



TC01730

Appeal number TC/2010/0539

VALUE ADDED TAX – zero-rating of the supply of a qualifying motor vehicle to a handicapped person who usually uses a wheelchair – item 2A, Group 12, Schedule 8, VATA – notes (3) and (5L) of Group 12 considered – whether two vehicles supplied were each (a) supplied to a handicapped person who usually uses a wheelchair, and (b) a qualifying motor vehicle – held in both cases both conditions were fulfilled and the supplies fell to be zero-rated – appeal allowed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

**DENNIS GEORGE BUNNING
and CHRISTINA DENISE BUNNING
trading as STAFFORD LAND ROVER**

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY'S
REVENUE AND CUSTOMS (*Value Added Tax*)**

Respondents

**TRIBUNAL: JOHN WALTERS QC
PETER WHITEHEAD**

Sitting in public in Birmingham on 18 November 2011

**D. Bunning, the first Appellant, in person
M. Wilson, an Officer of HMRC, for the Respondents**

© CROWN COPYRIGHT 2011

DECISION

- 5 1. The Appellant originally appealed on 7 September 2010 against an assessment
to VAT in the amount of £48,457 plus interest of £5,423.03 made by the
Respondent Commissioners (“HMRC”) on 28 May 2010. The assessment
covered the VAT periods 12/06, 03/07, 09/07, 12/07 and 06/08 to 09/09 inclusive.
10 The VAT assessed related to a number of separate VAT issues which had come to
light following a visit to the Appellant’s business premises by Mr. John Caven,
one of HMRC’s VAT officers.
- 15 2. The Appellant requested an internal HMRC review of this assessment. This
was carried out by a Mrs. H J Jones, an HMRC Higher Officer, and resulted in a
reduction of the amount assessed from £48,457 to £13,839, by reason of Mrs.
Jones’s decision not to dispute further certain issues raised by Officer Caven and
included in the original assessment.
- 20 3. When the appeal was called on for hearing before the Tribunal, there therefore
remained for determination the substance of the revised assessment in the amount
of £13,839 of VAT. The first Appellant, Mr. Bunning, opened the appeal by
taking the Tribunal through all the issues raised by the revised assessment, but
after the mid-day adjournment we were told that all of these issues bar two had
been settled between the parties. This decision therefore relates to the remaining
two issues which continued to be contested.
- 25 4. These two issues were whether or not the Appellant had been correct to apply
the zero-rate of VAT to the supply of (a) a Range Rover Sport HSE motor vehicle,
registration DU 56 ZBV, to a Mr. Kenneth R. Miles on 6 December 2006, in the
VAT period 12/06, for a total consideration of £40,481.08 and (b) a Land Rover
Discovery motor vehicle. Registration DY 07 NUK, to a Mr. Paul Randles on 24
March 2007, in the VAT period 03/07, for a total consideration of £25,384.60.
- 30 5. The VAT law relevant to the determination of these issues is item 2A of
Group 12 of Schedule 8 VAT Act 1994 (“VATA”), pursuant to which the supply
of a qualifying motor vehicle to a handicapped person who usually uses a
wheelchair is zero-rated. Note (3) to Group 12, which gives a meaning for
“handicapped”, and Note (5L) to Group 12, which defines “qualifying motor
35 vehicle” for the purposes of item 2A are also relevant.
- 40 6. We note that as a result of Mrs. Jones’s review of the original assessment three
further sales of motor cars to which the Appellant had applied the zero-rate of
VAT, which Officer Caven had originally decided ought not to have been zero-
rated, were accepted by HMRC to have been properly zero-rated as supplies to
handicapped persons.
7. The Appellant trades under the name of Stafford Land Rover as a distributor
of Land Rover vehicles and is registered for VAT. The Tribunal heard evidence

from the first Appellant, Mr. Dennis Bunning, one of the proprietors of the business, which is an established business, from Peter Gilbert, the Appellant's sales manager, who has worked for the Appellant for 21 years, and from Officer Caven, who had visited the Appellant and had raised the original assessment. Officer Caven had also provided a Witness Statement. HMRC and the Appellant both produced a bundle of documents. We record that we found all the witnesses to be reliable and to have given honest evidence.

8. We set out the relevant evidence below. We accept it except to the extent that we indicate to the contrary and find facts accordingly.

The evidence and findings of fact

The supply of the Range Rover to Mr. Miles

9. Neither Mr. Bunning nor Mr. Gilbert sold the Range Rover to Mr. Miles in person. This was done by a salesman who no longer works with the Appellant. However Mr. Gilbert was present at the Appellant's business premises when Mr. Miles was there and he (Mr. Gilbert) observed that Mr. Miles used a wheelchair. Mr. Gilbert also said that when he saw Mr. Miles at the time Mr. Miles ordered the vehicle he (Mr. Miles) had obviously had a leg amputation but that when Mr. Miles returned to the Appellant's business premises to collect the vehicle this was not obvious and 'he had two legs'. We infer that on occasions, but not always, Mr. Miles uses a prosthetic leg.

10. We had in evidence a document entitled "Eligibility declaration by a disabled person", signed by Mr. Miles and dated 7 December 2006. In it, Mr. Miles declared he was chronically sick or had a disabling condition by reason of a lower left leg amputation, chronic diabetes and a stroke. He also declared that the adapted vehicle was for his personal use and that he usually used a wheelchair or stretcher to be mobile. Since the form was a printed form, we infer that Mr. Miles ought to have deleted the printed words "or stretcher" and that his declaration ought to have been that he usually uses a wheelchair to be mobile.

11. The adaptation of the vehicle to which the declaration referred was the fitting of a steering wheel spinner and the fitting of wheelchair ramps.

12. The steering wheel spinner is a knob which is attached to a steering wheel, designed to make the use of a steering wheel easier for certain users. It is not an expensive item and amongst the Tribunal's papers was an invoice addressed to the Appellant from Alan Tomlinson from which it appears that he supplied and fitted the steering wheel spinner to the Range Rover at the Appellant's premises on 7 December 2006 for a price of £30 plus VAT of £5.25. That cost (£35) was passed on to Mr. Miles with no mark-up in the sales invoice issued by the Appellant covering the supply of the Range Rover.

13. Mr. Gilbert's evidence was that the steering wheel spinner helped Mr. Miles to get into the vehicle and to balance himself in the driving seat. Mr. Gilbert had read the part of HMRC's Notice 701/59 ("Motor Vehicles for Disabled People")

at which (paragraph 3.4) under the heading “What is a ‘substantial’ adaptation” it is stated:

5 “A substantial adaptation enables a wheelchair user to use a vehicle which he could not use before it was adapted. For example, a spinner device, such as a knob on a steering wheel, may not seem substantial to an able bodied person but it would be substantial for a disabled wheelchair user who could not otherwise drive the vehicle.”

14. Mr. Gilbert understood from this that the fitting of a steering wheel spinner to a motor vehicle was enough to cause the vehicle concerned to be sufficiently substantially adapted to enable the supply of it to a disabled person to be
10 legitimately zero-rated for VAT purposes.

15. We had in evidence a document showing that the Appellant also fitted wheelchair ramps, which Mr. Miles had himself supplied, to the Range Rover and made no charge to Mr. Miles for this work. It appeared that this document had not been made available to HMRC before the Appellant’s documents were prepared
15 for the hearing of the appeal, but we have no reason to doubt the genuineness of the document.

16. The document entitled “Eligibility declaration for a disabled person”, which we have already referred to, also contained a section to be filled in by the supplier (i.e. the Appellant). That section was signed by Mr. Gilbert (and dated 15
20 December 2006, some days after the sale) but it was incomplete as Mr. Gilbert had not filled out any details of the vehicle or its adaptation.

17. Another document was in evidence, whose provenance was unclear, in which Mr. Miles was stated to be ‘wheelchair bound’. Yet another document, a letter sent by the Appellant to HMRC and dated 16 March 2010, and so, long after the
25 event, stated that:

“Mr. K. Miles supplied us with the wheel spinner that he had taken off his previous car. The car was an automatic so he only needed one leg to operate it. It would be pointless for Mr. Miles to have purchased a new wheel spinner when he already had one.”

18. Mr. Wilson, for HMRC, pointed out that the other evidence was inconsistent
30 with what had been written in the letter dated 16 March 2010. We agree. However, Mr. Bunning gave evidence that he had been in America at the time the letter was sent (the letter is not signed by him, but it is signed on his behalf) and had understood that he was under time pressure to reply to HMRC. We accept this evidence and find that Mr. Bunning’s recollection reflected in the letter was
35 mistaken.

19. In summary, therefore, we find that at the time of the supply (7 December 2006) Mr. Miles usually used a wheelchair to be mobile. He is a person who has suffered a lower left leg amputation and has chronic diabetes and has suffered a stroke. We accept that the Range Rover was purchased by him for his personal
40 use. The Range Rover was adapted by the Appellant by the fitting of a steering wheel spinner and the fitting of wheelchair ramps. The steering wheel spinner helped Mr. Miles to get into the vehicle and to balance himself in the driving seat.

The supply of the Land Rover Discovery to Mr. Randles

20. Mr. Gilbert sold the Land Rover Discovery to Mr. Randles in person. Mr. Randles told Mr. Gilbert that he qualified for a zero-rated supply of a vehicle to be made to him, and satisfied Mr. Gilbert that he (Mr. Randles) was disabled. Mr. Randles confirmed to Mr. Gilbert that he (Mr. Randles) (a) was in receipt of disability allowance (motability section); (b) used a wheelchair and an electric wheelchair; (c) walked very short distances with a cane; and (d) was in possession already of a vehicle which he had purchased 'VAT-free' (though not from the Appellant).

21. Mr. Randles said to Mr. Gilbert that he needed ramps to be fitted to the Land Rover Discovery and that he had had a steering wheel spinner in his previous car. Mr. Gilbert was in no doubt that Mr. Randles was disabled and recommended to Mr. Randles that he have a steering wheel spinner fitted in the Land Rover Discovery to assist in making the supply properly zero-rated. A steering wheel spinner was fitted to the Land Rover Discovery.

22. We had in evidence another document entitled "Eligibility declaration by a disabled person", this time signed by Mr. Randles and Mr. Gilbert. This document was dated 8 March 2007. In it, Mr. Randles gave no details of his condition and Mr. Gilbert, for the Appellant, gave no details of any adaptation of the vehicle for Mr. Randles's use. Mr. Gilbert acknowledged the obvious fact that the declaration had not been fully completed. Nevertheless Mr. Randles did declare that the adapted vehicle was for his personal use and that he usually used a wheelchair (or stretcher, but we infer the reference to a stretcher was inapplicable) to be mobile.

23. The invoice for the sale of the Land Rover Discovery to Mr. Randles was dated 24 March 2007, and recorded that the Appellant charged Mr. Randles a £38 registration fee, but also indicated that Mr. Randles had exemption from road fund licence for the vehicle on account of the fact that he was "disabled". The steering wheel spinner, for supply and fitting of which the Appellant had paid Alan Tomlinson £30 including VAT, was not charged on by the Appellant to Mr. Randles. The steering wheel spinner had been fitted on 7 March 2007.

24. Mr. Gilbert's evidence was that Mr. Randles had provided ramps and a fitting kit to enable the ramps to be used with the vehicle. The ramps were for scooter and wheelchair access to the vehicle. The Appellant had fitted the bracket to the vehicle (part of the kit provided by Mr. Randles). The Appellant did not charge Mr. Randles for fitting the bracket to the vehicle. This work was done on 23 March 2007, according to an internal invoice document produced by the Appellant.

25. Amongst the documentation obtained from Mr. Randles for the purposes of disputing HMRC's case that the supply of the vehicle to him ought to have been standard-rated for VAT purposes, was a certificate of exemption from paying for a vehicle licence which had been issued to Mr. Randles by the Service Personnel & Veteran Agency, and was granted in response to an application received on 5

March 2008. Mr. Wilson, for HMRC, noted that this was a year after the date of the supply in issue. The certificate of exemption noted that Mr. Randles was a war pensioner receiving a War Pensioners' Mobility Supplement and that entitlement for the supplement had started on 9 May 2007.

5 26. The Tribunal also had in its papers a document issued to Mr. Randles by the Department for Work and Pensions, Disability and Carers Service. This document was dated 27 April 2004 and confirmed that Mr. Randles was entitled to Disability Living Allowance, specifically, to the 'middle rate care component for help with personal care from 22 December 1997 indefinitely'. Mr. Wilson, for
10 HMRC, pointed out to Mr. Gilbert that there was no mention in this document of the 'mobility component', to which Mr. Gilbert responded that he thought he had seen something to say that Mr. Randles was entitled to the mobility component.

15 27. The Tribunal also had in its papers a letter sent by Mr. Randles to Mr. Gilbert and dated 28 January 2010 ("the January letter") and a statement made by Mr. Randles and dated 1 November 2010 ("the November statement"). We note that both the January letter and the November statement were prepared a long time after the supply in issue, and in connection with the preparation of the appeal. Mr. Randles, of course, did not give oral evidence to the Tribunal, and so was not made available for cross-examination.

20 28. In the January letter, Mr. Randles explained that he has 'numerous disabilities which include Arthritis, Asthma, Diabetes, and Depression etc.'. He added that 'more pertinent to requiring the chosen vehicle [he had] disabilities to [his] left hand, right knees, lower middle, upper back and neck, left arm and wrist'. He stated that 'medically' the vehicle had been chosen 'due to various contributing
25 factors: High driving position; Full height adjustable suspension for ease of entry and exiting the vehicle; And simply the sitting position of the vehicle; [and] General sitting space inside the vehicle to meet my personal requirements'. Even so, according to the January letter, the Land Rover Discovery is not perfect for Mr. Randles's use, but it is the best choice to meet his requirements. He still has
30 discomfort and is unable to travel for long periods and only uses the vehicle on 'good days'. Even in the Land Rover Discovery, the seated position 'causes repeated kidney infections due [to] trying to sit comfortable [*sic*] due to the knee and back, which causes other complications and repeated infections'.

35 29. Mr. Randles added in the January letter that he finds it 'incredibly difficult, especially on a regular basis, to use a standard saloon car, due to the very low entry and exit position, and subsequently having to lower into the vehicle, and then rise from a very low position'. He added that this has not only proved to be difficult, but has caused repeated injuries in the past.

40 30. Mr. Randles stated in the January letter that at the time of purchase he required two modifications to the vehicle, namely a 'steering wheel knob – designed to make every day driving easier due to an accumulation of limited movement or mobility from the back and additionally weakness in the left arm and wrist' and an automatic gear box. We note, however, that the bracket to enable use of ramps

with the vehicle was fitted on 23 March 2007, the day before the invoice date relative to the supply.

31. Mr. Randles added in the January letter that:

5 “In addition to the above requirements the vehicle was additionally chosen to transport a **Full Size Mobility Scooter**, as you will see by the attached photos this scooter is NOT a basic folding scooter and would be impossible to get into any normal family saloon or even estate car. This full size scooter is essential for my personal requirements, and again that Land Rover Discovery after meticulous research proved to be one of the very few vehicles capable of transporting the attached scooter.”

10 32. Photographs were attached to the January letter and were in the Tribunal’s bundle. They show the scooter and the way it is loaded into the vehicle via the ramps.

33. In the November statement, Mr. Randles said that:

15 “I use a Wheelchair and Mobility Scooter to get about as I have cronic [*sic*] back pain and can not walk far.

I use either the Scooter or Wheelchair depending on the trip and where I can park, normally close to the shops with my car.

The Scooter or Wheelchair is loaded into the back of my Land Rover with the aid of ramps that Stafford Land Rover had fitted into it.

20 Stafford Land Rover also fitted a wheel spinner to aid me in turning the steering wheel.

The Land Rover I have purchased has air suspension to lower and aid the loading of the wheelchair and access for myself.

I consider that I am fully entitled to a VAT free vehicle under current HMRC guidelines.”

25 34. We also had in evidence a letter dated 18 October 2010 sent by Dr. Palmer of the Browning Street Surgery, Stafford to Mr. Randles at Mr. Randles’s request, in which Dr. Palmer confirms that Mr. Randles has an electric scooter and a manual wheelchair.

30 35. In summary, we find that at the time of the supply (24 March 2007) Mr. Randles had both a manual wheelchair and a full size mobility scooter. We accept that he usually used the wheelchair. The Land Rover Discovery was adapted for him at the time of the supply by the fitting of a steering wheel spinner and a bracket to enable ramps to be used with the vehicle. The primary use envisaged for such ramps was to allow Mr. Randles’s mobility scooter to be loaded onto and to be unloaded from the vehicle. We find that Mr. Randles’s chief concern in
35 buying the Land Rover Discovery was to acquire a motor vehicle in which he could transport his mobility scooter. No evidence was given that both the mobility scooter and a wheelchair could be carried in the vehicle at the same time, and we find that Mr. Randles’s purpose in purchasing the Land Rover Discovery was not to transport the wheelchair regularly, although the ramps could be used to
40 load the wheelchair into the vehicle and we accept that at the time of the purchase

of the vehicle Mr. Randles had it in mind that this could be done when required. At the time of the supply of the Land Rover Discovery, Mr. Randles was in possession already of a vehicle which he had purchased 'VAT-free' (though not from the Appellant). Mr. Randles purchased the Land Rover Discovery for his personal use and he had exemption from road fund licence for the vehicle on account of the fact that he was "disabled".

36. We find that at 24 March 2007, Mr. Randles was in receipt of disability allowance (the care component and not the mobility component). At that time Mr. Randles had medical conditions which made it very difficult for him to walk far (he walked only short distances and then with a cane) or to travel in a standard saloon car, on account of the low-slung position of the seating in such a car. He also had at 24 March 2007 various weaknesses including weakness to his left arm and wrist, which made the use of the steering wheel spinner in the Land Rover Discovery an advantage to him, though we consider that if it had been a necessity, that fact would have been brought out much more clearly in the documents.

37. Having set out our findings of fact we turn to the applicable law and HMRC's relevant published guidance, noting that Mr. Wilson, for HMRC, fairly informed us that the guidance did not have the force of law, but was based on HMRC's interpretation of the requirements laid down by the legislation.

The law and HMRC's interpretation

38. Pursuant to section 30 VATA 1994, goods or services are zero-rated if they are of a description specified in Schedule 8 VATA. As stated above, the provisions of Schedule 8 which are relevant to this case are contained in Group 12, item 2A, which must be interpreted by reference to Note (3) and Note (5L). These provisions are as follows:

Item 2A

The supply of a qualifying motor vehicle—

- (a) to a handicapped person—
 - (i) who usually uses a wheelchair, or
 - (ii) who is usually carried on a stretcher, for domestic or his personal use; or
- (b) to a charity for making available to such a handicapped person by sale or otherwise, for domestic or his personal use.

Note (3)

"Handicapped" means chronically sick or disabled.

Note (5L)

A "qualifying motor vehicle" for the purposes of item 2A is a motor vehicle (other than a motor vehicle capable of carrying more than 12 persons including the driver)—

- (a) that is designed or substantially and permanently adapted to enable a handicapped person—
 - (i) who usually uses a wheelchair, or
 - (ii) who is usually carried on a stretcher,

to enter, and drive or be otherwise carried in, the motor vehicle; or

- (b) that by reason of its design, or being substantially and permanently adapted, includes features whose design is such that their sole purpose is to allow a wheelchair used by a handicapped person to be carried in or on the motor vehicle.

5 39. It will be seen that the legislation imposes qualifications both on the vehicle
which is supplied – that it must be a qualifying motor vehicle, as defined – and
also on the person to whom the supply is made. Since Item 2A (b) – zero-rating
for certain supplies to charities – is not in issue in this appeal, the relevant
10 qualification imposed on a person to whom the supply is made is that such a
person must be chronically sick or disabled and usually use a wheelchair. (The
clause at the end of paragraph (a) of item 2A ‘for domestic or his personal use’ we
construe as applying to the supply of the qualifying motor vehicle to a
handicapped person, rather than to that person’s use of a wheelchair or a
stretcher.)

15 40. HMRC’s guidance is contained in Notice 701/59, entitled “Motor vehicles for
disabled people”. Mr. Wilson, for HMRC, submitted that the interpretation of the
above provisions which is contained in that Notice is correct and that the Tribunal
should adopt it.

20 41. The relevant passages of the Notice are as follows (paragraph references are
given):

2.1 What are the conditions for zero-rating?

You can zero rate the sale of an adapted motor vehicle when the following conditions are met:

- 1 The vehicle seating no more than 12 people must be supplied to a disabled person who normally uses a wheelchair or stretcher to be mobile – see paragraph 3.1.
- 25 2. The vehicle must be adapted to enable the disabled wheelchair (or stretcher) user to enter, drive or otherwise travel in the vehicle – see section 3
3. The adapted vehicle must be for the domestic or personal use of the disabled wheelchair or stretcher user – see paragraph 2.7
4. You hold documents to show eligibility – see section 12.

2.2 What is a wheelchair user?

For the purposes of this relief a wheelchair user is anyone who has to use a wheelchair (electrically powered or otherwise) in order to be mobile.

35 A disabled person with a degenerative condition, such as multiple sclerosis, who does not need to use a wheelchair all the time, but only when the condition requires it, also qualifies as a wheelchair user.

A person who only occasionally uses a wheelchair such as:

- when visiting a shopping centre or gardens; or
- temporarily because he has a broken leg

is not considered to normally use a wheelchair and is not eligible for the relief.

2.3 What is a wheelchair?

A wheelchair is a chair for invalids on wheels which is manually or mechanically propelled.

A mobility scooter is not a wheelchair for VAT purposes.

5 2.4 What is a mobility scooter?

A scooter

- is mechanically propelled;
- has a central steering column;
- has a maximum speed of 4 miles per hour for pavement use; and
- 10 • is generally only used outside the home.

2.7 Domestic or personal use

To qualify for zero-rating the adapted vehicle must be for the domestic or personal use of the disabled wheelchair user. This may also include vehicles that are used by the disabled wheelchair user in his work capacity provided this is incidental to the vehicle's main use as a private vehicle.

You cannot zero-rate vehicles supplied to businesses regardless of who uses them or how they have been adapted – for example, you cannot zero-rate an adapted vehicle that will be used as a taxi.

3.1 What is an eligible adapted motor vehicle?

20 It is any motor vehicle (such as a car, light van, multi-passenger vehicle (MPV) or motor home) that is

- designed, or substantially and permanently adapted for the carriage of a disabled wheelchair user – see paragraphs 3.2 to 3.6; and
- has a carrying capacity of no more than 12 people ...

25 3.2 What does 'adapted for the carriage of a disabled wheelchair/stretchers user' mean?

A motor vehicle is adapted for the carriage of a disabled wheelchair user if it is:

- adapted to suit his specific needs; **and**

the adaptation:

- allows him to enter and travel in the vehicle whilst seated in the wheelchair or on the stretcher;
- allows him to enter, travel in or leave the vehicle;
- enables him to drive the vehicle; or
- allows a wheelchair to be carried on or in the vehicle.

3.3 What is a 'permanent' adaptation?

35 An adaptation is permanent if it can be used for as long as the disabled wheelchair user requires it. Generally the adaptation would require welding or bolting to the vehicle.

3.4 What is a 'substantial' adaptation?

5 A substantial adaptation enables a wheelchair user to use a vehicle which he could not use before it was adapted. For example, a spinner device, such as a knob on a steering wheel, may not seem substantial to an able bodied person but it would be substantial for a disabled wheelchair user who could not otherwise drive the vehicle.

3.5 Examples of adaptations

The following are examples of adaptations for the carriage of a disabled wheelchair user:

- a swivel seat;
- a hoist to lift a wheelchair into or onto the vehicle;
- 10 • a box for the wheelchair, which is fitted to the top of the back of the vehicle;
- adaptations that enable a wheelchair user to drive the vehicle, such as a push/pull brake and accelerator, hand controls or other aids that operate the primary driving controls; and
- infra-red control unit that operates the secondary controls.

15 This is not an exhaustive list.

The following are **not** adaptations for the carriage of a disabled wheelchair user:

- the fitting of a roof rack or standard roof box;
- the attachment of a trailer to the back of a vehicle; or
- the fitting of automatic transmission;

20 because they are for general use and not specifically designed for disabled people.

This is not an exhaustive list.

11.2 If a disabled wheelchair user purchases a vehicle and subsequently has it adapted can the disabled wheelchair user claim VAT relief on the purchase of the vehicle?

25 No. The vehicle must be adapted before it is supplied to the disabled wheelchair user in order to be eligible for VAT relief. There is no VAT relief for an unadapted vehicle. However, the cost of the adaptation is eligible for zero-rating.

12. Eligibility declarations

12.1 What should the disabled wheelchair user declare?

The declaration should

- 30 • give details of his disability; and confirm that the vehicle is for his personal use

...

12.5 What must the supplier do?

You are responsible for ensuring that you are charging the correct amount of VAT.

35 Possession of an eligibility declaration does not mean that you can automatically zero rate your charge.

You must be satisfied that the declaration made by the disabled wheelchair user, charity or eligible body is valid before signing your section of the form.

5 You should be able to show that you have taken reasonable steps to confirm the validity of the declaration. You may wish to ask for additional information or documents to support a claim for VAT relief, such as relevant correspondence.

You must not accept a declaration that you know or suspect to be untrue.

As a concession, if you have taken all reasonable steps to check the validity of a declaration and acted in good faith, you will not normally be asked to account for VAT if the declaration is subsequently found to have been made in error – see Notice 48 Extra-statutory concessions.

10 You should retain the declaration and any supporting documents as part of your records.

13 Eligibility declaration by a disabled person.

Under this heading a pro-forma document is set out in the terms used by the Appellant – see: paragraphs 10, 16 and 22.

15 42. The Tribunal was specially referred by Mr. Wilson to one previous decision of the VAT and Duties Tribunal. This was the decision in the appeal of *Leisure Karts (UK) Limited v Commissioners for HMRC* (Decision No. 19403) (Chairman: Lady Mitting) (Date: 28 November 2005).

20 43. In that decision, the Tribunal decided that the mobility scooter in issue, which we note was capable of travelling at speeds of up to eight miles per hour and adapted for use on and off the road and, in its basic form, with the possible exception of an optional swivel seat, had no features which were of use only to a disabled person, was not ‘designed solely for use by a handicapped person’ within item 2(g) of Group 12 of Schedule 8m VATA – see: paragraph 26 of the decision.

The submissions

25 44. The Appellant’s submission was straightforward. Mr. Bunning contended that the two vehicles in question had both been substantially and permanently adapted for use by the respective customers, Mr. Miles and Mr. Randles, both of whom were (obviously) disabled and both of whom had signed eligibility declarations in the form included in Notice 701/59 – see: section 13 thereof.

30 45. Mr. Bunning added that because of the difficulty he had experienced with the supplies which are the subject of this appeal, the Appellant was now very reluctant to sell cars to disabled persons and that he has in consequence been accused of discriminating against such customers.

35 46. Mr. Wilson, for HMRC, accepted that both Mr. Miles and Mr. Randles were disabled. We infer from this that he accepted that each qualified as ‘a handicapped person’ within the meaning of item 2A, Group 12, Schedule 8, VATA and notes (3) and (5L). But he argued that the conditions for zero-rating had not been fulfilled.

47. First, HMRC did not accept that either Mr. Miles or Mr. Randles was a wheelchair user. His submission was that the statutory formula ‘a handicapped person who usually uses a wheelchair’ in item 2A and note (5L) was to be interpreted as set out in paragraph 2.2 of Notice 701/59 – that is to say, in broad terms, as a person ‘who has to use a wheelchair ... in order to be mobile’.

48. Secondly, the respective vehicles had not been ‘substantially or permanently adapted’ within note (5L) because the evidence was that they had not been adapted to the extent that would enable Mr. Miles or Mr. Randles respectively to drive the vehicles. From this we understood that HMRC interpret note (5L), whose language is as follows:

“a motor vehicle ... that is designed or substantially and permanently adapted to enable a handicapped person, who usually uses a wheelchair, to enter, and drive or otherwise be carried in the motor vehicle”

as requiring that the adaptation required to enable a vehicle to come within the definition of a ‘qualifying motor vehicle’ in note 5(L) must enable – in the sense of making it possible for – the specific handicapped customer to whom the vehicle is supplied to enter, and drive or be otherwise carried in, the vehicle. Mr. Wilson submitted that this was the interpretation provided in paragraph 3.4 of Notice 701/59.

49. In support of this submission he argued that the evidence showed that Mr. Miles could drive the vehicle supplied to him without the steering wheel spinner which had been attached, and that Mr. Randles could drive a standard saloon car, which showed that the adaptations to the vehicle supplied to him did not enable him to drive it.

50. Thirdly, Mr. Wilson submitted that Mr. Randles’s mobility scooter was not a wheelchair within the meaning of item 2A and note (5L), Group 12, Schedule 8, VATA. In this he echoed the interpretation in paragraphs 2.3 and 2.4 of Notice 701/59 and relied on the Tribunal’s decision in *Leisure Karts (UK) Ltd*.

Discussion and decision

51. There are in the Tribunal’s view three points relevant to this case on which the interpretation contained in Notice 701/59, adopted in his submissions by Mr. Wilson, is inconsistent with the law contained in item 2A and Note (5L) of Group 12, Schedule 8, VATA.

52. The first is the statement that the holding of documents to show eligibility is a condition for zero-rating – see paragraph 2.1 (4) of the Notice. Item 2A and Note (5L) do not, unlike some other provisions, incorporate, as a condition precedent for zero-rating, compliance with such conditions as may be laid down by HMRC. They can be contrasted in this respect with section 30(6) VATA providing *inter alia* for zero-rating of goods exported to a place outside the member States ‘if such other conditions, if any, as may be specified in regulations or the Commissioners may impose are fulfilled’.

53. Therefore the holding of documents to show eligibility (including an eligibility declaration in the form set out in section 12 of the Notice – and signed in relation to both supplies concerned in this appeal) is not a legal condition for zero-rating a supply. However, the holding of documents to show eligibility, and an eligibility declaration in the form laid down, and properly completed, is clearly advisable in cases such as this. Furthermore, the Tribunal emphasises that by virtue of a taxable person’s participation in the VAT system (i.e. by virtue of being a taxable person), a taxable person has a responsibility to carry out reasonable checks (due diligence) as to the accuracy and correctness of the information necessary to entitle a supply of a qualifying motor vehicle to be zero-rated pursuant to item 2A, Group 12, Schedule 8, VATA.

54. Secondly, the statement in the first section of paragraph 2.2 of the Notice to the effect that a ‘wheelchair user’ is ‘anyone who has to use a wheelchair ... in order to be mobile’ is, in the Tribunal’s view, an incorrect paraphrase of the legislative language which refers to ‘a handicapped – i.e. chronically sick or disabled – person who usually uses a wheelchair’.

55. The emphasis in the legislative language is on usual use, whereas the language of the Notice states that necessity of use is the primary yardstick – there is an exception set out in paragraph 2.2 of the Notice for disabled persons with degenerative conditions.

56. Thirdly, the statement that a vehicle ‘adapted for the carriage of a disabled wheelchair/stretchers user’ must be ‘adapted to suit his specific needs’ (see paragraph 3.2 of the Notice) appears to the Tribunal to be an incorrect interpretation of the legislation.

57. As stated above (see paragraph [39]), the legislation imposes qualifications both on the vehicle which is supplied and also on the person to whom the supply is made. The qualification on the vehicle is imposed by the requirement that it must be a ‘qualifying motor vehicle’. The qualification on the person to whom the supply is made is (relevantly to this appeal) that such a person must be a handicapped person (as defined) who usually uses a wheelchair.

58. The requirement that the vehicle must be a ‘qualifying motor vehicle’ incorporates the condition that it must be designed or substantially and permanently adapted to enable *a handicapped person*, who usually uses a wheelchair or is carried on a stretcher to enter and drive or otherwise be carried in, the vehicle (Note (5L) (a)) – emphasis added.

59. In the Tribunal’s view the subjective condition of the person to whom the supply is to be made is entirely recognised in the legislative requirement that he/she must be a handicapped person (as defined) who usually uses a wheelchair.

60. The condition that the vehicle must be a ‘qualifying motor vehicle’ imposes, in the Tribunal’s view, objective tests which must be satisfied by the vehicle, irrespective of the subjective condition of the person to whom the supply is to be

made. If it were otherwise, the reference to ‘a handicapped person’ in the definition of ‘qualifying motor vehicle’ would have been a reference to *the handicapped person* to whom the supply is or is intended to be made.

5 61. This means that, under the first limb (a) of note (5L), a qualifying motor vehicle must be one that is designed or substantially and permanently adapted to enable objectively a handicapped person who usually uses a wheelchair or is usually carried on a stretcher to enter and drive or be otherwise carried in it. The particular subjective characteristics of the disability of the handicapped person to whom the supply or is intended to be made are not relevant in determining
10 whether the vehicle is a ‘qualifying motor vehicle’.

62. This reasoning is, in the Tribunal’s view, reinforced by the evidently objective nature of the condition in the second limb (b) of note (5L) regarding an adaptation including features whose design is such that their sole purpose is to allow a wheelchair used by a handicapped person to be carried in or on the motor vehicle.

15 63. During the hearing the Tribunal expressed some doubt about HMRC’s exclusion of a mobility scooter from qualifying as a wheelchair for the purposes of this legislation. Mr. Wilson indicated that HMRC relied on the Tribunal’s decision in *Leisure Karts (UK) Limited* in making this exclusion. On reflection, it seems to this Tribunal that this exception is correctly made.

20 64. As stated above, the subjective condition of the person to whom the supply is to be made is that he/she must be a handicapped person (i.e. a chronically sick or disabled person) who usually uses a wheelchair. It appears to the Tribunal that the legislation is here imposing a qualification that the person receiving the zero-rated supply must have a very severe lack of normal mobility. The Tribunal considers
25 that this purpose would not be achieved if it were permissible to regard a chronically sick or disabled person who usually uses a mobility scooter (but not a wheelchair) as qualifying as a recipient of a zero-rated supply under these provisions.

30 65. Applying the legislation to the findings of fact made above in relation to Mr. Miles, we hold that he was at the time of the supply a handicapped person who usually used a wheelchair, and that the Range Rover supplied to him by the Appellant was a qualifying motor vehicle within note (5L), Group 12, Schedule 8, VATA, which was so supplied to him for his domestic or personal use. The supply therefore falls to be zero-rated.

35 66. The Range Rover, being a motor vehicle not capable of carrying more than 12 persons including the driver, was a qualifying motor vehicle for one or both of the following reasons – either because it was substantially and permanently adapted objectively to enable a handicapped person who usually uses a wheelchair to enter and drive or be otherwise carried in it, or because by reason of its being
40 substantially and permanently adapted it objectively included features whose design is such that their sole purpose is to allow a wheelchair used by a handicapped person to be carried in the it.

5 67. The relevant substantial and permanent adaptation first referred to in the preceding paragraph was the fitting of a steering wheel spinner. In view of the content of paragraph 3.4 of the Notice, we do not understand HMRC to argue that the fitting of a steering wheel spinner is not a substantial and permanent adaptation. The relevant substantial and permanent adaptation secondly referred to in the preceding paragraph was the fitting of wheelchair ramps.

10 68. Applying the legislation to the findings of fact made above in relation to Mr. Randles, we hold that at the time of the supply he was a handicapped person who usually used a wheelchair, and that the Land Rover Discovery supplied to him by the Appellant was a qualifying motor vehicle within note (5L), Group 12, Schedule 8, VATA, which was so supplied to him for his domestic or personal use. This supply also therefore falls to be zero-rated.

15 69. The Land Rover Discovery, being a motor vehicle not capable of carrying more than 12 person including the driver, was a qualifying motor vehicle only because it was substantially and permanently adapted objectively to enable a handicapped person who usually uses a wheelchair to enter and drive or be otherwise carried in it, by the fitting of a steering wheel spinner.

20 70. The fitting of the bracket to enable ramps to be used with the vehicle does not qualify as a substantial and permanent adaptation under the second limb (b) of note (5L) because it did not include features whose design was such that their *sole purpose* was to allow a wheelchair used by a handicapped person to be carried in or on the vehicle. The chief purpose of the bracket, we have found, was to enable ramps to be used to allow a mobility scooter, which is not a wheelchair, to be carried in the vehicle.

25 71. In the result, we allow the appeal. We treat the parts of the appeal relating to the issues which have been settled, as having been withdrawn.

Right to apply for permission to appeal

30 72. This document contains full findings of fact and reasons for my decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Rules. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

35

JOHN WALTERS QC

JUDGE OF THE FIRST-TIER TRIBUNAL
RELEASE DATE: 6 January 2012

5