Zero rated vehicles

Indirect Tax | Tax voice



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Alan McLintock provides a timely reminder of the changes made to counter abuse of the zero rating relief for certain vehicles and the potential impact these have on business processes and record keeping

HM Revenue & Customs (HMRC) issued, earlier in the year, new guidelines on the VAT free supply of vehicles to customers with disabilities that require the use of wheelchairs or stretchers to move. The relevant legislation in Schedule 8 of the VAT Act 1994 has also been amended with the changes taking effect from 1st April 2017. These are wide ranging changes and anyone involved in or advising on the supply of zero rated vehicles is advised to ensure they are familiar with the changes as a

matter of urgency.

The changes are intended to mitigate the perceived exploitation of the scheme and HMRC estimates a £20m per annum saving from the changes (the Financial Secretary to the Treasury revealed for example that one person had purchased 30 cars under the scheme in one day). Overall the changes should certainly dramatically cut the level of abuse which is welcome news. However, the changes made by HMRC in my view arguably extend significantly beyond that necessary to address the abuse and also place a significant administrative burden on suppliers of such vehicles. Settled case law on what constitutes an acceptable level of adaptation of a vehicle may now also need to be re-fought under the new legislation.

What are the main changes?

The main changes are:

1. Zero rating is linked to the disabled person. Only one vehicle can be purchased every three-year period (this is the key change that by itself should shut down most abuse);
2. New mandatory customer eligibility declaration forms;
3. New mandatory information returns to HMRC by the seller (which will typically be the dealer or a finance house if the buyer takes out finance);
4. New penalties apply to any person providing an incorrect customer declaration form;
5. Changes to what type of adaptations will be eligible for zero rating.

The new HMRC notice can be found on GOV.UK.

When do the new rules come into effect?

The new rules came into effect on 1st April 2017. The three year rule compares vehicles purchased on or after 1st April 2017 only. So any vehicle bought prior 1st April does not break the three-year rule if replaced within a three-year period.

Who is eligible to buy a VAT-free vehicle?

The vehicle must be for someone who usually uses a wheelchair, or who is usually carried on a stretcher.

If the vehicle is being purchased **on behalf** of a disabled wheelchair user, you may need additional information and evidence, such as:

1. Who is paying for the adapted vehicle?
2. Who will own the adapted vehicle?
3. Who is the registered keeper of the adapted vehicle?
4. Does the family member or carer have another vehicle for their use?
5. Where will the adapted vehicle be kept?
6. Who will use the adapted vehicle?
7. What will the adapted vehicle be used for?
8. How often will the disabled wheelchair user use the adapted vehicle?

These are quite intrusive questions but HMRC's mindset is on avoiding invalid or fraudulent VAT free sales and are based on the new HMRC guidance. HMRC's concern is that a third party may have agreed with a disabled person that they buy a vehicle on behalf of that person but actually use it for their own personal use or sell it on. The changes, at some levels, make the dealer or finance house responsible for enforcing HMRC's new rules, which is unwelcome. If these additional questions are so vital then perhaps they should be mandatory ones in the form completed by the buyer.

HMRC has indicated that a seller will not be penalised if they have taken "***all reasonable steps***". "All" can be read to mean "every possible" but basing an assessment on HMRC's sample data (see points1-8 above) should arguably in most situations equate to "all possible". However it may also be arguable that all reasonable steps is a much smaller set of checks based around how each business operates. The HMRC position allowing penalties not to apply is based on VAT Notice 48: extra statutory concessions which states:

> *3.11 VAT: incorrect customer declaration*
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> *Where a customer provides an incorrect declaration claiming eligibility for zero rating under Groups 2, 4, 5, 6, 8, 12 or 15 of the zero rate Schedule of the VAT Act 1994, or eligibility for a reduced rate under Group 1 of Schedule 7A for the qualifying use of fuel and power, and where a supplier, despite having taken **all** reasonable steps to check the validity of the declaration, nonetheless fails to identify the inaccuracy and in good faith makes the supplies concerned at the zero rate, or a reduced rate, HMRC will not seek to recover the tax due from the*

supplier.

Does the vehicle seller need to have proof of the disability and level of wheelchair use?

No. HMRC have not required this.

Purpose of adapted vehicle

The vehicle must be for personal or domestic use only. It also includes incidental use at work, providing the main use remains as a private vehicle.

Finance Houses (where the buyer is taking finance out)

Suppliers cannot zero rate vehicles supplied to finance houses. However the dealer is responsible for providing evidence of eligibility of zero rating (and the finance house is responsible for ensuring this is done as it is the finance houses sale that will be the zero rated sale).

What vehicles are eligible for relief?

A ‘qualifying vehicle’ is any motor vehicle such as a car, light van, multi-passenger vehicle (MPV) or motorhome that:

- has been designed, or substantially and permanently adapted to enable a qualifying person to travel in it
- **the adaptation is necessary to enable the qualifying person to travel in it**
- has a carrying capacity of no more than 12 people (including the driver)

The adaptation to the vehicle must be both ***necessary and specific to suit the disabled wheelchair user’s particular needs to enable them to travel in the vehicle, or enter and drive it***. The adaptation should alter the vehicle in a meaningful way, enabling the wheelchair user to use the vehicle which they couldn’t use before it was adapted. The law has been amended to ensure the adaptation is necessary for each individual buyer.

The following are not considered as substantial and permanent adaptations because they are widely available accessories or upgrade options or involve only minor

adaptation:

- A wheelchair that can be folded and stowed in the boot of a car with only minor adaptation
- The fitting of a roof rack or standard roof box
- Any standard vehicle option.

A motor vehicle is adapted for a disabled wheelchair user if it is adapted to meet the specific needs of that person's disability and the adaptation is necessary and:

1. Allows the disabled person to travel in the vehicle;
2. Enables the disabled person to leave the vehicle;
3. Allows the disabled person to drive the vehicle.

HMRC seem to have taken the view that superficial changes that cost little and are easily de-installed are less likely to be a "substantial and permanent adaptation. It is likely that we will see future case law on this to see if HMRC's interpretation of the legislation is supported by the courts.

Exceptions to the Three-Year rule

There could be occasions when there are reasons why a disabled person needs to replace an adapted motor vehicle within a three-year period and the normal rules can be waived. These involve:

1. Theft of vehicle;
2. Destruction of vehicle (possibly damaged beyond economic repair);
3. Change in disabled wheelchair user's needs such that the vehicle is no longer suitable;

The customer must provide you with a confirmation letter from HMRC agreeing the above conditions are met and that a replacement zero rated vehicle can be provided.

The relevant VAT Forms 1617A and 1615A can be found on GOV.UK.

Businesses involved in the sale and/or financing of eligible vehicles are advised to review their existing processes and add additional controls or checks such that they can demonstrate they are compliant with the new rules.