



## CHANGES TO THE REDUCED RATE OF VAT FOR ENERGY SAVING MATERIALS

ICAEW welcomes the opportunity to comment on the consultation document [VAT: Changes to the reduced rate of VAT for Energy Saving Materials](#) published by HM Revenue & Customs on 9 December 2015.

This response of 27 January 2016 has been prepared on behalf of ICAEW by the Tax Faculty. Internationally recognised as a source of expertise, the Faculty is a leading authority on taxation. It is responsible for making submissions to tax authorities on behalf of ICAEW and does this with support from over 130 volunteers, many of whom are well-known names in the tax world. Appendix 1 sets out the ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark proposals for changes to the tax system.

We should be happy to discuss any aspect of our comments and to take part in all further consultations on this area.

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## MAJOR POINTS

### Key point summary

1. We are concerned that the arbitrary setting of a 50% threshold for determining what is a significant part of the value of services supplied could be subject to abuse. We think clear guidance on what HMRC will consider to be acceptable commercial pricing practice would be helpful.
2. Where supplies might otherwise require apportionment between the standard and reduced rates of VAT, there is scope to increase the value of the amount relating to services.
3. We are concerned that the documentary evidence required for proof of age could render the customers vulnerable to identity theft and increased costs.

## RESPONSES TO SPECIFIC QUESTIONS

**Q1: Does the legislation as drafted achieve the objectives as described in this document? If not, why not?**

4. The point about the cost of the materials not being more than the services could lead to uncertainty as to what is an acceptable pricing practice and possibly cases of abuse where suppliers undervalue the goods element and over value the services.
5. If the 50% test is based on the VAT exclusive price charged to the consumer, where an installer of energy saving materials is to supply both the materials and the services of installing them, under the new item 3 of Group 2, Sch 7A, there could be a temptation to increase the value of the services of installation to a level which secures reduced rating, subject to commercial constraints.
6. For example, an installer could agree to supply the goods at cost, with the service charge always being at least £1 more than the cost price of the goods. Would this be abusive if the pricing was determined in part by commercial factors other than the objective of avoiding VAT?
7. Where the price is to be apportioned between standard rated goods and reduced rated services, there will probably be market pressure to make a reduction in the price of the materials in a single economic transaction.
8. For example, if an installer buys materials costing £100 and the installation cost would usually be £50 and a mark-up of 30% was applied to each, then the overall price would be £195 excluding VAT, which would be due at 20% on the materials and at 5% on the services of installation.
9. We wonder if HMRC would regard it as abusive for an installer to agree to supply the materials at £95 and the installation services at £100 to achieve reduced VAT rating on the total price, if there was evidence that such pricing was being adopted in the market. How would HMRC ensure equality of treatment amongst taxpayers throughout the industry in practice?
10. We understand that there is a similar rule in France on repairs, ie if goods are less than 50% of the total value of the supply, then the whole supply is a service. In Spain, we believe that a similar rule applies with a 75% goods limit. This suggests that there is no accepted EU wide definition of what is meant by point 10 in annex III, which only requires that goods must not account for a *significant part of the value of the service supplied*. We would have concerns if the proposed UK law is less favourable than the position in other member states.
11. The restriction on item 3 reads as follows:

*Item 3 does not apply to a supply so far as relating to the energy saving materials installed if the cost of those materials to the person to whom they are supplied exceeds the cost to that person of the service of installing them.*

We assume that this test is intended to be based upon the amount paid by the end customer for the materials and the services of installing them, as opposed to the amount paid by the installer. However, we think that the definition of “the person to whom they are supplied” makes this unclear, as it is capable of being read as what the installer pays.

12. For example, if there was a sub-contractor who installed the goods and charged a main contractor who subsequently charged the householder, there could be a difference in the proportion of goods to services in the case of the sub-contractor’s and the main contractor’s supplies.
13. On the exclusion of certain goods from the reduced rate relief, we are aware of certain solar power installations such as the removal of the existing roof and replacement with a structure incorporating solar panels which would probably qualify as a 'renovation' due to the structure of the building being affected. We believe that clarification of this this point is required.

**Q2: Do you have any other comments on the proposed implementation of these changes?**

14. The consultation document states that HMRC would normally expect evidence to take the form of one of the following: a current copy of the customer’s pension or benefit statement, a copy birth certificate, a copy passport or anything else that clearly demonstrates the customer is a ‘qualifying person’.
15. Given the current risks and publicity regarding identity theft, we are concerned that elderly people may be worried about providing copies of such documents to suppliers that are likely to be unknown to them, particularly birth certificates and passports.
16. By suggesting that such documents be accepted as proof, HMRC could be playing into the hands of fraudsters by providing justification to the suppliers that they request the documents and reassurance to the elderly people that it is acceptable to hand them over in order to receive a reduced rate of VAT.
17. If the supplier subsequently sells the documents received, or information contained within them, to fraudsters, where does that leave HMRC?
18. We recommend that HMRC excludes from the list of suggested documents anything that could be used for identity theft purposes.
19. The original birth certificate of a qualifying person would have to be at least 60 years old. Many elderly people may not have, or be able to find, such documents. The older the person concerned, the less likely they are to have a passport. To obtain a passport or replacement birth certificate would be expensive, the cost of which may exceed the potential VAT savings.
20. It would be very unusual for a birth certificate to include the same address as the property in which the energy saving materials were being installed. For most married women, the surname would also be different. Passports do not show addresses. We are therefore doubtful that a birth certificate or passport would provide adequate evidence that the person shown was the genuine recipient of the supply in most cases.
21. Alternative evidence may be suggested by the Government’s UK Verify programme, or by simply getting the customer to sign a declaration to the effect that they were over 60 years of age at the time of installation.

22. If an elderly person was house sitting while the owners were at work and was the only person seen by the installer of the energy saving materials, how could they be expected to know that the real home owner was not over 60?

## APPENDIX 1

### ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. **Statutory:** tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. **Certain:** in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. **Simple:** the tax rules should aim to be simple, understandable and clear in their objectives.
4. **Easy to collect and to calculate:** a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. **Properly targeted:** when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. **Constant:** Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. **Subject to proper consultation:** other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. **Regularly reviewed:** the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. **Fair and reasonable:** the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. **Competitive:** tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see via <http://www.icaew.com/en/about-icaew/what-we-do/technical-releases/tax>).