

## Call for evidence: VAT energy saving materials relief – improving energy efficiency and reducing carbon emissions

### Response by the Chartered Institute of Taxation

#### 1 Executive Summary

- 1.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the UK for advisers dealing with all aspects of taxation. We are a charity and our primary purpose is to promote education in taxation with a key aim of achieving a more efficient and less complex tax system for all. We draw on the experience of our 19,000 members, and extensive volunteer network, in providing our response.
- 1.2 We have only responded to questions where we have comments about the tax system. The CIOT does not comment on the setting of tax rates and we have not commented on questions that require a response from energy saving materials ('ESMs') industry specialists.
- 1.3 We consider that in principle, the VAT relief on battery storage could meet the three key objectives, subject to additional research by HMRC.
- 1.4 We received feedback that there is increased complexity for suppliers and customers where the installation of ESMs forms part of a wider contract of building works, and whether the works constitute a single or multiple supply. Where works are a single supply by a main contractor, the installation of ESMs are subject to the VAT liability of the wider works and may not benefit from the zero-rating, so it is essential that the ability to determine the VAT position is clear in the VAT guidance, particularly if the charitable relief is reinstated. There is merit in considering a specific carve-out for ESMs, where normal single v multiple supply considerations are suspended, in order to deliver the government's ambition to increase energy efficiency and bring down bills for households.
- 1.5 The CIOT would like HMRC to consider the VAT legislative position for the installation of ESMs as part of wider single supply of refurbishment works for housing associations ('HAS'), as well as charities, insofar as whether a provision for the Card Protection Plan ('CPP') jurisprudence to not apply, as part of the ongoing consultation. HAS hold a significant amount of the UK's rented domestic housing stock and will play a part in increasing the number of homes that are fuelled by ESMs rather than fossil fuels.

## 2 About us

- 2.1 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. Our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party-political organisation.
- 2.2 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.
- 2.3 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.
- 2.4 Our members have the practising title of ‘Chartered Tax Adviser’ and the designatory letters ‘CTA’, to represent the leading tax qualification.

## 3 Introduction

- 3.1 At paragraph 5.6 of the [Autumn Statement 2022](https://www.gov.uk/government/publications/autumn-statement-2022-documents)<sup>1</sup>, the government made a commitment to support improvements in energy efficiency to bring down fuel bills for households, businesses and the public sector, with an ambition to reduce the UK’s final energy consumption from buildings and industry by 15% by 2030 against 2021 levels.
- 3.2 Since 1 April 2022, until 31 March 2027, the zero-rate of VAT applies to the installation of specified ESMs in residential accommodation in Great Britain. For Northern Ireland, the commencement date applies from 1 May 2023. The reduced rate of VAT will apply on these ESMs from 1 April 2027. The zero-rate of VAT does not apply to installations of ESMs in business premises; these remain standard rated.<sup>2</sup>
- 3.3 As the installations of ESMs into new dwellings would be subject to the wider zero-rate applied to the construction of newly built residential properties, the proposed zero-rating discussed in this consultation would refer to works on existing residential properties.
- 3.4 Our stated objectives for the tax system include:
- A legislative process that translates policy intentions into statute accurately and effectively, without unintended consequences.
  - Greater simplicity and clarity, so people can understand how much tax they should be paying and why.
  - Greater certainty, so businesses and individuals can plan ahead with confidence.

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<sup>1</sup> <https://www.gov.uk/government/publications/autumn-statement-2022-documents>

<sup>2</sup> <https://www.gov.uk/guidance/vat-on-energy-saving-materials-and-heating-equipment-notice-7086>

- A fair balance between the powers of tax collectors and the rights of taxpayers (both represented and unrepresented).
- Responsive and competent tax administration, with a minimum of bureaucracy.

#### **4 Battery storage**

##### **4.1 Question 3: If included in the relief, can you explain how this type of battery storage would meet each of the 3 objectives set out in Chapter 2?**

4.2 Battery storage equipment would meet key objective one, as it improves the capability to retain or preserve energy within a property, by allowing customers to use energy generated from their solar panels later in the day. This decreases the demand for energy derived from fossil fuels.

4.3 In order to meet objective two on cost effectiveness, the proposed zero-rating of battery storage should encourage its installation. In principle, reducing the price of the product via a cut in taxation, where the net price remains the same after the VAT rate reduction, should make it more attractive for consumers. The government should draw on research to determine if the net price of ESMs have typically stayed the same following a reduction in the VAT rate, if the expected reduction in price due to the reduction in VAT has been passed on to consumers, and if the reduction in the VAT rate has increased the uptake of the installation of ESMs by consumers.

4.4 We note that for ESMs installed as part of a wider refurbishment contract with a main contractor, where the refurbishment contract is treated as a single supply for VAT purposes, the ESMs do not retain their zero-rating and are subject to the VAT rate applied to the wider refurbishment. This could be standard or reduced rated, depending on the circumstances of the refurbishment works carried out. In such circumstances, there is no encouragement for affected customers to install battery storage, even if they are changed to the zero-rate.

4.5 For key objective three that considers introducing complexities to the wider VAT system, where the battery storage was installed and connected to existing solar panels, or installed with new solar panels, and in either case, without wider construction works to the residential property, the application of a zero-rate to the battery storage would not cause uncertainty or complexity to broader VAT principles. These straightforward supplies would be zero-rated and there would be no requirement to consider the single or multiple supply VAT rules.

4.6 As noted in the consultation document in section two, it mentions that where ESMs are installed as part of a wider supply of building works, the ESMs element cannot be carved out of the single supply, as this would create uncertainty as to the broader VAT treatment of supplies involving multiple components. In principle, the zero-rating of battery storage would not in itself create uncertainty for the VAT system as such supplies supplied as part of a single supply of building works would not be subject to this VAT liability. However in practice, the determination of what is a single or multiple supply can be a very complex issue for businesses.

##### **4.7 Question 6: What are the advantages and disadvantages of including this type of battery storage within the relief?**

4.8 Two advantages of including battery storage in the zero-rated ESM list are increased simplicity and clarity. For suppliers of ESMs, there would be no requirement to apportion the value of installation services to the components with different VAT rates (assuming there is not a wider contract for refurbishment works). The

zero-rating for both the solar panels and the battery storage also makes it clear to consumers that they are not paying any VAT on these supplies.

## 5 Charities

### 5.1 **Question 14: Do you think the relief for the installation of ESMs in a building intended for use solely for a relevant charitable purpose should be reinstated? And if so, why?**

5.2 As stated in the consultation document, prior to August 2013, UK legislation provided a VAT relief for the installation of ESMs in a building intended for use solely for a relevant charitable purpose. The reason that this was removed was due to the European Commission identifying that the UK's application of the ESM relief was too broad and that including charitable buildings in the relief was not compatible with EU law. The UK is no longer required to have its VAT rules on the installation of ESMs align with EU law.

5.3 Although the CIOT does not comment on the setting of rates, our view is that HMRC should apply the same tests as for other ESMs, that is, consider whether the re-introduction of the relief would meet the three key objectives stated in the consultation document. HMRC can also revisit the historic reasons why the relief was originally granted to charitable buildings and consider if these still currently apply.

5.4 Our view is that charities would welcome the reinstatement of the relief.

### 5.5 **Question 16: To what extent do you think that charities would benefit from the reinstatement of this relief?**

5.6 As many charities will have a combination of non-business and VAT exempt income streams, they are not able to recover all of the input VAT they incur on overheads. On that basis, the reinstatement of the relief would, in principle, reduce the cost of non-recoverable VAT compared to a supply of installed ESMs that would otherwise be subject to a positive rate of VAT. This assumes that the net price of the ESMs remains the same after the VAT rate is reduced to zero.

5.7 Many charities will be undertaking wider steps to work towards reducing their carbon footprint as they work towards net zero targets. In principle, the reduced price of installing ESMs should encourage charities that are able to undertake these works to do so, perhaps at an earlier time.

5.8 Under current VAT legislation, charities may not benefit from the reinstatement if the works form part of a single supply of refurbishment works. Please see paragraphs 6.6-6.7 below for our recommendations.

### 5.9 **Question 17: What are the advantages and disadvantages of reinstating the relief?**

5.10 The main advantage to charities that are undertaking these works is that, in principle, the reinstatement of the relief would reduce their VAT burden.

5.11 For charities that lease a property, they may be restricted on what works they are able to carry out on the infrastructure of the building and it would be the landlord making these decisions, so the reinstatement of the relief would have no impact.

5.12 A possible disadvantage to reinstating the relief would be the additional VAT rules for suppliers so we would like to see clear guidance with examples to make the decision making process easier to ascertain the correct VAT liability for suppliers. Also see our comments in paragraphs 6.2-6.7 below.

## 6 Other issues

### 6.1 Question 18: Are there any other suggestions you have for making the relief more effective and efficient?

- 6.2 The main feedback received by the CIOT on this topic is for HMRC to consider the VAT position on ESMs when supplied to housing associations ('HAs'). HAs hold portfolios of domestic accommodation that are typically rented to people on lower incomes or to people requiring additional support. The government, in its Autumn Statement 2022 committed to support improvements in energy efficiency to bring down fuel bills for households, and HAs will be at the forefront of offering social housing with low-cost fuel delivered via ESMs to low-income tenants who would benefit most from reductions in fuel bills, so they are a sector that should be given consideration as part of this consultation.
- 6.3 HAs may have charitable status or they may operate as not-for-profit Registered Social Landlords or Private Registered Providers of Social Housing. The CIOT would be concerned if the reinstatement of the relief on ESMs for charities only applies to HAs that hold charitable status but there was a different VAT treatment for HAs operating as not-for-profits without charitable status. This would increase the complexity for suppliers of ESMs and increase the risk of getting the VAT liability wrong, which in turn increase the risk of penalties and interest.
- 6.4 There is also the (non-VAT) environmental aim of increasing the installation of ESMs in the UK housing stock, of which HAs form a significant part in the rental sector. HMRC has the opportunity to consider how the VAT position for this sector could see an increased speed of uptake of the installation of ESMs.
- 6.5 Further, HAs will tend to carry out works of refurbishment to the housing stock and carry out the installations of ESMs at the same time. As noted in paragraphs 4.8 and 4.10, they are currently unable to benefit from the zero-rate of VAT on installations into residential properties where such installations form part of a single supply of building works. If HAs incur VAT at a positive rate, they will be restricted on what input VAT can be recovered as the majority of the income will be exempt from VAT. It is noted that any 'carve-out' of the installations of ESMs as part of a single supply may introduce complexities to the wider VAT system.
- 6.6 We note that in *Commission v France C-94/09*, the CJEU ruled that the Commission was not able to show that for a single supply by an undertaker *'that the application of a reduced rate to the transportation of a body by vehicle is liable to infringe the principle of fiscal neutrality inherent in the common system of VAT'*. On this basis, the French tax authorities were permitted to carve out one element of a single supply in order to apply a different VAT liability, as it the domestic legislation allowed for this.
- 6.7 In HMRC VAT manuals VATSC11171<sup>3</sup> an excerpt from the *Colaingrove Limited* case (TC02534) is stated: *the principles from Talacre and French Undertakers would only apply 'in the very limited class of case where a reduced rate of VAT is in issue and the domestic legislation imposing it indicates an intention that the CPP jurisprudence should not apply.* Whilst the UK VAT legislation does not currently allow for the CPP jurisprudence to not apply for the installation of ESMs as part of a single supply of wider refurbishment works, the CIOT's view is that consideration of whether this should remain the case for HAs, whether charitable or not, and also for properties used for a relevant charitable purpose, should form part of this consultation.

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<sup>3</sup> <https://www.gov.uk/hmrc-internal-manuals/vat-supply-and-consideration/vatsc11171>

- 6.8 If a carve out were to be introduced for the specific supplies mentioned above, it would allow eligible parties to still benefit from the reduced VAT rate that will be applicable to the installation of ESMs, following the period when the temporary zero rate ends on 31 March 2027.

## **7 Acknowledgement of submission**

- 7.1 We would be grateful if you could acknowledge safe receipt of this submission, and ensure that the Chartered Institute of Taxation is included in the List of Respondents when any outcome of the consultation is published.

The Chartered Institute of Taxation

31 May 2023