

**Finance (No. 2) Bill 2017**  
**Clause 57 and Schedule 19 – VAT: zero-rating of adapted motor vehicles**  
**Briefing from the Low Incomes Tax Reform Group (LITRG)**

**1 Introduction**

- 1.1 Effective from 1 April 2017, this measure is designed to counter abuse of the law which allows a qualifying disabled person to buy a vehicle free of VAT (zero-rated) provided it is substantially and permanently adapted to their needs. To counter abuse, such as the purchase of numerous high-end vehicles with minimal adaptations which are quickly removed with the vehicles then sold at a profit, the measure now limits (subject to a very few exceptions) purchases of zero-rated adapted vehicles to one per eligible person every three years.
- 1.2 We understand that a number of stakeholders consulted in the design of this anti-abuse provision agreed that action was needed in order to preserve the relief for those who genuinely need it. The three year rule follows the usual lease term under the Motability scheme.<sup>1</sup> Some respondents to the 2014 consultation on this subject supported one car every three years, though support was not unanimous.<sup>2</sup>

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<sup>1</sup> <http://www.motability.co.uk/>

<sup>2</sup> See paras 2.8 to 2.14 of the consultation response document:  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/388536/141216\\_A\\_dapted\\_Motor\\_Vehicles\\_Summary\\_of\\_Responses\\_FINAL.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/388536/141216_A_dapted_Motor_Vehicles_Summary_of_Responses_FINAL.pdf)

1.3 It is worth noting that the points we make below 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.

1.4 This briefing suggests:

1.4.1 Further exceptions to the three-year rule;

1.4.2 Ensuring that there is a specific right of appeal for a disabled user applying for a further vehicle within a three year period based upon a change in their condition, if HM Revenue & Customs (HMRC) refuse to give clearance for this;

1.4.3 Making the law clear that the purchaser can be another person acting on the disabled person's behalf;

1.4.4 The legislation should be subject to a post-implementation review and a call for evidence should be issued to further review how the relief can be updated so that it continues to benefit those who need substantially adapted vehicles even though, due to technological advances, they may not meet the strict definition of 'wheelchair user'.

## 2 Further exceptions to the three year rule

2.1 Support for a 'one car every three years' restriction was given on the proviso that there would be exceptions. Initially in the consultation response document, this was referred to as the *needs* of the user changing, meaning that they needed a different vehicle.<sup>1</sup> Later in the consultation response, this flexibility narrows to changes in the user's *condition*. The latter is what is now provided for in the draft legislation,<sup>2</sup> and is rather narrower than addressing any changing *needs* of the user.

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<sup>1</sup> See para 2.13 of the consultation response document:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/388536/141216\\_Adapted\\_Motor\\_Vehicles\\_Summary\\_of\\_Responses\\_FINAL.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/388536/141216_Adapted_Motor_Vehicles_Summary_of_Responses_FINAL.pdf)

<sup>2</sup> Schedule 19(2) Finance Bill 2017, new note (5P)(b)

- 2.2 There are also other welcome exceptions to the three year rule to allow for a vehicle being written off or stolen.<sup>1</sup> We understand from HMRC that to claim those exceptions, evidence of the write off or theft<sup>2</sup> will need to be produced to the car dealer on purchase of the replacement.
- 2.3 For changes in the user's condition, however, the process will be for the user to contact HMRC with details of the change and that HMRC's written agreement will then be given to the dealer to complete the purchase.<sup>3</sup> It is disappointing that the guidance in VAT Notice 1002 does not give any indication of what information the user has to provide to evidence the change.
- 2.4 As HMRC will be able to 'police' this exception and so ensure that it is not being abused, we believe it could be made more flexible to prevent unfortunate and unfair cases arising for genuine users.
- 2.5 Although it is difficult to estimate how many people will be affected, there will undoubtedly be some who need to replace their vehicle outside of the exceptions provided. For instance, we think there should be further exceptions to allow for other circumstances having changed – for example:
- 2.5.1 The user may have moved to a rural location and now need a four wheel drive vehicle to negotiate a dirt track to their house;
- 2.5.2 The user's family may have 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 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 human rights. It might also arguably be a breach of the Equality Act in that a non-disabled user would experience no such barrier to their moving to a rural location, or extending their family, and simply purchasing a new vehicle to accommodate the change in circumstances.

### **3 Right of appeal**

- 3.1 Generally, VAT matters are appealable under Part V of VATA 1994. However, our understanding of appeals in relation to the amount of tax chargeable on supplies (VATA

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<sup>1</sup> Schedule 19(2) Finance Bill 2017, new note (5P)(a)(i) and (ii)

<sup>2</sup> Insurance company documentation or police report

<sup>3</sup> See VAT Notice 1002, para 6.2: <https://www.gov.uk/government/publications/vat-notice-1002-adapted-motor-vehicles-for-disabled-people-and-charities/vat-notice-1002-adapted-motor-vehicles-for-disabled-people-and-charities#types-of-vat-relief-on-motor-vehicles>

1994 s 83(1)(b)) is that a formal appeal may only be pursued in relation to a specific supply and that a tribunal cannot hear an appeal relating to a future supply, even if HMRC have made a decision as to the tax payable in advance of the transaction taking place.

- 3.2 This is of significant concern to us, as a disabled person may not wish, or indeed be able to afford, to purchase a vehicle and pay the standard rate of VAT in order then to challenge the decision not to allow the zero-rate. They would probably wish to get a final decision, via the courts if necessary, on the application of the zero-rate before they purchase as they might make a different choice if they know the zero-rate is definitely unavailable to them.
- 3.3 We would therefore like to see a specific appeal right inserted into Section 83 VATA 1994 to make it absolutely clear that HMRC's decisions on this three year rule can be pursued via the tribunal if necessary in advance of a supply being made. Therefore, on page 645 of the Bill, after line 34, we suggest inserting:

‘Section 83(1) of VATA 1994 shall be amended as follows, to insert –

“(ba) a decision given by the Commissioners under Schedule 8, Group 12 Note 5P(b) that they are not satisfied that a zero-rated motor vehicle may be supplied to a disabled person by reason of a change in their condition”

#### **4 Clarification of the purchaser**

- 4.1 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.<sup>1</sup>
- 4.2 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.
- 4.3 HMRC's guidance, however, says 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.
- 4.4 It would be preferable if the legislation itself were clarified to reflect that a supply to another person may qualify, provided that the beneficiary is the disabled person. This would then allow for a formal appeal in the event of HMRC denying the relief. We therefore suggest the following amendment to the proposed legislation:
- 4.5 On page 654, at the end of line 41, delete the full stop, then insert:

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<sup>1</sup> Ibid, para 3.4.

‘, or

(d) the supply may be made to another person provided that (a), (b) and (c) above apply and that P is the principal beneficiary of the qualifying motor vehicle.’

## **5 Further review of this legislation**

- 5.1 First, if Schedule 19 goes through without amendment, we believe that HMRC should commit to doing a post-implementation review in due course. This could take the form of an open consultation which is well publicised to relevant stakeholders and individuals so that evidence can be gathered regarding any ‘hard cases’ that may have come to light for the reasons we suggest in section 2 above. It could also gather evidence as to whether the new processes are working well.
- 5.2 Secondly, 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.

## **6 About Us**

- 6.1 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.
- 6.2 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.
- 6.3 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.

