming zero-rating on the purchase of an adapted vehicle. While we can see the rationale for having a penalty as a further deterrent for abuse of the scheme, we cannot understand why centralised collection of data, identifying scheme abusers and imposing penalties on them in itself is not sufficient to address misuse. The TIIN¹ acknowledges that the changes to reporting requirements will make it 'easier to police the scheme'; so a digital system that matches vehicle purchase data and identifies duplication of relief should be a relatively easy one from which to issue penalties.

8.2 Further, we are concerned that many of the relief's critics in the consultation stated that uncertainty as to whether or not the relief could be claimed (see for example the point in 3.2.3 above as to a person potentially not be a regular wheelchair user through advances in

¹ <https://www.gov.uk/government/publications/vat-relief-on-adapted-motor-vehicles-for-disabled-wheelchair-users/vat-relief-on-adapted-motor-vehicles-for-disabled-wheelchair-users>

prosthetics, etc) is a significant problem. The support for introducing a penalty stated in consultation responses¹ was presumably therefore given on the basis that the consultation related to a wider reform of the relief – and presumably clarification of the qualifying criteria.

- 8.3 To introduce a penalty therefore without having that wider change to the relief and clarification of definitions means that there is a significant risk of genuinely disabled people claiming the relief and making a declaration that turns out to be ‘incorrect’ due to the problems of lack of clarity in general; rather than intentional abuse of the system.

9 Query regarding apparent duplicate provision

- 9.1 The proposal in clause 43 and schedule 14 is to replace the existing VATA Sch8 Group 12, Item 2A. We think that Item 2(f), also needs re-examination and possible repeal, given that it seems to aim to achieve substantially the same as Item 2A, ie it says:

‘2. The supply to a handicapped person for domestic or his personal use, or to a charity for making available to handicapped persons by sale or otherwise, for domestic or their personal use of –

...

(f) motor vehicles designed or substantially and permanently adapted for the carriage of a person in a wheelchair or on a stretcher and of no more than 11 other persons’

10 Domestic or personal use

- 10.1 The legislation states that the supply is to be for the disabled person’s ‘domestic or personal use’. We note here in particular the use of ‘or’, thus showing that the two tests are to be considered separately, not as one.
- 10.2 HMRC’s guidance on the subject though considers this as a single matter. For example, the text in VAT1615 reads:

‘Domestic or personal use is normal everyday use by the disabled wheelchair user such as going to the shops, taking the children to school, travelling to and from work. It also includes incidental use at work, providing the main use remains as a private vehicle.

Domestic or personal use does not include business use, for example:

- using the vehicle as a taxi

¹ See summary of responses, question 11:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/388536/141216_Adapted_Motor_Vehicles_Summary_of_Responses_FINAL.pdf

- buying and selling motor vehicles for profit'

- 10.3 It is not clear to us how HMRC have arrived at the above qualification of the term 'domestic or personal use'. Domestic use, we agree, might be interpreted to exclude use for business purposes but there is nothing that precludes something for personal use also being for business use. That is, the law says 'personal use' which HMRC have apparently interpreted (except for 'incidental use at work') as meaning 'private use'.
- 10.4 The two are not necessarily the same thing. For instance, what if a disabled farmer requires an adapted 4x4 vehicle (one which would otherwise be treated as a 'car' for VAT purposes and therefore subject to the very restrictive rules for VAT to be reclaimed in a business context)? He may very well need this for his *personal* use to oversee the management of his farm (and indeed its adaptations may render it unsuitable for anyone else to use), so we are not clear why, according to HMRC guidance, the provisions in Schedule 8 Group 12 would not apply.
- 10.5 In the absence of definitive case law on the subject, we can see no justification for narrowing the definition of 'personal' in the ordinary sense of the word to one particular definition. We recommend that HMRC's guidance be reviewed and amended so that it does not prevent claims to the relief from being made by business users who nonetheless require an adapted vehicle for personal reasons.