



# VAT: Addressing borderline anomalies

## **Consultation document**

Publication date: 21 March 2012

Closing date for comments: 4 May 2012

<b>Subject of this consultation:</b>	Budget 12 announced changes to address some anomalous VAT borderlines. The changes either marginally extend VAT at the standard rate to these areas or confirm the current standard rated treatment.
<b>Scope of this consultation:</b>	This consultation invites comments on draft legislation changing the VAT treatment of supplies of catering, sports drinks, self storage, hairdressers' chair rental, holiday caravans and alterations to listed buildings.
<b>Who should read this:</b>	HMRC would like to hear from businesses involved in the manufacture and retail of affected goods or the provision of affected services; consumers affected by the changes and tax practitioners.
<b>Duration:</b>	The consultation will start on 21 March 2012 and end on 4 May 2012.
<b>Enquiries:</b>	For enquiries about the content of the consultation or requests for hard copies, please contact:  David Roberts HMRC VAT Projects Team 3C/10, 100 Parliament Street, London, SW1A 2BQ 020 7147 0205 Email : <a href="mailto:david.roberts4@hmrc.gsi.gov.uk">david.roberts4@hmrc.gsi.gov.uk</a>
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<b>Additional ways to be involved:</b>	HMRC is also happy to meet with and speak to other interested parties. Contact details are as above.
<b>After the consultation:</b>	A summary of responses will be published and the responses considered before a final version of the legislation is laid before Parliament in the summer.
<b>Getting to this stage:</b>	N/A
<b>Previous engagement:</b>	None

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# 1. Introduction

1. The VAT system contains a number of anomalies along the borderlines of the VAT exemptions and the VAT zero-rates. The UK's zero-rates and exemptions were designed to determine the tax treatment of the goods and services which existed when VAT was introduced in 1973, and have remained largely unchanged.
2. Some of the anomalies have arisen because of changes in the types of goods and services provided, which were not envisaged when the law was framed. Other anomalies have arisen as a result of litigation decisions, either where businesses have experienced uncertainty on how to apply the law or where some businesses have actively pushed at the boundaries to secure zero-rating or exemption for their products.
3. In some cases the reliefs have been exploited by avoiders or non compliant businesses, allowing them to secure an unfair advantage over other businesses. In addition to this loss of revenue, the uncertainty and complexity of the current rules creates costs for businesses and HMRC, with businesses seeking advice on the correct treatment and HMRC and businesses incurring litigation costs where they cannot agree.
4. The Government is therefore introducing a number of simplifying measures which create new sustainable borderlines to address some of these anomalies, reducing uncertainty, and costs for business and HMRC.
5. EU VAT law provides for exemption for certain specific supplies. In most cases exemption is mandatory but, in some cases, Member States have discretion on how to apply the VAT exemptions and can tax certain supplies that would otherwise be exempt. The UK's zero-rates can be removed but cannot be extended or new zero-rates introduced. These constraints in EU Law mean that in many cases in order to address any anomalies, new sustainable borderlines have to be created by extensions to the current VAT base.
6. The current changes seek to reduce these anomalies by marginally broadening the VAT base in areas where differences in VAT treatment have led to uncertainty, error and complexity for taxpayers.
7. The measures
  - clarify the treatment of catering to ensure that all hot takeaway food is taxed and to clarify the meaning of premises;
  - tax sports nutrition drinks to ensure that all sports drinks receive the same tax treatment;
  - remove exemption from self storage to ensure all supplies of storage receive the same tax treatment and to counter avoidance;
  - remove the anomaly whereby approved alterations to certain listed buildings are zero-rated whilst alterations to other

- buildings, and repairs and maintenance to all buildings are standard rated;
  - put beyond doubt the fact that VAT applies to the rental of hairdressers' chairs;
  - ensure that holiday caravans are taxed consistently at the standard rate of VAT.
8. Secondary legislation will be introduced in summer 2012, supported by anti-forestalling provisions in Finance Bill 2012. The changes will take place with effect from 1 October 2012.
9. Transitional arrangements will be available for alteration works to listed buildings.
10. HMRC is consulting on the draft legislation. The consultation will last from 21 March 2012 to 4 May 2012. HMRC is keen to hear the views of businesses and individuals who are affected by the changes and to identify any unintended consequences or unidentified impacts.
11. This document aims to give businesses and individuals clarity on the proposed changes by setting out for each change:
- the current rules;
  - the reasons why change is necessary;
  - the intended scope of the change; and
  - a draft of the relevant amended sections of Schedule 8 or Schedule 9 to the VAT Act 1994

Annex B contains Tables of Impacts for each individual measure.  
Annex C sets out the text of the proposed draft Statutory Instruments.

## 2. Catering - Hot Take Away Food and “Premises”

### What does this measure do?

12. This change clarifies the definition of “hot takeaway food” to confirm that all food\* (with the exception of freshly baked bread) that is above ambient air temperature when provided to the customer is standard-rated. It also clarifies the definition of “premises” to confirm that i) all food\* sold for consumption on the premises on which it is supplied, and ii) all food sold for consumption in areas adjacent to those premises or in areas shared with other retailers is subject to VAT at the standard rate.

\*Note: food includes drink

### Hot Take Away Food

#### What are the current rules?

13. Under the current rules, a supply of food “in the course of catering” is standard-rated. This includes hot takeaway food that has been heated for the “purposes” of enabling it to be consumed at a temperature above the ambient air temperature (and which is above that temperature at the time it is provided to the customer).

#### Current legislation

Group 1(a) of Schedule 8 to the VATA 1994 taxes “a supply in the course of catering” and note 3(b) confirms that this includes the sale of hot food which is “food which, or any part of which -

“(i) has been heated for the purposes of enabling it to be consumed at a temperature above the ambient air temperature; and

(ii) is above that temperature at the time it is provided to the customer”.

#### Why do the current rules need changing?

14. The borderline between hot takeaway food (standard-rated) and cold takeaway food (zero-rated) has for a number of years been the subject of litigation with some retailers arguing that the purpose of heating their food products is to improve their appearance or to comply with health and safety regulations, rather than to enable them to be consumed hot. This litigation has been decided on the facts of each individual case. As a result, the VAT rules in this area have become unclear and increasingly prone to legal challenge, leading to similar products receiving different tax treatment. So, although many retailers and take away outlets charge VAT

on the sale of hot chicken products, hot pies and toasted sandwiches, some retailers and bakery chains sell similar products zero-rated.

### **Scope of change**

15. The changes will apply VAT at the standard rate to all food which is at a temperature above the ambient air temperature at the time that it is provided to the customer, with the exception of freshly baked bread. This will clarify the rules in this area and ensure that all hot takeaway food is taxed consistently. Freshly baked bread that is cooling down in racks will remain zero-rated. 'Bread' will be defined in guidance but will include loaves, rolls, baguettes etc.

*Examples of products affected by the change include:* rotisserie chicken products, pies, pasties, toasted sandwiches etc. when above the ambient air temperature at the time they are provided to the customer.

*Examples of products not affected by the change include:* Freshly baked bread; and pies, pasties, sandwiches etc. when at or below ambient air temperature at the time they are provided to the customer.

#### Proposed new legislation

Hot food will be defined in a new note 3B as follows

“For the purposes of paragraph (b) of Note 3, “hot food” means food which, or any part of which, is above the ambient air temperature at the time it is provided to the customer, other than freshly baked bread”.

### **Questions on proposed new legislation**

*Q1 – Does the proposed legislation meet its objective of ensuring that all hot takeaway food is taxed consistently at the standard rate of VAT? If not, why not and what changes are needed?*

*Q2 - Freshly baked bread which is cooling down will remain zero-rated. Bread will be defined in guidance. What types of bread are most likely to be baked on a retailer's premises and are therefore above ambient air temperature at the time they are provided to customers?*

## **Premises**

### **What are the current rules?**

16. A supply of food “in the course of catering” is standard-rated. This includes a supply of food for consumption on the premises on which it is supplied. “Premises” includes the unit from which a retailer makes its sales along with any other areas set aside for the consumption of food.

#### **Current legislation**

Group 1(a) of Schedule 8 to the VATA 1994 taxes “a supply in the course of catering” and note 3(a) confirms that this includes:

“any supply of [food] for consumption on the premises on which it is supplied”.

### **Why do the current rules need changing?**

17. The borderline between on-premises consumption of food (standard-rated) and off-premises consumption of cold food (zero-rated) has been the subject of litigation over the years. More recently disputes have arisen as to whether food courts in shopping centres (which can also be shared with other retailers) and tables and chairs outside a cafe form part of a retailer’s premises.

### **What is the scope of the change?**

18. This change will confirm that “premises” includes all areas that are set aside for the consumption of food even if those areas are shared with other retailers.

*Examples of areas affected by this change include:* tables and chairs on the pavement outside a café, food courts in shopping centres, other similar shared eating premises such as in motorway service stations, airports, railway stations etc.

*Examples of areas not affected by this change include:* benches in a shopping centre for resting, airport departure seating etc.



Proposed new legislation

The reference to “premises” in note 3(a) will be clarified in a separate note 3A as follows:

“(3A) For the purposes of note (3), in the case of any supplier, the premises on which food is supplied include any area set aside for the consumption of food by that supplier’s customers, whether or not the area may also be used by the customers of other suppliers”.

**Questions on proposed new legislation**

*Q3 - Does the proposed legislation meet its objective of ensuring that food courts, tables and chairs outside a café and similar eating areas are included within the definition of premises? If not, why not and what changes are needed?*

**Questions on Impacts on businesses and consumers**

*Q4 - We have considered impacts on businesses and consumers of the changes to catering and these are set out in the Table of Impacts in Annex B. We would welcome comment on these impacts (including any specific impacts on small businesses) and would particularly welcome details of any impacts we have not identified.*

## 3. Sports Nutrition Drinks

### What does this measure do?

19. This measure will tax sports nutrition drinks at the standard rate, ensuring that all sports drinks receive the same treatment whether or not they are consumed for nutritional purposes.

### What are the current rules?

20. Beverages are specifically excluded from zero-rating unless they fall into one of a number of overriding items. Most sports drinks are beverages, which are designed to rehydrate, quench thirst or give pleasure. Some sports nutrition drinks are zero-rated following court decisions which have held that they are not designed to be consumed for these purposes and so are not beverages.

#### Current Legislation

Item 1 of Group 1 of Schedule 8 VAT ACT 1994 zero-rates

*1. Food of a kind used for human consumption.*

But then excepted Item 4 excludes from the zero-rate

*"Other beverages (including fruit juices and bottled waters) and syrups, concentrates, essences, powders, crystals or other products for the preparation of beverages".*

### Why do the current rules need changing?

21. Despite their similarity to other standard-rated beverages, the courts have found some sports drinks not to be beverages because of their nutritional content and therefore zero-rated. This change ensures that all sports drinks are taxed in a similar way, ensuring that there is consistent treatment of sports drinks whether consumed for rehydration or nutritional purposes.

### What is the scope of the change?

22. The change will only affect "sports nutrition" drinks that are currently treated as zero-rated and ensures that all sports drinks receive the same tax treatment ("sports energy drinks" for example are already standard-rated as beverages). The products affected exist pre-mixed in liquid form and also in powder form to be made up into a liquid by the consumer. They are often marketed as supplying energy to enhance performance,

accelerating recovery after exercise, providing energy, or building bulk and often contain creatine.

*Examples of products affected by the change include:* sports nutrition drinks such as carbohydrate drinks, protein drinks, creatine drinks, work-out recovery products, whether or not in powder form.

*Examples of products not affected by the change include:* meal replacement drinks for slimmers and invalids.

#### Proposed New Legislation

A new excepted item 4A will be introduced that taxes

“Sports drinks that are marketed as products designed to enhance physical performance, accelerate recovery after exercise or build bulk, and other similar drinks including (in either case) syrups, concentrates, essences, powders, crystals or other products for the preparation of such drinks.”

#### **Questions on proposed new legislation**

*Q5 - Does the proposed legislation meet its objective of ensuring that sports nutrition drinks are taxed consistently with other sports drinks at the standard rate of VAT? If not, why not and what changes are needed?*

#### **Questions on Impacts on businesses and consumers**

*Q6 - We have considered impacts on businesses and consumers of the changes to sports nutrition drinks and these are set out in the Table of Impacts in Annex B. We would welcome comment on these impacts (including any specific impacts on small businesses) and would particularly welcome details of any impacts we have not identified.*

## 4. Self Storage

### What does this measure do?

23. This measure taxes all provision of self storage. Self storage businesses provide their customers with a clearly defined lockable space to which the customer has access for the purpose of storing goods. The measure provides consistency of treatment within the self storage industry; levels the playing field between providers of self storage and providers of other storage; and addresses tax avoidance.

### What are the current rules?

24. Rental of self storage space is currently exempt from VAT as a licence to occupy land but suppliers may opt to tax their supplies.

#### Current Legislation

Group 1, Schedule 9 of the VAT Act 1994 exempts:

Item No.

1 The grant of any interest in or right over land or of any licence to occupy land, or, in relation to land in Scotland, any personal right to call for or be granted any such interest or right

### Why do the current rules need changing?

25. The supply of self storage is usually exempt from VAT as it typically relates to a discrete area of land to which the customer has access for the purposes of storing their goods. However, other types of storage do not provide the customer with a discrete area or involve the storage of goods on the customer's behalf (for example storage provided by traditional removal companies). These types of storage are always standard rated for VAT purposes. This change levels the playing field between different types of storage.

26. Under the current rules, providers may opt to tax their supplies of self storage, but only around 30% of self storage is currently taxed. Some self storage providers have never opted to tax. However some providers have opted to tax in order to reclaim the VAT incurred on the costs of constructing or purchasing their storage facilities, but have then used avoidance arrangements to convert their taxable supplies back to exempt supplies. Businesses who use these avoidance arrangements often continue to charge the same gross price to customers, effectively retaining the amount previously paid in VAT to the Government. This change addresses the avoidance, ensuring that avoiders cannot gain an unfair VAT advantage over their competitors.

## What is the scope of the change?

27. The aim of the proposed new legislation is to tax the provision of storage facilities to the end user – i.e. to a person for the storage of their goods. The change is not intended to tax the supply of premises used for some other purposes or to tax the sale or lease of a self storage facility or warehouse to a self storage supplier, which will continue to be VAT exempt (unless the supplier of the building opts to tax the supply). Group 1 of Schedule 9 to the VAT Act 1994 will be amended to tax the provision of self storage facilities.

*Examples of supplies affected by the change include* – self storage in purpose built facilities; movable containers; garages; railway arches; lock-ups; spare rooms used for self storage; warehouses and distribution centres etc, renting space for the purpose of storing someone else's goods.

*Examples of supplies not affected by the change - the sale or lease of a whole building to a self storage business (unless the vendor/lessor opts to tax); the rent of a property (where there are some storage facilities which are not a separate supply but ancillary to an overall supply of land); storage space rented by charities for a non-business purpose (e.g. for storage of goods for famine or disaster relief.)*

Other types of storage facilities are already taxed either because they fall outside the scope of the exemption or because they are specifically excluded from it. These include removal firms providing storage facilities; customs warehouses; excise warehouses; hire of bank vaults; safety deposit boxes; rental of garages used for parking vehicles etc.

28. However in some circumstances the mandatory taxation of self-storage could be used for tax avoidance purposes. For example, where a parent company cannot recover VAT charged on the cost of constructing a building (including some storage facilities) because it is partly exempt, it could avoid or defer some of this irrecoverable VAT by engaging a subsidiary to construct the building. The subsidiary would separately lease the storage areas of the completed building to its parent company and because this supply was taxable it would obtain partial VAT recovery on the construction costs up front. The parent company would still incur irrecoverable VAT, but only on the self storage charges from its subsidiary and it is likely to be many years before this equals the VAT it would have incurred on construction of the building.
29. To prevent this, the supply of self storage facilities between connected persons will remain exempt and the partly exempt subsidiary and parent company will not be able to avoid irrecoverable VAT by opting to tax because the option will be disapplied by existing anti-avoidance legislation. Where the disapplication tests do not apply (for example where the parent

company is using the storage for mainly taxable purposes) the subsidiary can opt to tax in order to reclaim the VAT on construction costs.

#### Proposed New Legislation

Group 1 (Land) of Schedule 9 to the Value Added Tax Act 1994 will be amended to tax

“(ka) the grant of facilities for the self storage of goods;”

The following notes will be added to Group 1

“(15A) “Self storage” means the exclusive use of a container, other fully enclosed structure, unit, or a building (or part of a building) for the storage of goods by the person (or persons) to whom the grant of facilities is made.

(15B) A supply does not fall within item 1(ka) if—

- (a) the person making the supply is connected with the person to whom it is made, or
- (b) the grant is made to a charity which uses the facilities solely otherwise than in the course or furtherance of a business.”

Whether a person is connected with another shall be determined by a new Note 20

(20) For the purpose of Note (15B) (a) and (18) any question whether a person is connected with another person shall be determined in accordance with section 1122 of the Corporation Tax Act 2010(6) (connected persons).”

#### **Questions on proposed new legislation**

*Q7 - We would welcome any views on whether the proposed law achieves the aim of taxing all self storage. If not, why not and what changes are needed? Are there any other supplies which are not of self storage that the changes would capture?*

*Q8 - Does the introduction of the connected parties test in Note 15B(a) cause any problems for fully taxable businesses? Would having to opt to tax a building in order for input tax to be reclaimed be undesirable?*

## **Questions on Impacts on businesses and consumers**

*Q9 - We have considered impacts on businesses and consumers of the changes to self storage and these are set out in the Table of Impacts in Annex B. We would welcome comment on these impacts (including any specific impacts on small businesses) and would particularly welcome details of any impacts we have not identified.*

### **Anti-forestalling legislation**

30. Anti-forestalling legislation will be included in Finance Bill 2012 to prevent providers of self storage facilities entering into avoidance arrangements on or after Budget Day (21 March 2012) in order to obtain exemption for supplies of self storage facilities supplied on or after the implementation day of 1 October 2012. Such supplies will attract an anti-forestalling charge applied at the standard rate of VAT which will become due on 1 October 2012. The charge will apply to the proportion of such services performed on or after 1 October 2012. For grants of a right to receive supplies of self-storage facilities the charge will apply to the extent that the services relating to the grant are carried out on or after 1 October 2012.

### **VAT Avoidance through Value-shifting**

31. HMRC is aware that VAT exempt insurance is commonly sold alongside self storage and that the proposed change may be open to abuse through schemes which seek to shift value away from the now standard-rated self storage to the VAT exempt insurance. In sectors where there has been evidence of abuse in the past, applying the higher rate of IPT (equal to the standard rate of VAT) to the insurance premiums and any associated insurance rated fees has proved an effective deterrent to value shifting. HMRC will monitor the self storage sector and the Government will consider introducing higher rate IPT if there is evidence of value-shifting.

## 5. Hairdressers' Chair Rental

### What does this measure do?

32. This measure will make it clear in legislation that the supply of facilities to a hairdresser is taxable at the standard rate.

### What are the current rules?

33. A licence to occupy land is VAT exempt if that licence meets the conditions for letting or leasing of immovable property. However the supply to a hairdresser of the facilities to carry out a hairdressing business (commonly known as a "chair rental") is not a supply of land and is already taxable according to current policy and case law. However some salon owners continue to get this wrong and treat this as an exempt supply of land. When a hairdressing salon or similar establishment rents chair spaces to individual self-employed stylists, the stylist receives more than just a licence to occupy their chair space. The supply includes a number of other services (e.g. use of washbasins, reception, waiting area for clients) which cannot be described as ancillary to a supply of land as they are rather an integral part of an overall supply made up of a bundle of elements. This overall supply is a supply of facilities and not an exempt supply of land.

#### Current Legislation

Group 1, Schedule 9 to the VAT Act 1994 exempts:

Item No 1. - The grant of any interest in or right over land or of any licence to occupy land, or, in relation to land in Scotland, any personal right to call for or be granted any such interest or right

### Why do the current rules need changing?

34. The long history of litigation in this area has almost always supported HMRC's position and in 2007, the High Court referred to a previous court's reasoning as providing "*a compelling analysis showing why in all chair letting hairdressers' arrangements including the present the supply cannot properly be categorised as an exempt supply*". The majority of salons have followed this judgment, but a significant minority still seek to argue this is an exempt supply. This measure puts the matter beyond doubt by explicitly excluding the supply of hairdresser chair rentals from VAT exemption.



## **What is the scope of the change?**

35. This measure is intended to cover all chair rental by salons to self-employed stylists. It is not intended to automatically tax the rent of a whole floor, separate room or clearly defined area by a salon to a stylist unless services are provided by the salon owner such as laundry, booking and reception services etc. If these are also provided then the supply is the same as the normal chair rental and is standard rated because there is a bundle of services being supplied. In order to prevent avoidance this will apply whether it is the salon owner who provides these services or someone connected to them.

*Examples of supplies affected by the change include – chair rental agreements in hairdressing salons, barbers and similar establishments.*

*Examples of supplies not affected by the change - the provision of a whole floor or self-contained room of a salon under a contract which enables the stylist to operate their own business (and does not include the provision of other services). For VAT exemption to apply, the stylist must be able to control who does and does not enter their floor or room of the salon.*

### Proposed New Legislation

Group 1 (Land) of Schedule 9 to the Value Added Tax Act 1994 will be amended to tax

“(ma) the grant of facilities within relevant premises to a person supplying hairdressing services”

new notes will be added to

“(17) For the purpose of item 1(ma) “relevant premises” means a salon, shop or other establishment.

(18) A supply does not fall within paragraph (ma) of item 1 if—

(a) the grant provides for the exclusive use by the person to whom the grant is made of a whole floor, separate room or clearly defined area, which is within the relevant premises, and

(b) no services (including services which may be shared with others) are provided to, or made available for use by, the person to whom the grant is made by (in either case) the person making the grant (or a person connected with that person).

(19) For the purpose of Note (18) “services”-

(a) includes services of a kind specifically required by hairdressers such as marketing, the booking of appointments, the laundering of towels, cleaning, and the services of a receptionist, hairdresser’s assistant or cashier, but

(b) does not include utilities.

(20) For the purpose of Note (15B) (a) and (18) any question whether a person is connected with another person shall be determined in accordance with section 1122 of the Corporation Tax Act 2010(6) (connected persons).”

### **Questions on proposed new legislation**

*Q10 - We would welcome any views on whether the proposed law achieves the aim of clarifying that hairdressers’ chair rental is taxable? If not, why not and what changes are needed? Are there any other supplies that the changes would capture?*

### **Questions on Impacts on businesses and consumers**

*Q11 - We have considered impacts on businesses and consumers of the changes to hairdressers’ chair rentals and these are set out in the Table of Impacts in Annex B. We would welcome comment on these impacts*

*(including any specific impacts on small businesses) and would particularly welcome details of any impacts we have not identified.*

## 6. Holiday Caravans

### What does this measure do?

36. This measure taxes the sale of holiday caravans (mainly static holiday caravans), ensuring that the sale of all holiday caravans is standard-rated, while preserving the zero rate for residential caravans.

### What are the current rules?

37. Currently, the sale of a caravan that can legally be towed on UK roads by a typical family car is standard-rated (caravans 7m or less in length and less than 2.55m wide). The sale of larger caravans is zero-rated, even though many are used for holiday purposes.

#### Current legislation

Item 1 of group 9 of schedule 8 to the VATA 1994 zero-rates the sale of:

“Caravans exceeding the limits of size for the time being permitted for the use on roads of a trailer drawn by a motor vehicle having an unladen weight of less than 2,030 kilogrammes.”

Item 3 also zero –rates

“The supply of such services as are described in paragraph 1 (1) or 5(3) of Schedule 4 in respect of a caravan comprised in item 1 or a houseboat comprised in item 2.”

Note a to Group 9 excludes

“removable contents other than goods of a kind mentioned in item 3 of Group 5”

### Why do the current rules need changing?

38. The VAT zero rate was only intended to apply to the sale of residential caravans and not to holiday caravans. The legislation only taxes as holiday caravans the sale of caravans that can legally be towed by a family car (commonly known as “tourer” caravans). However, over the years an increasing number of other caravans that are used for holiday purposes are benefitting from the zero rate but the sale of other types of holiday accommodation (in smaller caravans or in new holiday homes that cannot be occupied all year round ) is taxable.

## What is the scope of the change?

39. The size test will be replaced by a new test that restricts the zero-rate to the sale of caravans that conform to British Standard BS 3632 (or equivalent) which indicates that the caravan is designed and manufactured for continuous all year round occupation, and is therefore suitable for residential accommodation. This change will help to ensure that all holiday caravans are taxed consistently at the standard rate.

*Examples of products affected by the change include:* caravans and that do not meet the required British Standard.

*Examples of products not affected by the change include:* residential park homes which do meet the required British Standard

40. The change will also include a minor update to confirm that the reference to “paragraph 5(3)” in item 3 should be replaced with “paragraph 5(4)”, and the reference to “item 3 of group 5” should be “item 4 of group 5”.

### Proposed New Legislation

Item 1 of Group 9 of Schedule 8 to the Value Added Tax Act 1994 (caravans and houseboats) will be amended to

“Caravans designed and constructed for continuous year round occupation”.

This will be clarified by way of a new note 2:

“For the purposes of item 1 a caravan is “designed and constructed for continuous year round occupation” if (and only if) it is manufactured to standard BS 3632: 2005 approved by the British Standards Institution or to an equivalent standard.”

## Questions on proposed new legislation

*Q12 - Does the proposed new test adequately ensure that all caravans used for holiday purposes are standard-rated as intended? If not, how might the test be adapted? For example, do you think that it is necessary to introduce a second limb to the test to ensure that zero-rating only applies to caravans that meet the British Standard 3632 and which are also sited or to be sited on land which is not subject to an occupancy restriction (e.g. where use of the caravan as a principal place of residence is prevented by the terms of a covenant, statutory planning consent or similar permission)?*

*Q13 - If the test is adapted along the lines of question 12, what kind of evidence would a supplier of a caravan need to obtain in order to be satisfied that the caravan they are about to sell will not be sited on land on which there is an occupancy restriction? How easy will it be for them to obtain this evidence?*

*Q14 - In VAT law it is not permissible to extend the zero rate to goods or services that are standard-rated. If the current test in group 9 is replaced with a single test based on British Standard 3632, would the sale of any caravans that are currently standard-rated inadvertently be reclassified as zero-rated?*

*Q15 - What would manufacturers of holiday static caravans have to do to make existing designs comply with BS 3632 or equivalent. How much would this cost and what would be the impact on the impact of static holiday caravans?*

**Questions on Impacts on businesses and consumers**

*Q16 - We have considered impacts on businesses and consumers of the changes on static caravans and these are set out in the Table of Impacts in Annex B. We would welcome comment on these impacts (including any specific impacts on small businesses) and would particularly welcome details of any impacts we have not identified.*

# 7. Approved Alterations to Listed Buildings

## What does this measure do?

41. This measure will remove the zero rate for alterations to protected buildings, mostly listed residential dwellings but also listed buildings used for charitable and other residential purposes. It does not apply to supplies of repairs and maintenance which are already taxable.

## What are the current rules?

42. For VAT purposes a protected building is a listed building or scheduled monument that is (or will become on completion of the work):

- a dwelling;
- a residential building such as a nursing home or student accommodation; or
- a building used by a charity for non-business purposes such as a place of worship, or as a village hall or similar.

43. Although works of repair and maintenance to protected buildings are standard-rated for VAT purposes, approved alterations to a “protected building” are zero-rated. Alterations to all other types of building are standard-rated.

44. Zero-rating also applies to the first grant by a developer of a major interest in a substantially reconstructed protected building.

## Current Legislation

### Group 6, Schedule 8, VAT Act 1994:

#### Item No.

1 The first grant by a person substantially reconstructing a protected building, of a major interest in, or in any part of, the building or its site.

2 The supply, in the course of an approved alteration of a protected building, of any services other than the services of an architect, surveyor or any person acting as consultant or in a supervisory capacity.

3 The supply of building materials to a person to whom the supplier is supplying services within item 2 of this Group which include the incorporation of the materials into the building (or its site) in question.

#### Notes

(4) For the purposes of item 1, a protected building shall not be regarded as substantially reconstructed unless the reconstruction is such that at least one of the following conditions is fulfilled when the reconstruction is completed—

(a) that, of the works carried out to effect the reconstruction, at least three-fifths, measured by reference to cost, are of such a nature that the supply of services (other than excluded services), materials and other items to carry out the works, would, if supplied by a taxable person, be within either item 2 or item 3 of this Group; and

(b) that the reconstructed building incorporates no more of the original building (that is to say, the building as it was before the reconstruction began) than the external walls, together with other external features of architectural or historic interest;

and in paragraph (a) above “excluded services” means the services of an architect, surveyor or other person acting as consultant or in a supervisory capacity.



## **Why do the current rules need changing?**

45. The repair and maintenance of a protected building is standard rated, whereas the approved alteration of a protected building is zero rated. Although some alterations restore or enhance the unique character of a building or prolong its active life, the majority of the work covered by the relief consists of extension work which is not necessary for heritage purposes. The current rules therefore give a perverse incentive for change as opposed to repair. Alteration work on other types of building is standard-rated so owners of listed buildings receive a tax advantage over owners of other types of building. Removing the zero rate removes the perverse incentive to change listed buildings rather than repair them and ensures that all alteration work receives the same tax treatment.
46. The borderline between alterations and repairs and maintenance is also a major source of confusion, resulting in a high volume of taxpayer queries and error. Removing the relief will make the VAT rules simpler for businesses to understand and for HMRC to administer and will reduce the scope for error and non compliance.

## **What is the scope of the change?**

47. The change removes zero rating from building materials and construction services supplied in the course of an approved alteration to a listed building.
48. The zero rate for the first sale or long lease of a substantially reconstructed protected building will be restricted so that the current zero rating for reconstructions where 60% of the reconstruction costs are approved alterations is removed but zero-rating is retained for buildings reconstructed from a shell. This will put listed buildings in a similar position to new buildings where zero-rating applies to a new building which retains a single façade (or for a corner plot) a double façade as a condition of planning consent.

*Examples of supplies affected by the change include: approved alterations to listed dwellings and buildings used for a relevant residential or charitable purpose, the first sale or long lease by a developer of a substantially reconstructed listed building where 60% of the reconstruction work is an approved alteration.*

*Examples of supplies not affected by the change include: the first sale or long lease by a developer of a substantially reconstructed listed building from a shell, work that is already standard rated such as alterations to listed commercial buildings and all repairs and maintenance work.*

Proposed New Legislation (substantive change)

Group 6, Schedule 8, VAT Act 1994:

Items 2 and 3 will be removed

Item No.

- 1 The first grant by a person substantially reconstructing a protected building, of a major interest in, or in any part of, the building or its site.

Note 4 will be amended as follows

(4) For the purposes of item 1, a protected building shall not be regarded as substantially reconstructed unless, when the reconstruction is completed, the reconstructed building incorporates no more of the original building (that is to say, the building as it was before the reconstruction began) than the external walls, together with other external features of architectural or historic interest.

### Questions on proposed new legislation

*Q17 - The current Note 4(b) allows zero-rating for substantial reconstructions where the reconstructed buildings incorporate no more of the original building than the external walls together with any other features of architectural or historic interest. HMRC would welcome comments on how frequently this element of the relief is used, and if it is seldom used, whether it would be a useful simplification to also remove this relief?*

### Transitional Arrangements

49. Some owners of listed buildings and developers will already have entered into binding contracts for approved alteration works and associated construction materials prior to Budget Day. The following transitional arrangements will be put in place to allow sufficient time for contracted works to be completed and for developers to sell or make a long lease of substantially reconstructed protected buildings, while continuing to qualify for the zero-rate:

- *Approved Alterations* (Current Items 2 and 3 of Group 6, Schedule 8) – where a signed contract is in place before Budget Day for supplies falling within items 2 and 3, works specified in that contract (allowing for minor amendment) continue to benefit from the zero rate if performed up to 20 March 2013 (1 year after Budget day). Any works performed after that date will be standard-rated.
- *Substantial reconstructions of a protected building* (Current item 1 of Group 6, Schedule 8 VATA 94, and Note (4)(a), where a signed

contract for supplies that would qualify as approved alterations under items 2 & 3 is in place before Budget Day, the first grant of a major interest in the protected building will continue to benefit from the zero rate if made on or before 20 March 2013 (1 year after Budget day).

Proposed New Legislation (Transitional arrangements)

Group 6 of Schedule 8 will be amended so that

“1A A supply of any services, other than excluded services, which is made in the course of an approved alteration of a protected building and pursuant to a written contract entered into before 21 March 2012.

1B A supply of building materials to a person to whom the supplier is supplying services within item 1A of this Group which include the incorporation of the materials into the building (or its site) in question, which is made pursuant to a written contract entered into before 21 March 2012.”.

New notes will be added as follows

(3) In Note (4) (as substituted by the Value Added Tax (Zero-rating and Exemptions) Order 2012( )) for “For” substitute “Subject to Note (4A), for”.

(4) In the Notes, after Note (4) insert—

“(4A) For the purposes of item 1 a protected building shall also be regarded as substantially reconstructed if—

(a) at least three-fifths of the works carried out to effect the reconstruction (measured by reference to cost) are of such a nature that the supply of services (other than excluded services), materials and other items to carry out the works, would, if supplied by a taxable person, fall within either item 1A or item 1B of this Group, or

(b) in circumstances where a written contract has not been entered into before 21 March 2012, at least 10% (measured by reference to cost) of the reconstruction of the protected building was completed before 21 March 2012, and at least three-fifths of the works carried out to effect the reconstruction (measured by reference to cost) are of such a nature that the supply of services (other than excluded services), materials and other items to carry out the works, would (apart from the requirement for a written contract to have been in place), if supplied by a taxable person, fall within either item 1A or item 1B of this Group.”

(4B) For the purposes of item 1A and Note (4A) “excluded services” mean the services of an architect, surveyor or other person acting as consultant or in a supervisory capacity.

(4C) For the purposes of items 1A and 1B any works carried out that are not within the scope of the written contract, as it stood immediately prior to 21 March 2012, are not a supply made pursuant to that contract.”.

(5) In Notes (9), (10) and (11) for “2” substitute “1A”.

## **Questions on proposed transitional arrangements**

*Q18 - The transitional arrangements are intended to provide protection for contracts already in place on Budget day and allow sufficient time for the completion of work and the making of first grants by developers. HMRC would welcome comment on whether these transitional periods are sufficient and whether owners, builders and developers foresee any difficulties in their operation.*

*Q19 - It is possible that some substantial reconstructions may be already underway at Budget Day without a written contract being in place. The proposed transitional arrangements therefore also provide relief where 10% of the reconstruction of the building was completed (measured by reference to cost) before budget day and the reconstruction meets the original tests for zero-rating. We would welcome views on how likely this set of circumstances is to occur and whether this additional transitional relief is necessary?*

## **Anti-forestalling legislation**

50. Anti-forestalling legislation will be included in Finance Bill 2012 to prevent owners and developers using avoidance arrangements to unfairly obtain zero-rating for works contracted on or after Budget Day (21 March 2012) but performed on or after the implementation day of 1 October 2012. Such supplies will attract an anti-forestalling charge applied at the standard rate of VAT which will become due on 1 October 2012. For construction services the charge will apply to the proportion of such services performed on or after 1 October 2012. For goods, the charge will apply to the extent that they are incorporated into the building on or after 1 October 2012.

## **Places of Worship.**

51. The Government has extended the scope of the current grant scheme administered by the Department for Culture, Media and Sport. Currently listed places of worship, of any faith or denomination, can claim a grant equal to the VAT paid on eligible repairs and maintenance works. From 1 Oct 2012 the scheme will include approved alterations to listed places of worship.

## **Questions on Impacts on businesses and consumers**

*Q 20 - We have considered impacts on businesses and consumers of the changes to alterations for listed buildings and these are set out in the Table of Impacts in Annex B. We would welcome comment on these impacts (including any specific impacts on small businesses) and would particularly welcome details of any impacts we have not identified.*

## 8. Implementation Issues

### **Transitional Arrangements**

HMRC have considered the case for transitional arrangements for supplies other than approved alterations to listed buildings and concluded that none are necessary.

*Q21 – Other than alterations for listed buildings are there any other cases where transitional arrangements are needed?*

## 9. Summary of Consultation Questions

### *Catering*

*Q1 – Does the proposed legislation meet its objective of ensuring that all hot takeaway food is taxed consistently at the standard rate of VAT? If not, why not and what changes are needed?*

*Q2 - Freshly baked bread which is cooling down will remain zero-rated. Bread will be defined in guidance. What types of bread are most likely to be baked on a retailer's premises and are therefore above ambient air temperature at the time they are provided to customers?*

*Q3 - Does the proposed legislation meet its objective of ensuring that food courts, tables and chairs outside a café and similar eating areas are included within the definition of premises? If not, why not and what changes are needed?*

*Q4 - We have considered impacts on businesses and consumers of the changes to catering and these are set out in the Table of Impacts in Annex B. We would welcome comment on these impacts (including any specific impacts on small businesses) and would particularly welcome details of any impacts we have not identified.*

### *Sports Nutrition Drinks*

*Q5 - Does the proposed legislation meet its objective of ensuring that sports nutrition drinks are taxed consistently with other sports drinks at the standard rate of VAT? If not, why not and what changes are needed?*

*Q6 - We have considered impacts on businesses and consumers of the changes to sports nutrition drinks and these are set out in the Table of Impacts in Annex B. We would welcome comment on these impacts (including any specific impacts on small businesses) and would particularly welcome details of any impacts we have not identified.*

### *Self Storage*

*Q7 - We would welcome any views on whether the proposed law achieves the aim of taxing all self storage. If not, why not and what changes are needed? Are there any other supplies which are not of self storage that the changes would capture?*

*Q8 - Does the introduction of the connected parties test in Note 15B(a) cause any problems for fully taxable businesses? Would having to opt to tax a building in order for input tax to be reclaimed be undesirable?*

Q9 - We have considered impacts on businesses and consumers of the changes on self storage and these are set out in the Table of Impacts in Annex B. We would welcome comment on these impacts (including any specific impacts on small businesses) and would particularly welcome details of any impacts we have not identified.

#### *Hairdresser's chair rental*

Q10 - We would welcome any views on whether the proposed law achieves the aim of clarifying that hairdressers' chair rental is taxable? If not, why not and what changes are needed? Are there any other supplies that the changes would capture?

Q11 - We have considered impacts on businesses and consumers of the changes on hairdressers' chair rentals and these are set out in the Table of Impacts in Annex B. We would welcome comment on these impacts (including any specific impacts on small businesses) and would particularly welcome details of any impacts we have not identified.

#### *Static Holiday Caravans*

Q12 - Does the proposed new test adequately ensure that all caravans used for holiday purposes are standard-rated as intended? If not, how might the test be adapted? For example, do you think that it is necessary to introduce a second limb to the test to ensure that zero-rating only applies to caravans that meet the British Standard 3632 and which are also sited or to be sited on land which is not subject to an occupancy restriction (e.g. where use of the caravan as a principal place of residence is prevented by the terms of a covenant, statutory planning consent or similar permission)?

Q13 - If the test is adapted along the lines of question 12, what kind of evidence would a supplier of a caravan need to obtain in order to be satisfied that the caravan they are about to sell will not be sited on land on which there is an occupancy restriction? How easy will it be for them to obtain this evidence?

Q14 - In VAT law it is not permissible to extend the zero rate to goods or services that are standard-rated. . If the current test in group 9 is replaced with a single test based on British Standard 3632, would the sale of any caravans that are currently standard-rated inadvertently be reclassified as zero-rated?

Q15 - What would manufacturers of holiday static caravans have to do to make existing designs comply with BS 3632 or equivalent. How much would this cost and what would be the impact on the impact of static holiday caravans?

Q16 - We have considered impacts on businesses and consumers of the changes on static caravans and these are set out in the Table of Impacts in Annex B. We would welcome comment on these impacts (including any

*specific impacts on small businesses) and would particularly welcome details of any impacts we have not identified.*

#### *Approved Alterations to Listed Buildings*

*Q17 - The current Note 4b allows zero-rating for substantial reconstructions where the reconstructed buildings incorporate no more of the original building than the external walls together with any other features of architectural or historic interest. HMRC would welcome comments on how frequently this element of the relief is used, and if it is seldom used, whether it would be a useful simplification to also remove this relief?*

*Q18 - The transitional arrangements are intended to provide protection for contracts already in place on Budget day and allow sufficient time for the completion of work and the making of first grants by developers. HMRC would welcome comment on whether these transitional periods are sufficient and whether owners, builders and developers foresee any difficulties in their operation.*

*Q19 - It is possible that some substantial reconstructions may be already underway at Budget Day without a written contract being in place. The proposed transitional arrangements therefore also provide relief where 10% of the reconstruction of the building was completed (measured by reference to cost) before budget day and the reconstruction meets the original tests for zero-rating. We would welcome views on how likely this set of circumstances is to occur and whether this additional transitional relief is necessary?*

*Q20 - We have considered impacts on businesses and consumers of the changes to alterations for listed buildings and these are set out in the Table of Impacts in Annex B. We would welcome comment on these impacts (including any specific impacts on small businesses) and would particularly welcome details of any impacts we have not identified.*

#### *Implementation Issues*

*Q21 – Other than alterations for listed buildings are there any other cases where transitional arrangements are needed?*



# 10. The Consultation Process

This consultation is being conducted in line with the Tax Consultation Framework. There are 5 stages to tax policy development:

- Stage 1 Setting out objectives and identifying options.
- Stage 2 Determining the best option and developing a framework for implementation including detailed policy design.
- Stage 3 Drafting legislation to effect the proposed change.
- Stage 4 Implementing and monitoring the change.
- Stage 5 Reviewing and evaluating the change.

This consultation is taking place during stage 3 of the process. The purpose of the consultation is to seek views on draft legislation in order to confirm, as far as possible, that it will achieve the intended policy effect with no unintended effects.

## How to respond

A summary of the questions in this consultation is included at chapter 9.

Responses should be sent by 4 May 2012 by e-mail to: -

david.roberts4@hmrc.gsi.gov.uk

or by post to:

David Roberts  
HMRC  
VAT Projects Team  
3C/10,  
100 Parliament Street, London, SW1A 2BQ

Telephone enquiries 020 7147 0205 (from a text phone prefix this number with 18001)

Paper copies of this document or copies in Welsh and alternative formats (large print, audio and Braille) may be obtained free of charge from the above address. This document can also be accessed from the HMRC Internet site at <http://www.hmrc.gov.uk/consultations/index.htm>. All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations.

When responding please say if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of people you represent.

## Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Revenue and Customs (HMRC).

HMRC will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

## The Consultation Code of Practice

This consultation is being run in accordance with the Code of Practice although it has been necessary for it to run for 6 weeks. This consultation is being run for this shorter time as the legislation introducing the changes will be laid in the summer. To ensure that people are able to contribute as fully as possible to this consultation HMRC will be offering to meet individual companies or groups of people to supplement the written consultation document. A copy of the Code of Practice criteria and a contact for any comments on the consultation process can be found in Annex A.

# Annex A: The Code of Practice on Consultation

## About the consultation process

This consultation is being conducted in accordance with the Code of Practice on Consultation.

The consultation criteria

1. When to consult - Formal consultation should take place at a stage when there is scope to influence the policy outcome.
2. Duration of consultation exercises - Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. Clarity of scope and impact - Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. Accessibility of consultation exercise - Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. The burden of consultation - Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
6. Responsiveness of consultation exercises - Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. Capacity to consult - Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

If you feel that this consultation does not satisfy these criteria, or if you have any complaints or comments about the process, please contact:

Amy Burgess, Consultation Coordinator, Budget & Finance Bill Co-ordination Group, HM Revenue & Customs, 100 Parliament Street, London, SWA 2BQ

e-mail [hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk](mailto:hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk)

# Annex B – Tables of Impact for Individual Measures

**TABLE 1 – CATERING – Hot take away food and “premises”**

**Summary of impacts**

Exchequer impact (£m)	2012-13	2013-14	2014-15	2015-16	2016-17
	+50	+105	+110	+115	+120
	These figures are part of the VAT package on <i>Closing Loopholes</i> and <i>Correcting Anomalies</i> set out in Table 2.1 of Budget 2012 and have been certified by the Office for Budget Responsibility. More details can be found in the policy costings document published alongside Budget 2012. This element of the VAT package is shown above.				
<b>Economic impact</b>	This measure might lead to a small increase in the price of hot food products which would lead to a fall in demand. The overall macroeconomic impacts are expected to be negligible				
<b>Impact on individuals and households</b>	This measure will impact on individuals and households that purchase products that are affected by this change.  There are no identified compliance costs for individuals or households.				
<b>Equalities impacts</b>	Potentially any consumer of hot food products, sold as hot but not marketed as takeaway, will be affected by this change. There is no specific impact identified for any equalities group.				
<b>Impact on business including civil society organisations</b>	This measure will impact on retailers of affected products that are currently zero-rated but will become standard-rated.  One off compliance costs have been considered and are expected to be negligible in total. Around 2,000 to 3,000 businesses are expected to incur costs from familiarisation with the new guidance, system changes, re-pricing and additional book keeping. It is estimated that the cost per business will be around £50 on average. There are no expected ongoing administrative burdens.				
<b>Operational impact (£m) (HMRC or other)</b>	This measure will help to reduce the number of disputes and amount of litigation in the area of hot food, which will reduce HM Revenue & Customs costs.				
<b>Other impacts</b>	Small Firms Impact Test: The measure may impact on small businesses that sell affected products, however there is no scope for different treatment of the sale of hot takeaway food by small businesses.				

## TABLE 2 – SPORTS NUTRITION DRINKS

### Summary of Impacts

Exchequer impact (£m)	2012-13	2013-14	2014-15	2015-16	2016-17
	+5	+10	+10	+10	+15
	These figures are part of the VAT package on <i>Closing Loopholes</i> and <i>Correcting Anomalies</i> set out in Table 2.1 of Budget 2012 and have been certified by the Office for Budget Responsibility. More details can be found in the policy costings document published alongside Budget 2012. This element of the VAT package is shown above.				
<b>Economic impact</b>	This measure might lead to a small increase in the prices of sports nutrition drinks which would lead to a fall in demand. The overall macroeconomic impacts are expected to be negligible.				
<b>Impact on individuals and households</b>	This measure will impact on individuals and households that purchase sports drinks that are affected by this change.  There are no identified compliance costs for individuals or households.				
<b>Equalities impacts</b>	Potentially any consumer of sports nutrition drinks will be affected by this change. There is no specific impact identified for any equalities group.				
<b>Impact on business including civil society organisations</b>	This measure will impact on retailers of affected products that are currently zero-rated but will become standard-rated.  One off compliance costs have been considered and are expected to be negligible in total. Around 1,000 to 2,000 businesses are expected to incur costs from familiarisation with the new guidance, system changes, re-pricing and additional book-keeping. It is estimated that the cost per business will be around £40 on average. There are no expected ongoing administrative burdens.				
<b>Operational impact (£m) (HMRC or other)</b>	This measure will help to reduce the number of disputes and amount of litigation in the area of sports drinks, which will reduce HM Revenue & Customs costs.				
<b>Other impacts</b>	Small Firms Impact Test: The measure may impact on small businesses that sell products, however there is no scope for different treatment of the sports nutrition drinks for small firms.				

**TABLE 3 – SELF STORAGE**

**Summary of impacts**

<b>Exchequer impact (£m)</b>	2012-13	2013-14	2014-15	2015-16	2016-17
	+15	+30	+30	+35	+35
	<p>These figures are part of the VAT package on <i>Closing Loopholes</i> and <i>Correcting Anomalies</i> set out in Table 2.1 of Budget 2012 and have been certified by the Office for Budget Responsibility. More details can be found in the policy costings document published alongside Budget 2012. This element of the VAT package is shown above.</p>				
<b>Economic impact</b>	<p>This measure might lead to a small increase in the price of self storage which would lead to a fall in demand. The overall macroeconomic impacts are expected to be negligible.</p>				
<b>Impact on individuals and households</b>	<p>This measure will affect all consumers who use currently untaxed storage facilities and are unable to reclaim any VAT that may be charged.</p> <p>Industry data estimates that overall around 235,000 business and private customers use self storage facilities. There is no data on the number of private customers who will now be charged VAT as a result of this change but supplies to private consumers account for around two thirds of all self storage supplies by value. There is no data on the types of individuals impacted.</p> <p>There are no identified compliance costs for individuals or households.</p>				
<b>Equalities impacts</b>	<p>Potentially any user of self storage facilities will be affected by this change. There is no specific impact identified for any equalities group.</p>				
<b>Impact on business including civil society organisations</b>	<p>This measure will impact on:</p> <ul style="list-style-type: none"> <li>a) An estimated 250 VAT registered self storage businesses that do not opt to tax their supplies.</li> <li>b) Any unregistered suppliers of self storage that will have to register as a result of the change. The number of these businesses is not known, but is estimated to be around 50.</li> <li>c) An unknown number of unregistered businesses, businesses making exempt supplies and charities that are unable to reclaim the VAT charged to them on self storage</li> </ul> <p>One-off compliance costs have been considered and are expected to be negligible in total. An estimated 300 businesses are expected to incur costs from familiarisation with the new guidance, system changes, re-pricing and additional book keeping and these are expected to be small.</p> <p>Ongoing annual costs for the estimated 50 businesses that will have to register have been considered and are expected to be negligible in total.</p>				
<b>Operational impact (£m) (HMRC or other)</b>	<p>HM Revenue &amp; Customs is likely to benefit from lower administrative costs as a result of a reduction in levels of taxpayer query and non-compliance.</p>				
<b>Other impacts</b>	<p>Small firms impact test - The change will impact on all businesses which</p>				

	are currently treating self storage as exempt irrespective of size. Small operators of self storage facilities will have to register and account for VAT if their taxable turnover exceeds the registration threshold. There is no scope for different VAT treatment for supplies of self storage made by small firms.
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**TABLE 4 – HAIRDRESSERS CHAIRS**

**Summary of impacts**

<b>Exchequer impact (£m)</b>	2012-13	2013-14	2014-15	2015-16	2016-17
	+5	+5	+5	+5	+10
	These figures are part of the VAT package on <i>Closing Loopholes</i> and <i>Correcting Anomalies</i> set out in Table 2.1 of Budget 2012 and have been certified by the Office for Budget Responsibility. More details can be found in the policy costings document published alongside Budget 2012. This element of the VAT package is shown above.				
<b>Economic impact</b>	This measure might lead to a small increase in the price of affected hairdressing services which would lead to a fall in demand. The overall macroeconomic impacts are expected to be negligible.				
<b>Impact on individuals and households</b>	<p>Most of the supplies affected by this measure are made to self-employed persons operating below the VAT registration threshold, who will incur irrecoverable VAT. Individuals and households may be impacted either if i) unregistered businesses pass on this irrecoverable VAT in higher prices, or ii) unregistered businesses register for VAT and therefore charge VAT on their services. There is no information on the numbers of individuals affected.</p> <p>There are no identified compliance costs for individuals or households.</p>				
<b>Equalities impacts</b>	Industry data suggests that the vast majority of hairdressers (who may represent the unregistered businesses impacted by this measure) are female and aged between 16-44.				
<b>Impact on business including civil society organisations</b>	<p>This measure makes it clear that certain supplies of land provided with other services are already standard-rated. It is estimated to affect under 1,000 hairdressing salons that have incorrectly treated land supplied together with other services as VAT exempt and under 5,000 self-employed businesses receiving these services and unable to recover the VAT.</p> <p>As the measure introduces no changes to the current treatment, any one-off and ongoing compliance costs will only be incurred by businesses currently treating their supplies incorrectly.</p>				
<b>Operational impact (£m) (HMRC or other)</b>	HMRC is likely to benefit from lower administrative costs as a result of a reduction in levels of taxpayer query, non-compliance and litigation.				
<b>Other impacts</b>	Small firms impact test - the measure impacts only those businesses which treat chair rental incorrectly and imposes no new impacts over and above the existing effects of the current law. This will affect businesses of all sizes, however the majority of those directly impacted are assumed to be small firms, making supplies of chair rental to other small firms operating below the VAT registration threshold.				



**TABLE 5 – STATIC HOLIDAY CARAVANS**

**Summary of impacts**

<b>Exchequer impact (£m)</b>	2012-13	2013-14	2014-15	2015-16	2016-17
	+15	+35	+40	+40	+45
	<p>These figures are part of the VAT package on <i>Closing Loopholes</i> and <i>Correcting Anomalies</i> set out in Table 2.1 of Budget 2012 and have been certified by the Office for Budget Responsibility. More details can be found in the policy costings document published alongside Budget 2012. This element of the VAT package is shown above.</p>				
<b>Economic impact</b>	<p>This measure might lead to a small increase in the price of static caravans which would lead to a fall in demand. The overall macroeconomic impacts are expected to be negligible.</p>				
<b>Impact on individuals and households</b>	<p>This measure will impact around 50,000 individuals and households purchasing static holiday caravans each year. There is no impact on those who already own a caravan of a type affected by the change.</p> <p>There may be an impact on a small number of individuals renting static holiday caravans for residential purposes if the business renting out the caravan passes on the VAT on the purchase of the caravan in increased rent.</p> <p>There are no identified compliance costs for individuals or households.</p>				
<b>Equalities impacts</b>	<p>The main impact of the measure is on individuals buying a static caravan for holiday purposes. This measure could however adversely impact on any individuals and families who reside in static caravans not designed for residential purposes. However, the numbers affected are expected to be very small as these caravans are not designed for all year round occupation.</p> <p>However, those affected will include some of the Gypsy and Traveller community. Official statistics on the number of Gypsy and Traveller caravans suggest there are around 13,500 privately owned Gypsy and Traveller caravans in the UK and 8,000 rented caravans. There is no breakdown available of the types of caravan purchased or rented by the Gypsy and Traveller community. It is likely that the majority of these are tourer caravans which are already standard-rated. However assuming the same proportion as for the entire population, it is estimated that the Gypsy and Traveller community may purchase around 1,000 static caravans each year and rent around 3,000.</p> <p>There are no data on the types of individuals who rent out static caravans for all year round residential purposes.</p> <p>Carving out exclusions from the legislation to mitigate the impact on vulnerable groups would make the rules complex and create opportunities for avoidance and evasion.</p>				

<p><b>Impact on business including civil society organisations</b></p>	<p>Up to around 750 manufacturers, retailers and holiday parks selling static caravans will be affected by this measure.</p> <p>The vast majority of holiday static caravans are manufactured in the UK and a small number of manufacturers account for the vast majority of all UK sales. Although some manufacturers produce other types of caravans, static caravans are the main source of income for most of these manufacturers. The costing assumes a fall in demand of about 30 per cent, if the VAT change is fully passed on.</p> <p>One-off compliance costs have been considered and are expected to be negligible in total. Around 750 businesses will incur costs from familiarisation with the new guidance, system changes, re-pricing and additional book-keeping and these are expected to be small.</p> <p>There are no expected ongoing administrative burdens.</p>
<p><b>Operational impact (£m) (HMRC or other)</b></p>	<p>It is not anticipated that implementing this change will incur any additional costs/savings for HM Revenue &amp; Customs.</p>
<p><b>Other impacts</b></p>	<p>Small firms impact test - This change is likely to adversely impact on all businesses that manufacture, buy or sell static caravans, from the very smallest to the very largest. There is no scope for different VAT treatment for supplies of static caravans made by small firms.</p>

**TABLE 6 – ALTERATIONS TO LISTED BUILDINGS**

**Summary of impacts**

Exchequer impact (£m)	2012-13	2013-14	2014-15	2015-16	2016-17
	+35	+85	+95	+110	+125
	<p>These figures are part of the VAT package on <i>Closing Loopholes</i> and <i>Correcting Anomalies</i> set out in Table 2.1 of Budget 2012 and have been certified by the Office for Budget Responsibility. More details can be found in the policy costings document published alongside Budget 2012. This element of the VAT package is shown above.</p>				
<b>Economic impact</b>	<p>This measure might lead to a small increase in the price of alterations to listed buildings which would lead to a fall in demand. The overall macroeconomic impacts are expected to be negligible</p>				
<b>Impact on individuals and households</b>	<p>The measure potentially affects any individual and household owners of protected buildings who will now have to bear VAT on any alteration work to their property.</p> <p>There are an estimated 350,000 listed dwellings in the UK. It is estimated that around 10,000 individuals and households may be affected each year by the measure, with the additional costs from the VAT change varying according to the extent of work undertaken.</p> <p>There are no identified compliance costs for individuals or households.</p>				
<b>Equalities impacts</b>	<p>Potentially any owner of a protected building will be affected by this change.</p> <p>Places of Worship - Listed places of worship will also be affected by the change, although our evidence suggests that places of worship form only a small minority of the total number of listed properties in the UK. These will be predominantly used by Christian denominations. In order to mitigate the impacts on these groups the DCMS is expanding the existing Listed Places of Worship Grant Scheme which refunds the VAT on repairs and maintenance work, so that this includes approved alterations to listed buildings.</p> <p>There is no specific impact identified for any other equalities group.</p>				
<b>Impact on business including civil society organisations</b>	<p>Businesses and charities that own protected buildings will be affected by this measure if they cannot reclaim the additional VAT incurred. There are an estimated 35,000 to 50,000 listed buildings owned by businesses or charities used for a residential or charitable purpose. It is estimated that around 1,000 businesses and charities may be affected each year.</p> <p>All businesses that supply work in the course of approved alterations to protected buildings will be affected. This will include tradesmen specialising in listed building work.</p> <p>One-off compliance costs have been considered and are expected to be negligible in total. Around 5,000 to 6,000 businesses estimated to routinely work on listed buildings are expected to incur small costs from familiarisation with the new guidance and additional bookkeeping. A further 100,000 businesses who provide construction services may incur very minimal familiarisation costs.</p>				

	There are no expected ongoing costs as businesses are familiar with making standard-rated supplies of repair and maintenance. Simplifying the VAT rules is expected to reduce the ongoing compliance costs for business.
<b>Operational impact (£m) (HMRC or other)</b>	HM Revenue & Customs is likely to benefit from lower administrative costs as a result of a reduction in levels of taxpayer query, non-compliance and litigation.
<b>Other impacts</b>	Small firms impact test - This change may impact affected businesses of all sizes that perform work on listed buildings. There will be an impact on small firms including tradesmen specialising in protected buildings. There is no scope for different VAT treatment for supplies of construction work by small firms.

# Annex C – Draft Statutory Instruments

*Order made by the Treasury, laid before the House of Commons under section 97(3) of the Value Added Tax Act 1994, for approval by resolution of that House within twenty-eight days beginning with the date on which the Order was made, subject to extension for periods of dissolution, prorogation or adjournment for more than four days.*

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## STATUTORY INSTRUMENTS

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**2012 No.**

### **VALUE ADDED TAX**

#### **The Value Added Tax (Zero-rating and Exemptions) Order 2012**

<i>Made</i>	- - - -	2012
<i>Laid before the House of Commons</i>		2012
<i>Coming into force</i>	- -	2012

The Treasury make the following Order in exercise of the powers conferred by sections 30(4), 31(2) and 96(9) of the Value Added Tax Act 1994<sup>(1)</sup>.

#### **Citation and commencement**

1. This Order may be cited as the Value Added Tax (Zero-rating and Exemptions) Order 2012 and comes into force on 1 October 2012.

#### **Amendment of Group 1 in Part 2 of Schedule 8 to the Value Added Tax Act 1994**

2.—a) Group 1 in Part 2 of Schedule 8 to the Value Added Tax Act 1994 (zero-rating: food)<sup>(2)</sup> is amended as follows.

(1) After excepted item 4 insert—

“**4A.** Sports drinks that are marketed as products designed to enhance physical performance, accelerate recovery after exercise or build bulk, and other similar drinks, including (in either case) syrups, concentrates, essences, powders, crystals or other products for the preparation of such drinks.”.

(2) In Note (3) omit the words “and for the purposes of paragraph (b) above” to the end.

(3) After Note (3) insert—

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(1) 1994 c. 23; section 96(9) was amended by section 99(6) of, and paragraph 5 of Schedule 31 to, the Finance Act 2001 (c. 9).  
(2) Group 1 was amended by S.I. 2004/3343.

“(3A) For the purposes of Note (3), in the case of any supplier, the premises on which food is supplied include any area set aside for the consumption of food by that supplier’s customers, whether or not the area may also be used by the customers of other suppliers.

(3B) For the purposes of paragraph (b) of Note (3), “hot food” means food which, or any part of which, is above the ambient air temperature at the time it is provided to the customer, other than freshly baked bread.”.

#### **Amendment of Group 6 in Part 2 of Schedule 8 to the Value Added Tax Act 1994**

**3.—b)** Group 6 in Part 2 of Schedule 8 to the Value Added Tax Act 1994(3) (zero-rating: protected buildings) is amended as follows.

(1) Omit items 2 and 3 (approved alterations and building materials).

(2) For Note (4) substitute—

“(4) For the purposes of item 1, a protected building shall not be regarded as substantially reconstructed unless, when the reconstruction is completed, the reconstructed building incorporates no more of the original building (that is to say, the building as it was before the reconstruction began) than the external walls, together with other external features of architectural or historic interest.”.

#### **Amendment of Group 9 in Part 2 of Schedule 8 to the Value Added Tax Act 1994**

**4.—c)** Group 9 in Part 2 of Schedule 8 to the Value Added Tax Act 1994 (zero-rating: caravans and houseboats) is amended as follows.

(1) For item 1 substitute—

“**1** Caravans designed and constructed for continuous year round occupation.”.

(2) In item 3 for “5(3)” substitute “5(4)”.

(3) For the Note to Group 9 substitute—

“NOTES

(1) This Group does not include—

(a) removable contents other than goods of a kind mentioned in item 4 of Group 5, or

(b) the supply of accommodation in a caravan or houseboat.

(2) For the purpose of item 1 a caravan is “designed and constructed for continuous year round occupation” if (and only if) it is manufactured to standard BS 3632:2005 approved by the British Standards Institution(4) or to an equivalent standard. ”.

#### **Amendment of Group 1 in Part 2 of Schedule 9 to the Value Added Tax Act 1994**

**5.—d)** Group 1 in Part 2 of Schedule 9 to the Value Added Tax Act 1994(5) (exemptions: land) is amended as follows.

(1) After item 1(k) insert—

“(ka) the grant of facilities for the self storage of goods;”.

(2) Omit “and” at the end of item 1(m).

(3) After item 1(m) insert—

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(3) Group 6 was substituted by S.I. 1995/283 and Notes (1) to (6) to Group 6 were amended by the Planning (Consequential Provisions) (Scotland) Act 1997 (c. 11).

(4) BS 3632:2005, Residential Park Homes, British Standards Publications, United Kingdom, 17 June 2005, ISBN 0 580 461483

(5) Notes (1), (3), (7) and (11) to Group 1 were amended, and Note (1A) inserted, by S.I. 1995/282.

“(ma) the grant of facilities within relevant premises to a person supplying hairdressing services; and”.

(4) In item 1(n) for “(m)” substitute “(ma)”.

(5) After Note (15) insert—

“(15A) “Self storage” means the exclusive use of a container, other fully enclosed structure, unit, or a building (or part of a building), for the storage of goods by the person (or persons) to whom the grant of facilities is made.

(15B) A supply does not fall within item 1(ka) if—

- (a) the person making the supply is connected with the person to whom it is made, or
- (b) the grant is made to a charity which uses the facilities solely otherwise than in the course or furtherance of a business.”.

(6) After Note (16) insert—

“(17) For the purpose of item 1(ma) “relevant premises” means a salon, shop or other establishment.

(18) A supply does not fall within paragraph (ma) of item 1 if—

- (a) the grant provides for the exclusive use by the person to whom the grant is made of a whole floor, separate room or clearly defined area, which is within the relevant premises, and
- (b) no services (including services which may be shared with others) are provided to, or made available for use by, the person to whom the grant is made by the person making the grant or a person connected with that person.

(19) For the purposes of Note (18), “services”—

- (a) includes services of a kind specifically required by hairdressers such as marketing, the booking of appointments, the laundering of towels, cleaning, and the services of a receptionist, hairdresser’s assistant or cashier, but
- (b) does not include utilities.

(20) For the purposes of Notes (15B)(a) and (18) any question whether a person is connected with another person shall be determined in accordance with section 1122 of the Corporation Tax Act 2010(6) (connected persons).”.

	<i>Name</i>
	<i>Name</i>
Date	Two of the Lords Commissioners of Her Majesty’s Treasury

### EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order amends Groups 1 (food), 6 (protected buildings) and 9 (caravans and houseboats) in Part 2 of Schedule 8 (zero-rating), and Group 1 (land) in Part 2 of Schedule 9 (exemptions), to the Value Added Tax Act 1994 (‘VATA’).

Article 2 amends Group 1 (food) of Schedule 8 VATA to: (1) insert a new excepted item 4A to make it clear that certain sports drinks (as specified) are not included within the VAT zero rate and (2) amend the definition of a supply in the course of catering (a supply which is not included within the VAT zero rate) to (a) provide clarification as to the meaning of “premises” and (b) amend the current definition of “hot food”.

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(6) 2010 c. 4.

Article 3 amends Group 6 (protected buildings) of Schedule 8 VATA to: (1) remove the zero rate for services supplied in the course of an approved alteration (and related supplies of building materials) and (2) narrow the definition of “substantial reconstruction” in relation to the zero-rating, by a person substantially reconstructing a protected building, of the first grant of a major interest in it or part of it.

Article 4 amends Group 9 (caravans and houseboats) of Schedule 8 VATA to limit the zero rate to the supply of caravans used for residential purposes.

Article 5 amends Group 1 (land) of Schedule 9 VATA to (1) remove the exemption for the grant of facilities for the self storage of any goods and (2) clarify that the grant of facilities within premises to a person supplying hairdressing services is not exempt.

A Tax Information and Impact Note covering this instrument will be published on the HMRC website at <http://www.hmrc.gov.uk/the> library/tiins/htm.



**2012 No.**

**VALUE ADDED TAX**

**The Value Added Tax (Zero-rating) Order 2012**

<i>Made</i> - - - -	2012
<i>Laid before the House of Commons</i>	2012
<i>Coming into force</i> - -	2012

The Treasury make the following Order in exercise of the powers conferred by sections 30(4) and 96(9) of the Value Added Tax Act 1994(7).

**Citation and commencement**

6. This Order may be cited as the Value Added Tax (Zero-rating) Order 2012 and comes into force on 1 October 2012.

7. This Order has effect in relation to supplies made on or after 1 October 2012 but before 21 March 2013.

**Amendment of Group 6 in Part 2 of Schedule 8 to the Value Added Tax Act 1994**

8.—e) Group 6 in Part 2 of Schedule 8 to the Value Added Tax Act 1994(8) (zero-rating: protected buildings) is amended as follows.

(1) After item 1 insert—

“1A A supply of any services, other than excluded services, which is made in the course of an approved alteration of a protected building and pursuant to a written contract entered into before 21 March 2012.

1B A supply of building materials to a person to whom the supplier is supplying services within item 1A of this Group which include the incorporation of the materials into the building (or its site) in question, which is made pursuant to a written contract entered into before 21 March 2012.”.

(2) In Note (4) (as substituted by the Value Added Tax (Zero-rating and Exemptions) Order 2012(9)) for “For” substitute “Subject to Note (4A), for”.

(3) In the Notes, after Note (4) insert—

“(4A) For the purposes of item 1 a protected building shall also be regarded as substantially reconstructed if—

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(7) 1994 c. 23; section 96(9) was amended by section 99(6) of, and paragraph 5 of Schedule 31 to, the Finance Act 2001 (c. 9).  
(8) Group 6 was substituted by S.I. 1995/283 and Notes (1) to (6) to Group 6 were amended by the Planning (Consequential Provisions) (Scotland) Act 1997 (c. 11).  
(9) S.I. 2012/xxx

- (a) at least three-fifths of the works carried out to effect the reconstruction (measured by reference to cost) are of such a nature that the supply of services (other than excluded services), materials and other items to carry out the works, would, if supplied by a taxable person, fall within either item 1A or item 1B of this Group, or
- (b) in circumstances where a written contract has not been entered into before 21 March 2012, at least 10% (measured by reference to cost) of the reconstruction of the protected building was completed before 21 March 2012, and at least three-fifths of the works carried out to effect the reconstruction (measured by reference to cost) are of such a nature that the supply of services (other than excluded services), materials and other items to carry out the works, would (apart from the requirement for a written contract to have been in place), if supplied by a taxable person, fall within either item 1A or item 1B of this Group.”.

(4B) For the purposes of item 1A and Note (4A) “excluded services” mean the services of an architect, surveyor or other person acting as consultant or in a supervisory capacity.

(4C) For the purposes of items 1A and 1B any works carried out that are not within the scope of the written contract, as it stood immediately prior to 21 March 2012, are not a supply made pursuant to that contract.”.

(4) In Notes (9), (10) and (11) for “2” substitute “1A”.

	<i>Name</i>
	<i>Name</i>
Date	Two of the Lords Commissioners of Her Majesty’s Treasury

**EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order amends Group 6 in Part 2 of Schedule 8 to the Value Added Tax Act 1994 (zero rating: protected buildings) (‘Group 6’). The Order applies to the supplies as specified made on or after 1 October 2012 but ceases to have effect in relation to any such supplies made on or after 21 March 2013.

Article 3(2) inserts new items 1A and 1B into Group 6 to maintain the zero rate in the circumstances specified for certain supplies that will, as from 1 October 2012, be subject to VAT at the standard rate. The supplies are supplies of (1) services supplied in the course of an approved alteration of a protected building and (2) building materials supplied in connection with such a supply of services. The circumstances are that the supplies must in either case (1) be made on or after 1 October and before 20 March 2013 and (2) be made pursuant to a written contract (‘the contract’) entered into prior to 21 March 2012.

Article 3(4) inserts a new Note (4A) into the Notes to Group 6 to specify the additional circumstances in which a protected building will be regarded as ‘substantially reconstructed’ for the purposes of item 1 of Group 6 (‘item 1’) in cases covered by new item 1A or 1B. Item 1 provides that the first grant of a major interest in a substantially reconstructed protected building is zero rated. Note (4) to Group 6 (as substituted on 1 October 2012) sets out the condition that must be satisfied in order for a protected building to be regarded as substantially reconstructed for the purposes of item 1. The insertion of Note (4A) provides for additional alternative conditions that will permit a protected building to be regarded as substantially reconstructed for the purposes of item 1 in cases covered by new item 1A or 1B. Article 3(5) also inserts new notes (4B) and (4C) to define excluded services and provide that any works that are an expansion to the scope of the works comprised in the contract will not fall within new item 1A or 1B.