



VAT relief for charities providing care & transport for the disabled

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Generally charities are required to pay VAT on the goods and services they purchase, just as other traders and consumers. However purchases of some types of equipment may be zero-rated. In the November 1996 Budget it was announced that the definition of certain zero-rated purchases would be amended, focusing these provisions on their original purpose. As a result certain higher education institutions and community transport groups would no longer be able to buy equipment zero-rated for VAT, including minibuses specially adapted to carry disabled people.¹ Following consultation with community transport groups, in March 1997 HM Customs & Excise announced it would operate an extra-statutory concession, to allow charities which exclusively serve the needs of handicapped people, either by providing a range of care services or by providing transport services, to purchase various goods, including adapted minibuses, at the zero rate.² This note sets out the background to these changes.³

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A. Minibuses for charities: the Help the Aged case

There is no general relief from VAT for charities purely because of their charitable status; though there are a number of specific reliefs which benefit many charities.⁴ Charities register for VAT in the same way as any business; that is, if they make taxable supplies in the course of the tax year above a given threshold.⁵ If this is the case, a charity must charge VAT on any taxable supplies it makes, though the charity will be able to reclaim VAT paid on the goods and services bought in the course of making those supplies even if those supplies are zero-rated.

¹ Legislation to effect this change was contained in section 34 of the *Finance Act 1997*.

² Customs publish detailed guidance on the operation of this tax relief: *Charities: supply, repair & maintenance of relevant goods (including adapted motor vehicles) VAT information sheet 8/98*, September 1998

³ The wider issue of the VAT treatment of care is discussed in "VAT on domestic care supplied by private businesses", SN/BT/1027, 19 July 2001.

⁴ Further details on charity taxation generally are provided in *Taxation of charities*, Library Research paper 01/46, 12 April 2001.

⁵ The registration threshold is currently £54,000 (with effect from 1 April 2001).

Although charities pay VAT on most inputs, certain specific supplies may be zero-rated. Zero-rated supplies are set out in schedule 8 to the *Value Added Tax Act (VATA) 1994*; group 15 to this schedule deals with charities. In particular, item 5 to group 15 is “the supply of any relevant goods to an eligible body which pays for them with funds provided by a charity or from voluntary contributions or to an eligible body which is a charitable institution providing care or medical or surgical treatment for handicapped persons.” Definitions of the key terms here - relevant goods, eligible body, handicapped persons - are given in the legal notes to group 15 (notes 3, 4 and 5 respectively). One of the ‘relevant goods’ that charities may buy zero-rated is a minibus, provided it is “designed or substantially and permanently adapted for the safe carriage of a handicapped person in a wheelchair.”⁶

In June 1996 a VAT tribunal heard the case concerning the supply by Help the Aged of a number of minibuses to other charities, which it had had adapted to carry passengers in wheelchairs.⁷ Help the Aged claimed that these supplies should be zero-rated. Customs challenged this on a number of grounds. Most important, Customs argued the recipient charities were not institutions providing care for handicapped persons, and, as such, could not count as an “eligible body”, qualifying for zero-rating under item 5 to Group 15, Schedule 8. In this particular case, the definitions given in the legislation at this time of the terms, “eligible body” and “handicapped” - notes 4 and 5 to Group 15 - were crucial; they are reproduced below:

(4) “Eligible body” means

- (a) a Regional, District or Special Health Authority in England and Wales;
- (b) a Health Board in Scotland;
- (c) a Health and Social Services Board in Northern Ireland;
- (d) a hospital whose activities are not carried on for profit;
- (e) a research institution whose activities are not carried on for profit;
- (f) a charitable institution providing care or medical or surgical treatment for handicapped persons;
- (g) the Common Services Agency for the Scottish Health Service, the Northern Ireland Central Services Agency for Health and Social Services or the Isle of Man Health Services Board;
- (h) a charitable institution providing rescue or first-aid services;
- (i) a National Health Service trust established under Part I of the National Health Service and Community Care Act 1990 or the National Health Service (Scotland) Act 1978.

(5) “Handicapped” means chronically sick or disabled.

Help the Aged believed that the recipient charities were eligible bodies, being “charitable institution[s] providing care or medical or surgical treatment for handicapped persons” (Group 15 note 4(f)). In fact, the recipients included a charity which provided accommodation for the elderly, a charity which provided transport for people with restricted mobility who were unable to use public transport, and a charity which ran a day centre for elderly persons of a particular

⁶ Note 3(e) to Group 15, Schedule 8 of *VATA 1994*

⁷ 14180 *Help the Aged v C&E Comrs: Simon's Weekly Tax Intelligence*, no.33 15 August 1996 pp 1356-1357

ethnic group. The Commissioners argued that none of these charities specialised in provision of care for persons who were the handicapped in the sense of being chronically disabled,⁸ as distinct from handicapped by poverty, age, isolation, frailty or other social or environmental causes. The first provided housing for the elderly, most of whom were not handicapped; the second provided transport, not care; and in the case of the third the functions of its day centre were too general to constitute the provision of care.

However, the tribunal found against Customs. It held that the ordinary meaning of “care” was having charge or protection of someone or something. Thus care was provided for a class of persons where a facility involved the charge or protection of those people, directly affecting them and making direct contact with them. This covered the provision of accommodation, providing for daily needs, safe transport and the provision of a secure daytime environment. The tribunal concluded that the activities of the three recipient charities involved the provision of care. While the objects of the recipient had to include provision of care for the handicapped, the provision of care did not have to be a special function of the charity and the care did not have to be provided exclusively for handicapped persons. On the evidence each of the three charities did to a substantial extent provide care for the handicapped in the sense of persons who were chronically disabled. The supplies were therefore correctly zero-rated. Customs appealed against this decision, but lost its appeal when the case was heard in February 1997.⁹

Though there was some dispute about how much this ruling might save charities, it was clearly quite important to several organisations:

Help the Aged has won a major legal victory against the VAT man which could save the charity sector £10 million a year, it emerged tonight. The ruling should save Help the Aged £250,000 a year in VAT on minibuses it provides to organisations which support older people. The charity said tonight it will also get back £167,000 from Customs and Excise on VAT it has paid on minibuses during the last two years. Help the Aged took Customs and Excise to a tribunal in April after a 1994 ruling meant that specially adapted minibuses for older people became liable for VAT. This added at least £3,000 to each minibus the charity supplied to groups providing transport. ... ‘Local community organisations could save £10 million a year,’ said the charity ...

A spokesman for Customs and Excise said tonight it was ‘considering’ whether it should appeal against the tribunal’s decision. Asked for his views on the suggestion that it could save charities in Britain £10 million a year, he said: ‘We would take a more conservative view. It will have implications on other charities. Quite what those are is yet to be determined.’¹⁰

B. Budget 1996

At the time of the Budget in November 1996 it was announced that the rules for zero-rating charities’ purchases would be made “clearer, focusing them on their original purpose ... [to] prevent them being exploited”:

⁸ As provided for in note 5 to Group 15, Schedule 8 VATA 1994

⁹ “Wheelchair minibus is zero-rated for tax”, *Times*, 4 March 1997

¹⁰ “Charity’s VAT Victory”, *Press Association*, 6 June 1996

VAT law lists nine separate categories of eligible body who are able to buy a specified range of equipment zero-rated. The list extends to various parts of the NHS, non-profit making hospitals and research institutions and also includes charitable institutions “providing care or medical or surgical treatment for handicapped persons” [VATA 1994 Schedule 8 Group 15 note 4(f) - as reproduced above]. This particular category was introduced to benefit two types of charity who provide care or medical or surgical treatment for the disabled - those that provided those services from a fixed establishment such as a day centre or residential care institution (for example, a residential home for the blind or for handicapped children) and those that provided medical care for handicapped people in their own homes.

In the recent case of “Help the Aged”, however, the VAT and Duties Tribunal found that organisations such as community transport groups or social centres for the elderly were indeed eligible bodies, because when they provided their services they did so in a caring manner, and the recipients of those services included at least a minimal number of disabled people. In taking this approach, the Tribunal granted VAT relief to organisations which were never intended to benefit. It also created a great deal of confusion, because it would be very difficult for charities or their suppliers to objectively determine whether a body provided services in a caring manner. Customs and Excise are appealing this decision to the High Court, but in the meantime this measure is intended to restore certainty ... The measure dealing with charitable care raises negligible revenue but safeguards future revenue of approximately £40 million per year.¹¹

Further details were given in a Budget Notice issued at this time:

This new measure ... confines VAT law in this area to its original purpose and restores certainty. It achieves this by dividing charitable care providers into two categories, institutional care providers, and domiciliary care providers. Under this measure, charitable institutional care providers will need to satisfy three tests to purchase “relevant goods” at the zero rate. Firstly, they must either provide day centre care or be registered under the relevant social legislation to provide residential care or medical or surgical treatment; secondly, the relevant goods must be used within those establishments; and thirdly, the majority of people receiving their care or treatment must be disabled. Domiciliary care providers will be able to purchase a specified range of medical equipment at the zero rate if they provide domiciliary medical care for handicapped people in their own homes.¹²

Provision to amend note 4 (the definition of an eligible group) and 5 (the definition of handicapped persons) to group 15 of schedule 8 VATA 1994 was made in the *Finance Act 1997*. HM Customs’ *Notes on Clauses* to the Finance Bill noted that some charities, despite fears to the contrary, would retain their status as eligible bodies for this VAT relief:

Clearly, charities which for example, operate residential homes for handicapped children or day rehabilitation or training centres for handicapped adults, or which send nurses to care for the terminally ill in their own homes meet that description. They have always been entitled to the benefits of this zero rate and will remain so, but those benefits will be limited to them ... This Clause

¹¹ HM Customs & Excise press notice, *Charity zero-rates clarified*, 26 November 1996

¹² HM Customs and Excise Budget notice, *VAT: Charity zero-rates BN 30/96*, 26 November 1996

protects VAT revenue of approximately £40 million per year. However, just as importantly, it provides clarity, both for charitable care providers and the businesses that supply them. The recent Tribunal decision has in effect, presented charities and their suppliers with the task of determining whether a charity provides its services in a caring manner before deciding whether VAT is chargeable. This Clause replaces this difficult and highly subjective test with a set of clear criteria, making it be much easier for them to conduct their VAT affairs.

The then Exchequer Secretary, Phillip Oppenheim, set out the Conservative Government's reasons for introducing this measure when it was debated in Standing Committee:

As matters stand, the loophole that is being exploited is not especially large - it probably runs to about £1 million or £2 million. As was said in relation to the previous clause, it is important that tax policy should nip avoidance schemes in the bud. At present, the total protected income is £40 million, but if the message goes out that the Government are not going to act in that way, the figure will soon increase fairly dramatically. As I have said, it is important to note that we give a great many tax benefits to charities - and rightly so. If we want to give further tax benefits, we should have the honesty to stand up and say what those benefits will be and to make the intention behind them wholly clear. We should not allow institutions that already receive some tax benefits slowly but surely to open up loopholes in other areas, especially if the fleetest of foot or those that have the best tax advisers manage to gain more than smaller institutions that do not have access to the best advice. That is the wrong way in which to operate tax concessions.

The clause divides charitable care providers into two distinct categories and sets clear criteria to enable charities to determine whether they qualify for zero-rated purchases. The first category relates to those who provide institutional care by running a fixed establishment for the handicapped - such as a day centre to which handicapped people go to receive rehabilitation or training, or a residential home for handicapped children. The second category relates to charities that provide domiciliary care, sending carers to the homes of individual handicapped people to provide care or treatment there and thus helping them to retain their independence. We also believe, however, that a further category of charity should be added to include those that are eligible to purchase minibuses at zero rate, comprising community transport groups with the primary function of serving disabled people.

This is not an unimportant issue for two reasons: first, the revenue protection is £40 million, which is a significant sum; secondly, we already help charities to the tune of £1½ billion - again, a significant amount - through other fiscal measures ... Finally, any charity that has been given reasonable permission to buy zero-rated minibuses or other items of equipment, and has planned on that basis, will not be caught by the provisions of the clause; rather, the clause represents a signal for the future, sending the message that we should adhere to the original intention of the 1981 law. I hope that I have convinced the Committee that the clause is reasonable and sensible.¹³

¹³ Standing Committee B 11 February 1997 cc 269-270

At a later stage in the debate, the Minister explained that Customs were examining a number of options to ensure charities that helped disabled persons exclusively would not lose the advantage of this VAT relief:

The hon. Lady mentioned community transport groups and asked what was happening with talks within those groups. She is right that Customs is currently talking to a variety of groups. We will act to help them if we can. We can act only if they show that they are carrying a majority of handicapped or chronically sick people. Otherwise we would simply go back to the current situation, which is one of confusion and blurred edges. If we can reasonably help them, we will. I will come back to this on Report if appropriate and will let the Committee know if there has been any progress, but I do not want to hold out false hopes.

It is worth remembering that a large proportion of community transport groups operate as businesses and charge fares, even if those fares are uneconomic and often subsidised by other means. The Bill will not affect them because under those circumstances they will be able not only to reclaim the VAT on their purchases but not to charge VAT on their fares. Those community transport groups will not be affected.¹⁴

C. The concession for charities

On 6 March 1997 the then Exchequer Secretary, Mr Oppenheim announced that Customs would introduce an extra-statutory concession (a reduction in tax liability which is not specified under the strict letter of the law), to ensure that some charities would be able to go on purchasing zero-rated equipment: namely, those charities which exclusively serve the needs of handicapped people, but do not operate their own institutions or day centres, or happen to use their adapted minibuses for a wider variety of purposes.¹⁵ The concession was published on 16 June 1997, and was backdated to 26 November 1996.¹⁶ It is reproduced below:

Extra Statutory Concession: supplies of “relevant goods” to charities

1. Where “relevant goods” of a kind described in note (3) to Group 15 of the Value Added Tax Act 1994 are supplied to a charity -

- a) whose sole purpose and function is to provide a range of care services to meet the personal needs of handicapped people (of which transport might form a part); or
- b) which provides transport services predominantly to handicapped people,

then by concession, the supply of those goods will be zero-rated, as will the repair and maintenance of those goods and the supply of any further goods in connection with that repair and maintenance.

2. “Handicapped” means chronically sick or disabled.

3. In order to be eligible for this concession, a charity must demonstrate that it meets the requirements of sub-paragraphs (a) or (b) above by way of -

¹⁴ Standing Committee B 11 February 1997 cc 276-277

¹⁵ HM Customs & Excise press notice, *Proposed changes to Budget measures for charities*, 6 March 1997

¹⁶ The concession was backdated to protect community transport groups from the provisions in section 34 of the *Finance Act 1997*, which took effect from 26 November 1996.

- its charitable aims and objectives;
- its publicity and advertising material;
- any documents which it has issued for the purpose of obtaining funding from a third party such as a local authority;
- its day to day operations;
- and any other evidence that may be relevant.

Finally it is worth noting that in June 2001 the scope of a second VAT relief – the zero rate for adapted motor vehicles supplied to disabled persons for their own use¹⁷ – was widened so as to cover a wider range of vehicles.¹⁸ This relief covers “motor vehicles designed or designed or substantially and permanently adapted for the carriage of a person in a wheelchair or on a stretcher” supplied “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.” In brief, the maximum carrying capacity of an eligible vehicle was increased from 6 to 12 persons, and the adapted vehicle was no longer required to be capable of carrying a disabled person travelling in a wheelchair or on a stretcher.¹⁹ The aim of this change was to ensure disabled people with larger families could benefit from the relief, as well as wheelchair/stretcher users who wish to transfer to a seat within the motor vehicle rather than remain in a wheelchair or on a stretcher.

This change also benefits ‘eligible bodies’ under group 15 to schedule 8, such as NHS Trusts and universities, although only with respect to the increase in size of the qualifying vehicles (ie, those capable of carrying up to 12 persons). The vehicle concerned must still be adapted to enable a wheelchair or stretcher user to travel in the vehicle whilst seated in a wheelchair or lying on a stretcher. Customs’ guidance on this change underlines that eligible bodies which are not charities must use charitable funds or voluntary contributions for the purchase of the eligible vehicle in order to obtain VAT relief.²⁰

¹⁷ This relief is provided under item 2(f) of group 12 to schedule 8 *VATA 1994*.

¹⁸ HM Customs & Excise Budget Notice BN 19/01, 7 March 2001

¹⁹ Under SI 2001/754 which came into force on 1 April 2001.

²⁰ *VAT: motor vehicles adapted for disabled people VAT information sheet 07/01*, June 2001 para 4.12 This leaflet is available on Customs’ site at: www.hmce.gov.uk/notices/info0701.htm