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Taxation

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Low Incomes
Tax Reform
Group

A voice for the unrepresented

**VAT relief on substantially and permanently adapted
Motor vehicles for disabled wheelchair users
Response by the Chartered Institute of Taxation and the Low Incomes Tax Reform
Group**

1 Introduction

- 1.1 This is a joint response to your consultation on reforming the VAT relief for substantially and permanently adapted motor vehicles by the Low Incomes Tax Reform Group (LITRG) and the Chartered Institute of Taxation (CIOT).
- 1.2 The aim of the consultation is to seek views on the reform of the existing reliefs so as to prevent perceived fraud and abuse.
- 1.3 However, the consultation paper notes at paragraph 1.10 that the policy rationale behind the measure is to help mitigate the sometimes substantial extra costs required to adapt a motor vehicle for a disabled person and also any losses incurred on disposal of the vehicle after use. We take account of this in our submission.
- 1.4 The consultation document also mentions the need to comply with EU law, which only permits the retention of but not extension of existing zero-rates (article 110 of the Principal VAT Directive (PVD)). If the UK legislates to withdraw or restrict the relief and then discovers that the change goes beyond the intention of Government policy, it would not be possible to restore the old reliefs. We also assume that the intention is not to jeopardise the existing relief.

2 Executive summary

- 2.1 We agree that something needs to be done to reduce the level of fraud and abuse but this should not be at the expense of the policy rationale, which is to mitigate the additional cost to people with disabilities of adapting motor vehicles for their use, not impose additional burdens on those genuinely entitled to the relief.

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- 2.2 What needs to be done may not need to be done via primary legislation; it may be possible to achieve it using existing powers including the use of tertiary legislation or by relatively minor “tweaks” in the primary legislation.
- 2.3 We agree that there is a need to pay particular regard to compliance with EU law. In addition, it is necessary to ensure that changes to the legislation do not go further than absolutely necessary since zero-rates once abandoned cannot be restored.
- 2.4 While we can see the need to provide relief to persons who use prosthetics rather than or in addition to a wheelchair, in our view, care is needed to ensure that such a change is EU law compliant ie it does not extend the existing relief, which would not be permitted. It may be possible to argue that because such a person would need to use a wheelchair in the absence of the prosthetic, the condition for zero-rating is met.
- 2.5 Removing VAT from the purchase of a vehicle is perhaps not the most efficient way of achieving Government objectives but it has some benefit in its simplicity.

3 Equality issues

- 3.1 The consultation document suggests that the relief provided for in VATA 1994, Sch 8, Group 12, item 2A and notes (5) and (5L) is largely used to acquire expensive cars, the implication being that most other users avail themselves of the Motability scheme.
- 3.2 The implication is therefore that the purchase relief is used mainly by more well off disabled people assuming that the purchase is genuine. We do not detect in the policy rationale stated anything to suggest that the relief is not intended for more expensive cars. Indeed, to introduce such a restriction would have possible Equalities Act implications since it would deny relief to wealthier disabled people unless they purchased a cheaper car.
- 3.3 The purpose of the relief is to mitigate the costs of acquiring a car adapted for their use by a person with a disability vis-à-vis a person in a similar position who is not disabled. This would not be achieved if the relief were restricted by reference to the value of the car or a disabled person’s circumstances.

4 Question 1: Do you agree that reform of the relief is needed?

- 4.1 The reason given for reform is succinctly stated in Part 5 of the consultation document (Assessment of impacts). This states that the value of relief given is about £65 million of which about £25 million – nearly 40% may be the cost of fraudulent or abusive claims. It is controlling the 40% that is at issue.
- 4.2 That does not necessarily imply that the legislation needs to be changed. The purpose of the legislation makes it clear that the relief is only to be granted where certain strict criteria are achieved eg HMRC’s guidance interprets the existing legislation as not permitting zero-rating for –
 - Minor adaptations;
 - Business use because it is then not for domestic use.

Buying a car with the intention of selling it for a profit (even when it is initially used as required) is viewed as not being domestic use. We are broadly in agreement with HMRC's view expressed in VAT1615.

- 4.3 Accordingly, we would suggest that the issue is not one of the legislation being wrong but of difficulties in enforcing compliance. The consultation gives no indication of what action HMRC has taken to counter fraud or abuse eg has it attempted to use the Tribunals or Courts to recover tax not due although we can see why enforcement may be difficult given that the conditions for zero-rating are subjective.
- 4.4 Given that compliance depends on records, it is arguable that VATA 1994, Schedule 11, para 6 gives HMRC all the powers it needs to direct what records are required for compliance, without the need for additional legislation.
- 4.5 We therefore agree that reform is required but that reform may not require legislative changes, although we can see why it might be an attractive option to make the legislation more objective.

5 Questions 2 and 3: Limit on number of vehicles

- 5.1 The consultation document suggests that limiting the number of vehicles that can be zero-rated to one every three years would significantly reduce the problem. However, it also recognises that there would need to be a power to allow more frequent purchases for certain events eg if the vehicle gets written off in an accident or where a larger car is needed because of the birth of a child.
- 5.2 We can envisage that there may be other exceptional circumstances. Here it should be recalled that just because a person has a mobility problem does not mean that they cannot carry on perfectly normal activities undertaken by their more mobile fellows eg a mother may have a car as a runabout but need an additional vehicle say an MPV to take children and their friends on activities. Further, VAT1615 makes it clear that a motorhome can be zero-rated; there is no reason why a person should not have such a vehicle and a car.
- 5.3 We appreciate that there might be arguments that a person that can afford two vehicles does not need the relief. Such an argument compares a person who is of greater means but with a disability, with a person who is of lesser means but no disability. The proper comparison to be made is between two people of more or less equal means but where the one incurs more costs because of a disability. The policy rationale seeks to mitigate that additional cost.
- 5.4 We would suggest therefore that any limit placed should recognise that there may be valid reasons for requiring more than one adapted vehicle and HMRC should have both sufficient powers as well as a duty to ensure that the relief is given as appropriate.

6 Questions 4 – 6: Defining the terms “substantially” and “permanently” in the legislation

- 6.1 For the reasons we have set out in 4 above, we can see an argument that while reform is needed, it does not need to be in the form of legislation. However, we also see that better definition of terms would create greater certainty so on that basis we

do not have any objection to specific legislation although it might be better done by creating a power to use tertiary legislation such as exists in Schedule 11.

- 6.2 The consultation document suggests that there are two sets of costs that a person who is disabled will incur in owning a specially adapted vehicle ie the initial adaptation and a potential loss on disposal because a subsequent purchaser may not require the adaptations and will want them removed.
- 6.3 Using VAT as a means of achieving the policy rationale is a blunt instrument because it takes no account of the spectrum of disabilities that may need to be catered for and the differences in cost. It also assumes that a relief equal to the VAT will be sufficient to cover both costs. In some cases it will do and in others it will not.
- 6.4 Given the relatively small scale of the fraud (estimated at £25 million), in our view, the need to ensure that any measure does not prevent a person with a disability from obtaining relief trumps the entirely necessary objectives of preventing fraud.
- 6.5 Accordingly, in our view, it is likely that any limit on the cost of adaptations would need to be something different than just the 20% VAT because of the need to allow some relief against possible loss on disposal.
- 6.6 We would add that when we gathered evidence on reduced rates in the past, one contributor noted that some dealers may take account of the fact that there is VAT relief in assessing the price at which they are prepared to sell a car to a person with a disability. This may result in less than the full relief being passed on. This possibility should also be taken into account in setting any minimum cost.
- 6.7 We had two comments in similar vein that setting a limit could have unintended consequences eg dealers raising prices of adaptations to fall within the limit. This could be done in conjunction with “bumping” to ensure that the customer gets the same deal.
- 6.8 Identifying the adaptations necessary and defining them is likely to be difficult if not impossible because of continuing changes in technology. In any event, it is clear that adaptations should be personal to the individual. We therefore suggest that HMRC should have a discretion (to be used fairly and not to deny relief as a means to raise revenue) but that it should be capable of review and appeal.

7 Questions 7 – 9: Supplier obligations

- 7.1 It is important that any administrative obligations imposed on suppliers should not result in significant cost that will increase their costs and feed into the price of adapted vehicles.
- 7.2 We have read the submission of the Association of Tax Technicians, who have suggested that control might be better exercised via the DVLA than through dealers and financiers.
- 7.3 As this is an operational issue that is best assessed by the trade and possibly the DVLA, we do not propose commenting further on these questions but we agree that some form of recording is going to be necessary.

8 Questions 10 – 11: Declaration

- 8.1 Declarations are used for other reliefs as well and we can see no reason why this should not be used here. It will impose a small burden on the supplier who presumably will have to maintain copies or possibly forward them to the DVLA when licensing a car for a customer.
- 8.2 We agree that it should be possible to impose penalties on a person who gives a false declaration. The penalty should be designed to both recover the relief incorrectly given and to penalise.

9 Questions 12 – 14: Ensure that it is clear that users of lower limb prosthetics can obtain relief

- 9.1 The difficulty with this proposal is that the strict wording of the legislation currently limits relief to people who “usually” use wheelchairs or are carried on stretchers. Thus, it might be argued that this change would extend the scope of the relief to persons not contemplated by the original relief and is therefore contrary to EU VAT law. However, it could be equally be argued that a person, who has and uses prosthetics, would but for the prosthetics usually have to use a wheelchair or stretcher and so the legislation is within the original ambit of the derogation.
- 9.2 In fact, para 2A is itself arguably a clarification of the relief provided for in VATA 1994, Sch 8, Group 12, para 2(f) – (h).
- 9.3 An alternative solution to ensure that the legislation is in line with EU law would be to remove it from Schedule 8 and create a new VAT refund similar to those contained in s33, 33A and 33B. This might provide more flexibility.

10 Questions 15 – 16: Removal of the reference to stretchers

- 10.1 We have no knowledge of whether this relief is still needed or might be needed in the future. We agree that it would simplify the legislation but there is other VAT legislation whose withdrawal would do more in terms of simplicity but which is not contemplated as a target for simplification.
- 10.2 Maintaining the policy rationale would suggest that the relief should only be removed if it is established that it is unnecessary now and is very unlikely to be necessary in future.

11 Questions 17 – 18: Apply the same changes to the relief for boats

- 11.1 It is clearly in line with the policy rationale for the relief to be applied to boats as well.

12 The Chartered Institute of Taxation

12.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with taxation. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries. The CIOT's comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.

The CIOT's 17,000 members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

The Chartered Institute of Taxation and The Low Incomes Tax Reform Group
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