

Is the UK tax system effective in supporting disabled people?

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Abstract

In 2020-21, some 22% of people in the UK reported a disability. The impacts of different impairments are hugely variable but for many disabled people – and their families – they may be profound, including limitations on the ability to work; and the need to meet considerable additional costs.

The UK benefits system is the most substantial source of public financial support for disabled people and their carers - alongside a range of public services. Separately, UK tax legislation contains nearly 40 reliefs spanning multiple taxes for eligible disabled taxpayers. The rationales for these reliefs vary: for example, some mitigate tax costs to assist with meeting ‘costs of disability’; others seek to eliminate discrimination; or facilitate an intended ‘after-tax’ result from a compensation claim or benefit payment.

Against this backdrop, this thesis seeks to answer the question *‘Is the UK tax system effective in supporting disabled people?’*. In answering this question, the thesis does not seek to evaluate the nature and extent of general redistribution to disabled people: its focus is on the effectiveness of the existing range of tax reliefs, together with ease of tax compliance and administration for disabled people and those who support them. It draws upon comparative analysis with four other countries to identify areas where alternative – or additional reliefs – may be effective in achieving policy intent.

This thesis finds that the position is variable: many tax reliefs work smoothly and deliver meaningful results; others have limited effects, suffer from implementation issues, or are overly-complex. Whilst taxing authorities have made considerable progress in improving system access and compliance for

disabled people, it seems that more can be done. The thesis makes a number of recommendations for modifications, further research, or the consideration of alternative reliefs to achieve overall policy intents.

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Table of abbreviations

Abbreviation

ABLE	Achieving a Better Life Experience
ATO	Australian Taxation Office
Bn	Billion
CO2	Carbon Dioxide
DAC	The Disability Advisory Committee for the Canadian Revenue Agency
DRE	Disability-Related Expenditure
DTC	Disability Tax Credit
DVLA	Driver and Vehicle Licensing Agency
DWP	Department for Work and Pensions
EARN	The Employer Assistance and Resource Network on Disability Inclusion
EITC	Earned Income Tax Credit
ESC	Extra-Statutory Concession
EU	European Union
FRS	Family Resources Survey
GST	Goods and Services Tax
HM	His Majesty's
HMRC	HM Revenue & Customs
HST	Harmonized Sales Tax
IFS	The Institute for Fiscal Studies
IHTA 1984	Inheritance Act 1984
ILO	International Labour Organization
IPT	Insurance Premium Tax
IRC	Internal Revenue Code - Title 26 of the United States Code (26 U.S.C.)
IRS	US Internal Revenue Service
ISA	Individual Savings Account
ITA 2007	Income Tax Act 2007
ITAA 1997	[Australian] Income Tax Assessment Act 1997
ITEPA 2003	Income Tax (Earnings and Pensions) Act 2003
ITTOIA 2005	Income Tax (Trading and Other Income) Act 2005
LITRG	The Low Incomes Tax Reform Group of the Chartered Institute of Taxation
MIB	Motor Insurers' Bureau
MIG	Minimum Income Guarantee
MIS	Minimum Income Standard
MP	Member of Parliament
NAO	National Audit Office
NDIS	National Disability Insurance Scheme
NHS	National Health Service
NIC	National Insurance Contribution
ONS	Office for National Statistics
OTS	Office for Tax Simplification
PIP	Personal Independence Payment
SEND	Special Educational Needs and Disabilities

SSAC	Social Security Advisory Committee
SSCR 2001	Social Security (Contributions) Regulations 2001, SI 2001, 1004
TCGA 1992	Taxation of Chargeable Gains Act 1992
UK	United Kingdom
UN	United Nations
UPIAS	Union of the Physically Impaired Against Segregation
US	United States of America
VAT	Value Added Tax
VATA 1994	Value Added Tax Act 1994
VBT	Vulnerable Beneficiary Trust
VED	Vehicle Excise Duty – or Vehicle Tax
VERA 1994	Vehicle Excise and Registration Act 1994

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Chapter 1: Introduction

1. Statement of thesis

Background

In 2020-21, UK Government statistics indicated that there were some 14.6 million people reporting a disability¹ - some 22% of the population. These statistics also suggested a growth of some 3 million people reporting a disability over the ten years since 2010-11².

There are a considerable number of definitions and implications of disability – for the disabled³, carers and financial providers alike: on the one hand, some impairments may lead to no, or limited, changes in lifestyle or ability to work when compared to an able-bodied person. By contrast, others may lead to considerable restrictions in a disabled person's life - including an inability to work; and, in turn, to acute requirements for both care and financial provision.

Similar to definitions of disability, definitions of 'tax systems' are multi-faceted. For example, Slemrod and Gillitzer⁴, define a tax system as:

... a set of rules, regulations, and procedures that (i) defines what events or states of the world trigger tax liability (tax bases and rates), (ii) specifies who or what entity must remit that tax and when (remittance rules), and (iii) detailed procedures for ensuring compliance, including information-reporting requirements, and the consequences (including penalties) of not remitting the legal liability in a timely fashion (enforcement rules).

¹ These statistics derived from the UK Government's 2020-21 Family Resources Survey, published on 31 March 2022 at:

<https://www.gov.uk/government/statistics/family-resources-survey-financial-year-2020-to-2021/family-resources-survey-financial-year-2020-to-2021#disability-1> > accessed 2 January 2023.

² 2020-2021 Family Resources Survey, n1.

³ Throughout this thesis, the terms 'disabled people' and 'people with disabilities' are used interchangeably. The candidate is aware that there are different perspectives on the use of these terms – although there does not appear to be a settled view. No offence – implied or actual – is meant by the use of either term.

⁴ Slemrod and Gillitzer, 'Insights from a Tax-systems Perspective', CESifo Economic Studies, Vol. 60, 1/2014, 1-31 at section 1.1.

Whilst Slemrod's and Gillitzer's definition – anchored around a '*set of rules, regulations and procedures...*' - might make tax systems appear largely functional, the reality is that they can have a major bearing on the lives of people with disabilities through redistribution in the form of welfare and other payments; as a source of finance for paying for a range of relevant public services such as healthcare; through the availability of appropriately targeted tax reliefs; and by being organised to allow ease of compliance and administration by people with diverse capabilities and limitations.

The extent to which direct financial support is provided to people with disabilities varies from country to country. In the UK, in excess of £30 billion per annum⁵ of specific support for people with disabilities and health conditions and their carers is provided by the benefits (welfare) system. Additional benefit amounts are provided for general subsistence and housing costs alongside support from public health and other services, and certain targeted grants. The total annual amount of financial support for people with disabilities and health conditions exceeds £60bn⁶. This is financed by taxation.

Tax reliefs: overview

The UK tax system itself contains nearly 40 specific reliefs in respect of disabled people and their carers with an estimated annual value of some £6 billion⁷.

⁵ An analysis is provided in Chapter 2, Section 7.

⁶ Chapter 2, Section 7.

⁷ Candidate analysis of this estimate is provided at Section 4.

The nature and policy intent of these reliefs vary: by way of examples, many seek to avoid effective discrimination against disabled people by otherwise taxing them on costs incurred as a result of their disability. Other reliefs ensure that an intended amount received by a disabled person in respect of, for example, a personal injury claim is not unduly diluted by taxation; or that a welfare payment designed to provide support in relation to ‘costs of disability’ is not diluted by a tax charge. Certain trust-based mechanisms seek to ensure tax neutrality in respect of monies set aside for eligible disabled people – rather than taxing these amounts at higher rates than disabled beneficiaries’ marginal rates.

The aim of this thesis

The aim of this thesis is to evaluate the existing range of UK tax reliefs, together with the overall coherence and administrative ease of the tax system, in supporting people with disabilities.

Scope of thesis and approach to evaluation

Whilst, for context, the thesis provides an analysis of UK public provision for disabled people and summarises a range of different approaches to distributive justice in relation to people with disabilities, it does not seek to recommend a preferred approach to the basis, nature and levels of redistribution – including the determination of specific amounts for redistributive support. Rather, it solely evaluates existing tax reliefs, and identifies the potential for others, by reference to a number of articulated normative principles – derived from, for example, principles of non-discrimination; and to a range of other tax effectiveness criteria – categorised as both ‘purposive’ and ‘functional’. ‘Purposive’ criteria surround

the effectiveness of a relief in meeting its policy intent; whereas 'functional' criteria surround the clarity and ease of use of reliefs by people with a diverse range of impairments.

In undertaking its analysis, the thesis does consider circumstances where benefit payments or other forms of support such as grants may be a more effective mechanism than tax reliefs for achieving policy intent. The thesis also explores areas where additional tax reliefs may support overall policy intent: in some cases it reaches definitive conclusions around these possibilities; in others it outlines options for further research and exploration.

Use of comparative analysis

Notwithstanding the focus on UK domestic tax reliefs, in order to seek to identify alternative mechanisms which may offer improvements or alternatives to UK reliefs, the thesis draws on comparative analysis with the national or federal (but with limited exceptions, not subnational) tax systems of Australia, Canada, Germany and the US – recognising that: (i) a local decision to use tax reliefs or incentives, as opposed to other forms of public financial support, will reflect local political choices and system designs; and (ii) that direct benefits and, for example, reliefs for municipal property taxes, may be provided at a subnational level.

Summary of conclusions

The thesis concludes that:

1. Whilst many existing tax reliefs deliver on their policy intent in an effective manner, a number could be modified or improved. The thesis identifies a number of areas where, subject to further research, additional tax reliefs may enhance support for people with disabilities and those who care and provide for them – but acknowledges that any decision as to whether to implement these ultimately reflects a policy choice.
2. Ease of tax administration and compliance can be of material importance to people with a range of disabilities and, here too, whilst HMRC and other bodies have implemented a range of measures to support disabled people, based on interviews and other analysis it seems that further improvements can be made.

In summary, the thesis concludes that the UK tax system is effective in many ways in supporting disabled people – but there are a number of areas where that effectiveness could be enhanced.

2. Order of thesis

The order of the thesis has been structured so as introduce the thesis and its methodologies for evaluation; provide clear fact bases to support the evaluation; conduct the evaluation systematically in clearly separable sections; and synthesise the results of the evaluation into conclusions and recommendations. Details of each chapter are provided below.

This chapter provides an introduction to, and overview of, the thesis. It provides an overview of the UK tax system together with an introduction to

relevant tax reliefs – explaining that the thesis does not seek to evaluate the broad nature and extent of redistribution to disabled people, their carers and providers, but is limited to an evaluation of the effectiveness of the existing tax reliefs. It specifies its criteria for determining ‘effectiveness’ in supporting people with disabilities by reference to a number of articulated normative principles and key literature; and sets out the methodologies used for the evaluation of effectiveness which follows in subsequent chapters.

Chapters 2 and 3 provide ‘information platforms’ for the evaluation chapters which follow: Chapter 2 provides a summary of a range of information connected with disability in the UK – including definitions; disability prevalence and participation data; evolving social attitudes towards, and models of, disability; international and domestic legal frameworks relating to disability; and the financial implications of disability. For context, the chapter provides a synopsis both of existing UK public financial provision for disabled people and their carers; together with a summary of distributive justice theory in relation to disability. Chapter 3 summarises the background to, and provisions of, the nearly 40 existing tax reliefs relevant to disabled people, spread across a range of taxes. It also provides a synopsis of key case law relating to the application of a number of these provisions.

Chapters 4 to 6 evaluate the effectiveness of the existing tax reliefs – categorised as between those which provide general financial support to people with disabilities; those which support participation in work and other activities; and those which relate to compensation or insurance payments received by disabled people due to ‘event-led’ disabilities.

Chapter 7 evaluates the ease and effectiveness of tax administration and compliance for people with disabilities – drawing on a range of sources including interviews with a number of people familiar with tax and disability.

Finally, Chapter 8 summarises the conclusions and recommendations of the thesis.

3. Overview of the UK tax system

Introduction

The UK tax system combines both direct and indirect taxation with taxes raised both centrally and at local levels. Most taxation is applied to central and local general funds for public spending purposes⁸ – although National Insurance Contributions (‘NICs’) are suggested to be weakly hypothecated⁹ towards the payment of state pensions; aspects (but not all) of the National Health Service

⁸ For an analysis of UK public spending, see ‘Public spending statistics: May 2023’, HM Treasury, 11 May 2023, at:

<https://www.gov.uk/government/statistics/public-spending-statistics-release-may-2023/public-spending-statistics-may-2023#:~:text=Trends%20in%20public%20spending,-Chart%201%3A%20Trends&text=TME%20as%20a%20percentage%20of,when%20compare d%20to%202020%2D21> > accessed 28 July 2023.

⁹ For an analysis of how NICs are applied to public services, see the IFS publication ‘National insurance contributions explained’ at:

[https://ifs.org.uk/taxlab/taxlab-taxes-explained/national-insurance-contributions-explained#:~:text=Unlike%20income%20tax%2C%20NICs%20are,most%20notably%20the%20state%20pension\).](https://ifs.org.uk/taxlab/taxlab-taxes-explained/national-insurance-contributions-explained#:~:text=Unlike%20income%20tax%2C%20NICs%20are,most%20notably%20the%20state%20pension).) > accessed 31 July 2023.

In the publication, the IFS write under the section entitled ‘The National Insurance Fund’:

‘Notionally, the NI Fund is financially separate from other parts of government and is used to fund contributory benefits. In reality, however, this separation is illusory. [] This makes the separation of the NI Fund from the main government account more or less meaningless.’

(‘NHS’ - a free-at-the-point-of-delivery universal healthcare system); and certain benefits¹⁰.

Certain taxing powers are devolved to the Northern Irish, Scottish and Welsh governments¹¹: these vary from administration to administration and cover, for example, certain local taxes and taxes on specific land transactions – although both Wales and Scotland have specific devolved income tax setting powers¹².

The principal taxing authority is His Majesty’s Revenue & Customs (‘HMRC’) – although certain other bodies, such as designated local authorities and the Driver and Vehicle Licensing Agency (‘DVLA’), also have defined tax-raising and compliance powers.

In order to illustrate the relative scale of key taxes raised, a summary of UK public sector receipts, including from a range of taxes, for 2022/23 is set out overleaf:

¹⁰ For a UK Government overview of National Insurance, see ‘National Insurance: introduction’ at:

< <https://www.gov.uk/national-insurance/what-national-insurance-is-for> > accessed 28 July 2023.

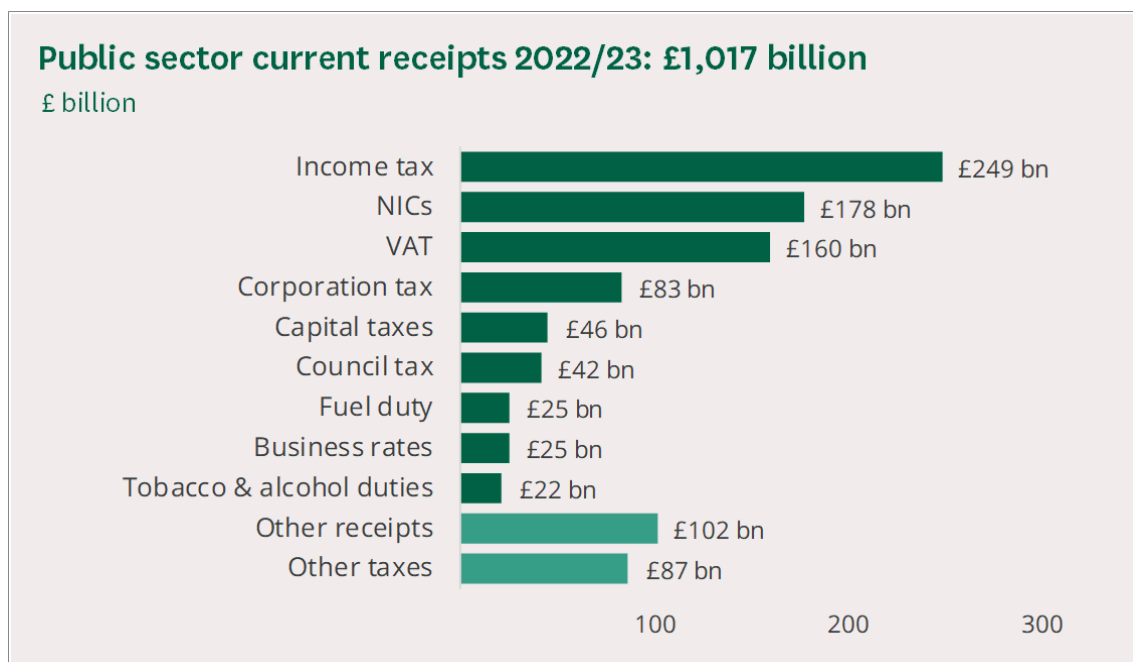
The IFS – n9 – write of the relationship between NICs and benefits:

‘In practice, however, the link between contributions paid and benefits received is vanishingly weak and NICs essentially act as a second income tax.’

¹¹ For a synopsis of devolved taxing powers, see ‘What is devolution?’, LITRG, 17 April 2023, at:

< <https://www.litrg.org.uk/tax-guides/tax-basics/what-scottish-income-tax/what-devolution> > accessed 28 July 2023.

¹² See LITRG, n11.



Source: House of Commons Library¹³

Central government taxation – overview

The table above shows that the most substantial central government direct taxes include Income Tax – raised from individuals, partnerships and certain trusts; NICs – raised from employees, employers and the self-employed; Corporation Tax – broadly raised on the chargeable profits and gains of companies; and Capital Taxes. Capital Taxes include, amongst others, Capital Gains Tax on gains arising from the disposal of certain assets by individuals, partnerships and trusts; and Inheritance Tax raised upon certain estates on death. All of the principal personal taxes are subject to a broad range of allowances and reliefs – including in relation to disabled people.

¹³ 'Tax statistics: an overview' House of Commons Library, 5 June 2023, at:

< <https://commonslibrary.parliament.uk/research-briefings/cbp-8513/> > accessed 6 August 2023.

There are a broad range of indirect taxes, including – amongst a range of others¹⁴ - Value Added Tax ('VAT' – a sales tax levied on goods and services, but with a number of exemptions and a 'zero rating' regime); Vehicle Tax (or Vehicle Excise Duty) levied on qualifying vehicles; and Insurance Premium Tax ('IPT') – chargeable upon qualifying insurance premiums. Again, each of these taxes is subject to a number of reliefs or exemptions, a number of which apply to certain disabled people and are evaluated later in this thesis.

Local government taxation: Council Tax and Rates

Local government in the UK is principally undertaken by 'councils' operating under a tiered system ranging from local parish councils to, in certain cases, large-scale 'unitary authorities'¹⁵. Each council has a remit for the provision of a range of local services in a defined area¹⁶.

A number of councils¹⁷ in England, Scotland and Wales have tax-raising powers to levy Council Tax on domestic properties. Northern Ireland operates a system of 'Rates'¹⁸. Other local government taxes include Business Rates,

¹⁴ For a UK Government overview of a range of indirect taxes, see 'Excise duty, VAT and other indirect tax statistics', last updated 29 November 2022, at:

< <https://www.gov.uk/government/collections/vat-excise-duties-and-other-minor-industry-specific-duties-and-levies> > accessed 28 July 2023.

¹⁵ For a UK Government overview of councils and their functions, see 'Understand how your council works', at:

<<https://www.gov.uk/understand-how-your-council-works> > accessed 28 July 2023.

¹⁶ UK Government, n15.

¹⁷ The types of local authority eligible to raise taxes – 'billing authorities' – are stipulated in section 1(2) of the Local Government Finance Act 1992.

¹⁸ For a government summary of rates in Northern Ireland, see 'A guide to rates' at:

< <https://www.nidirect.gov.uk/campaigns/guide-rates> > accessed 14 August 2023.

infrastructure-related levies and transport levies¹⁹. The level of Council Tax raised for each domestic property is linked to a periodic estimated valuation of the dwelling – not a taxpayer’s earnings - with tax levels escalating across eight ‘bands’ from A to H²⁰ (with nine in Wales). Rates in Northern Ireland are also based upon property valuations. There are a number of Council Tax and Rates exemptions or discounts available – certain of which relate to people with disabilities and, again, are discussed and evaluated further in this thesis.

4. Synopsis of tax reliefs for people with disabilities

Chapter 3 sets out a list of UK tax provisions as at the date of this thesis identified by the candidate as specifically applying to disabled people and their carers and providers, together with a review of the policy background to them and associated case law. The analysis in Chapter 3 categorises the provisions into three, each of which is used as the basis of effectiveness evaluations in subsequent chapters:

1. Those relating to providing general financial support - providing relief from tax to assist with the cost of living; or more fairly aligning a disabled person’s tax base by recognising their ‘costs of disability’.

¹⁹ For an overview of local government taxation, see ‘Local government taxation’, Sandford, House of Commons Research Library Research Briefing 09712, 24 January 2023 at: <https://researchbriefings.files.parliament.uk/documents/CBP-9712/CBP-9712.pdf> accessed 28 July 2023.

See in particular section 1.2 – ‘Sources of local authority income in the UK’.

²⁰ For a summary of Council Tax statistics in England, see ‘Council Tax levels set by local authorities in England 2023 to 2024 (revised)’, Department for Levelling Up, Housing and Communities, updated 19 May 2023, at:

<https://www.gov.uk/government/statistics/council-tax-levels-set-by-local-authorities-in-england-2023-to-2024/council-tax-levels-set-by-local-authorities-in-england-2023-to-2024> accessed 29 July 2023.

These include, for example, specific tax reliefs and allowances such as Blind Persons Allowance²¹ and various Council Tax reliefs.

2. Those relating to participation in work and other activities, and mobility²²: these include a number of reliefs in respect of work-related and mobility expenses, together with a number of VAT reliefs (although not all of these relate to participation). These reliefs reflect a range of policy intents – from helping address costs of participation that non-disabled people do not have to meet; to actively supporting disabled people to access work, consistent with the social model of disability.
3. Those relating to compensation and insurance payments for people suffering ‘event-led’ disabilities as a result of accident or illness whether at work or otherwise. In most cases, the tax system simply seeks to preserve the intended economic effects of these payments in the hands of their recipients by not unduly subjecting them to tax.

²¹ Income Tax Act 2007, ss38-40.

²² In a paper considering disability and Canadian Income Tax, Duff includes a number of these types of relief in a category entitled ‘Labour Market Integration’. See Duff, ‘Disability and the Income Tax (2000). McGill Law Journal, Vol. 45, No. 4, 2000.

Estimating the total value of tax reliefs – other than Council Tax and rates reliefs

The UK Government provides both periodic analyses of structural and non-structural tax reliefs (excluding Council Tax and Rates); and statistics around Council Tax – including the extent of discounts and exemptions granted. The analyses of structural and non-structural tax reliefs (excluding Council Tax) as at 31 December 2021 (updated for certain costs as at May 2022)²³ include a range of reliefs which are related to disability and summarised in the table overleaf. These exclude Council Tax and, in Northern Ireland, Rates reliefs which are summarised subsequent to the table and analysed further in Appendix 2.

²³ Available through UK Government, official statistics, including 'Non-structural tax reliefs' at 31 December 2021 as an Excel file – at:

< <https://www.gov.uk/government/statistics/main-tax-expenditures-and-structural-reliefs> >
(updated as at May 2022);

and 'Structural tax reliefs' at 31 December 2021 as an Excel file – at:

< <https://www.gov.uk/government/statistics/minor-tax-expenditures-and-structural-reliefs> >, both accessed 9 January 2023.

Relief	Tax(es) concerned	Estimated financial effect – 2021/22 (or as stated) - £m	Number of claimants (if provided)
Structural reliefs			
Attendance allowance	Income Tax	450	1,300,000
Disability living allowance	Income Tax	1,400	3,500,000
Severe disablement allowance	Income Tax	Negligible	Not available
Exemption for disabled motorists	Vehicle Excise Duty	200	Not stated
<i>Uncosted reliefs</i>			
Trusts for mentally or physically disabled	Inheritance Tax	Not available	Not available
Long term incapacity benefit [tax exemption]	Income Tax (and Corporation Tax)	Not available	Not available
Non-structural reliefs			
Blind person's allowance	Income Tax	20	36,900
War disablement benefits	Income Tax	40	100,000
Immediate Needs Annuities	Income Tax	Negligible	Based on 2014-15 data – high uncertainty
Death or disability payments and benefit	Income Tax	35	Based on 2017-18 data – high uncertainty
Contracts relating to motor vehicles for use by persons in receipt of certain disability related benefits	Insurance Premium Tax	“Disclosive”	Not published
Vehicles and other supplies to disabled people [vehicles only]	Value Added Tax	850	Not published
Vehicles and other supplies to disabled people [not including vehicles]	Value Added Tax	1,000	Based on 2016-17 data – high uncertainty
Talking books for the blind and disabled and wireless sets for the blind	Value Added Tax	“Disclosive”	Not published
Vulnerable Beneficiary Trusts (VBTs)	Income Tax and Capital Gains Tax	Negligible	Based on 2017-18 data
Car benefit - automatic car CO2 figures for a disabled employee	Income Tax & NICs	Negligible	Based on 2017-18 data – high uncertainty
Car benefit - automatic car list price for a disabled employee	Income Tax & NICs	Negligible	Based on 2017-18 data – high uncertainty

Car benefit - exemption for a disabled employee	Income Tax & NICs	Negligible	Based on 2017-18 data – high uncertainty
Car Benefit – exemptions of accessories for a disabled employee	Income Tax & NICs	Negligible	Based on 2017-18 data – high uncertainty
Asbestos compensation settlements	Capital Gains Tax & Inheritance Tax	“Disclosive”	Not published
Disabled employees cost of travel between home and work	Income Tax & NICs	45	Based on 2017-18 data – high uncertainty
Employment related securities for disabled employees	Income Tax	Negligible	Based on 2020-21 data – low uncertainty
Disabled person’s vehicle maintenance grant	Income Tax	Negligible	Based on 2021-22 data – medium uncertainty
Interest on damages for personal injury	Income Tax	10	Based on 2019-20 data – medium uncertainty
Recommended medical treatment	Income Tax	20	Based on 2018-19 data – medium uncertainty
Compensation awards for personal injury	Income Tax	1,300	Based on 2019-20 data – medium uncertainty
Grand total – excluding Council Tax		5,370 (total of amounts provided)	

An estimate of the total value of Council Tax reliefs is provided at Appendix 2. No data seems available around total Rates discounts. There are some uncertainties, but broadly the aggregate annual value of Council Tax reliefs appears to fall in a very approximate range of around £0.2bn. Aggregating the total from the table above with the broad estimate of the value of Council Tax and Rates reliefs implies that the total value of tax reliefs is, subject to rounding, of the order of £6 billion. Note that a substantial proportion of the illustrative total of £6 billion arises from a small number of reliefs – and that the financial value of a high proportion by number is comparatively modest.

5. Evolving societal approaches to disability and implications for tax system design

Introduction

UK and international societal approaches towards disability have evolved markedly in recent decades towards the disabled person being regarded as a fully participative member of society – rather than being a *'mere object[s] of goodwill or charity'*²⁴.

The evolution of social attitudes has sat alongside both activism in the late 20th century to improve the lives of disabled people; and the development of a number of theories and models²⁵ around the roles and treatment of disabled people in societies in what has become a very broad disability literature. Given the scale of relevant literature, what follows in this section is necessarily highly summarised.

²⁴ Šimonović, United Nations Assistant Secretary General for Human Rights: *'The Convention [United Nations Convention on the Rights of Persons with Disabilities] confirms persons with disabilities as full and active members of the society rather than mere objects of goodwill and charity. In so doing, the Convention celebrates each individual's value and inherent self-worth,'* - summary report of 2013 United Nations disability conference, accessible at:

< <https://www.unisdr.org/archive/34220> > accessed 2 January 2023.

²⁵ A synopsis of theories and models is provided in a Research Report for the Australian Commission into Violence, Abuse, Neglect and Exploitation of People with Disability – Clifton, 'Hierarchies of power: Disability theories and models and their implications for violence against, and abuse, neglect, and exploitation of, people with disability', October 2020, available at:

<https://disability.royalcommission.gov.au/system/files/2020-10/Research%20Report%20-%20Hierarchies%20of%20power_Disability%20theories%20and%20models%20and%20their%20implications%20for%20violence%20against%2C%20and%20abuse%2C%20neglect%2C%20and%20exploitation%20of%2C%20people%20with%20disability.pdf> accessed 2 January 2023.

Many commentators refer in particular to two key models of disability – the ‘medical model’ and the ‘social model’²⁶ - although a number of others exist²⁷. Historically, disability is argued to have been seen largely through the ‘medical model’. Of the ‘medical model’, the disability charity Scope writes²⁸:

The medical model of disability says people are disabled by their impairments or differences.

The medical model looks at what is 'wrong' with the person, not what the person needs. We believe it creates low expectations and leads to people losing independence, choice and control in their lives.

And of the ‘social model’ Scope writes²⁹:

The social model of disability is a way of viewing the world, developed by disabled people. Scope's Everyday Equality strategy is based on this model of disability.

The model says that people are disabled by barriers in society, not by their impairment or difference. Barriers can be physical, like buildings not having accessible toilets. Or they can be caused by people's attitudes to difference, like assuming disabled people can't do certain things.

The social model helps us recognise barriers that make life harder for disabled people. Removing these barriers creates equality and offers disabled people more independence, choice and control.

²⁶ The social model has been attributed to the late Professor Mike Oliver and referenced in his book ‘Social work with disabled people’ (1983), Macmillan. Oliver himself explains that ‘*The starting point for the social model was the publication of The Fundamental Principles of Disability by the Union of the Physically Impaired Against Segregation (UPIAS) in 1976. It stated that: In our view it is society which disables physically impaired people. Disability is something imposed on top of our impairments by the way we are unnecessarily isolated and excluded from full participation in society (UPIAS 1976:14).*’ See Oliver: ‘The Social Model in Action: if I had a hammer’ - Chapter 2 in ‘Implementing the Social Model of Disability: Theory and Research’ edited by Barnes and Mercer (2004); Leeds: The Disability Press, pp. 18-31.

²⁷ A number of models exist - see Clifton n25 for a synopsis. In a US context, Seto and Buhai identify four paradigms around disability: the ‘Affliction Paradigm’, the ‘Medical / Charity Paradigm’, the ‘Civil Rights Paradigm’ and the ‘Emergence of a Human Variation Paradigm’ [allowing participation by disabled people irrespective of their differences]. ‘Tax and Disability: Ability to Pay and the Taxation of Difference’, Seto and Buhai, University of Pennsylvania Law Review, Vol. 154, No. 5 (May 2006), 1053-1145.

²⁸ Scope, ‘Social model of disability’, accessible at:

<<https://www.scope.org.uk/about-us/social-model-of-disability/>> accessed 2 January 2023.

²⁹ Scope, n28.

Disability literature does contain criticisms of various identified models – including the social model³⁰.

Implications for tax system design

A question arises as to whether one of the models of disability underpins – or is substantially reflected in - UK disability policy given that a contention of this thesis is that tax system design should be coherent with broader policy.

Building on both developing social attitudes and coordinated international policy-making around disability³¹, a number of countries including the UK have published national disability strategies. The latest UK National Disability Strategy ('the National Strategy') was published in July 2021³² and includes a considerable emphasis on supporting participation by disabled people in work and other aspects of day-to-day life – consistent with the social model. Specifically, it states of the devolved administrations³³ (Northern Ireland, Scotland and Wales) – but not explicitly of the non-devolved UK Government:

'Underlying the approaches of devolved administrations is the Social Model of Disability. The social model helps us recognise barriers that make life harder for disabled people. Removing these barriers creates equality and offers disabled people more independence, choice and control.'

³⁰ Clifton addresses critiques of the social model: see n25 at 12. See also Owens, 'Exploring the critiques of the social model of disability: the transformative possibility of Arendt's notion of power', *Sociology of Health & Illness* Vol. 37 No. 3 2015, 385–403. Owens comments that there are a number of forms of the social model (see 386-388).

³¹ Chapter 2, Section 4.

³² UK Government, National Disability Strategy, 28 July 2021, accessible at:

< <https://www.gov.uk/government/publications/national-disability-strategy> > accessed 2 January 2023.

³³ National Disability Strategy, n32, at 14.

The National Strategy document³⁴ states that the Welsh government have explicitly adopted the social model in their disability framework³⁵.

Although the National Strategy document does not appear to state explicitly that the non-devolved UK Government has adopted the social model, separate UK Government publications refer to the use of the social model: for example, in online guidance – ‘Portraying disability’³⁶ – the UK Government writes;

‘A positive image of disability is a fair, creative and stimulating portrayal of one or more disabled people. It should be based on the social model of disability rather than medical model of disability.’

On 18 July 2023, the UK Government Disability Unit issued a ‘Disability Action Plan 2023-2024: consultation document’³⁷. In the Ministerial Forward to the consultation document, the Minister of State for Disabled People, Health and Work wrote:

‘At the heart of this government’s agenda is the ambition to make this country the most accessible place in the world for disabled people to live, work and thrive.

Every part of government is working together to transform the lives of disabled people in the UK for the better and ensure disabled people can participate fully in society.’

³⁴ In January 2022, the High Court ruled that the National Strategy was unlawful as consultation with disabled people leading to it had not met legal requirements. However, this decision was overturned in July 2023 by the Court of Appeal.

³⁵ National Disability Strategy, n32, at 16.

³⁶ UK Government guidance. ‘Portraying disability’, updated 15 March 2021 and available at:

< <https://www.gov.uk/government/publications/inclusive-communication/portraying-disability> > accessed 28 July 2023.

³⁷ UK Government, ‘Disability Action Plan 2023-2024: consultation document’ issued in July 2023.

A link to this consultation is available at:

< <https://www.gov.uk/government/consultations/disability-action-plan-2023-to-2024/disability-action-plan-2023-to-2024-consultation-document> >, accessed 28 July 2023.

This emphasis on full participation in society by disabled people is consistent with the social – rather than medical – model.

Implications for this thesis

Given the considerable emphasis on participation by disabled people in work and other activities in government publications; and the extensive references to the social model of disability, where relevant, and unless government guidance suggests otherwise, this thesis will consider in its evaluation of tax reliefs whether they are consistent with the broad emphasis on participation in the National Strategy and the social model.

A key feature of the social model is that it is designed to be seen holistically as a model for eliminating disabling environments – rather than as a series of ‘point solutions’ addressing individual issues: Oliver writes of the social model³⁸:

...it [the social model] refuses to see specific problems in isolation from the totality of disabling environments: hence the problem of unemployment does not just entail intervention in the social organisation of work and the operation of the labour market but also in areas such as transport, education and culture.

When considering how, for example, a tax system might help support participation in work by disabled people, this thesis considers the coherence of reliefs with addressing the complete disabling environment limiting or preventing work – alongside other measures such as Access to Work - not just, for example, stimulating labour incentives but ignoring access and transportation obstacles.

³⁸ Oliver, n26.

‘Nothing about us without us’

A key precept of disability policy-making amongst disability authors, activists and representative groups is that of ‘nothing about us without us’³⁹. This thesis incorporates the views of a number of disability stakeholders in its evaluation of tax administration and compliance arrangements for disabled people in Chapter 7. More broadly, it emphasises the importance of appropriate consultation in tax system design to support disabled people.

6. The roles of a tax system in supporting people with disabilities

Introduction

Tax systems play multiple roles⁴⁰ in societal resource distribution and the financing of public services – including in respect of people with disabilities. Beyond the ‘classic’ roles of tax systems in their broadest sense, including their redistributive function which facilitates the payment of benefits and provision of public services (noting that the aim of this thesis is *not* to evaluate the nature and

³⁹ See, for example, the United Nations’ explanatory note around the International Day of Disabled Persons 2004:

‘The observance of the Day in 2004 will focus on the active involvement of persons with disabilities in the planning of strategies and policies that affect their lives. The motto “Nothing About Us Without Us” relies on this principle of participation, and it has been used by Disabled Peoples Organizations throughout the years as part of the global movement to achieve the full participation and equalization of opportunities for, by and with persons with disabilities.’

See: <<https://www.un.org/development/desa/disabilities/international-day-of-persons-with-disabilities-3-december/international-day-of-disabled-persons-2004-nothing-about-us-without-us.html>> accessed 20 February 2023.

⁴⁰ The role of tax systems is the subject of a broad literature: see, for example, Musgrave and Musgrave ‘Public Finance in Theory and Practice’, McGraw Hill, Fifth Edition, Chapter 1. Avi-Yonah argues that tax systems have three goals: raising money for ‘necessary government functions, including the provision of public goods’; having a ‘redistributive function, aimed at reducing the unequal distribution of income and wealth that results from the normal operation of a market-based economy’; and a ‘regulatory component: [they] can be used to steer private sector activity in the directions desired by governments. Avi-Yonah, ‘The three goals of taxation’, New York Tax Law Review, Volume 60, 2006-2007, at 2.

quantum of general resource redistribution to, or the provision of public services for, disabled people) a tax system may provide effective support for people with disabilities, and those who care for and provide for them, in a number of specific ways.

Importantly, a tax system's compliance and administration can be organised to ensure that it is accessible and understandable for people with a range of different impairments: research summarised in Chapter 7, including interviews with a number of external stakeholders, reiterates the fundamental importance of this element of a tax system for many disabled people.

Financially, tax systems can assist in mitigating direct 'costs of disability' through targeted reliefs of varying types – alleviating tax costs⁴¹. Amongst other outcomes, these reliefs may more fairly align 'ability to pay'⁴². Seto and Buhai illustrate this issue with a notional example – albeit based on the US tax system⁴³:

⁴¹ On 22 July 2022, the Parliamentary Treasury Committee launched an enquiry into tax reliefs – with a focus on understanding whether 'the system of reliefs as a whole achieves benefits for the UK economy that justify their cost.' Various representations were received – including from the LITRG. The outcome of the enquiry is yet to be published. For background, see:

< <https://committees.parliament.uk/committee/158/treasury-committee/news/172305/mps-to-investigate-benefits-and-drawbacks-of-tax-reliefs-in-new-inquiry/> > accessed 9 January 2023.

⁴² Adjusting for incremental 'costs of disability' may more fairly reflect taxpayers' 'ability to pay' – a key precept of progressive tax system and a matter raised by the Radcliffe Commission report – see Chapter 3, Section 2. In the context of disability and the US tax system, Seto and Buhai, n27, write (candidate underlining for emphasis):

Disability theory has changed dramatically over the past century, to the point that many tax rules important to people with disabilities are no longer justified by modern disability theory. Standard tax theory turns out to be inadequate to deal with the problems of people with disabilities because, consistent with its utilitarian origins, standard tax policy analysis generally assumes that taxpayers are identical except with respect income; as a result, it lacks the capacity to deal with other individual differences in ability to pay. The failure of tax theory to deal adequately with ability to pay, in turn, has placed serious strains on the mechanical structure of the individual income tax system as a whole, which has become increasingly incoherent.

⁴³ Seto and Buhai, n27, at 1144.

A quadraplegic's decision to hire a personal assistant to help with bathing and personal hygiene cannot credibly be characterized as just another consumption choice, normatively indistinguishable from a decision to throw a big party. Our moral intuitions, reflected in the expansive modern medical expense deduction, tell us that at equivalent income levels the quadriplegic simply cannot afford to contribute as much to the costs of government as a taxpayer who can bathe and care without assistance.

In addition to direct cost mitigations, tax systems can also facilitate savings mechanisms which do not unduly tax people as a result of their impairments or which allow the tax-free accumulation of returns to meet future disability-related costs. They can assist in supporting people with disabilities in work and other activities both by relieving costs and creating incentives for employers to employ and retain people with disabilities. And they can ensure that people receiving compensation or insurance payments in respect of disability are not unduly taxed such that the economic effect of these payments is diluted. Examples of all of these reliefs – both from the UK and other jurisdictions - are considered throughout this thesis.

But whilst all of these outcomes are possible, three key questions arise around the use of tax systems to provide support: first, why use the tax system as opposed to another form of support such as the benefits system? Second, if a tax system is to be used, what type of tax relief might be appropriate given that their effects can vary markedly? And third, should tax reliefs around disability seek to adjust for earnings capacity limitations in addition to mitigating costs?

The answers to the first question – ‘why use the tax system at all?’ – are multi-faceted. There are a range of circumstances – building on elements of

literature examining the use of ‘tax expenditures’ for social purposes⁴⁴ - where this thesis contends that the UK tax system may *not* be the most effective vehicle for providing support to disabled people as certain reliefs may be wholly or partially ineffective; inefficient; or overly-complex to administer – particularly given any need for parallel interaction with the benefits system⁴⁵. But there are circumstances where it may be⁴⁶ – for example, where relief avoids effective discrimination on account of disability should the person otherwise be taxed (for example, taxing them on equipment provided at work to facilitate ‘reasonable adjustments’); where the tax relief is designed to deliver an intended ‘after-tax’ receipt in an efficient way – for example, under a state benefit or compensation claim; or where the relief simply eliminates a defined tax obligation with the objective of mitigating the associated tax cost as part of a policy objective – for example, certain Council Tax reliefs.

In relation to the second question, the choice of any type of relief may make a substantial difference to the outcome⁴⁷: for example, an Income Tax deduction, reducing a person’s tax base, may only save tax at a taxpayer’s

⁴⁴ In ‘Tax Expenditures and Horizontal Equity: A Lost Lesson from Stanley Surrey, 2019, Avi-Yonah and Fishbien explore the role of ‘tax expenditures’ in achieving horizontal equity through aligning ‘ability to pay’. See also Seto and Buhai, n27. For a synopsis of certain tax expenditure literature, see Vjekoslav, ‘Tax Expenditures: a theoretical review’, 2006, *Financial Theory and Practice*, 113-127. For a UK analysis, see ‘The Management of Tax Expenditures’, Report by the Comptroller and Auditor General, National Audit Office, HC 46 Session 2019-20, 14 February 2020.

⁴⁵ Negative effects of the use of ‘tax expenditures’ – including, amongst others, ineffectiveness, inefficiency or complexity - are summarised by Vjekoslav, n44, at 124 and 125.

⁴⁶ In relation to tax expenditures, Weisbach and Nussim argue that whether a tax system is used to achieve a policy objective should reflect whether it is the best vehicle for doing so, taking a holistic view: ‘*If we mistakenly look only at the tax system instead of overall government policy, we will draw the wrong conclusions.*’ From Weisbach and Nussim, ‘The Integration of Tax Spending Programs’, John M. Olin Program in Law and Economics Working Paper No. 194, 2003.

⁴⁷ Discussed by Vjekoslav, n44.

marginal rate (rather than reimburse a full cash cost) – but may be of no value to a person whose income sits below the UK Personal Allowance threshold. Conversely, a refundable tax credit can provide people with a cash sum irrespective of income; whereas a non-refundable credit may not. A VAT relief may save a person, say, 1/6⁴⁸ of the ‘gross’ costs of relevant goods and services – but may have implicitly regressive effects if it benefits wealthier people only able to afford those supplies.

The third key question – should tax systems adjust for the impact on earnings capacity arising from disability? – raises deeply complex issues around how such adjustments could be measured and adjusted for on a just basis, including the fair assessment of the implications of impairment and measures of relative effort⁴⁹. By way of an illustrative example, a disabled person may, as a direct consequence of their disability, need to work full-time to deliver what a non-disabled worker might deliver part-time; or take considerably longer to access work from an equivalent distance. If both are paid the same amount, should both be taxed to the same extent given the relative efforts made and the additional free time enjoyed by the non-disabled worker? This thesis acknowledges this area as one for legitimate debate: nonetheless, current policy in the UK and in the other countries considered in the comparative analysis is not to adjust tax rates to reflect the varying earnings implications of disability, save for any general progressivity in tax structures. Beyond considering in detail in Chapter 4 whether there should be some form of general tax relief for disabled people, this question is not pursued further in this evaluation.

⁴⁸ Using a VAT rate of 20%.

⁴⁹ See the synopsis of distributive justice literature, including endowment taxation, in Chapter 2, Section 9; and Seto and Buhai, n27.

Considering tax reliefs as part of 'whole systems' in comparative analysis

Tax reliefs are one - and, in the UK, a comparatively modest - element of state support for people with disabilities in the UK. Whilst comparative analysis in this thesis illustrates a range of alternative tax reliefs in use in other countries, to achieve true comparability these need to be considered by reference to 'whole system' provision – including benefits; employment support mechanisms; and public services such as healthcare.

At a national level, Canada, for example, uses tax credits in a variety of ways to support disabled people – in addition to welfare payments. The UK's primary vehicle for providing direct financial support is the benefits (welfare) system. The UK operates a universal healthcare system free at the point of delivery. Other countries operate insured or mixed private and state systems.

On this basis, this thesis argues that any recommendations for additional or enhanced tax reliefs need to be coherent with other elements of public provision⁵⁰: reliefs should not be 'cherry picked' without considering how they fit into the complete landscape of provision. It may well be the case that multiple policy tools are used in practice to achieve specific outcomes⁵¹ – for example, using tax mitigations such as Council Tax reliefs in addition to benefit payments to provide assistance to disabled people in meeting their costs of disability and costs of living more broadly. The Motability scheme – discussed in Chapter 5 – whilst not a state enterprise, 'joins up' various sources of public provision to provide transportation for people with disabilities.

⁵⁰ A point emphasised in 'Disability in tax and related benefits: the case for a modern and coherent approach: A report by the Low Incomes Tax Reform Group of the Chartered Institute of Taxation', December 2003.

⁵¹ See Weisbach and Nussim, n46.

7. Disability: normative principles in tax system design

Although this thesis explicitly does not argue a preferred normative view around general redistribution to disabled people, within its stated parameters it still contends that there are five normative principles underpinning effective tax system design for people with disabilities – linked both to non-discrimination and taxpayer privacy.

The candidate accepts that there are multiple definitions and applications of the concept of ‘normative principles’⁵²: the five principles set out below are derived from, or develop, ethical positions already largely enshrined in legislation.

General non-discrimination through the tax system

Given considerable national and international legislation and conventions⁵³ prohibiting discrimination on account of disability, this thesis contends that a tax system should not discriminate against disabled people by taxing them as a result of their disability – for example, taxing them on an imputed benefit arising from equipment or support provided to them to enable them to work or to access work. This is entirely consistent both with anti-discrimination legislation and with UK Government policy emphasis on supporting disabled people in accessing and remaining in work⁵⁴ - and has implications for, for example, the scope of tax reliefs for disabled people in relation to their costs of accessing work.

⁵² For definitions and examples of ‘normative principles’ see Cambridge English Dictionary at:

< <https://dictionary.cambridge.org/example/english/normative-principle> > accessed 28 July 2023.

⁵³ Summarised in Chapter 2, Sections 4 and 5.

⁵⁴ See Chapter 2, section 3.

Non-discrimination between different forms and impacts of disability

Consistent with general principles of non-discrimination, together with the broad tax principle of horizontal equity, this thesis argues that the nature and quantum of any tax reliefs should, as far as is practically possible, be reflective of the specific nature and impact of a person's disability – albeit, that it may be appropriate that some reliefs are available to a people with a range of impairments (for example, when exempting a broadly available disability-related benefit payment from tax).

Further, any reliefs should not appear to favour one form of disability over another where to do so leads to an obvious disadvantage to people whose disability does not benefit from the relief. For example, a question arises as to whether Blind Persons Allowance is equitable as such an allowance is not available in respect of other disabilities.

Maintaining fairness and non-discrimination through vertical equity

The thesis argues that tax reliefs should be appropriately structured so as to reflect vertical equity as between disabled taxpayers: for example, providing VAT reliefs in relation to expensive goods and services may only benefit wealthier people able to afford the supplies and could discriminate against disabled people unable to work and on low incomes.

Non-discrimination around ease of tax system access and compliance

Based on anti-discriminatory legislation, including the Public Sector Equality Duty in section 149 of the Equality Act 2010, the claiming of any tax reliefs; broader

compliance with the tax system; and accessing information about the tax system, should be structured so as to be accessible and straightforward for people with a broad range of impairments.

Privacy in the conduct of tax affairs

Based on general principles of taxpayer confidentiality and privacy, claiming any tax reliefs should be achieved confidentially such that a disabled person's personal privacy and dignity is not compromised, nor stigma attached to any claim⁵⁵.

8. Disability: defining tax system effectiveness

Introduction

This section defines UK tax system 'effectiveness' for the purpose of this thesis – building on the normative principles in Section 7. Given that the thesis does not evaluate the general nature and quantum of redistribution to disabled people and their carers, these attributes are not considered in the definitions of 'effectiveness'.

Attributes of tax system effectiveness

A considerable literature examines attributes of effective tax systems and their components. Example attributes include Smith's⁵⁶ Canons of Equity⁵⁷, Certainty,

⁵⁵ Note that a considerable literature addresses stigma associated with the claiming of benefits in the UK. See, for example, Geiger, 'The stigma of claiming benefits: a quantitative study', 2016, *Social Policy*, 45 (2). pp. 181-199.

⁵⁶ From Smith, 'An Inquiry into the Nature and Causes of the Wealth of Nations', 1776, Book V, Chapter 2, V.2.25-28.

⁵⁷ 'Equity' can include both vertical and horizontal equity: for example, see Kay and King, 'The British Tax System', Oxford University Press, 1990 at 41-42.

Convenience and Economy; Mirlees et al's⁵⁸ various attributes including Efficiency, Simplicity, Neutrality, Fairness, Stability and Transparency; and attributes put forward by Devereux et al in various publications⁵⁹, including Economic efficiency, Fairness, Stability, Ease of Implementation and Robustness to Avoidance. In their paper 'A better deal for the low income taxpayer'⁶⁰, the LITRG contend that seven principles relating to tax systems are that they should be clear and up to date, simple, equitable, just, accessible and responsive, joined up and inclusive.

This thesis contends that, in relation to the effectiveness of tax systems in supporting disabled people, in addition to being reflective of the normative principles set out in Section 7 above, the attributes of effectiveness can be categorised into two: 'purposive effectiveness' and 'functional effectiveness'.

'Purposive effectiveness' – reflects how effective a tax relief is in achieving a stated policy objective. In evaluating 'purposive effectiveness', the thesis considers whether reliefs deliver effectively on their policy intent – or whether, drawing on candidate and comparative analysis – there are better alternative approaches for doing so (such as through the benefits system). Beyond effectiveness in meeting broad policy intent, 'purposive effectiveness' considers the structural operation of the relief – and whether it appropriately reflects normative principles such as non-discrimination and both horizontal and vertical

⁵⁸ Mirrlees et al, 'Tax by Design', Institute of Fiscal Studies, 2011 – see, for example 2.1, 'Assessing tax systems'.

⁵⁹ For example, Devereux, Auerbach, Keen, Oosterhuis, Schön and Vella, 'Taxing Profit in a Global Economy', OUP 2021, Chapter 2.

⁶⁰ LITRG, 'A better deal for the low income taxpayer', December 2022, at:

< <https://www.litr.org.uk/sites/default/files/files/LITRG-A-better-deal-for-the-low-income-taxpayer-2020.pdf> > accessed 17 August 2023.

equity. Consideration of ‘purposive effectiveness’ also includes evaluating robustness to avoidance – for example, the extent to which non-disabled people might take advantage of provisions intended to benefit disabled people (in ways which are inconsistent with policy intent). Finally, purposive effectiveness considers the extent to which a relief actually makes a meaningful difference to disabled taxpayers – or whether an alternative mechanism would deliver an improved result.

Whilst ‘purposive effectiveness’ focuses on the structure of a relief relative to its policy intent, this thesis argues that a key dimension of tax relief effectiveness is its ‘functional effectiveness’, essentially its clarity and ease of use – convenience - by people with a diverse range of impairments. The interviews summarised in Chapter 7 and Appendix 1 emphasise how important ease of access and administration is to disabled people and those who support them.

Components of ‘functional effectiveness’ include that any relief is clear, unambiguous and understandable by people with a broad range of disabilities⁶¹ – whether in legislative drafting or through HMRC guidance and systems for compliance; that the relief is easily claimable by people with varying types of impairment; that the relief is financially convenient so as to avoid placing undue or unscheduled financial burdens on people who may be on low incomes or otherwise struggling to cope with the demands of their impairments; and that the relief is - absent compelling reasons to the contrary - stable so as to facilitate planning or to mitigate confusion for those who find the tax system hard to follow.

⁶¹ The LITRG write that: ‘*Tax matters generally can be complicated, and the special rules for disabled people or for those who care for them, are even more so.*’ See ‘Disabled people and carers’, at: < <https://www.litrg.org.uk/tax-guides/disabled-people-and-carers> > accessed 9 January 2023.

Effectiveness and policy coherence

Given evolving policy for supporting people with disabilities, the thesis considers tax system ‘effectiveness’ using the principle that a tax system should be coherent with a country’s own legislative and policy framework for disability, recognising that this may vary between countries. For example, taking published UK Government policy statements in relation to disability, participation and opportunity – a number of which are referenced in Section 5 above - the thesis considers whether the reliefs offered by the existing UK tax system are coherent with those statements; or whether alternative – or additional – reliefs might better achieve stated policy outcomes such as accessing work.

Effectiveness and system coherence

Whilst the attributes of purposive and functional effectiveness are focused on individual reliefs, at a broader level its overall effect will depend on how it is constructed as part of an overall tax system. One feature of an effective tax system – strongly advocated by Mirrlees et al⁶² - is system coherence. By way of example, in a paper reviewing tax provisions and disability in Canada, Duff⁶³ writes:

The federal Income Tax Act contains an extensive number of provisions addressing the taxation of families with disabled persons. These provisions, however, have been the subject of a series of ongoing incremental adjustments, and do not reflect a comprehensive and coherent approach to the taxation of these individuals in light of their unique financial circumstances.

⁶² Mirrlees et al, n58, at 45 highlight: ‘*The need to think of the tax system as just that—a system. The way that different taxes fit together matters, as does being clear about the role of each tax within the system.*’

⁶³ Duff, n22, at 797.

The ‘incremental’ approach to tax reliefs referenced by Duff is in many ways similar to that which has arisen in the UK: a synopsis of the evolution of UK reliefs is provided in Section 2 of Chapter 3.

Political saliency and political economy

When setting or modifying tax reliefs there are inevitable challenges for governments in determining which areas require prioritisation (political saliency); and which policy options are likely to prove most attractive to voters (political economy). Where relevant and appropriate, commentary around the political saliency and economy of provisions – including any recommended changes – are made in this thesis.

9. Methodologies for the evaluation

Introduction

Each relief considered in this thesis is evaluated individually and, where relevant, collectively in ‘clusters’: examples of ‘clusters’ of reliefs include Council Tax reliefs, VAT reliefs and certain employment-related reliefs.

Measuring effectiveness relative to the number of normative principles, together with purposive and functional criteria, set out above requires a range of methodologies – some applied individually; some in combination. The methodologies used in this thesis are summarised below.

Methodologies used in this thesis

A precursor to the effectiveness evaluation of each relief is to understand the policy intent behind it. The policy background to each relief is considered using a range of sources – including the relevant legislation; relevant parliamentary

debates summarised in Hansard; relevant UK Government policy papers; Finance Bill background notes; or other relevant literature. Much of this is summarised in the description of the provisions in Chapter 3.

Case law analysis is used to support this understanding – considering examples where legislation has required court interpretation to determine its application in different circumstances.

Once the policy intent has been understood, the evaluation considers the application of both the normative principles in Section 7; and the effectiveness criteria in Section 8. The emphasis of these varies from relief to relief – with certain attributes of effectiveness having greater prominence in the analysis than others depending on the nature of the relief and issues identified with it: for example, much of the evaluation around Blind Person's Allowance in Section 3 of Chapter 4 focusses on aspects of its policy intent; the normative principle of non-discrimination between disability types; and the political economy consequences of broadening the relief; whereas the evaluation of the Severe Mental Impairment Council Tax discount in Section 4 of Chapter 4 focusses on identified problems of implementation of the relief.

In undertaking its effectiveness evaluation, the thesis draws on a range of sources, analysis and data – including the legislation underpinning each relief; independent commentary and literature (for example, from the LITRG); published data around fiscal effects and claimants of reliefs; case law; and legislative analysis. These sources are supplemented by candidate analysis – for example, analysing the timings of when reliefs are available to understand whether they are financially convenient to those claiming them; considering whether reliefs are

reflective of either horizontal or vertical equity; or considering whether reliefs are widely used or likely to make a meaningful difference to those claiming them.

The stability of provisions is analysed by reference to legislative longevity and the frequency of any changes; whereas indicators of a lack of robustness to avoidance can be found either in case law or policy papers supporting changes to legislation (for example, the use of certain disability-related trusts by non-disabled beneficiaries – explained in Section 3 of Chapter 3).

The use of multiple methodologies

The evaluation of attributes of some reliefs draws on multiple sources: for example, evaluating the clarity and ease of understanding of a relief might combine case law analysis (to determine areas of ambiguity considered by the courts); a review of legislative complexity by the candidate; and independent commentary – for example, by the LITRG: an example of this multi-faceted evaluation is the analysis of the complexity of the trusts regime in Section 7 of Chapter 4.

The use of comparative analysis

The evaluation of whether a relief is the best vehicle for meeting policy intent, or whether there might be better alternatives, draws upon comparative analysis with the national tax systems of Australia, Canada, Germany and the US: this comparative analysis reveals a number of examples of alternative options for consideration – whether in the choice of relief to meet policy intent; in the structuring of a relief's implementation; or in possible alternative reliefs to support

wider policy objectives. Unless otherwise stated, comparative analysis does not consider subnational taxes.

The use of interviews

Finally, in evaluating the ease of access to and administration of the UK tax system for disabled people and those who support them, the analysis in Chapter 7 and Appendix 1 draws upon interviews with a number of people, drawn from bodies including major disability charities and voluntary sector providers of tax support.

10. Conclusions

The prevalence of disability in the UK is substantial – reportedly affecting more than 20% of the population - albeit that the nature and implications of disability are broad-ranging. Social attitudes around disability have both changed markedly over recent decades, with a progressive adoption of the social model of disability in many aspects of public provision for disabled people; together with a clear emphasis on non-discrimination as a result of disability.

Whilst tax systems have a number of roles in supporting disabled people and their carers, the aim of this thesis is to undertake an evaluation of the effectiveness of nearly 40 targeted tax reliefs together with the ease of tax administration and compliance – rather than to comment on broader aspects of the nature and quantum of general redistribution through taxation. This chapter has illustrated that tax system effectiveness – including normative principles for tax system design – is multi-faceted.

Based on the analyses and methodologies set out in this chapter, Chapters 2 and 3 provide background information both around disability and existing UK tax reliefs – before the full evaluation of their effectiveness is undertaken in the chapters which follow.

Chapter 2 – Disability: background information

1. Introduction

Disability arises for many different reasons; and may have multiple and highly diverse implications – including for tax system design. As a precursor to the tax system evaluation in this thesis, this chapter provides background information around disability. In addition to considering definitions of disability; prevalence data; participation data (including work); and information around domestic and international legislative evolution, the chapter considers current UK public financial provision for disabled people; the financial implications of disability and, for context, approaches to distributive justice and disability. This background information, together with the analysis of the specific tax reliefs in Chapter 3, provides an ‘information platform’ for the evaluations which follow in subsequent chapters.

2. Disability: definitions, origins and implications

Definitions

The Oxford English Dictionary defines ‘disabled’ as ‘deprived of some ability’⁶⁴; and, of a person, ‘having a physical or mental condition which limits activity, movement, sensation, etc.’⁶⁵. One definition of ‘disability’ provided by the Dictionary is ‘a physical or mental condition that limits a person’s movements, senses, or activities’⁶⁶.

⁶⁴ Oxford English Dictionary, Third Edition, updated online up to September 2022, from online search at Bodleian Law Library, 9 January 2023 at 1500.

⁶⁵ Oxford English Dictionary, n64.

⁶⁶ Oxford English Dictionary, n64.

In their Standard Rules on the Equalization of Opportunities for Persons with Disabilities, the United Nations ('UN') say of disability⁶⁷:

The term 'disability' summarizes a great number of different functional limitations occurring in any population in any country of the world. People may be disabled by physical, intellectual or sensory impairment, medical conditions or mental illness. Such impairments, conditions or illnesses may be permanent or transitory in nature.

A recurring theme throughout this thesis in considering the eligibility criteria for, and effectiveness of, support through the UK tax system is that 'disability' is a term encompassing a very broad range of conditions with markedly varying origins and implications; and that the use of generalised definitions can lead to sub-optimal outcomes in the use of tax reliefs given very different individual circumstances.

Origins

A person can be born with a disability (for example, a single physical or mental impairment or, more broadly, a genetic syndrome); develop a 'latent' disability over time; become disabled through an accident or as a result of crime or armed conflict⁶⁸; develop a disability arising from a medical condition; develop an impairment, such as dementia, as part of the ageing process; or become disabled by environmental factors such as exposure to toxic substances. The UN extract above⁶⁹ comments that disability can be permanent or transitory in nature. Some

⁶⁷ United Nations, 'Standard Rules on the Equalization of Opportunities for Persons with Disabilities', Paragraph 17. Available at:

<https://www.un.org/development/desa/disabilities/standard-rules-on-the-equalization-of-opportunities-for-persons-with-disabilities.html> > accessed 9 January 2023.

⁶⁸ Armed conflict-related disabilities can be both physical and mental - for example, Post-Traumatic Stress Disorder.

⁶⁹ United Nations, n67.

impairments can be permanent from birth; others – such as dementia – progressive and permanent from a later stage in life.

Implications

The implications of an impairment for a person and, where relevant, those who care or provide for them will depend on its type, severity and duration – and on personal circumstances, including the availability of support and financial resources. Some impairments may have limited, if any, impact on aspects of a person’s day-to-day life including their ability to participate in work and other activities. Such impairments may also be transitory in nature. Conversely, complex, lifelong and severe impairments may result in a disabled person being unable to work; being immobile without assistance; and, in some cases, needing ‘24 hour’ lifetime care.

The implications of disability for carers and providers can also vary markedly depending on the nature and extent of a disabled person’s needs⁷⁰. In some cases a person may not be able to work, or may need to limit their working hours, due to the need either to provide for, or be on ‘standby’ for, the needs of a disabled relative.

3. Disability: UK prevalence and participation data

This section provides a statistical background both to disability prevalence in the UK and to participation by people with disabilities in work and social activities.

⁷⁰ A synopsis of demands on carers is provided at ‘A Carer’s Life: Implications and Considerations for Commissioning’, Institute of Public Care at Oxford Brookes University, July 2017.

There is a considerable body of statistical data published by the UK Government and ONS around disability⁷¹: what follows in this section is necessarily selective. However, the statistics used reinforce the diverse nature, prevalence and implications of disability – whether by age cohort; impairment type; or impact on work or social participation. This diversity in turn brings out the potential pitfalls in tax system design of over-simplifying – or ‘commodifying’⁷² – disability-related tax reliefs.

UK disability prevalence

ONS UK disability prevalence estimates – derived from samples - are summarised by age cohort and impairment types in the two charts which follow⁷³. The first chart illustrates that 9% of children reported a disability in FY 2020/21 together with 21% of working adults and 42% of state pension adults. 22% of all people reported a disability.

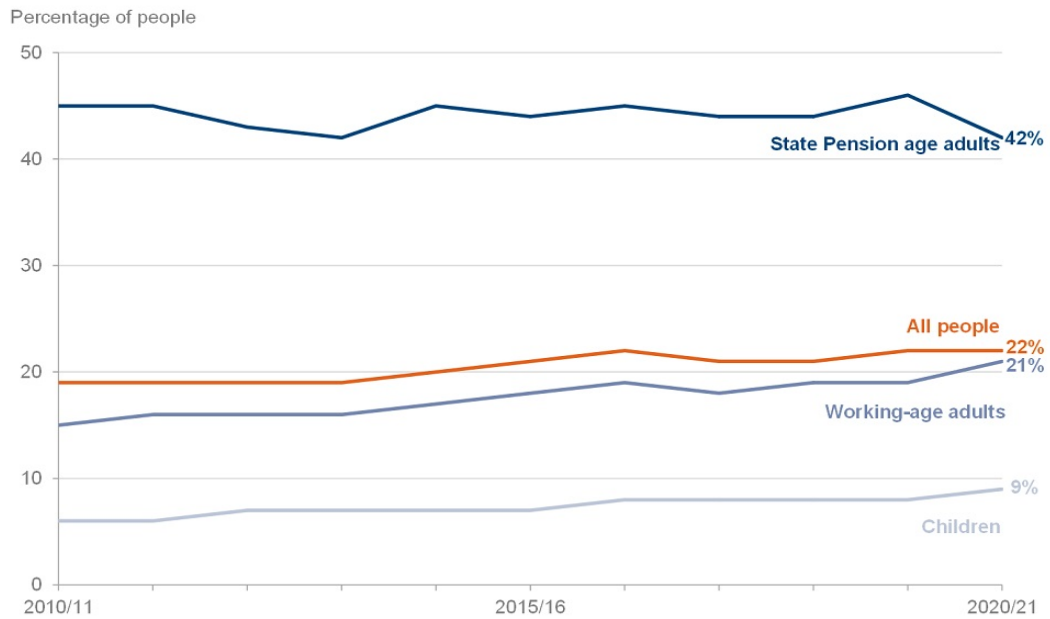
⁷¹ See, for example, a range of Office for National Statistics (‘ONS’) reports at:

< <https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/disability> > accessed 2 January 2023.

⁷² There is a broad literature considering citizen ‘commodification’ – whereby public services such as care are argued not to reflect the specific attributes or needs of individuals. In a taxation context, see, for example, Dagan, ‘The currency of taxation’, *Fordham Law Review*, Volume 84 2016, 2537-2563. In this paper, Dagan explores how tax systems can shape identities, writing at 2540 ‘*To determine each taxpayer’s liability and fair share, tax law must compare people and their behavior, assess interpersonal interactions and social institutions, and convert all these factors into the currency of taxation.*’

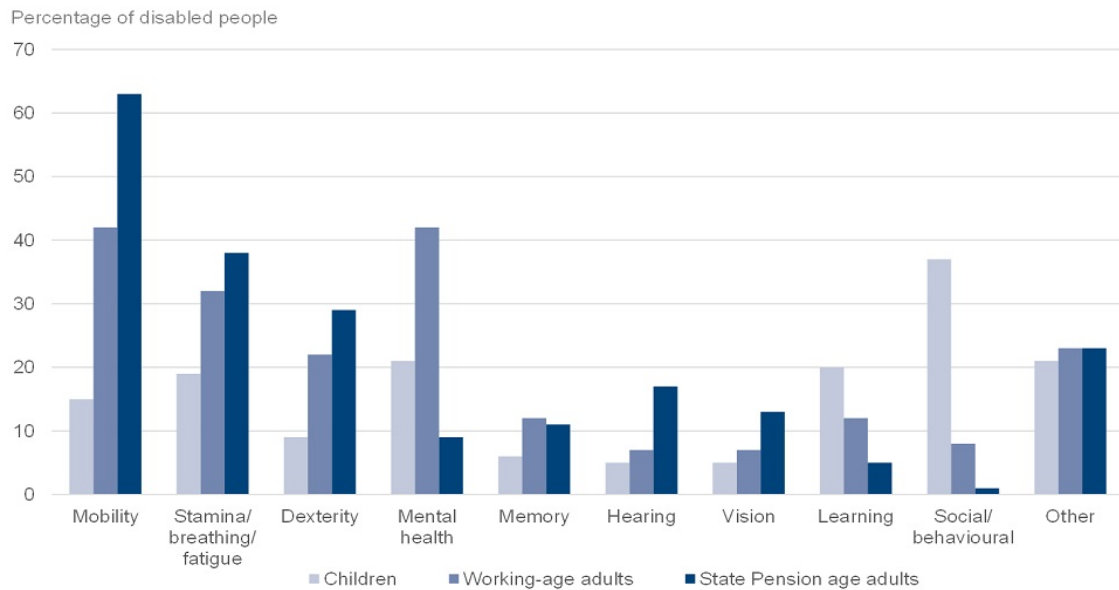
⁷³ Sourced from disability-related tables in the 2020-2021 Family Resources Survey, n1, accessed 1 January 2023.

Disability prevalence by age group, FY 2010/11 to FY 2020/21, United Kingdom



The second chart overleaf sets out impairments reported by disabled people by age group.

Impairment types reported by disabled people, by age group, 2020 to 2021, United Kingdom



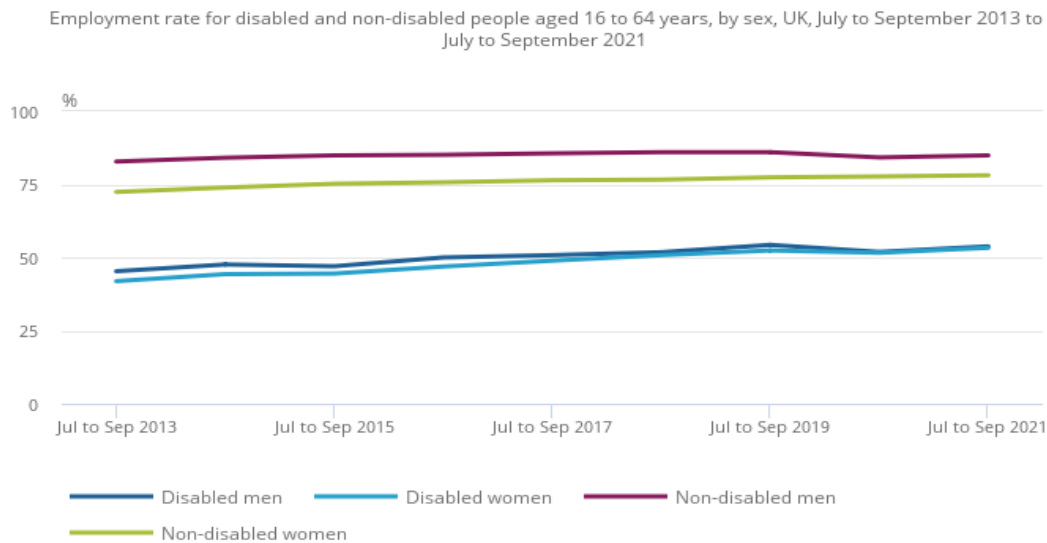
Amongst working-age adults, mobility-related and mental health impairments are each reported by more than 40% of disabled people: these statistics emphasise the importance of mental as well as physical health in considerations of tax system design – including in relation to supporting people with disabilities in accessing work and other activities.

Work participation - overview

By way of background, there is a very substantial body of literature, policy analysis and statistical data about participation by disabled people in work and other activities. Again, data set out in this section is necessarily selective and is provided for context to the evaluation of tax system effectiveness. It reinforces the dangers of the use of averages or other generalised definitions in framing support for disabled people, whether through the tax system or otherwise.

Based on ONS data⁷⁴, work participation by disabled people in absolute numbers has increased overall from 2013 to 2021. However, there is a clear gap in employment levels between disabled and non-disabled men and women: the chart below sets out employment rates for men and women over this period.

Figure 3: Employment rates for disabled men and women are similar, but the greatest gap in employment is between disabled and non-disabled men



Source: Office for National Statistics - Labour market A08 dataset, Labour Force Survey

Although the chart above illustrates percentages of people in ‘employment’, there is some modest variation in the type of employment as between disabled and non-disabled people – reinforcing the importance of the tax treatment of self-employment. The ONS write that⁷⁵:

⁷⁴ ONS, ‘Outcomes for disabled people in the UK: 2021’, 10 February 2022, Figure 3. Accessible at:

<<https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/disability/articles/outcomesfordisabledpeopleintheuk/2021#employment>> accessed 1 January 2023.

⁷⁵ ONS, n74 – referencing Figure 6.

...differences were seen between the type of occupation disabled and non-disabled people were working in. When looking at type of employment, there were more disabled people who were self-employed (13.8%) than non-disabled people (12.5%). These trends are consistent with 2020.

Government steps taken to increase work participation

There has been a policy emphasis on increasing the participation of disabled people in work: for example, without confirming 'cause and effect' in detail, a May 2021 Parliamentary Briefing Paper⁷⁶ highlighted a number of steps taken by the Government to increase employment amongst disabled people, building on a November 2017 White Paper 'Improving Lives: the future of health, work and disability'⁷⁷. Those highlighted steps included⁷⁸ the Access to Work programme⁷⁹; the Disability Confidence programme; the Work and Health programme; the Intensive Personalised Employment Support programme; and other measures such as personal Support Packages; apprenticeships; and the New Enterprise Allowance – as it applied to disabled jobseekers.

⁷⁶ Powell, 'Disabled people in employment', Parliamentary Briefing Paper Number 7540, 24 May 2021, accessible at:

< <https://commonslibrary.parliament.uk/research-briefings/cbp-7540/> > accessed on 10 March 2023.

⁷⁷ Department for Work & Pensions ('DWP') and Department of Health, 'Improving Lives: the future of health, work and disability', November 2017, accessible at:

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/663399/improving-lives-the-future-of-work-health-and-disability.PDF > accessed 2 January 2023.

⁷⁸ Powell, n76, section 3, 12-19.

⁷⁹ By way of background, Access to Work provides people with disabilities grants to access work. The scheme has some 38,620 participants and cost some £149.9 million in 2021/22. For UK Government statistics around take-up and cost of the Access to Work Scheme as at March 2022, see:

<https://www.gov.uk/government/statistics/access-to-work-statistics-april-2007-to-march-2022/access-to-work-statistics-april-2007-to-march-2022> > accessed 3 January 2023.

In August 2021, the UK Government published a further consultation – ‘Shaping future support: the health and disability Green Paper’⁸⁰ – which, in Chapter 2, considered how support for disabled people in employment could be improved. On 15 March 2023, the Government published a health and disability White Paper which stated that:⁸¹ *‘Our vision in this White Paper is to help more disabled people and people with health conditions to start, stay and succeed in work.’* The White Paper set out a broad range of measures designed to increase participation by disabled people in work⁸² - including, amongst others, a number of changes to DWP systems and processes in evaluating the work capability of disabled people; piloting an enhanced Access to Work package for people needing more support than under the current scheme; and working with organisations such as Motability⁸³ *‘to address the challenges disabled people face accessing transport’*.

⁸⁰ DWP, ‘Shaping future support: the Health and Disability Green Paper’, Consultation, 12 August 2021, available at:

<<https://www.gov.uk/government/consultations/shaping-future-support-the-health-and-disability-green-paper/shaping-future-support-the-health-and-disability-green-paper>> accessed 2 January 2023.

⁸¹ DWP, ‘Transforming Support: The Health and Disability White Paper’, 15 March 2023, at:

< <https://www.gov.uk/government/publications/transforming-support-the-health-and-disability-white-paper/transforming-support-the-health-and-disability-white-paper> > accessed 16 March 2023.

⁸² DWP, n81, synopsis of measures in Executive Summary.

⁸³ The Motability scheme is discussed extensively in Chapter 5, Section 3.

Work participation – impact of different impairment types

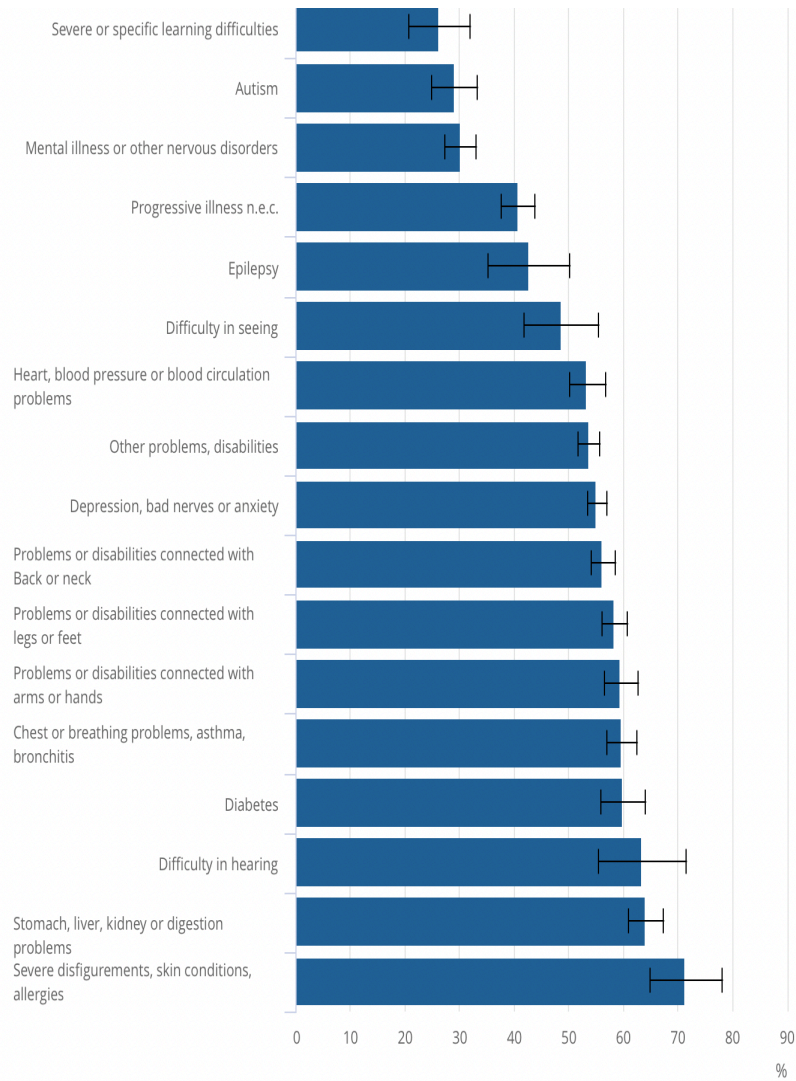
ONS statistics suggest that employment rates vary markedly by disability type. The chart overleaf sets out employment rates by categories of impairment for the year ended June 2021⁸⁴ - emphasising the impact of learning difficulties and mental illness on levels of employment.

Once again, in the context of tax system design in relation to work participation, these data emphasise that: (i) there is no single impact on work participation of disability; and (ii) specific learning difficulties, autism and mental health disorders were the conditions with the lowest rates of employment – emphasising the importance of these conditions in framing support for people with disabilities in accessing work.

⁸⁴ ONS, n74, Figure 5.

Figure 5: Disabled people with severe or specific learning difficulties, autism and mental illness had the lowest employment rates

'Employment rates of disabled people, by main impairment, aged 16 to 64 years, UK, year ending June 2021'



Source: ONS - Annual Population Survey

Disability – social participation

The ONS have also published statistics in relation to social participation by people with disabilities⁸⁵. In relation to civic engagement and social action, the ONS write⁸⁶:

In the year ending March 2021, disabled people aged 16 years and over were as likely to have been involved in civic participation (45.7%), such as signing a petition or attending a public rally, as non-disabled people (43.0%). Similar proportions of disabled and non-disabled people were also involved in civic consultations, civic activism, and social action in 2021. [Truncated]

In relation to volunteering, the ONS write⁸⁷

Disabled people showed similar proportions of participation in either formal or informal volunteering (30.4% for formal and 56.6% for informal) to non-disabled people (32.9% and 55.6% respectively) in 2021. [Truncated]

In their ‘Main points’ in an earlier analysis based on 2018 data⁸⁸, the ONS wrote:

- *Disabled people were as likely to have been involved in a group, club or organisation (67.9%) as non-disabled people (71.9%) in the year ending March 2018.*
- *There are differences in participation in certain group types; the largest difference was in ‘sports or exercise’ groups where, in the year ending March 2018, 27.6% of disabled people had participated in a group, compared with 43.1% of non-disabled people.*

In summary, whilst the emphasis may vary, these data evidence participation by people with disabilities in a very broad range of social and other activities. The 2018 data above highlight ‘sports or exercise groups’ as being one area where

⁸⁵ ONS, n74 – Section 5.

⁸⁶ ONS, n74 – Section 5.

⁸⁷ ONS, n74 – Section 5.

⁸⁸ ONS, ‘Disability and social participation, England: 2018’, 2 December 2019, Section 2, accessible at:

<https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/disability/bulletins/disabilityandsocialparticipationengland/2018> > accessed 9 January 2023.

participation levels by disabled people were somewhat lower than by non-disabled people.

4. Disability in international law and conventions - overview

International law and conventions have developed markedly in recent decades to be increasingly reflective of contemporary views of disability. In the US, for example, the Americans with Disabilities Act of 1990⁸⁹ formed a landmark in civil rights for disabled people: the Act introduced various provisions for non-discrimination against disabled people including requirements to make 'reasonable accommodations' for them⁹⁰; and to facilitate access to public services and programs⁹¹.

The United Nations ('UN') Convention on the Rights of Persons with Disabilities was adopted in 2006 and now has some 164 signatories⁹² - including the UK. Of the Convention, the UN writes⁹³ (candidate underlining for emphasis):

The Convention follows decades of work by the United Nations to change attitudes and approaches to persons with disabilities. It takes to a new height the movement from viewing persons with disabilities as 'objects' of charity, medical treatment and social protection towards viewing persons with disabilities as 'subjects' with rights, who are capable of claiming those rights and making decisions for their lives based on their free and informed consent as well as being active members of society.

⁸⁹ For a commentary, see analysis prepared by the US Department of Labor at:

< <https://www.dol.gov/general/topic/disability/ada> > accessed 2 January 2023. This is used as the basis of the comments above.

⁹⁰ US Department of Labor, n89.

⁹¹ US Department of Labor, n89.

⁹² United Nations, 'Convention On The Rights of Persons with Disabilities (CPRD)', at:

<<https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>> accessed 2 January 2023.

⁹³ United Nations, n92.

The Convention is intended as a human rights instrument with an explicit, social development dimension. It adopts a broad categorization of persons with disabilities and reaffirms that all persons with all types of disabilities must enjoy all human rights and fundamental freedoms. It clarifies and qualifies how all categories of rights apply to persons with disabilities and identifies areas where adaptations have to be made for persons with disabilities to effectively exercise their rights and areas where their rights have been violated, and where protection of rights must be reinforced.

5. Disability in UK law: discrimination

The treatment of disability in UK law has also evolved substantially in recent decades. Whilst the body of law connected with disability is considerable, this section considers, in outline, the law related to discrimination. The position of carers and certain law related to public service provision is summarised in Section 7.

The first substantive UK anti-discrimination legislation in relation to people with disabilities was the Disability Discrimination Act 1995. The provisions of the Disability Discrimination Act 1995 were, broadly, consolidated into the Equality Act 2010⁹⁴ – which in turn reflected EU Equal Treatment Directives⁹⁵. Section 4 of the Equality Act 2010 sets out nine Protected Characteristics, one of which is Disability. Sections 6(1) and (2) define Disability for the purposes of the Act as follows:

Disability

(1) *A person (P) has a disability if—*

(a) P has a physical or mental impairment, and

⁹⁴ As described in UK Government Equality Act 2010 guidance at:

< <https://www.gov.uk/guidance/equality-act-2010-guidance> >, accessed 9 January 2023, the Equality Act 2010 consolidated a series of previous anti-discriminatory statutes including The Disability Discrimination Act 1995.

⁹⁵ See, for example, Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

(b) *the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.*

(2) *A reference to a disabled person is a reference to a person who has a disability.*

Chapter 2 of the Act stipulates actions which constitute Prohibited Conduct – including, in sections 13-19, discrimination. Section 13(1) provides that ‘A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others’. Further, in relation to disability and discrimination, Sections 15(1) and (2) of the Act provide that:

(1) *A person (A) discriminates against a disabled person (B) if—*

(a) *A treats B unfavourably because of something arising in consequence of B's disability, and*

A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

(2) *Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.*

There are a number of provisions in the Act requiring ‘reasonable adjustments’ to be made to meet the needs of disabled persons including, amongst others, in relation to public services, premises and employment (Parts 3, 4 and 5 respectively). These are to be made at no cost to the disabled person. Sections 20(1) – (5) of the Act stipulate a duty to make adjustments where a disabled person is put at a ‘substantial disadvantage’ in comparison with persons who are not disabled in relation to a ‘provision, criterion or practice’⁹⁶; a ‘physical feature’⁹⁷ – or where the person would be put at substantial disadvantage ‘but for an

⁹⁶ Equality Act 2010, s20(3).

⁹⁷ Equality Act 2010, s20(4).

auxiliary aid'⁹⁸. Section 20(6) sets out requirements to provide information in an accessible format in certain circumstances.

These various provisions have a number of implications for tax system design – from ensuring that tax provisions do not unduly discriminate against disabled people; to the conduct requirements for taxing authorities in their interactions with disabled people.

6. The provision of state care and the position of carers

Introduction

One area considered by this thesis is the extent to which the tax system – and other forms of public financial provision – should provide reliefs for people who care for those with disabilities on an unpaid basis ('informal carers'); or who meet additional costs on behalf of disabled people. Whilst there is legislation governing the provision of care by the state – summarised below – informal carers may be otherwise employed or self-employed in addition to providing care. However, in many cases, family carers may not be able to pursue other employment – or may need to cease employment - given the needs of the person with a disability.

Public service provision

By way of background, there are a broad range of public services for people with disabilities governed by both primary and secondary legislation. For example, the Care Act 2014 provides⁹⁹, amongst other things, for the provision of a range of

⁹⁸ Equality Act 2010, s20(5).

⁹⁹ See Part 1 of the Care Act 2014, in particular ss18 and 19.

services for eligible persons¹⁰⁰, including those with disabilities¹⁰¹, provided that they meet eligibility criteria following assessment¹⁰².

Under Part 1 of the Act, local authorities are given wide-ranging responsibilities for the identification and assessment of people needing care – including those with disabilities; and for the provision of care. There is a Minimum Income Guarantee for people receiving care ('the MIG')¹⁰³, including certain allowances for Disability-Related Expenditure¹⁰⁴.

Sections 77(3) of the Act provides that a local authority may establish and maintain a register of disabled adults in their catchment to enable planning for, and monitoring of, their care and support. In this context, Section 77(5) provides that the definition of Disability is that set out in Section 6 of the Equality Act 2010.

The funding of social care in the UK – particularly, but not exclusively, in relation to elderly people - has been the subject of extensive political debate: in

¹⁰⁰ See Care Act 2014, section 8.

¹⁰¹ A synopsis of the application of the Care Act 2014 to people with disabilities is published by Disability Rights UK at:

< <https://www.disabilityrightsuk.org/care-act-guide> > accessed 2 January 2023.

¹⁰² See Care Act 2014, ss9-13.

¹⁰³ The Minimum Income Guarantee ('the MIG') seeks to ensure that people receiving local authority-provided care are left with a minimum amount of money from which to meet living costs. The MIG is indexed annually for inflation. For further information about the MIG, see the UK Government 2022 local authority circular at:

< <https://www.gov.uk/government/publications/social-care-charging-for-local-authorities-2022-to-2023/social-care-charging-for-care-and-support-local-authority-circular-lacdhsc20231> > accessed 5 February 2023.

¹⁰⁴ In arriving at the MIG, deductions may be made for 'Disability Related Expenditure' ('DRE') to the extent that this is not provided separately by public bodies. Local Authorities publish guidance in relation to DRE deductions: see, for example, 'What is disability-related expenditure?' published by Surrey County Council at:

< <https://www.surreycc.gov.uk/adults/paying-for-care/non-residential-services#expenditure> > accessed 5 February 2023.

September 2021, the UK Government published plans for a new Health and Social Care Levy¹⁰⁵ together with certain care cost capping arrangements¹⁰⁶. However, in a subsequent change in policy, the Levy was abolished by the Health and Social Care Levy (Repeal) Act 2022.

'Informal carers': statistical overview

The 2020-21 Family Resources survey ('FRS')¹⁰⁷ provides a number of statistical summaries around the prevalence of 'informal carers'¹⁰⁸. Whilst these data provide a picture of levels of 'informal care'¹⁰⁹, the datasets are not explicitly related to caring for people with disabilities and therefore need to be considered in the light of this. In overview terms, the FRS states that:

'Two in every 50 people are in receipt of care. Three in every 50 people are providing informal care to someone else, with almost half caring for someone living within their household.'

¹⁰⁵ See UK Government Policy Paper, 'Health and Social Care Levy', 9 September 2021, accessible at:

<https://www.gov.uk/government/publications/health-and-social-care-levy/health-and-social-care-levy> > accessed 9 January 2023.

¹⁰⁶ In September 2021, the UK Government announced a cap on care costs to be met from private means of £86,000. For an overview, see UK Government, 'Build back better: Our Plan for Health and Social Care', updated 8 March 2022, at:

<https://www.gov.uk/government/publications/build-back-better-our-plan-for-health-and-social-care/build-back-better-our-plan-for-health-and-social-care> > accessed 9 January 2023.

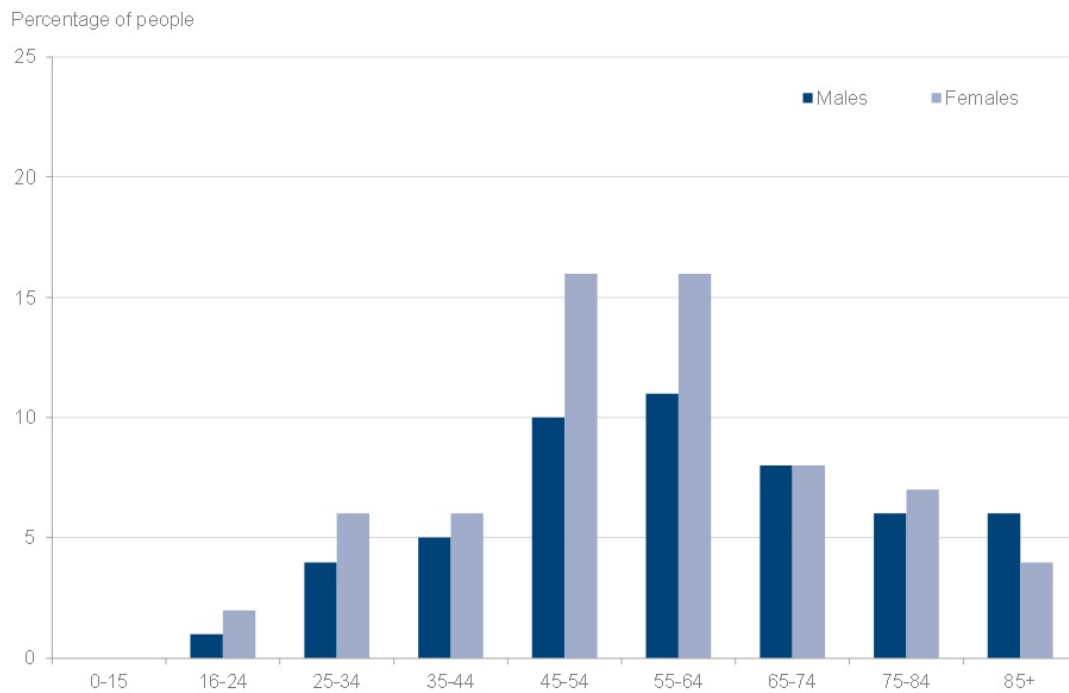
¹⁰⁷ Family Resources Survey – n1.

¹⁰⁸ The Family Resources Survey (n1) states that '*The [Family Resources Survey] questionnaire asks if people are caring for others on an informal basis (that is, where caring is not a paid job; this contrasts with formal care, which comes from paid help, such as the local authority, district nursing or private domestic help). Examples of care include helping with shopping, preparing meals and feeding, and household chores. See tables 5.1 and 5.2 for full data.*'

¹⁰⁹ Although the Institute of Public Care at Oxford Brookes University paper at n70 was a 2017 paper, it states at 1 that '*People who provide unpaid care for a disabled, seriously-ill or older loved one in the UK save the state £132 billion a year – close to the cost of a second NHS (Buckner and Yeandle, 2015)*'.

The chart below¹¹⁰ shows the distribution of informal carers by age and gender:

Percentage of people providing informal care by age and gender, 2020 to 2021, United Kingdom

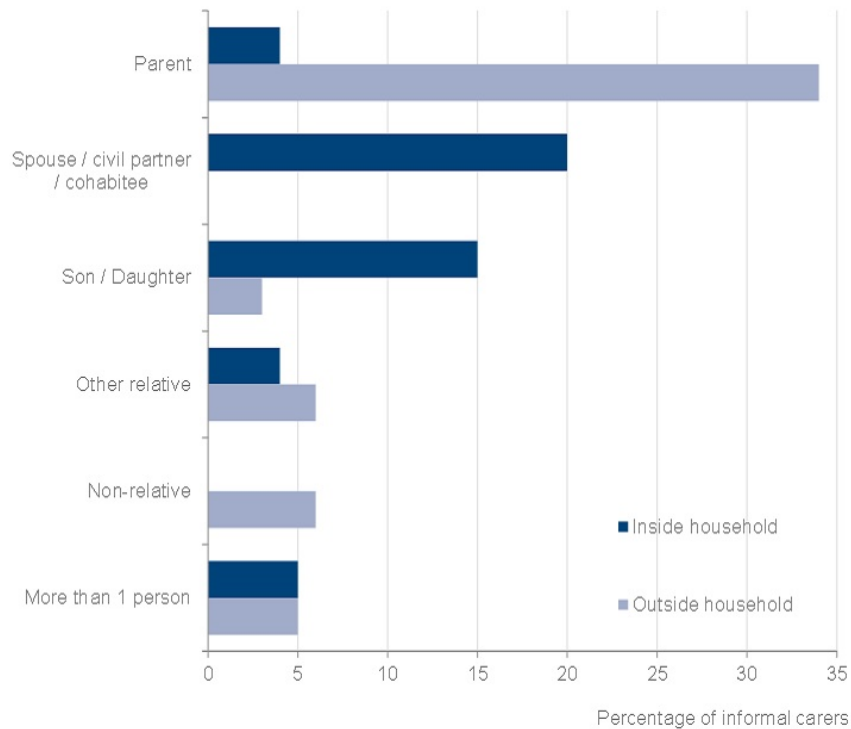


Whilst informal carers span a range of age brackets, there is a ‘bulge’ of carers – particularly females – in the age range 45-64.

¹¹⁰ Family Resources Survey – n1.

The chart below¹¹¹ summarises the categorisations of people for whom informal care is provided.

Who informal carers care for, 2020 to 2021, United Kingdom
 Family members were the main recipients of informal care.



In relation to the chart above, the FRS states:

Of all informal carers, 48% provided care to someone living within their household and 55% provided care to someone living outside their household. []

A small minority of informal carers were caring for more than one person, both inside and outside their household.

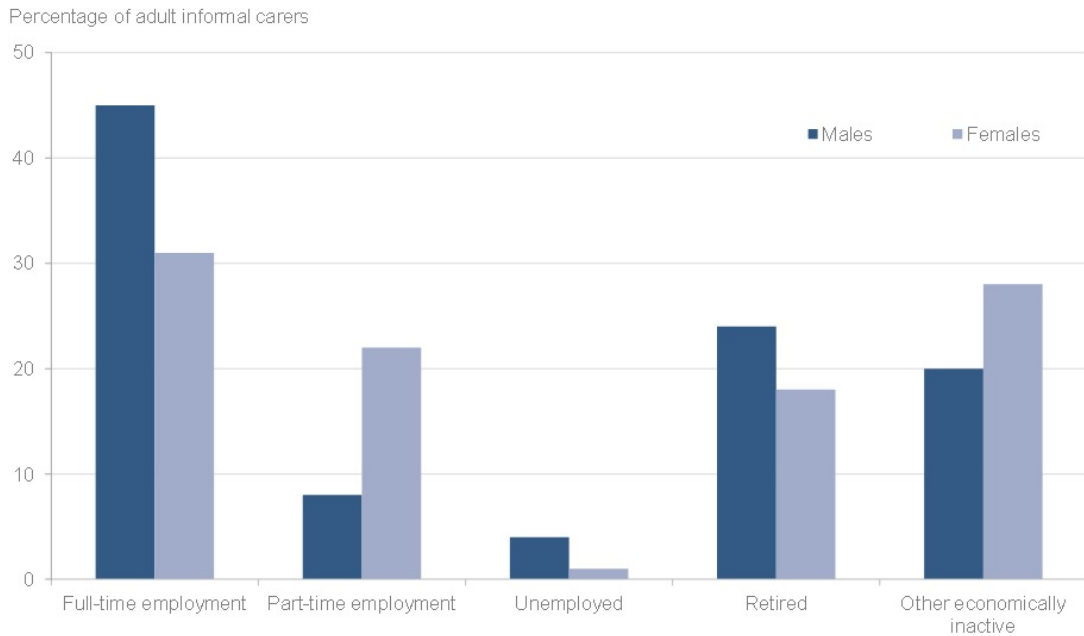
The main recipients of informal care were parents. Of all informal carers, 34% provided care to parents living outside their household, with a further four per cent providing informal care to parents living inside their household.

[]

¹¹¹ Family Resources Survey – n1.

The chart below¹¹² summarises the economic status and gender of informal carers – showing that a significant number are in employment or part-time employment:

Adult informal carers by economic status and gender, 2020 to 2021, United Kingdom



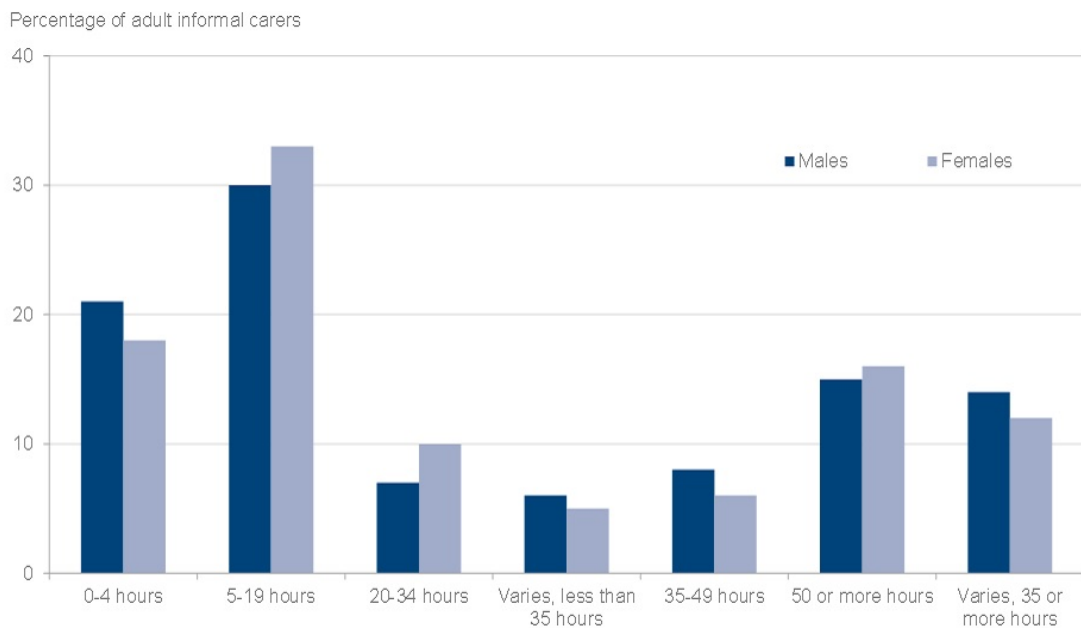
The patterns arising in the chart above seem mixed – with greater percentages of males in full-time employment and females in part-time employment. In relation to the chart, the FRS states that (amongst other matters):

Economically inactive status includes those who are students, those looking after a family or home, those permanently or temporarily sick or disabled and those inactive due to other reasons. Those unemployed (that is, seeking work) formed a very small minority of all adult informal carers, at only two per cent.

¹¹² Family Resources Survey – n1.

The final chart below¹¹³ summarises the hours spent caring each week by informal carers: whilst many informal carers may be able to ‘fit in’ their care alongside full-time work, a significant proportion are providing care for 35 hours or more per week.

Adult informal carers by gender and hours of care provided per week, 2020 to 2021, United Kingdom



In relation to the chart above, the FRS states that (amongst other matters):

Of all adult informal carers, over half (51%) provided care for 19 hours per week or fewer. Adult informal carers providing care for 5-19 hours per week were the largest single group with 32% of carers delivering this number of hours. Informal care of 50 or more hours per week was provided by 16% of adult carers and 36% reported providing informal care for 35 or more hours per week.

¹¹³ Family Resources Survey – n1.

7. Current UK public financial provision for people with disabilities: synopsis

Introduction

Although this thesis explicitly does not evaluate the nature and quantum of redistribution to disabled people and their carers, an overview of UK public financial provision – other than through tax reliefs - is provided here for context.

Current UK public financial and other provision for people with disabilities and their carers is multi-faceted – and encompasses a range of benefit (welfare) payments; public services; and other financial support such as grants. Certain benefits are specifically designed to help with ‘costs of disability’ or caring; others are more general – including subsistence or housing support. Public services include, for example, healthcare under the NHS; SEND¹¹⁴ education; and care and transport provided under the Care Act 2014.

How benefits are set

For context, an April 2022 House of Commons research briefing¹¹⁵ explains how general benefit levels are set (in broad terms), commenting that¹¹⁶:

The benefit levels we have today are not the result of any regular, systematic assessment of needs. Instead, they have emerged from successive rounds of welfare reform since the Second World War and, above all, choices made at periodic benefit upratings, compounding over time.

And that:

¹¹⁴ Special Educational Needs and Disabilities.

¹¹⁵ Hobson, Kennedy and Mackley, ‘How benefit levels are set’, House of Commons Library Research Briefing number CBP 9498, 14 April 2022, available at:

< <https://commonslibrary.parliament.uk/research-briefings/cbp-9498/> > accessed on 5 March 2023.

¹¹⁶ Hobson, Kennedy and Mackley, n115, at 5 and 8: the basis of benefit support assessment was raised by the representative of Mencap in the interviews at Appendix 1.

People often think that benefit levels in the UK are determined by an official assessment of “how much is enough” by, for example, regularly costing baskets of goods and services considered essential to meet minimum needs. This is not the case. Benefit rates in the UK have never been based on any regular, systematic estimate of minimum needs.

The last (and only) time an official exercise was undertaken to determine the adequacy of benefits was in the 1960s. The results were not published and its impact on policy was minimal.

Commentators suggest that support levels can fall some way short of the costs disabled people need to meet¹¹⁷. In relation to benefits more broadly, the research briefing¹¹⁸ explains how a number of organisations have derived estimates of Minimum Income Standards (‘MIS’), with actual benefit levels falling somewhat short of these levels¹¹⁹. The research briefing explains that¹²⁰:

Successive UK Governments have refused to accept Minimum Income Standards as a basis to inform the setting of benefit rates, maintaining there is no objective way of deciding what a minimum adequate level of benefit is. Ministers in the current Government argue that MIS budgets include items that many people would not consider to be necessities [].

As regards periodic increases, certain benefits have risen in line with inflationary indices rather than relative to defined statements of cost which they are intended to meet - albeit that fixed-sum additional support may be provided¹²¹. The

¹¹⁷ See Scope analysis and the House of Lords Library commentary in Section 8.

¹¹⁸ Hobson, Kennedy and Mackley, n115, at 14-17.

¹¹⁹ Hobson, Kennedy and Mackley, n115, at 17.

In January 2023, a report authored by Sarygulov and Arslanagic-Wakefield – ‘Building up – the future of social security’ - was published by the Conservative-leaning think tank, ‘Bright Blue’. The Bright Blue website explains that ‘This report examines the adequacy, accessibility and fairness of the UK’s social security system for working-age adults in low-income households before and during the pandemic, before proposing three major policies to strengthen social security.’ See:

< <http://www.brightblue.org.uk/portfolio/building-up-the-future-of-social-security/> > accessed 5 March 2023.

¹²⁰ Hobson, Kennedy and Mackley, n115, at 21 and 22.

¹²¹ For a summary of how disability and other benefits were indexed by inflation in the Autumn Statement 2022; and details of additional support payments, see HM Treasury, ‘Cost of living support Factsheet’, Policy Paper, updated on 21 November 2022, available at:

research briefing explains that¹²² the statutory framework in Sections 152(a) and (3) of the Social Security Administration Act 1992 (as amended) relating to many disability-related benefits – including Attendance Allowance, Personal Independence Payment, Disability Living Allowance, Carer’s Allowance and Industrial Injuries Disablement benefit - requires an annual uplift referable to general price increases; whereas such an obligation does not exist in relation to a number of other benefits, including Universal Credit¹²³.

Summary of benefit (welfare) support for disabled people and their carers

Most direct financial support is provided by the benefits system. ‘Benefits’ include specific disability-related allowances paid by the DWP; and certain disability-related tax credits paid by HMRC (not included in the estimated £6 billion of tax reliefs set out in Section 4 of Chapter 1). The tax credit regime is being phased out in favour of Universal Credit (administered by the DWP) and all claimants will be moved to Universal Credit by 2024¹²⁴. Given that tax credits are being phased out within less than two years of the publication of this thesis and replaced by Universal Credit; and that they are in nature a form of benefit payment, their effectiveness has not been evaluated as part of this thesis.

<<https://www.gov.uk/government/publications/autumn-statement-2022-cost-of-living-support-factsheet/cost-of-living-support-factsheet>> accessed 9 January 2023.

¹²² Hobson, Kennedy and Mackley, n115, at 5 and 8.

¹²³ Hobson, Kennedy and Mackley, n115, at 22.

¹²⁴ For a UK Government synopsis – ‘Tax credits and some benefits are ending: claim Universal Credit’ – see:

<<https://www.gov.uk/government/publications/tax-credits-and-some-benefits-are-ending-claim-universal-credit>> accessed 11 March 2023.

Total benefit levels

The DWP 2022/23 Annual Report and Accounts state on Page 22 that: ‘...[£65.2 billion] supported disabled people and people with health conditions (including pensioners). This is an increase of £2.1 billion (5%) from 2021-22.’ Please note that this amount includes payments made to people with health conditions which may not qualify as disabilities.

This total excludes the disability-related elements of working tax credit and child tax credit which, whilst being phased out, were paid over the same period by HMRC. Based on statistical data provided by HMRC as at December 2021¹²⁵, candidate analysis estimates that the total annualised value of the disability elements of tax credits was some £0.8bn.

Specific disability-related benefits

The diagram overleaf, copied from a National Audit Office overview of the Department for Work and Pensions (‘DWP’)¹²⁶ and summarising DWP expenditure for 2020-21, provides an analysis of specific disability benefits totalling £28.6 billion in that period – *excluding* (i) other benefits such as Universal Credit and Housing Benefit paid to people with disabilities and non-disabled

¹²⁵ HMRC, National Statistics, ‘Commentary – Child and Working Tax Credit statistics: Provisional awards – December 2021’, updated 2 February 2023, Section 5, accessible at:

<<https://www.gov.uk/government/statistics/personal-tax-credits-provisional-statistics-for-december-2021/commentary-provisional-tax-credits-statistics-december-2021>> accessed on 11 March 2023.

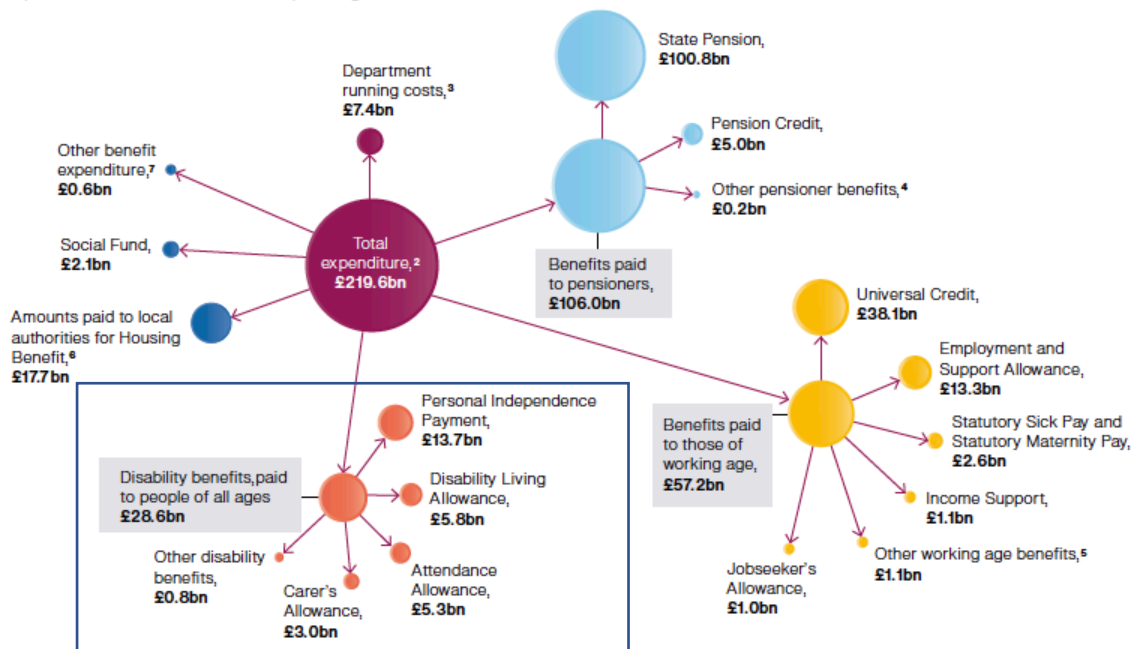
¹²⁶ National Audit Office, ‘Departmental Overview 2020-21 – Department for Work & Pensions’, November 2021 at 11. Accessible at:

< <https://www.nao.org.uk/wp-content/uploads/2021/11/DWP-DO-2021.pdf> > accessed 2 January 2023.

people; and (ii) disability-related tax credit amounts paid by HMRC. The relevant section has been highlighted by the candidate with a rectangle.

Whilst an equivalent table is not available in the 2022/23 DWP Annual Report and Accounts, information on Page 23 states that the total of pension age support for disabled people and people with health conditions in the year was £11.4bn; and for working age people, the total of other support was £22.4bn – a total of £33.8bn. Again, this excludes the general benefits and tax credits referred to in the paragraph above.

Department for Work & Pensions' spending 2020-21¹



Changes to the design of disability benefits

Section 5 of an August 2021 Green Paper¹²⁷ explored options for improving aspects of the design of disability benefits. When published on 15 March 2023, the associated White Paper¹²⁸ set out a number of proposed modifications to the

¹²⁷ Green Paper, n80.

¹²⁸ White Paper, n81.

design of disability-related benefits, including removing the requirement for Work Capability Assessments to allow for one health and disability assessment linked to Personal Independence Payments - to *'change the emphasis from what people can't do, to what they can'*; and *'[replacing] the current Universal Credit Limited Capability for Work and Work Related Activity (LCWRA) financial top up with a new UC health element'*¹²⁹.

8. Financial implications of disability

People with disabilities may need to meet (potentially substantial) incremental costs as a result of their disability¹³⁰ and may have significantly reduced earnings capacity. Carers for people with disabilities may also incur a range of additional costs – including lost earnings. Incremental costs and reduced earnings capacity amongst people with disabilities clearly vary between individuals depending on the nature and severity of their impairment.

¹²⁹ HM Treasury, 'Spring Budget 2023 factsheet – Disability White Paper', 15 March 2023, at:

< <https://www.gov.uk/government/publications/spring-budget-2023-disability-white-paper-factsheet/spring-budget-2023-factsheet-disability-white-paper> > accessed 16 March 2023.

¹³⁰ There is a considerable literature commenting on, or analysing, the increased costs that people face as a consequence of disabilities. A 2017 analysis of various literature across multiple countries is set out at Mitra et al., 'Extra costs of living with a disability: A review and agenda for research', *Disability and Health Journal*, Volume 10, Issue 4, October 2017, Pages 475-484.

UK publications include 2018, 2019 and 2023 reviews by the disability charity Scope, including the 'Disability Price Tag Report 2023' available at:

< <https://www.scope.org.uk/campaigns/extra-costs/disability-price-tag-2023/> > accessed 21 August 2023.

See also the final report of the Extra Costs Commission – 'Driving down the extra costs disabled people face', June 2015, available at:

< <https://www.scope.org.uk/campaigns/extra-costs/extra-costs-commission/> > accessed 9 January 2023.

Duff also comments on the 'costs of disability' – see Duff n22.

One of the themes of this thesis is that the financial implications of disability are far from universal – and ‘commodified’ approaches to tax system design can be both inequitable and inefficient. Nonetheless, for context, the paragraphs below provide a general sense of scale of costs associated with disability.

The UK disability charity Scope publishes an annual ‘Disability Price Tag’ report, supported by a technical report¹³¹. Other commentary around the ‘costs of disability’ in the context of the current UK ‘cost of living crisis’ has been made by, amongst others, the House of Lords Library¹³² referencing work by the Economic Observatory¹³³. An extract from the summary of the 2023 Scope Disability Price Tag report (the latest version available) is as follows:

Our findings

Our analysis shows:

- *On average, disabled households (with at least one disabled adult or child) need an additional £975 a month to have the same standard of living as non-disabled households.*
- *If this figure is updated to account for inflation over the current period 2022/2023, these extra costs rise to £1,122 per month.*
- *On average, the extra cost of disability is equivalent to 63% of household income after housing costs.*
- *The average extra costs rise to £1,248 per month where there are two disabled adults in the household and at least two children. And for*

¹³¹ Scope, n130.

¹³² House of Lords Library, ‘Cost of living: impact of rising costs on disabled people’, published 14 December 2022 at:

< <https://lordslibrary.parliament.uk/cost-of-living-impact-of-rising-costs-on-disabled-people/> > accessed 2 January 2023.

¹³³ Remnant, ‘How is the cost of living crisis affecting disabled people in the UK?’, for Economics Observatory, 6 September 2022, at:

< <https://www.economicsobservatory.com/how-is-the-cost-of-living-crisis-affecting-disabled-people-in-the-uk> > accessed 2 January 2023.

households with one disabled adult, one non-disabled adult and at least one child, the average extra cost is £634.

These figures are accounting for disability benefit payments like Personal Independence Payment (PIP), which are designed to help address these costs.

There is an accompanying technical report which sets out the methodology and assumptions behind the report¹³⁴.

9. Disability and distributive justice: synopsis of key approaches

Introduction

This thesis specifically does not evaluate the nature and quantum of redistribution to disabled people and their carers – limiting itself to an evaluation of tax reliefs and ease of compliance and administration. However, for context, a synopsis of key distributive justice approaches in relation to disability is provided here¹³⁵.

Background

If a state is to support people with disabilities with their costs of living or participation – recognising the substantial potential variability both in earnings capacity and associated costs – a question arises as to how such support should be determined on a basis which is fair both to people with disabilities and other citizens. The answer to this question is immensely nuanced and the derivation of normative principles both complex and multi-dimensional: for example, any redistributive approach which implicitly (or explicitly) did not focus on how to

¹³⁴ See 'Calculating the Disability Price Tag: our new methodology', Scope, n130.

¹³⁵ Please note that this section is necessarily a highly summarised overview of limited parts of a complex distributive justice literature.

support disabled people's participation as full and active members of society; and focussed largely on providing subsistence support through benefits, would - whilst providing for them - undermine their dignity; be inconsistent with, for example, the United Nations Convention (by effectively treating them as '*objects of goodwill and charity*'¹³⁶); and would likely be perceived as unfair by other citizens if disabled people who were able to work choose not to do so.

Conversely, a public support system which does not recognise the varied impacts disability can have on a disabled person's ability to work; and the additional costs they have to meet, risks both 'freezing them out' of parts of competitive labour markets; and forcing them to meet additional 'costs of disability' that other citizens do not have to meet. The ONS analysis in Section 3 regarding disability and work participation illustrates the marked impact different types of disability can have on earnings capacity: some impairments may result in a limited – or no – capacity to work and earn. Others may result in increased costs to access or participate in work – for example, in relation to mobility.

Recent approaches to public funding and support in relation to disability have developed alongside shifts in social attitudes (such as the progressive adoption of the social model) with various UK policy papers emphasising participation by people with disabilities in work and other activities¹³⁷. The UK Government has implemented a range of policy measures to help disabled people access work¹³⁸. Nonetheless, some elements of public support relating to

¹³⁶ United Nations, n93.

¹³⁷ Including the National Disability Strategy, n32.

¹³⁸ Department for Work and Pensions and Department of Health, n77; and DWP White Paper, n81.

disability and work have stimulated controversy, including Work Capability Assessments for benefit eligibility which the Government announced were being removed in their March 2023 Health and Disability White Paper¹³⁹. Determining a normative public support approach which is fair – and reflective of both the diverse implications of disability and evolving social attitudes – is extremely challenging.

Synopsis of distributive justice approaches to disability

There is a considerable ‘distributive justice’ literature which has advanced a number of conceptual bases for framing societal redistributive mechanisms, including in relation to people with disabilities, seeking to identify approaches which are normatively fair¹⁴⁰.

At the heart of much distributive justice theory lies the reconciliation of a number of variables in creating fair societal resource allocations, including the endowments people are born with (or into); the extent to which they have the opportunity to make the most of their endowments; their preferences; the choices they make; the efforts they apply; and the consequences of those choices and efforts. ‘Endowments’ may include specific talents; or they may include a disability. People clearly have no control over the endowments they are born with or, absent reckless behaviour, disabilities they acquire later in life. A number of authors contend that specific talents should be subject to higher taxation¹⁴¹ if they

¹³⁹ White Paper, n81.

¹⁴⁰ Not all authors support substantial redistribution through taxation: Nozick, for example, argues that ‘*The minimal state is the most extensive state that can be justified*’ – in Chapter 7 (‘Distributive justice’), *Anarchy, State and Utopia*, Blackwell Publishing, 1974.

¹⁴¹ Some authors have argued that a person’s natural endowments should form an element of the tax base – on the basis that a person with certain natural endowments may have a fundamentally greater ability to earn. A critique of endowment tax theory is provided in Vording, ‘Talents, types, and tags. What is the relevance of the endowment tax debate?’, Leiden University, Netherlands. The concept of ‘talent slavery’ refers to the idea that, if people with the

increase earnings capacity; whereas others emphasise that the impacts of disability should be reflected in fair bases of redistribution to disabled people.

Rawls¹⁴² argues that people's 'native endowments' should form a 'common asset'¹⁴³; and that, using his 'difference principle'¹⁴⁴, redistribution should aim to maximise welfare under a social welfare function under a 'maximin rule'¹⁴⁵ whereby '*social and economic inequalities...[should] be to the greatest benefit of the least-advantaged member of society*'¹⁴⁶. This approach implies potentially significant resource allocations to many disabled people, depending on the nature and impact of their disabilities.

As Duff¹⁴⁷ explains, Dworkin¹⁴⁸ challenges welfare approaches from a number of perspectives, including that 'welfare' is a loosely defined and subjective concept; and that the approach may unduly reward perceived undesirable welfare preferences.

In contrast to welfare-based approaches, Dworkin argues for fairness in redistribution under a mechanism of 'equality of resources'¹⁴⁹ – providing fair

greatest endowments are to be taxed the most, this level of taxation will commit them to 'slavery' to earn to pay their taxes. See also Stark, 'Enslaving the Beachcomber: Some Thoughts on the Liberty Objections to Endowment Taxation', University of California, Los Angeles School of Law, Law & Economics Research Paper Series, Research Paper No. 05-6.

¹⁴² Rawls, 'Justice as Fairness - A Restatement', Belknap Press, 2001.

¹⁴³ Rawls, n142 at 75.

¹⁴⁴ Rawls, n142 at 42 and 43.

¹⁴⁵ Rawls, n142 at 97.

¹⁴⁶ Rawls, n142 at 42 and 43.

¹⁴⁷ Explained by Duff in 'Tax Policy and the Virtuous Sovereign: Dworkinian Equality and Redistributive Taxation', 2016, at 5-8.

¹⁴⁸ Dworkin, 'Sovereign Virtue', Harvard University Press, 2000.

¹⁴⁹ Dworkin, n148, Chapter 2

overall 'resource' allocations (which can include natural endowments)¹⁵⁰ for people but emphasising personal choice and responsibility in their use. Although Dworkin argues that people should choose how to use their 'resources'¹⁵¹, he acknowledges that people may be faced with innate disadvantages or events outside of their control – such as a disability - which he characterises as 'brute luck'¹⁵² (as opposed to the results of choices they make which he calls 'option luck'¹⁵³). Dworkin envisages that 'brute luck' would be compensated for through societal resource redistributions under a hypothetical insurance arrangement¹⁵⁴, with the premiums – taxation – being used to compensate for, for example, the impacts of disabilities¹⁵⁵.

In his book 'Distributive Justice and Disability', Stein argues strongly for a utilitarian approach¹⁵⁶ to distributive justice and disability. In relation to welfare egalitarianism, using an example of young people with terminal cancer, Stein contends that this approach 'would continue to lavish resources on the least-welfare disabled long after they ceased to derive much benefit from additional resources.'¹⁵⁷ This would, he suggests, result in 'the non-disabled poor being

¹⁵⁰ Dworkin argues that his resource egalitarianism approach reflects '*a unified account of equality and individual responsibility that respects both*'. Dworkin, n148 at 7. Also referenced in Duff, n147, at 3.

¹⁵¹ For example, Dworkin, n146 at 30-31 and 74. Note that Dworkin's concept of 'resources' is far broader than monetary resources – and includes personal endowments.

¹⁵² Dworkin, n148 at 73 – 'not in that sense deliberate gambles'.

¹⁵³ Dworkin, n148 at 73 – 'deliberate and calculated gambles'.

¹⁵⁴ Dworkin, n148 at 76.

¹⁵⁵ At 81, Dworkin, n148, writes: '*Someone who is born with a serious handicap faces his life with what we concede to be fewer resources, just on that account, than others do. This circumstance justifies compensation, under a scheme devoted to equality of resources...*'

¹⁵⁶ Stein, 'Distributive Justice and Disability – Utilitarianism against Egalitarianism', Yale University Press, 2006 at 1 and 2.

¹⁵⁷ Stein, n156 at 2.

viewed as a means to increase the welfare of those with the least welfare'.¹⁵⁸ Stein develops his arguments for a utilitarian approach as one which is:

*...completely sensitive to relative benefit. Utilitarianism seeks to place resources where they will do the most good. Only utilitarianism, or a theory with a large element of utilitarianism, can avoid both inadequate provision for the disabled and excessive redistribution to the disabled. Utilitarianism is the golden mean of distributive justice.*¹⁵⁹

An alternative to egalitarian or utilitarian approaches is to allow people to achieve certain 'capabilities': the 'capability approach'¹⁶⁰ is advocated by, for example, both Sen¹⁶¹ and Nussbaum¹⁶². Sen argues that redistribution should allow people with different attributes to achieve basic levels of capability – such as nutrition, clothing, mobility and shelter.¹⁶³ Nussbaum goes further than Sen in setting out a defined list of ten 'Central Capabilities'¹⁶⁴, contending that *'it follows that a decent political order must secure to all citizens at least a threshold level of these ten Central Capabilities.'*¹⁶⁵ However, depending on the breadth of any identified

¹⁵⁸ Stein, n156 at 2.

¹⁵⁹ Stein, n156 at 2.

¹⁶⁰ For an analysis see Stanford Encyclopedia of Philosophy, 'The Capability Approach', substantively updated on 10 December 2020 and found at:

< <https://plato.stanford.edu/entries/capability-approach/> > accessed on 11 February 2023.

¹⁶¹ In 'Equality of What?', 1979, a lecture delivered at Stanford University, Sen writes: *'It is arguable that what is missing in all this framework [redistribution based on utility and primary goods] is some notion of 'basic capabilities': a person being able to do certain basic things. The ability to move about is the relevant one here, but one can consider others, e.g. the ability to meet one's nutritional requirements, the wherewithal to be clothed and sheltered, the power to participate in the social life of the community. The notion of urgency related to this is not fully captured by either utility or primary goods, or any combination of the two.'*

¹⁶² Nussbaum, 'Creating Capabilities – The Human Development Approach', Harvard University Press, 2011. Nussbaum lists her suggested Central Capabilities at 33-34.

¹⁶³ Sen, n161 at 218.

¹⁶⁴ Nussbaum, n162 at 33-34.

¹⁶⁵ Nussbaum, n162 at 33.

universal capabilities, the financial trade-offs required to deliver them may in practice be unaffordable; or create unfairness for other citizens – leading to improvements for some but undue disadvantages for others.

Indeed, one critique of certain distributive justice theories is that the fiscal trade-offs required to support particular proposed approaches – whether to people with disabilities or other cohorts of people - may not be fully modelled by their advocates. Stein¹⁶⁶, for example, is critical of Nussbaum's approach to capabilities, commenting that she:

*...does not say how she would make tradeoffs in attempting to provide people with the central human capabilities. This is a major gap in her theory, as such tradeoffs are assuredly necessary. Given the reality of disability and ill health, all the resources of a society could be devoted to just one of the central capabilities.*¹⁶⁷

This view does highlight the challenges and complexities of fair resource distribution within a dynamic economic and political environment where specific financial choices need to be made to the advantage of some and disadvantage of others – potentially trading off longer term prosperity against shorter term needs¹⁶⁸. At the date of this thesis, the UK is experiencing very considerable economic constraint – resulting in a widely-referred to 'cost of living crisis'; and immense demands on public services with numerous assertions that the NHS is in a parlous state: in setting public financial provision for different cohorts of citizens, trade-offs are inevitable – notwithstanding powerful normative arguments around where resources should be distributed.

¹⁶⁶ Stein, n156, at 187.

¹⁶⁷ Stein, n156, at 187.

¹⁶⁸ In his book 'Theories of Distributive Justice', Harvard University Press, 1996, Roemer provides an economic analysis of a number of distributive justice theories, including utilitarianism and both resource and welfare egalitarianism.

Implications for UK public financial provision

Although a number of theories of distributive justice support the provision of varying levels of public financial support and redistribution to people with disabilities under different conceptual mechanisms, there does not appear to be an overwhelmingly accepted distributive justice framework driving public financial resource allocation in contemporary UK policy. Indeed, commentary above explains how levels of a variety of benefit types have often simply been indexed by a measure of inflation metric rather than being explicitly linked to, say, a defined series of specified costs.

Current UK policy is redistributive to varying degrees – and structured to provide public support for people with disabilities in an evolving range of ways such as contributing towards meeting their basic costs of living where necessary; assisting with care; helping access work; supplementing income from work; or supporting mobility. Many elements of policy seem increasingly aligned with the social model of disability.

Given the broad ranges of public service and direct financial support available to people with disabilities, but recognising that many people's 'costs of disability' may exceed this, it is arguable that current policy reflects elements of a combined 'capabilities' but utilitarian approach to redistribution to people with disabilities - rather than, for example, aiming unequivocally at either resource or welfare egalitarianism: the technical analysis¹⁶⁹ in Scope's 'Disability Price Tag' report suggests that, currently – and subject to its assumptions – redistribution

¹⁶⁹ Scope, n130.

through benefits falls some way short of the actual costs of disability. Many disability charities provide support to disabled people and their carers where the state does not do so.

10. Conclusions

The prevalence of disability in the UK is substantial – reportedly affecting more than 20% of the population - albeit that the nature and implications of disability are broad-ranging. There are a substantial number of ‘informal carers’ looking after disabled people, often needing to reduce, or even cease, their working hours to do so. Many disabled people are able to work – with their disability often not affecting their earnings capacity. Conversely, a significant proportion of disabled people cannot work, or can only undertake limited work, as a consequence of their disability.

Public provision for people with disabilities is principally provided by both the benefits system and public services. There does not seem to be an overriding distributive justice framework underpinning UK policy – although there are substantial levels of redistribution. On average, Scope analysis¹⁷⁰ suggests that disabled people face significant additional ‘costs of disability’, although the nature and scale of those costs vary from person to person.

Chapter 3 provides a synopsis of the background to the existing range of nearly 40 tax reliefs in respect of disabled people.

¹⁷⁰ Scope, n130.

Chapter 3 – The UK tax system and disability: existing provisions

1. Introduction

Overview

This chapter provides background information to the identified existing reliefs in the UK tax system relating to disability. Legislative provisions around tax administration and system access are summarised in Chapter 7.

The chapter represents an ‘information platform’ for the effectiveness analysis which follows in subsequent chapters – setting out both key elements of relevant statutory provisions and, where relevant, the background to them. It also summarises a range of key case law decisions to illustrate a number of issues arising from the application of the provisions in practice.

Section 2 provides historical context to public financial provision for disabled people in the UK – including the emergence of specific tax reliefs. Sections 3-5 summarise the various statutory provisions under the headings of general financial support; participation; and compensation and insurance. Section 6 provides a summary of key case law. Conclusions to the chapter are set out in Section 7.

Statutory sourcing

The list of existing statutory provisions has been drawn from (i) a review of analyses of tax reliefs provided by the Government as at 31 December 2021 (unless otherwise stated) - summarised in Section 4 of Chapter 2 - and more generally from online Government and local authority guidance; and (ii) by way of a cross-check a review of the indices of the following statutes:

1. The Council Tax (Reductions for Disabilities) Regulations 1992, SI 1992/554.
2. The Finance Act 1994, Schedule 7A, Sections 2 and 3 (in relation to certain Insurance Premium Tax exemptions)
3. The Income Tax (Earnings and Pensions) Act 2003 ('ITEPA 2003').
4. The Income Tax (Trading and Other Income) Act 2005 ('ITTOIA 2005').
5. The Income Tax Act 2007 ('ITA 2007').
6. The Inheritance Act 1984 ('IHTA 1984').
7. The Social Security (Contributions) Regulations 2001, SI 2001/1004 ('SSCR 2001').
8. The Taxation of Chargeable Gains Act 1992 ('TCGA 1992').
9. The Value Added Tax Act 1994 ('VATA 1994').
10. The Vehicle Excise and Registration Act 1994 ('VERA 1994').

For ease of reference, the statutory provisions considered in this chapter – and more broadly in this thesis - have been summarised in the tables overleaf.

Reliefs relating to general financial support

<i>Blind Person's Allowance</i>	
Blind Person's Allowance	Sections 38-40 ITA 2007
<i>Council Tax reliefs</i>	
Council Tax – 'Band Reduction Scheme'	Council Tax (Reductions for Disabilities) Regulations 1992, SI 1992/554
Council Tax – 'disregard' in relation to severe mental impairment	Sections 2(1) and 2(2) of Schedule 1 of the Local Government Finance Act 1992
Council Tax – exemptions in respect of annexes for dependent relatives	The Council Tax (Chargeable Dwellings, Exempt Dwellings and Discount Disregards) Amendment Order 1997, SI 1997/656
Council Tax – 'disregard' for certain qualifying carers	The Council Tax (Additional Provisions for Discount Disregards) Regulations 1992, SI 1992/552
Rates in Northern Ireland – discount in respect of disability	Rates (Northern Ireland) Order 1977; and Rates (Amendment) (Northern Ireland) Order 2006
<i>Provisions relating to benefit payments</i>	
Exemption from tax for certain state benefits	Table B, Section 677 ITEPA 2003
Certain Income Tax exemptions in respect of long term Incapacity Benefit	Sections 663 and 664 ITEPA 2003
Class 2 NIC relief under certain conditions	Regulation 43(1) SSCR 2001
<i>Provisions relating to health and care</i>	
Exemption from tax for 'immediate needs annuities'	Section 725 ITTOIA 2005
Exemption from tax for accommodation provided to home care workers	Section 306A ITEPA 2003
Qualifying Care Relief for certain carers	Sections 803-828 ITTOIA 2005
<i>Provisions relating to savings and investments</i>	
Inheritance Tax relief in respect of 'Pre-1981 Trusts' for disabled persons	Section 74 IHTA 1984

Inheritance Tax relief for certain trusts for disabled beneficiaries	Section 89 IHTA 1984
Inheritance Tax relief for certain self-settled trusts for disabled people	Section 89A IHTA 1984
Income and Capital Gains Tax relief for trusts with 'Vulnerable Beneficiaries'	Chapter 4, Finance Act 2005 – including formulae set out in Section 25 (Income Tax); Section 30 (Capital Gains); and Schedule 44 Finance Act 2013
Relief from tax in respect of certain employment-related securities	Sections 439(4) and 477(5) ITEPA 2003

Reliefs relating to Participation

<i>Mobility-related reliefs</i>	
Tax relief for transport provided to disabled employees	Section 246 ITEPA 2003
Tax relief for cars provided to disabled employees	Section 247 ITEPA 2003
Exemption from Class 1A NICs in respect of car provided to a disabled employee for business / commuting purposes	Regulation 38 SSCR 2001
Reduction in taxable benefit for automatic cars provided to disabled employees	Section 124A ITEPA 2003
Adjustment in CO2 charge for automatic cars provided to disabled employees	Section 138 ITEPA 2003
Reduction in taxable benefit for accessories fitted to cars enabling disabled people to use them	Section 125(2)(c) ITEPA 2003
Exemption from tax for certain car maintenance grants provided to disabled people	Section 780 ITTOIA 2005
Exemptions from Vehicle Excise Duty	Sections 5, 18 and 19 of Schedule 2; and Section 1ZA of Part 1 of Schedule 1 of VERA 1994
Insurance Premium Tax exemption for certain leased vehicles	Sections 2 and 3 of Schedule 7A of the Finance Act 1994

<i>Other tax reliefs facilitating participation by disabled people in a work setting</i>	
Exemption from tax for certain equipment provided to disabled employees	Income Tax (Benefits In Kind) (Exemption for Employment Costs resulting from Disability) Regulations 2002, SI2002/1596
Exemption from tax in relation to the receipt by an employee of 'recommended medical treatment'	Section 320C ITEPA 2003
<i>VAT reliefs</i>	
Zero rating of certain goods and services for VAT purposes	Schedule 8 of Group 12; and Schedule 4 of Group 12, VAT Act 1994.

Reliefs relating to compensation and insurance

<i>Provisions relating to disablement pensions</i>	
Tax relief for wounds and disability pensions	Section 641 ITEPA 2003
Tax relief for certain other disablement pensions	Section 644 ITEPA 2004
<i>General provisions relating to compensation awards for disability arising from personal injury</i>	
Tax relief for personal injury compensation paid as periodic payments	Section 731 ITTOIA 2005
Income Tax relief in relation to interest on damages for personal injury	Section 751 ITTOIA 2005
Tax relief for compensation payments in respect of personal injury	Section 51(2) TCGA 1992
<i>Provisions related to disability arising from criminal or motor injury</i>	
Tax relief for criminal injuries compensation awards	Section 732 ITTOIA 2005

<i>Provisions relating to compensation for disability arising at work</i>	
Tax relief for certain employment termination payments on account of employee injury or disability	Section 406(1) ITEPA 2003
<i>Provisions relating to certain health insurance payments</i>	
Exemption from Income Tax of payments received under certain health insurance policies	Section 735 ITTIOA 2005
<i>Provisions related to certain specialist conditions</i>	
Tax relief for asbestos compensation payments	Section 31 and Schedule 14 Finance (No3) Act 2010

2. Historical context

Research suggests that the first specific tax relief for disabled people arose in the 1919 Finance Act – immediately after the Great War – when ‘wound and disability pensions’ were exempted from Income Tax under section 16 of the Act. Shortly thereafter, other specific reliefs for disabled people through central taxation included means-tested dependent relative’s allowances¹⁷¹.

It was not until the 1960’s and subsequently that most of the current provisions providing tax relief for disabled people, their providers and carers came into force: the introduction of the Blind Person’s Allowance in 1962 might seem to be an isolated relief, but its introduction belies an extensive and complex debate around tax relief and provision for disabled people which followed the 1952 Royal Commission on the Taxation of Profits and Income (the ‘Radcliffe

¹⁷¹ An allowance against Income Tax in respect of dependent relatives was introduced at section 22 of the Finance Act 1920 and flowed through to, for example, sections 216 and 217 of the Income Tax Act 1952: section 216 provided for an additional personal allowance where a taxpayer maintained a qualifying relative ‘*who [was] incapacitated by old age or infirmity from maintaining himself []*’; or, in section 217, was ‘*by reason of old age or infirmity [] compelled to depend on the services of a daughter resident with and maintained by him []*.’

Commission'). Truncated extracts from paragraphs 197, 200 and 201 of the Second Report of the Royal Commission read as follows¹⁷² - with paragraph 201 explicitly identifying that disability-related costs may have a bearing on a person's 'taxable capacity'; and paragraph 202 reiterating the impact on 'relative capacity to pay' – but not necessarily through changes to 'earning capacity':

197. Disability is recognised only in one connection, that of the second branch of the dependent relative allowance. A man or woman who is compelled by old age or infirmity to depend on the services of a daughter resident with, and maintained by, him or her receives an allowance of £40. From 1920 to 1953 it stood at £25. The determining cause is not the dependence of the daughter on the taxpayer, but the infirmity of the taxpayer which makes him dependent on having the daughter in the house. []

DISABILITY

201. The taxpayer's own disability is hardly recognised under the existing system. Yet there are many kinds of disability (putting aside age, which is provided for by a special relief) so severe that they modify the whole conditions of a person's life and impose upon him a constant levy of extra expense that may fairly be said to affect the taxable capacity of his income.

[TRUNCATED]

202. Our general conclusion is that grave disability ought to be the subject of allowance. It presents itself to us as a personal circumstance that sets apart those who suffer from it and directly affects their relative capacity to pay. We do not mean that it affects their earning capacity. It may or may not, but so far as it does, the graduated scale of tax will diminish the burden on diminished earning power. What we are thinking of is a range of additional expense attendant upon the conduct of their normal life, not least upon the maintenance of their earning capacity, which yet goes unrelieved under the existing code. [TRUNCATED]

203. We thought it right to concentrate upon some extreme measure of disability, because, if there is to be an allowance at all, it should, at any rate initially, be related to personal circumstances which are reasonably capable of identification and which demonstrably set the person concerned apart from others. [TRUNCATED]

¹⁷² Candidate underlining for emphasis.

The recommendations of the Second Report of the Royal Commission were the subject of a series of Parliamentary policy debates as to how further tax reliefs for disabled people might be given – whether as a single allowance or as a series of specific allowances. Requests for a general disability allowance, or a series of targeted allowances, were repeatedly rejected¹⁷³. Nonetheless, a number of the points raised in these paragraphs are highly relevant to considerations raised later in this thesis.

A Blind Person's Allowance was ultimately introduced in 1962 – the benefits system being then argued to be a better way of helping disabled people compared to a general disability allowance which was perceived to introduce practical problems with eligibility assessments: this is explored in more detail when considering the possibility of a general disability tax relief in Section 2 of Chapter 4.

Although the concept of a general disability allowance had been rejected, in 1968 Marcus Worsley, MP for Chelsea, sought to broaden the scope of Blind Person's Allowance during the debate around the 1968 Finance Bill, proposing the following clause¹⁷⁴:

TAX RELIEF FOR DISABLED PERSONS

In section 9 of the Finance Act 1962, as amended by section 10 of the Finance Act 1965, for the references to £100 and £200 respectively there shall be substituted references to £130 and £260 and these sections shall also apply to any other seriously disabled person, which means a person who is deaf, dumb or otherwise handicapped by loss of physical or mental faculty which is substantial and likely to be permanent.

¹⁷³ In a Parliamentary debate on 16 July 1969, Tim Fortescue MP observed that '*The Radcliffe Commission, 15 years ago, in 1954, recommended that a tax concession for blind and disabled persons should be introduced. This was proposed in this House in 1956, 1958, 1959, 1960 and 1961...*'. HC Deb 16 July 1969, vol 787, col 628.

¹⁷⁴ HC Deb 3 July 1968, vol 767, col 1505; candidate underlining for emphasis.

Once again, however, the principle of a general relief for disabled people was rejected by 204 votes to 167.

Tax reliefs: the current position

The position remains that – notwithstanding the Second Report of the Radcliffe Commission – there is no general disability allowance. However, subsequent to the introduction of the Blind Persons Allowance a range of other reliefs for disabled people have been introduced which are considered in this thesis.

The policy basis underpinning these reliefs varies: for example, a number were introduced subsequent to anti-discriminatory legislation, including the Disability Discrimination Act 1995 and the Equality Act 2010, and reflect provisions whereby disabled people are relieved from any additional tax burden in respect of specialist transport and equipment provided by employers to meet their needs.

3. Provisions related to general financial support

General financial support through existing tax reliefs can broadly be categorised into five areas:

1. Blind Person's Allowance.
2. Council Tax reliefs.
3. Provisions related to benefit payments.
4. Provisions related to health and care.
5. Provisions related to savings and investments.

Blind Person's Allowance

As described in Section 2, Blind Person's Allowance was introduced in 1962 at the culmination of a series of debates around tax reliefs for disabled people following the Radcliffe Commission.

The present statutory provisions can be found in sections 38-40 of the Income Tax Act 2007. Sections 38(2) and (3) prescribe the criteria for eligibility for the Allowance – which in 2023/24 is £2,870.

The precise criteria for eligibility depend on whether the claimant lives in England, Scotland, Wales or Northern Ireland: in relation to people 'ordinarily resident' in Scotland or Northern Ireland, there is a requirement that '*because of the individual's blindness, the individual is unable to do any work for which eyesight is essential*', whereas in England or Wales a claimant needs to be registered as severely sight-impaired.

Section 39 makes provision for the transfer of part of the allowance to a spouse or civil partner; and section 40 prescribes the basis of an election for transfer under section 39.

Council Tax and Rates (Northern Ireland) reliefs

There are four Council Tax reliefs in England, Scotland and Wales relevant to people with disabilities. Each of these is outlined below. Northern Ireland operates a system of Rates – not Council Tax. There is a Rates discount applying to qualifying people with disabilities: this is also summarised in this section.

Council Tax – ‘Band Reduction Scheme’

A disabled person may require additional accommodation, or modifications to accommodation, as a result of their disability. In these circumstances, subject to eligibility and other criteria, the ‘Band Reduction Scheme’ set out in the Council Tax (Reductions for Disabilities) Regulations 1992, SI 1992/554 (‘the Regulations’) may reduce the level of Council Tax payable by reference to a valuation band lower than the valuation band otherwise applicable to the property.

The Scheme applies upon written application to a local authority where an ‘eligible person’ – see below – is liable for Council Tax in a dwelling where a ‘qualifying individual’ (who may be the same person) is resident. For the purposes of the Regulations, a ‘qualifying individual’ means a person who is ‘*substantially and permanently disabled (whether by illness, injury, congenital deformity or otherwise)*’. Note the requirement for permanence.

The Regulations provide – using a stipulated formula – for a lower Council Tax valuation banding to be applied. A number of paragraphs from Regulation 3 are reproduced below given their importance to case law to the application of this relief discussed in Section 6 below – in particular, the test in sub-section 2 of being ‘essential or of major importance’. There is an emphasis in this relief in relation to the physical implications of a person’s disability (candidate underlining for emphasis).

3. ... a person is an eligible person for the purposes of these Regulations if–

(a) *he is a liable person as regards a dwelling which is the sole or main residence of at least one qualifying individual and in which there is provided –*

(i) *a room which is not a bathroom, a kitchen or a lavatory and which is predominantly used (whether for providing therapy or otherwise) by and is required for meeting the needs of any qualifying individual resident in the dwelling; or*

- (ii) a bathroom or kitchen which is not the only bathroom or kitchen within the dwelling and which is required for meeting the needs of any qualifying individual resident in the dwelling; or
 - (iii) sufficient floor space to permit the use of a wheelchair required for meeting the needs of any qualifying individual resident in the dwelling; and as regards the financial year in question, an application is made in writing by him or on his behalf to that authority.
- 2 *For the purposes of paragraph (1), and subject to paragraph (3), references to anything being required for meeting the needs of a qualifying individual are references to its being essential or of major importance to his well-being by reason of the nature and extent of his disability.*

Council Tax – ‘disregard’ in relation to severe mental impairment

Sections 2(1) and 2(2) of Schedule 1 of The Local Government Finance Act 1992, referable to section 6(4) of the Act, provide that a person with ‘severe mental impairment’ is ‘disregarded’ for the purposes of Council Tax. The value of the ‘disregard’ discount depends on whether they live alone or in multiple occupancy.

Section 2(2) of Schedule 1 of the Act defines severe mental impairment as follows: *‘For the purposes of this paragraph a person is severely mentally impaired if he has a severe impairment of intelligence and social functioning (however caused) which appears to be permanent.’* Note that the appearance of ‘permanence’ is a condition for eligibility.

To meet the requirements of severe mental impairment, a disabled person needs – under section 2(1)(b) of Schedule 1 of the Act – to have a *‘certificate of a registered medical practitioner to have been or to be likely to be severely mentally impaired’*; and be entitled to one of a range of benefits set out in section 3(2) of The Council Tax (Discounts Disregards) Order 1992, SI 1992/548.

Council Tax – exemption in respect of annexes for dependent relatives

This relief provides an exemption for Council Tax in England and Wales where a relative, being a person aged over 65 or a disabled person, lives in a dwelling forming part of a single property where there is at least one other dwelling. It arose following various cases¹⁷⁵ – and extensive Parliamentary debate around ‘granny annexes’¹⁷⁶. Ultimately, the exemption was introduced in 1997¹⁷⁷. The legislation¹⁷⁸ defines an eligible dwelling as:

Class W: a dwelling which forms part of a single property including at least one other dwelling and which is the sole or main residence of a dependent relative of a person who is resident in that other dwelling, or as the case may be, one of those other dwellings.

A ‘dependent relative’ includes a person who is ‘*severely mentally impaired with the meaning given in paragraph 2 of Schedule 1 to the [Local Government Finance] Act [1992], or ‘substantially and permanently disabled (whether by illness, injury, congenital deformity or otherwise)’*. This definition effectively combines those used for the Severe Mental Impairment discount and the Band Reduction Scheme.

¹⁷⁵ The Valuation Tribunal Service Council Tax Guidance Manual, January 2022 revision, summarises this as follows at 9.3.1 at 86:

‘Prior to SI 1997/656, which clarified the position with regard to what had become known as the ‘granny annex’ issue, there were several appeals heard before the High Court (Coleman v Shelton and Berkshire VT; Salisbury v Oxford VO and Oxford CC; Benjamin v Eldridge and East Sussex VT; Bonds v Gorst).’

For details, see: < <https://valuationtribunal.gov.uk/app/uploads/2022/05/Council-Tax-Manual-January-2022-edition.pdf> > accessed 15 January 2023.

¹⁷⁶ See, for example, HL Deb 25 June 1995 Vol 565, Col 528.

¹⁷⁷ The Council Tax (Chargeable Dwellings, Exempt Dwellings and Discount Disregards) Amendment Order 1997, SI 1997/656.

¹⁷⁸ Amendment Order, n177, section 3(3).

The original definition of a 'relative' has subsequently been amended by statutory instrument to take account of civil partnerships and people living together as if they were in a civil partnership¹⁷⁹. This and other modifications have brought the legislation in line with broader policy developments around personal relationships.

Council Tax – 'disregard' or discount for certain qualifying carers

The Schedule to The Council Tax (Additional Provisions for Discount Disregards) Regulations 1992, SI 1992/552, sets out a number of requirements for qualifying carers to be disregarded for the purposes of assessing Council Tax.

There are two qualifying categories of carers in the Schedule: first, carers who look after a person other than their partner or child aged 18 or under for at least 35 hours per week; the person being cared for is in receipt of certain benefits; and they live in the same property. Second, carers who are employed by, broadly, a local authority or charity; or are introduced by a charity and are employed by the person being cared for; are paid no more than £44 per week; are employed to care for the person for at least 24 hours per week; and are resident at the property.

The disregard criteria are subject to periodic updating: for example, the Explanatory Note to The Council Tax (Additional Provisions for Discount Disregards) (Amendment) (England) Regulations 2013, SI 2013/725 explains that the Regulations modified the benefit requirements to allow carers '*providing care to a person who is entitled to an attendance allowance at any rate or the highest or*

¹⁷⁹ The Council Tax (Exempt Dwellings) (Amendment) (England) Order 2005, SI 2005/2865.

middle rate of the care component of a disability living allowance...' to be eligible for the disregard.

Rates discount: Northern Ireland

Northern Ireland operates a system of Rates rather than Council Tax. The governing legislation is principally set out in the Rates (Northern Ireland) Order 1977.

Subject to a number of conditions, there is a 25% discount from Rates in respect of a household where a person living in the household suffers from a disability. Article 2(A) of the Order defines a disability as:

(2A) For the purposes of this Order a person has a disability if he—

- (a) is substantially and permanently disabled (whether by illness, injury, congenital deformity or otherwise); or*
- (b) suffers from mental disorder within the meaning of the Mental Health (Northern Ireland) Order 1986 (NI 4).*

The conditions for claiming the discount are set out in The Rates (Amendment) (Northern Ireland) Order 2006: note that, whilst the conditions are broadly similar to the Band Reduction Scheme summarised above, the legislation does not limit the discount to physical disabilities; nor does it introduce a separate Severe Mental Impairment discount:

This Article applies to—

- (a) a hereditament in which there is a facility which is required for meeting the needs of a person who resides in the hereditament and has a disability, including a facility of either of the following descriptions—*
 - (i) a room, other than a kitchen, bathroom or lavatory, which is wholly or mainly used (whether for providing therapy or for other purposes) by such a person; or*
 - (ii) an additional kitchen, bathroom or lavatory; and*
- (b) a hereditament in which there is sufficient floor space to permit the use of a wheelchair used by and required for meeting the needs of a person who resides in the hereditament and has a disability.*

- (3) *In paragraph (2)—*
- (a) *references to a person who resides in a hereditament include references to a person who is usually resident there; and*
 - (b) *subject to paragraph (3A), references to a facility or a wheelchair being required for meeting the needs of a person who has a disability are references to its being essential or of major importance to that person's well-being by reason of the nature and extent of the disability.*
- (3A) *A wheelchair is not required for meeting a person's needs if he does not need to use it within the living accommodation comprising or included in the hereditament.*

Provisions related to benefit payments

Whilst a number of state benefits are taxable for Income Tax purposes, certain disability-related benefits are not subject to tax¹⁸⁰. These – and other tax-free state benefits – are set out at Table B of section 677 ITEPA 2003 and include, amongst a range of others, Adult Disability Payment (in Scotland), Attendance Allowance, Personal Independence Payment ('PIP'), Disability Living Allowance ('DLA' – being replaced by other benefits), and Severe Disablement Allowance (being replaced by Employment and Support Allowance).

The financial synopsis in the table in Section 4 of Chapter 2 indicates that the tax exemptions in relation to DLA and Attendance Allowance were amongst the reliefs with the greatest financial impact in 2021-22 (£1.4bn and £450m respectively).

¹⁸⁰ For a UK Government synopsis of the tax treatment of benefits, see 'Tax-free and taxable state benefits' at:

< <https://www.gov.uk/income-tax/taxfree-and-taxable-state-benefits> > accessed 16 August 2023.

Class 2 NIC relief when person in relief of Incapacity Benefit

Regulations 43(1)(a), (ab), (b) and (e) of the Social Security (Contributions) Regulations 2001 provide a specific relief for the self-employed relating to Class 2 NICs when, broadly, the person is in receipt of Incapacity Benefit or Employment Support Allowance; is incapable of work; or is in receipt of Carer's Allowance. Given that Class 2 NICs are only some £3 per week¹⁸¹, the value of this relief is likely to be extremely modest.

Provisions relating to health and care

Exemption from tax for 'immediate needs annuities'

A number of sections in ITTOIA 2005 provide an exemption from Income Tax in respect of various annuity and insurance receipts applicable – amongst others – to disabled people.

Section 725 exempts amounts received under 'immediate needs annuities' paid to 'care providers'¹⁸² under certain circumstances. An 'immediate needs annuity' is, in summary, a stream of income bought to finance care in exchange for a capital sum. Immediate needs annuities are available from a number of insurance companies. Section 725 (1)(a) and (3) qualify the nature of the annuity as being one where (candidate underlining for emphasis):

...the purpose or one of the purposes of which is to protect a person against the consequences of the person being unable, at the time the contract is made, to live independently without assistance because of a condition to which subsection (3) applies, and

¹⁸¹ HM Government, 'Self-employed National Insurance rates', accessible at:

< <https://www.gov.uk/self-employed-national-insurance-rates> > accessed on 11 March 2023.

¹⁸² Defined in ITTOIA 2005, s726.

(b) *under which benefits are payable in respect of the provision of care for the person protected.*

[]

(3) *This subsection applies to—*

(a) *mental or physical impairment, or*

(b) *injury, sickness or other infirmity, which is expected to be permanent.*

Exemption from tax for home care workers

A disabled person may need to employ a carer to live with them at home. In these circumstances, section 306A of ITEPA 2003 exempts a home care worker from a charge to Income Tax on the potential benefit of the accommodation where, amongst other criteria, the recipient of the care is '*in need of personal care because of...mental or physical disability*'. For the exemption to be available, subsection (2) of the section requires that the provision is:

(a) *on a reasonable scale,*

(b) *at the recipient's home, and*

(c) *by reason of the individual's employment as a home care worker.*

This relief was introduced by the Finance Act 2015. The Explanatory Notes to the Finance Act 2015 explain that: '*This exemption is being introduced as a result of the abolition the £8,500 threshold for benefits in kind [‘BiK’] and expenses that is taking effect at the same time.*'; and that:

12. The exemption will also apply to National Insurance contributions due on the value of the BiK of board and/or lodging, which the person providing the BiK of board and/or lodging (usually the person being cared for) would otherwise have to pay.

13. This is to ensure that those persons who are in need of care are not involved in additional employer related administration or costs that may arise from the abolition of the threshold.

No financial estimate of the cost of this relief is provided in the Government analyses referenced in Section 4 of Chapter 1.

Exemption for certain carers under Qualifying Care Relief

Sections 803 – 828 ITTOIA 2005 provide for an Income Tax exemption, within certain limits, for qualifying carers. It is essentially a tax simplification mechanism – but those benefiting are still subject to the self-assessment regime. The relief was introduced in its present form in the Finance Act 2010¹⁸³ as a development of previous ‘foster care relief’: whilst the provisions still apply to qualifying foster carers, they now also apply to ‘shared lives’ carers – and hence are relevant for this thesis. HMRC guidance¹⁸⁴ summarises the relief as follows:

‘Qualifying care relief allows carers who look after children or adults to receive certain payments (qualifying amounts) tax-free...With qualifying care relief, you only need to keep simple records for your business.’

The NHS describes elements of the ‘shared lives’ arrangements¹⁸⁵ as follows: (candidate underlining for emphasis around scheme registration and carer approval):

‘Shared lives schemes support adults with learning disabilities, mental health problems or other needs that make it harder for them to live on their own.

The schemes match someone who needs care with an approved carer. The carer shares their family and community life, and gives care and support to the person with care needs.’

[]

¹⁸³ See Schedule 1 – ‘Shared lives care’.

¹⁸⁴ HMRC, ‘HS236 Qualifying care relief: foster carers, adult placement carers, kinship carers and staying put carers (2022)’, at:

<<https://www.gov.uk/government/publications/qualifying-care-relief-foster-carers-adult-placement-carers-kinship-carers-and-staying-put-carers-hs236-self-assessment-helpsheet/hs236-qualifying-care-relief-foster-carers-adult-placement-carers-kinship-carers-and-staying-put-carers-2022>> accessed 16 March 2023.

¹⁸⁵ NHS, ‘Shared live schemes,’ at:

< <https://www.nhs.uk/conditions/social-care-and-support-guide/care-services-equipment-and-care-homes/shared-lives-schemes/>> accessed 16 March 2023.

Shared lives schemes rely on carers, and the schemes have to be registered with the Care Quality Commission. Carers are trained and vetted by the scheme.

The schemes do pay the self-employed shared lives carers but not by the hour. Carers, as well as their families and friends, contribute a lot that is unpaid.

Very broadly, the relief provides for an exemption from Income Tax for both a fixed amount and additional amounts linked to the number of people being cared for. These amounts were substantially increased in the 2023 Spring Budget¹⁸⁶ with indexation based on the Consumer Prices Index to apply from 2024-2025 onwards. The total annual tax cost of the increase was estimated to be some £10-15m¹⁸⁷ – but that part attributable to shared lives care was not separately identified. Of the measure, HMRC write¹⁸⁸:

This measure is expected to take most care income out of tax by providing a higher level of relief. This will provide a direct financial benefit to carers that currently pay tax on their care income. By increasing the number of carers benefitting from full relief on their care income, this measure will also allow more carers to use the simpler method completing their self-employment pages on their Self-Assessment return.

Importantly, the relief is not a full exemption from profit – rather a simplification given that shared lives care amounts will need to cover a range of relevant costs.

HMRC explain that¹⁸⁹:

Qualifying Care Relief (QCR) is a tax simplification available to carers that provides specific tax relief for care income, as a replacement for apportioning and calculating full deductions for expenses. The relief allows carers to keep simpler records for their care activities and use a simpler method of filling in the self-employed pages of their tax returns.

¹⁸⁶ HMRC Policy Paper, 'Qualifying Care Relief increase', 15 March 2023, at:

<<https://www.gov.uk/government/publications/increase-in-qualifying-care-relief/qualifying-care-relief-increase>> accessed 16 March 2023.

¹⁸⁷ HMRC, n186.

¹⁸⁸ HMRC, n186.

¹⁸⁹ HMRC, n186.

Provisions relating to savings and investments

Tax reliefs in relation to certain trust arrangements for disabled beneficiaries: introduction

A series of legislative provisions have provided elements of tax relief where disabled people meeting qualifying criteria are beneficiaries of certain trusts. The analysis in Section 4 of Chapter 1 suggests that the overall cost of these reliefs is negligible.

Settlers – such as family members - may have many reasons for wishing to provide for disabled people, recognising that many may be unable to support themselves financially. For example, they may have anxieties around the future of public finances and whether a high standard of care will always be available to support the disabled beneficiary long into the future.

Trusts can be attractive vehicles for holding assets on behalf of people unable to manage their own affairs given that the obligations for investing and appointing capital (and income) sits with Trustees. A secondary, but currently relevant, attribute of a number of types of trust, such as discretionary trusts, is that legal ownership of trust assets sits with Trustees and capital and income can only be distributed at the Trustees' discretion. This means that – unless appointed to the disabled beneficiary - the capital value of these assets, or income derived from them, is generally not regarded as that of the disabled beneficiary when assessing means-tested benefits or state care provision.

The LITRG do caution, however, that¹⁹⁰:

Please be aware that leaving money directly to the beneficiary so they can set up a disabled trust themselves may cause problems with the benefit system's 'deprivation of capital' rules (the rules that apply to stop claimants

¹⁹⁰ LITRG, 'Trusts for disabled people', updated on 6 January 2023. Available at:

< <https://www.litrg.org.uk/tax-guides/disabled-people-and-carers/trusts-disabled-people> accessed 15 January 2023.

depriving themselves of capital for the purpose of retaining or obtaining entitlement to means-tested benefits). The DWP could argue that by setting up a trust the beneficiary has deprived themselves of that capital in order to secure more benefit, and treat the beneficiary as still being in possession of the money.

Trust types

Current UK tax legislation provides for, essentially, two categories of trust tax reliefs in respect of disabled beneficiaries meeting qualifying criteria. First, where a ‘Vulnerable Beneficiary’ election is made, a qualifying trust is eligible for certain Income and Capital Gains Tax reliefs. Under separate provisions, Trusts for Disabled Beneficiaries can benefit from certain Inheritance Tax reliefs. Trusts may be structured so as to benefit from all of these reliefs. These reliefs, and their evolution, are discussed in detail below. The features and benefits of these types of trust have developed over time and have been the subject of various anti-avoidance provisions.

Whilst the concept of ‘Personal Injury Trusts’ may be referred to in considering provision for a person injured in an accident (potentially from the proceeds of a compensation award), these trusts have no specific status in tax legislation save for whether they meet the criteria for Trusts for Vulnerable or Disabled Beneficiaries outlined above.

Trusts: UK Government consultation

The UK Government comparatively recently consulted on the use of trusts: however, on 23 March 2021, they indicated in relation to the consultation that *‘The responses did not indicate a desire for comprehensive reform of trusts at*

*this stage. The government will keep the issues raised under review.*¹⁹¹

Nonetheless, the LITRG had previously advocated a ‘root and branch’ review of the trusts regime as it applies to disabled people¹⁹². In the 2023 Spring Budget on 15 March 2023, the Government announced¹⁹³:

‘Simplification for trusts and estates – To simplify administration, the government will formalise and extend an existing income tax concession for low-income trusts and estates and provide further changes to make calculations and reporting more straightforward. HMRC also intend to make changes to inheritance tax regulations to remove non-taxpaying trusts from reporting requirements.’

It seems from the associated policy paper that the proposed simplifications may only have a limited impact on many Trusts for Disabled Beneficiaries and Trusts for Vulnerable Beneficiaries¹⁹⁴.

The evolution of the current regime

When introduced by the Finance Act 1975, Capital Transfer Tax – the successor to Estate Duties and the predecessor of Inheritance Tax – provided under Schedule 5, section 19 of the Act for ‘Trusts for the benefit of mentally disabled

¹⁹¹ UK Government, ‘The taxation of trusts, a review’ published 23 March 2021 at:

< <https://www.gov.uk/government/consultations/the-of-taxation-of-trusts-a-review> > accessed 15 January 2023.

¹⁹² LITRG, ‘HMRC Consultation: The Taxation of Trusts – A Review – Response from the Low Incomes Tax Reform Group’, February 2019, at Paragraph 1.7. see:

< www.litrg.org.uk/sites/default/files/190220-LITRG-response-taxation-trusts-FINAL.pdf > accessed 15 January 2023.

¹⁹³ HM Treasury, ‘Spring Budget 2023’, Personal Tax, Policy decisions, 15 March 2023, at:

< <https://www.gov.uk/government/publications/spring-budget-2023/spring-budget-2023-html#policy-decisions> > accessed on 17 March 2023.

¹⁹⁴ HMRC, Policy Paper, ‘Estates in administration and trusts’, 15 March 2023, at:

< <https://www.gov.uk/government/publications/simplifications-for-trusts-and-estates/estates-in-administration-and-trusts> > accessed 17 March 2023.

persons'. The provisions were developed under the Capital Gains Tax Act 1979, extending the reliefs available to people with severe physical as well as mental disabilities by including people in receipt of attendance allowance under section 35 of the Social Security Act 1975.

The 1981 Budget of Geoffrey Howe coincided with the 'Year of Disabled People'. Howe's Budget included a number of provisions extending reliefs for disabled people¹⁹⁵ – including allowing for trusts with multiple beneficiaries by providing an amended condition for eligibility under section 19 of Schedule V of the Capital Transfer Tax Act 1984 that:

This paragraph applies to settled property held on trusts under which, during the life of a disabled person, no interest in possession in the settled property subsists and which secure that not less than half of the property which is applied during his life is applied for his benefit.

The next key milestones in the development of tax reliefs for trusts with disabled beneficiaries were the introduction of the regime in section 89 of the Inheritance Tax Act 1984 ('IHTA 1984') – with its subsequent additions and developments; and the introduction of the Trusts for Vulnerable Beneficiaries provisions in Budget 2004. Importantly, these are two separate regimes – one covering Inheritance Tax, the other covering Income Tax and Capital Gains Tax. The trusts regime in IHTA 1984 which provides for disabled people covers the following circumstances and types of trust:

1. 'Pre-1981 trusts' – where property was settled into trust before 10 March 1981, the date of Howe's 1981 Budget. These trusts are covered by section 74 IHTA 1984.

¹⁹⁵ For the relevant extract from Howe's 1981 Budget speech, see 'The Disabled' under the Budget Speech in Hansard - 10 March 1981. The original document used by Howe for his speech is available under Special Collections at the Bodleian Library and the relevant sections were viewed by the candidate on 17 June 2019.

2. Trusts meeting certain criteria which are established with a qualifying disabled beneficiary – as set out in the legislation. These trusts are covered by section 89 IHTA 1984.
3. Self-settled trusts by people expecting to meet the stated disability criteria. These trusts are covered by section 89A IHTA 1984.

For the purposes of section 89 trusts, the definition of a 'disabled person' is now contained in Schedule 1A of the Finance Act 2005, updated by the Finance Acts 2013 and 2014: this definition (i) expands the original definition when IHTA 1984 was introduced to include eligibility for a range of qualifying benefits for disabled people beyond Attendance Allowance – for example, Personal Independence Payments; and (ii) brings the definition in line with that used under the Vulnerable Beneficiary regime for Income and Capital Gains Tax purposes introduced by the Finance Act 2005 (discussed below).

The effect of the provisions in section 89 IHTA 1984 is – subject to various qualifications and criteria – that, although the trust for a disabled person is discretionary, it is not treated as such for Inheritance Tax purposes and therefore is not subject to the periodic charges to tax otherwise incurred by discretionary trusts every ten years under section 64 IHTA: the disabled person is treated as having an interest in position in the settled property for Inheritance Tax purposes under section 89(2) IHTA 1984. The original transfer into the trust is treated as a Potentially Exempt Transfer by the Settlor.

The original requirements of section 89 IHTA trusts included that not less than half of the settled property was applied for the benefit of the disabled person during their lifetime. Following consultation in 2012 (discussed below) this requirement was changed in the Finance Act 2013 due to concerns that section

89 trusts could provide tax benefits for non-disabled beneficiaries receiving appointments of substantial levels of the settled property or income derived from it: there is now a limit on annual distributions to non-disabled beneficiaries of £3,000 for the trust, or '*3% of the amount that is the maximum value of the settled property during the period in question*' to continue to qualify for Section 89 IHTA treatment – although settled property put into trust prior to 17 July 2013 was effectively 'grandfathered' by the provisions of the Finance Act 2013.

Where Trustees of section 89 trusts do not make Vulnerable Person Elections under section 37 of the Finance Act 2005 (see below), the income of the trust (other than dividends) is taxed at the Trustee rate of, in 2023/24, 45% above £1,000 of income (this band is taxed at 20%). Dividends are taxed at a rate of 39.35% (other than if they fall within the £1,000 band of income in which case they are taxed at 8.75%).

In respect of Capital Gains, Trustees benefit from a Trustee Annual Exempt Amount of £6,000 in 2023/24 where the beneficiary is 'vulnerable' – described overleaf – but beyond this amount are taxed at 28% for gains in respect of residential property; and 20% for other chargeable gains. If the beneficiary does not fall within the definition of 'vulnerable', then the Annual Exempt Amount is £3,000.

A beneficiary receiving a distribution from the trust can, where the 'tax pool' of accumulated tax paid by the trust is sufficient, reclaim the tax attributable to the distribution by submitting a Form R40 to HMRC.

Income and Capital Gains Tax relief for trusts with 'Vulnerable Beneficiaries'

Chapter 4 of the Finance Act 2005 introduced a new Income Tax and Capital Gains Tax regime for trusts for Vulnerable Beneficiaries: section 23(7) of the Act

provides that one category of Vulnerable Person is a disabled person. Subject to various eligibility criteria and the making of a Vulnerable Person election under section 37 of the Act, the regime provides – through formulae set out in section 25 (Income Tax) and section 30 (Capital Gains Tax) – that the income and capital gains arising in the trust are taxed as if they were those of the vulnerable person (as opposed to at – typically higher – Trustee rates).

In 2012, the UK Government consulted on aspects of trusts for Vulnerable Beneficiaries – including, amongst other matters, how the relevant definitions should address then new benefit structures such as Personal Independence Payment; and then inconsistencies in tax legislation regarding the extent to which appointments of capital out of trust needed to be made for the benefit of the disabled beneficiary.

Following the consultation, Schedule 44 of the Finance Act 2013 introduced a range of modifications both to trusts for the disabled and trusts for Vulnerable Beneficiaries¹⁹⁶: for example, section 6 of Schedule 44 modified section 89 IHTA, including specific limits on distributions; section 15 introduced new provisions under the Vulnerable Persons regime for Income Tax and Capital Gains Tax purposes; and section 19 revised the definitions of ‘disabled person’ to include a range of eligibility criteria including, amongst others, eligibility for Personal Independence Payment with the daily living component.

¹⁹⁶ HMRC’s impact assessment of certain of the changes under ‘Vulnerable beneficiary trusts’, at:

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/179277/vulnerable_beneficiary_trusts.pdf.pdf> accessed on 11 March 2023.

Relief from tax in respect of certain employment-related securities

Section 477(5) ITEPA 2003 provides that a 'chargeable event' in relation to employment-related securities options which is¹⁹⁷:

(5) A benefit received on account of any disability (within the meaning of the Equality Act 2010 in England and Wales and Scotland, or the Disability Discrimination Act 1995) of the employee is to be disregarded for the purposes of subsection (3)(c).

Section 439(4) includes a similar provision in relation to convertible, employment related securities.

The words 'on account of' [any disability] in the statutory drafting seem important in that the exemption from the chargeable event does not arise simply because the beneficiary has always been disabled. At paragraph 14.117 of Chapter 14 of Whiteman and Sherry on Income Tax¹⁹⁸, the authors state that (candidate underlining for emphasis): 'no charge arises...because the employment comes to an end...because of some injury or disability arising'.

In their March 2011 final report on tax reliefs, the OTS were unable to source the policy background to these reliefs¹⁹⁹, writing at paragraph B.135 that:

Due to a lack of information, we are not able to reach a conclusion as to whether this relief should be retained or abolished. The lack of evidence or representations do suggest it is little used but it may be best to consider it in the context of a general review of share schemes taxation.

¹⁹⁷ Candidate underlining for emphasis.

¹⁹⁸ Accessed through the Bodleian Law Library, 3 May 2019.

¹⁹⁹ OTS, 'Review of tax reliefs: final report', March 2011, paragraphs B.129 – B.135. Accessible at:

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/198570/ots_review_tax_reliefs_final_report.pdf> accessed 15 January 2023.

4. Provisions related to participation

Introduction

A number of tax provisions provide financial support to enable disabled people to participate in work and other activities – in particular transport to work, including vehicle provision; relief for certain other work-related expenses; relief from Vehicle Excise Duty; and the zero-rating for VAT purposes of a range of supplies to disabled people, certain (but not all) of which are goods which can enable them to undertake specific activities.

Interaction with anti-discriminatory law

A number of reliefs set out in this section – in relation both to transport, including car provision, and the provision of equipment – seek to ensure that, from a tax perspective, an employee is left no worse off as a result of their disability. These reliefs use the definition of disability used in section 6(1) of the Equality Act 2010. This approach is consistent with one of the normative principles of tax system design set out in Section 7 of Chapter 1.

Although the tax reliefs considered in this section are principally in respect of employees otherwise subject to Income Tax on employment benefits received, specific commentary is provided on the position of the self-employed.

Mobility-related reliefs

Tax relief for transport provided to disabled employees

Section 246 ITEPA 2003 exempts from Income Tax the provision of transport, or reimbursement of the expense of transport, to a disabled employee provided – under section 246(2) – that ‘...*the transport is provided or the expenses are incurred for the purpose of ordinary commuting or travel between any two places that is for practical purposes substantially ordinary commuting.*’ The analysis in Section 4 of Chapter 2 suggests that the cost of this relief was some £45m based on 2017/18 data.

For the purposes of this relief, section 246(4) provides that ‘[a] *‘disabled employee’ means an employee who has a physical or mental impairment with a substantial and long-term adverse effect on the employee’s ability to carry out normal day to day activities.*’ This is consistent with the definition of a disabled person in section 6(1) of the Equality Act 2010.

This provision appeared in legislation with the enactment of ITEPA 2003: it had previously been the subject of HMRC ESC A59. ESC A59²⁰⁰ provided an exemption from Income Tax:

...on the amount received or benefit provided’ in circumstances where ‘[a] person who is severely and permanently disabled and incapable of using public transport because of his disability [is] provided with alternative means of transport or [] financial assistance with the cost of such journeys between his home and place of employment.

Regulation 25, Paragraph 8(b) of Part X of Schedule 3 to the Social Security (Contributions) Regulations 2001, SI 2001/1004 exempts home-to-work travel for

²⁰⁰ British Tax Encyclopaedia Volume 5, Page 6933; Para 6-2071.

disabled people from being treated as earnings for the purposes of earnings-related National Insurance Contributions.

Tax relief for cars provided to disabled employees

Section 247 ITEPA 2003 exempts from being treated as a benefit for Income Tax purposes the provision of a car to a disabled employee provided a number of conditions are met. Those conditions include, amongst others, that:

- (4) *Condition A is that the car has been adapted for the employee's special needs or, in the case of an employee who because of disability can only drive a car that has automatic transmission, it is such a car.*
- (5) *Condition B is that the car is made available on terms prohibiting its use otherwise than for—*
 - (a) *the employee's business travel, or*
 - (b) *transport for the employee for the purpose of—*
 - (i) *ordinary commuting or travel between any two places that is for practical purposes substantially ordinary commuting, or*
 - (ii) *travel to a place the expenses of travelling to which would be within one of the training exemption provisions if the employer paid them.*
- (6) *Condition C is that in the tax year the car is only used in accordance with those terms.*

Again, this provision was originally included in ESC A59, and codified into legislation in ITEPA 2003. The definition of 'disabled employee' follows that in section 246 ITEPA 2003 – and, in turn, is consistent with section 6(1) of the Equality Act 2010.

The provision seems to mitigate any tax arising from a 'reasonable adjustment' in providing a disabled employee with an adapted or automatic car for business or commuting purposes – subject to the stated conditions. This is consistent with the normative principle around non-discrimination through taxation set out in Section 7 of Chapter 2.

Separately, subject to a number of conditions, Regulation 38 of the Social Security (Contributions) Regulations 2001, SI 2001/1004 broadly exempts the requirement to pay Class 1A National Insurance Contributions in respect of a car made available to a disabled person to the extent that the car is used solely for business purposes or home-to-work travel by the disabled employee.

Reduction in taxable benefit for automatic cars provided to disabled employees

The Finance Act 2009 inserted into ITEPA 2003 under section 124A a provision that, in summary, reduces for the purposes of car benefit calculations the cost of an automatic car to that of its manual equivalent where, under subsection (1):

- (b) at any time in the year when the automatic car is available to the employee ('E'), E holds a disabled person's badge, and*
- (c) by reason of E's disability, E must, in the event of wanting to drive a car, drive a car which has automatic transmission.*

Again, in these circumstances, the provision of an automatic car might be seen to be a 'reasonable adjustment' to meet a disabled employee's needs.

Eligibility for the disabled person's badge is governed by the Disabled Persons' Parking Badges Act 2013 and section 21 of The Chronically Sick and Disabled Persons Act 1970. In 2018, the UK Government consulted on eligibility for these badges²⁰¹, stating that (candidate underlining for emphasis):

1.3 Eligibility under the current scheme is primarily aimed at those who have 'a permanent and substantial disability which causes inability to walk or very considerable difficulty in walking'. This consultation is seeking views on a proposition to change this criterion to the following:

²⁰¹ UK Government, 'Blue Badge scheme: consultation on eligibility': the consultation closed on 18 March 2018. The consultation can be found at:

< www.gov.uk/government/consultations/blue-badge-disabled-parking-scheme-eligibility-review/blue-badge-scheme-consultation-on-eligibility > accessed 15 January 2023.

'a person who has an enduring and substantial disability the effect of which is that that person is unable to-

- i. walk;*
- ii. undertake any journey without it causing very considerable difficulty when walking;*
- iii. undertake any journey without there being a risk of very considerable harm to the health or safety of that person or any other person;*
- iv. follow the route of any journey without another person, assistance animal or orientation aid.'*

On 15 June 2019²⁰², the UK Government announced that guidance for 'Blue Badge' eligibility was being widened so as to cover 'hidden disabilities' such as dementia or anxiety disorders – albeit that these may not result in the need for an automatic car under section 124A(1)(c) above.

Adjustment in CO2 charge for automatic cars provided to disabled employees

Section 138 ITEPA 2003 provides that – broadly – where a disabled employee who holds a disabled person's badge must drive a car with automatic transmission, then the CO2 figures for the purposes of calculating the benefit associated with the car will be those of an 'equivalent manual car' where these are lower. This provision seems in line with the approach of Section 124A ITEPA 2003 set out above and, again, meets the normative requirement that disabled people are not subject to tax as a result of their disability.

²⁰² The announcement was made on 15 June 2019. Current Department for Transport guidance, 'Blue Badge scheme local authority guidance (England)', updated on 16 May 2022, is available at:

<<https://www.gov.uk/government/publications/the-blue-badge-scheme-local-authority-guidance-england/blue-badge>> accessed 12 February 2023.

Reduction in taxable benefit for accessories fitted to cars enabling disabled people to use them

For the purposes of calculating the cash equivalent amount of benefit arising from the provision of a car under the formula set out in section 121 ITEPA 2003, section 125(2)(c) exempts from being added to the cost of a car the value of accessories which represent 'equipment to enable a disabled person to use a car'. Section 172 defines such equipment as:

(1) [...] equipment—

- (a) *which is designed solely for use by a chronically sick or disabled person, or*
- (b) *which is made available for use with the car because it enables a disabled employee to use the car in spite of the disability.*

(2) *In this section—*

'disabled employee' means an employee who, at the time when the car is first made available to the employee, holds a disabled person's badge, and

'the disability' means the disability entitling the disabled employee to hold the disabled person's badge.

Again, this provision seems consistent with the 'reasonable adjustment' and normative approach discussed above. Note again the requirement for the holding of a disabled person's badge.

Exemption from tax for certain car maintenance grants provided to disabled people

Section 780 ITTOIA 2005 exempts from Income Tax vehicle maintenance grants received, broadly, as a result of NHS Clinical Commissioning Groups providing vehicles (including wheelchairs) to disabled people. The legislation governing the provision of such vehicles is contained – in England – in Paragraphs 9-11 of Schedule 1 of the National Health Service Act 2006: section 780(2) ITTOIA 2005 also provides for equivalent provisions in Wales, Scotland and Northern Ireland.

Paragraph 9 of Schedule 1 of the National Health Service Act 2006 enables Clinical Commissioning Groups to make such provisions *'for [persons for whom the group has responsibility and who appear to it to have a physical impairment] which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.'*

Exemptions from Vehicle Excise Duty (otherwise referred to as Vehicle Tax)

Exemptions for disabled people from Vehicle Excise Duty have existed for a number of years. For example, section 7(2) of the Vehicles (Excise) Act 1971 – the precursor to the existing legislation – provided an exemption, subject to certain conditions, of *'a mechanically propelled vehicle fitted with controls enabling it to be driven by persons having particular disability.'*

In relation to the current legislation, section 5, and sections 18 and 19 of Schedule 2 of the Vehicle Excise and Registration Act 1994 exempt vehicles from Duty including:

1. Invalid carriages of 508kg or less unladen weight (section 18(a) of Schedule 2).
2. Vehicles – broadly - used or kept for the use of a disabled person meeting certain specified criteria (section 19(1) of Schedule 2).

Section 19(2) of Schedule 2 prescribes eligibility of the relief by reference to a person's receipt of, or eligibility for, a number of specified benefits and grants.

Section 1ZA of Part 1 of Schedule 1 – broadly - provides that, subject to various criteria, a 50% exemption from Duty applies for disabled people in receipt of Personal Independence Payment where they are entitled to the mobility component at the standard rate.

In 2022/23, the total estimated cost of Vehicle Excise Duty relief was some £200m²⁰³.

Insurance Premium Tax relief

Section 2 of Schedule 7A of the Finance Act 1994 provides an exemption from Insurance Premium Tax ('IPT') for certain vehicles leased to disabled people. The requirements for relief in section 3(2) of Schedule 7A include that:

- (a) the vehicle is used, or intended for use, by a handicapped person in receipt of a disability living allowance, or personal independence payment, by virtue of entitlement to the mobility component, or of an armed forces independence payment, or of a mobility supplement or of disability assistance for children and young people, or disability assistance for working age people, by virtue of entitlement to the mobility component;*
- (b) the insured lets such vehicles on hire to such persons in the course of a business consisting predominantly of the provision of motor vehicles to such persons; and*
- (c) the insured does not in the course of the business let such vehicles on hire to such persons on terms other than qualifying terms.*

There is also a requirement in section 3(3) that part of the lease costs are met by payments to the leasing company on behalf of the lessee in respect of certain benefits by the DWP, the Department of Health and Social Services for Northern Ireland, the Ministry of Defence or Scottish ministers. In practice, this exemption principally applies to vehicles leased under 'Motability' scheme. The Motability scheme is considered in more detail in Chapter 5 alongside relevant VAT reliefs which – in combination with the IPT relief, Vehicle Tax relief and a number of scale economies - is reported to make leasing a vehicle from Motability considerably cheaper than obtaining the vehicle privately.

²⁰³ See table at Chapter 1, Section 4.

Non-mobility related reliefs

Exemption from tax for certain equipment provided to disabled employees

Consistent with a number of a transport-related reliefs for disabled people, following the Disability Discrimination Act 1995, the Income Tax (Benefits in Kind) (Exemption for Employment Costs resulting from Disability) Regulations 2002, SI 2002/1596 exempted certain equipment provided to disabled people from being treated as a taxable benefit for Income Tax purposes, subject to a number of conditions. The conditions under which relief is provided are that:

Condition 1

The benefit is provided to a disabled employee.

Condition 2

The main purpose of providing the benefit is to enable the employee to perform the duties of his employment.

Condition 3

The benefit consists in the provision of a hearing aid or other equipment, services or facilities, excepting any excluded benefit within the meaning in section 155ZA [of ICTA 1988]²⁰⁴ and Regulations made under that section.

Condition 4

The benefit is provided under, or within the terms of the provisions of, the Disability Discrimination Act 1995, the Access to Work programme, or any other statutory provision or arrangements, whether or not the employer has any legal duty to provide the benefit.

Condition 5

The benefit is made available to the employer's employees generally on similar terms (which include terms identical to Conditions 1 to 4).

²⁰⁴ Note 6 to the online legislation explains that 'Section 155ZA was inserted by paragraph 2(1) of Schedule 10 to the Finance Act 2000. No Regulations have so far been made under that section.'

See: < <https://www.legislation.gov.uk/uksi/2002/1596/made> > accessed 12 March 2023.

Exemption from tax in relation to the receipt by an employee of ‘recommended medical treatment’

Section 320C ITEPA 2003 provides an exemption from Income Tax in relation to the receipt by an employee of ‘recommended medical treatment’. The analysis in Section 3 above suggests that the annual cost of this relief was some £20m in 2019/20.

The provisions of section 320C cover employees with a very broad range of conditions – many of which might not be categorised as ‘disabilities’ - but some might. Section 320C(3)(b) sets out that the relief applies where it *‘is made for the purpose of assisting the employee to return to work after a period of absence due to injury or ill health’*.

The position of the self-employed

Notwithstanding the apparent focus of a number of reliefs on employees, the LITRG write of the self-employed and disability-related tax reliefs that²⁰⁵:

If you are genuinely self-employed, as with employment income, there is no blanket tax exemption or deduction for the extra costs you incur on account of your disability. However any expenditure which is wholly and exclusively incurred for business purposes can be deducted from your taxable business income. This could include adjustments made to your office premises to accommodate you as well as books in special formats and specialist equipment.

Claiming a deduction for equipment under the ‘wholly and exclusively’ rule will be subject to the restrictions and case law governing the test of ‘wholly and exclusively’ – such as ‘duality of purpose’. For example, in the case of *Murgatroyd*

²⁰⁵ See LITRG website, ‘Disabled people and carers’ under the ‘Help for employees’ link, updated on 22 December 2022, accessed 15 January 2023.

See: <<https://www.litrg.org.uk/tax-guides/disabled-people-and-carers/help-employees>> under heading ‘What about if I am a self-employed disabled person?’.

*v Evans-Jackson*²⁰⁶, expenditure claimed on a proportion of medical expenses by a trade-mark agent working in hospital (where clients visited him and he made telephone calls) were denied as the medical expenses were for a dual purpose.

Zero-rating of certain goods and services for VAT purposes

A number of goods and services provided to disabled people are zero-rated for VAT purposes. Given that they form part of distinct statutory provisions, for categorisation purposes these reliefs are regarded in this thesis as relating to 'participation' – given, for example, certain vehicle reliefs. However, a number of them relate to other 'costs of disability' and more strictly might form part of 'provision'.

By way of background, the Value Added Tax Act 1983, Schedule 5, Group 14 originally provided that a range of '*Drugs, Medicines, [and] Aids for the Handicapped etc*' were zero rated for VAT purposes. The list of items was broad – and, in Item 2(a) to (h), for example, covered amongst a range of equipment electrically adjusted beds, chair lifts and '*hoists and lifters used by invalids*'. A further provision in Item 2(g) covered '*equipment and appliances not included in paragraphs (a) to (f) above designed solely for use by a handicapped person*'. For the purposes of the legislation, 'Handicapped' was defined as 'chronically sick or disabled'.

The Value Added Tax Act 1994, Schedule 8 Group 12 – '*Drugs, medicines, aids for the disabled etc*' (the current legislation) has broadened the range of goods and services for disabled people which are zero rated. The Finance Act

²⁰⁶ [1967] 1 All ER 881.

2017 made a number of amendments to the legislation – including changing the definition of ‘disabled’ [as opposed to ‘handicapped’] to ‘*any person who is chronically sick or disabled*’, consistent with a change in the title for the Group from ‘handicapped’ to ‘disabled’. Government guidance²⁰⁷ explains that:

For VAT purposes, you’re chronically sick or disabled if you have a:

- *physical or mental impairment which has a long term and substantial adverse effect on your ability to carry out everyday activities*
- *condition that the medical profession treats as a chronic sickness (that’s a long term health condition)*

For VAT purposes, the term ‘chronically sick or disabled’ does not include a person who’s only temporarily disabled or incapacitated, for example with a broken limb or someone who’s elderly but is not chronically sick or disabled.

Examples of goods and services now included in Group 12 - which are far broader in scope than Group 14 of the 1983 Act - include ‘qualifying motor vehicles’ supplied for a disabled person’s personal use, the scope of which was introduced in section 1(3) of Schedule 7 of the Finance Act 2017 as:

A motor vehicle is a ‘qualifying motor vehicle’ by virtue of this paragraph if—

- (a) it has been substantially and permanently adapted to enable a person to whom paragraph (4) applies to travel in it, and*
 - (b) the adaptation is necessary to enable [the disabled person] to travel in it.*
- (4) This paragraph applies to a disabled person—*
- (a) who usually uses a wheelchair, or*
 - (b) who is usually carried on a stretcher.*

In practice, the vast majority of VAT relief in relation to private cars for disabled people is provided through the ‘Motability’ scheme which is discussed at length in Chapter 5.

²⁰⁷ UK Government guidance, ‘Get VAT relief on certain goods if you have a disability’, ‘What HMRC means by ‘chronically sick or disabled’, accessible at:

< <https://www.gov.uk/guidance/vat-relief-on-certain-goods-if-you-have-a-disability#what-hmrc-means-by-chronically-sick-or-disabled> > accessed on 12 March 2023.

A further example of a relief in Group 12 is Item 10 which provides relief for *'The supply to a [disabled] person of a service of providing, extending or adapting a bathroom, washroom or lavatory in his private residence where such provision, extension or adaptation is necessary by reason of his condition.'*

Finally, Group 4 of Schedule 12 zero rates *'Talking books for the blind and disabled and wireless sets for the blind'*. The provisions of Group 4 Item 1 – covering items provided to *the 'Royal National Institute for the Blind, the National Listening Library or other similar charities'* – are focused on equipment using magnetic tape: in the modern digital environment, it is hard to see that magnetic tape-based equipment remains extensively available for purchase. Item 2(a) covers the supply to a charity of *'wireless receiving sets'*. The value of these provisions seem limited: the Government analysis in Section 4 of Chapter 1 provides no financial value for the relief – referring to it as *'disclosive'*²⁰⁸.

5. Provisions related to compensation and insurance

Introduction

A series of provisions exempt from tax some or all of certain compensation or insurance payments – including pensions - made in respect of impairments arising from military service; employment; accidents; criminal acts; or other specialist circumstances.

The reliefs set out in this section are all in respect of *'event driven'* impairments, including disease onset – rather than congenital impairments. The tax effects of relevant exemptions are *'priced in'* to the setting of many of the

²⁰⁸ Analysis of tax reliefs – Chapter 1, Section 4.

associated state pensions and payments; and into certain insurance-based arrangements.

In administrative terms, one of the features of most of the provisions summarised in this section is that they result in taxpayers receiving payments 'tax free' without the need to reclaim any tax – making administration for the recipient straightforward. If the individual is eligible for the payment, then the tax relief follows.

Personal injury payments and criminal injury compensation awards

Sections 731-4 ITTOIA 2005 exempt various personal injury payments from Income Tax. Section 751 exempts interest on damages for personal injury from Income Tax.

Subsection 5 of section 731 defines personal injuries as follows: '*In this section 'personal injury' includes disease and impairment of physical or mental condition.*' The definition does not include a reference to 'permanence' - suggesting that any impairment might be temporary in nature.

Section 731(2) prescribes a number of types of payment to which the exemption applies, including – amongst others - payments under a court order under section 2 of the Damages Act 1996; an agreement made to settle damages for personal injury; and a Motor Insurance Bureau ('MIB') undertaking in relation to personal injury. Section 732 ITTOIA 2005 exempts payments in respect of personal injury (defined as '*disease and impairment of physical or mental condition*') in respect of compensation made under the Criminal Injuries Compensation Scheme or the Victims of Overseas Terrorism Compensation Scheme.

The reliefs available under section 731 and 732 ITTOIA 2005 are not only available to the person who has suffered injury: section 733 ITTOIA 2005 states that the categories of person entitled to the exemptions given by section 731(1) and 732(1) can – broadly - include the person entitled to the damages, together with a person receiving the payment on their behalf; or a trustee of a trust where the injured person is the sole beneficiary.

Section 734 ITIOA 2005 provides, broadly, that the Income Tax exemption will apply where payments under section 731(1) and 732(1) are made to the Trustees of a lifetime trust where the beneficiary is the person to whom the relevant award has been made. This provision ensures that a disabled person who may lack capacity following an injury may receive a tax-exempt award settled into a trust for their benefit.

Compensation payments for personal injury - Capital Gains Tax

Section 51(2) TCGA 1992 provides that:

'It is hereby declared that sums obtained by way of compensation or damages for any wrong or injury suffered by an individual in his person or in his profession or vocation are not chargeable gains.'

The treatment in this provision is extended by paragraph 12 of HMRC ESC D33 (which covers tax on compensation and damages). Paragraph 12 extends the scope of section 51(2) so that the exemption covers compensation received by an individual in his trade or employment and also broadens the exemption so that it extends to:

...compensation received by a person other than the individual who suffered the wrong or injury, such as relatives or personal representatives of a deceased person. It also extends to compensation for emotional distress caused by the death of another person, and compensation for loss of financial support.

It does not apply to compensation for any other wrong or injury suffered by any person other than an individual.

Employment termination payments

Section 406(1) ITEPA 2003 exempts from the scope of Income Tax termination payments made:

(1) (b) on account of injury to, or disability of, an employee.

(2) Although 'injury' in subsection (1) includes psychiatric injury, it does not include injured feelings.

The words '*on account of*' in subsection 1 are symmetrical to those used in another relief connected with employment-related securities: in that context, analysis by Whiteman and Sherry²⁰⁹ suggests that '*on account of*' means '*because of*' – meaning in this case that any termination payments eligible for relief would need to be made *because of* injury to, or disability of, an employee [arising at work].

Paragraphs 3 of HMRC's Statement of Practice 10/81 clarified their approach to disability as follows:

As a result of a decision given by the Special Commissioners on 6 January 1981, HMRC reconsidered its practice and now accepts that 'disability' covers not only a condition resulting from a sudden affliction but also continuing incapacity to perform the duties of an office or employment arising out of the culmination of a process of deterioration of physical or mental health caused by chronic illness.

The provisions of section 406 have been the subject of a number of decided cases discussed in Section 6.

²⁰⁹ Whiteman and Sherry on Income Tax, Chapter 14, paragraph 14.117.

For completeness, the UK Government consulted on the broad tax treatment of termination payments in 2015²¹⁰ against the backdrop of stated concerns around the manipulation of contractual and non-contractual payments; and certain NIC asymmetries. Save for the ‘carve-out’ in respect of ‘injury to feelings’ in section 5(7)(b) of the Finance Act (No2) 2017, legislative amendments arising from the consultation have not affected the provisions of section 406(1).

Wounds and disability pensions

An exemption from Income Tax in respect of ‘wounds and disability pensions’ was originally introduced in section 16 of the Finance Act 1919. It has sequentially flowed through subsequent legislation²¹¹ and the provisions can still be found - in substantially similar form - in section 641 ITEPA 2003. The summary of the annual cost of tax reliefs in Section 4 of Chapter 2 indicates that this relief cost £40m in Fiscal Year 2021/22 and had some 100,000 claimants.

Eligibility in Section 641 is determined by reference to a range of categories of person receiving disablement pensions from a number of specified schemes.

Hansard shows that, on a number of occasions since the introduction of the original relief in 1919 and, up to comparatively recent times, the possibility of

²¹⁰ UK Government consultation – ‘Simplification of the tax and National Insurance treatment of termination payments’ – 24 July 2015. For details of the consultation and analysis of responses, see:

<<https://www.gov.uk/government/consultations/simplification-of-the-tax-and-national-insurance-treatment-of-termination-payments>> accessed 29 January 2023.

²¹¹ See, for example, Income and Corporation Taxes Act 1988, s315; and, prior to that, the Income Tax Act 1952, s380.

exempting widows' and widowers' pensions arising from war disablement from tax was raised – but rejected²¹². However, the amounts are now tax free²¹³.

Other disablement pensions

A provision exempting 'disablement pensions' from Income Tax is found in section 644 ITEPA 2003. This provision broadly provides some symmetry to the treatment of war-related disability pension payments with those arising from industrial accidents or other accidents at work. Section 644 reflects the legislative codification into ITEPA 2003 of HMRC's former Extra-Statutory Concession ('ESC') A62 – 'Pensions to employees disabled at work'²¹⁴. Subsections 1 and 2 of section 644 provide that:

(1) No liability to income tax arises on the exempt amount of a disablement pension.

(2) For the purposes of this section a pension is a 'disablement pension' if-

(a) the pension is payable because a person has ceased to hold an employment or office because of disablement, and

(b) that disablement is attributable to—

(i) performance of the duties of the employment or office, or

(ii) war injuries.

But 'disablement pension' does not include any pension to which section [579A] applies.

²¹² See, for example, HC Deb 19 February 1953, vol 511, col 1441.

²¹³ See UK Government guidance, 'War Widow(er) Pension', at:

< <https://www.gov.uk/war-widow-pension/what-youll-get> > accessed on 12 March 2023.

²¹⁴ ESC A62 reads: 'The amount by which the pension awarded on retirement through disability caused by injury on duty or by a work-related illness such as pneumoconiosis, asbestosis etc, or by war wounds, exceeds the pension which would have been awarded if the retirement had been on ordinary ill-health grounds is not treated as income for income tax purposes. Similarly, a pension awarded solely on account of such retirement is not treated as income' - British Tax Encyclopaedia Volume 5, Page 6,934; Para 6-2075.

It seems that subsection 2(ii) covers a disablement pension arising because of war injuries where the injury results in an inability to work arising some time after the cessation of conflict. The ‘carve out’ in section 579A broadly covers payments by registered pension schemes.

Section 644 does not exempt all pensions payable to a qualifying individual from Income Tax – rather, that element which is attributable to their disablement over and above any pension which would have been payable should they have retired from office ‘*but the disablement had not been attributable to (i) performance of the duties of the employment or office, or (ii) war injuries.*’ This provides some symmetry with subsection (2) of section 641 which limits tax relief for, broadly, war disablement pensions:

‘But if the Secretary of State certifies that a pension or retired pay of a kind listed in subsection (1) is only partly attributable to disablement or disability, that subsection applies only to the part attributable to disablement or disability.’

In relation to section 644, HMRC manuals²¹⁵ comment that:

‘The amount of the pension that is exempt (if any) is calculated based on what pension would be payable to the individual if they retired due to the same illness or injury but instead it was not related to work or war injuries. If in these alternate circumstances:

- *no pension would be payable, then the whole disability pension is exempt, that is, tax-free*
- *a pension of a smaller amount would be payable, then only the extra amount payable because of the disability being work (or war injury) related is tax-free*
- *the same amount of pension would be payable, then none of the disability pension is exempt and the whole amount is taxable’*

²¹⁵ HMRC Employment Income Manual, EIM75080 – ‘The taxation of pension income: pension payments exempt from tax’, updated 9 January 2023 and available at:

<https://www.gov.uk/hmrc-internal-manuals/employment-income-manual/eim75080#disability-pensions-paid-due-to-injury-or-illness-at-work> > accessed 15 January 2023.

Exemption from tax for annual payments received under certain health insurance policies

Provided that no Income Tax deduction has been claimed for the payment of premiums, subject to certain conditions section 735 ITTOIA 2005 exempts annual payments received under insurance policies which insure against a 'health or employment risk'. Section 736(1) states that:

- (1) *For the purposes of sections 735 [and 737 to 743], a policy insures against a health risk if it insures against the insured becoming, or becoming in any specified way, subject—*
 - (a) *to any physical or mental illness, disability, infirmity or defect, or*
 - (b) *to any deterioration in a condition resulting from any such illness, disability, infirmity or defect.*

Further, section 736(2) provides that:

- For the purposes of sections 735 [and 737 to 743], a policy insures against an employment risk if it insures against circumstances arising as a result of which the insured ceases—*
 - (a) *to be employed or hold office, or*
 - (b) *to carry on any trade, profession or vocation.*

Tolley's Income Tax 2018/19 observes at page 845 that these provisions:

'...will most commonly apply to mortgage payment protection insurance, permanent health insurance, creditor insurance (to meet existing commitments, possibly including domestic utility bills, in event of accident, sickness, disability or unemployment) and certain types of long-term care insurance (but only where the policy is taken out before the need for care becomes apparent).'

Specialist relief – asbestos settlements

Section 31 and Schedule 14 of the Finance (No3) Act 2010 exempt certain asbestosis compensation payments from Inheritance Tax and Capital Gains Tax.

This is a specialist relief, the policy background for which was summarised by David Gauke at the Public Bill Committee on 28 October 2010²¹⁶ :

It has come to the Government's attention that trusts set up in certain circumstances to compensate asbestos victims have been unable to access tax-efficient structures. Consequently, such trusts are facing tax liabilities that will reduce the funds available to asbestos victims who are eligible for compensation. [TRUNCATED].

To help victims of asbestos, the changes set out in Schedule 14 will remove past and future inheritance tax, income tax and capital gains tax liabilities from asbestos compensation settlements.

6. Selected case law synopsis

Introduction

A number of – but by no means all - statutory provisions summarised in this chapter have been the subject of decided cases. Rather than provide a sequential analysis of the various cases by statutory provision, this section classifies and discusses a number of key cases by reference to identified themes or specific taxes. The identified themes are:

1. Disability and Income Tax exemptions – meeting statutory definitions.
2. The economics of, and eligibility for, tax relief in compensation awards.
3. Council Tax: the link between disability and the basis for reliefs.
4. Section 89 IHTA trusts: drafting issues.
5. VAT and zero-rating under Schedule 8 Group 12 VAT Act 1994.

²¹⁶ Public Bill Committee, debating the Finance (No2) Bill 2010, 28 October 2010, David Gauke at col 147 – see:

<<https://publications.parliament.uk/pa/cm201011/cmpublic/financen2/101028/am/101028s01.htm> > accessed 15 January 2023.

Disability and Income Tax exemptions – meeting statutory definitions

A number of cases consider the linkage between a taxpayer's disability and their eligibility for relief.

For example, section 406(1)(b) of ITEPA 2003 exempts employment termination payments made 'on account of injury to, or disability of, an employee'. In the case of *Dr AG Flutter*²¹⁷, the First Tier Tribunal considered whether payments made to an executive upon the termination of his employment were on account of his disability. The appellant, Dr Flutter, had sold his business but had been retained as an employee within the acquiring group post-acquisition. He suffered from hearing difficulties with Menieres Disease. His employment was terminated and he contended that elements of his termination payment arrangements were on account of his disability.

The Tribunal highlighted a test set out by Lightman J in the earlier case of *Horner v Hasted*²¹⁸. This case dealt with the predecessor legislation to section 406 ITEPA 2003 – section 188 Income and Corporation Taxes Act 1988. Lightman J said that:

It is clear from the language of s 188 that for the exemption to be available it must be established: (1) that the disability alleged by an employee is a relevant disability, that is to say, a total or partial impairment (which may arise from physical, mental or psychological causes) of his ability to perform the functions or duties of his employment; and (2) that the person making the payment does so not merely in connection with the termination of employment (compare the language of the exemption of payment made on the death of an employee) but on account of the disability of the employee. In short, there must be established as an objective fact a relevant disability and as a subjective fact that the disability is the motive for payment by the person making it.²¹⁹

²¹⁷ [2015] UKFTT 249 (TC).

²¹⁸ [1995] STC 766.

²¹⁹ Candidate underlining for emphasis.

Whilst Dr Flutter's disability was accepted by HMRC, the Tribunal concluded that this was not the motive for Dr Flutter's termination payments and dismissed this element of his appeal (there were a number of other strands to the case).

The Court of Appeal considered in the case of *Moorthy v Revenue and Customs Commissioners*²²⁰ whether injury to feelings fell within the definition of 'injury' in section 406 ITEPA 2003 – concluding that it did. In the judgment, Henderson LJ stated that:

It seems to me that to treat an award of damages for injured feelings, in respect of actionable discrimination on grounds of age, as falling within the exemption in s 406 would accord with the natural meaning of the language of the section, would provide parity of treatment with similar awards made in a continuing employment relationship, and would not be objectionable on policy grounds.

The Court of Appeal upheld Mr Moorthy's appeal that injury to feelings fell within the scope of section 406. The UK Government subsequently legislated in the Finance (No2) Act 2017 to remove injury to feelings from the tax exemption: section 406(2) ITEPA 2003 now reads:

'(2) Although 'injury' in subsection (1) includes psychiatric injury, it does not include injured feelings.'

The economics of, and eligibility for, tax relief in compensation awards

Eligibility for tax relief under court awards clearly need to meet specific statutory requirements: the case of *KD ((a minor) by his mother and next friend) v Belfast Social Health and Care Trust*²²¹ involved a request for the court to confirm whether or not elements of payments under a Periodic Payments Order ('PPO') in relation to a boy with cerebral palsy were such that they would meet the criteria under

²²⁰ [2018] EWCA Civ 847.

²²¹ [2014] NIQB 143.

section 731(2)(a) ITTOIA 2005 for exemption from Income Tax – in particular, whether they fell within with section 2 of the Damages Act 1996 as elements of them were ‘not known by date or amount’. Gillen J declined to opine on draft PPO’s presented to the court – awaiting a finally agreed draft – but observed that:

‘...even if the presence of material that falls outside s2 [of the Damages Act 1996] was introduced into the PPO by oversight or misunderstanding, it is not likely to render the whole PPO invalid in so far as it would bring the whole PPO outside the provisions of the ITTOIA 2005 s 731(2)(a). For all the reasons that I have given in the judgment I consider Parliament would never have intended such a draconian consequence given the purpose of the legislation.’

Nonetheless, the judgment highlights the need for care in the structuring of awards to ensure that anticipated tax reliefs are available.

Council Tax: the link between disability and the basis for reliefs

This section considers three cases in connection with Council Tax and the Band Reduction Scheme. In relation to the Scheme, Regulation 3(2) of the Council Tax (Reductions for Disabilities) Regulations 1992, SI 1992/554 (‘the Regulations’) provides that:

For the purposes of paragraph (1), and subject to paragraph (3), references to anything being required for meeting the needs of a qualifying individual are references to its being essential or of major importance to his well-being by reason of the nature and extent of his disability.

This provision raises the question as to what, for a disabled person, is ‘*essential or of major importance to his well-being by reason of the nature and extent of his disability*’. Case law has examined two key tests: a ‘causative link’ between disability and the requirement for the use of the room; and a ‘major importance’ test, referable to the legislation above.

A Court of Appeal case pre-dating the Regulations, *Williams v Wirral Borough Council*²²², addressed eligibility for a rebate under the then Rating (Disabled Persons) Act 1978 – certain of whose provisions had similarities to those in subsection 3(2) of the Regulations²²³. In *Williams*, Mrs Howell Williams, who was disabled with arthritis, contended that she should be entitled to a rebate of [then] Rates as she was disabled and needed heating in her living room. Fox LJ disagreed that she should be entitled to a rebate, commenting that²²⁴:

It is clear, in my view, that the living room, as such, is not essential or of major importance to the well-being of Mrs. Howell Williams by reason of the nature and extent of her disability. She needs the living room as such, merely in the way that anybody, whether disabled or not, needs a living room as part of ordinary life. She does not need the room because of the nature and extent of her disability.

Fox LJ went on to say later in the judgment:

It seems to me that Mrs. Howell Williams uses the living room simply because, like anybody else, she needs a living room, and not because of her disability. She uses it as an ordinary living room; she requires it as a room to live in, and not as a room to put the heater in. She needs the heater to give her extra warmth because of her disability; ...but Mrs. Howell Williams does not use her living room because of her disability. In my view, therefore, section 1(2)(a) does not apply to this case.

This judgment was referenced in a subsequent case involving Regulation 3, *Sandwell MBC v Perks*²²⁵. In the judgment, Silber J stated that²²⁶:

It is important that any tribunal, which has to consider whether or not a person is entitled to exemption under Regulation 3, should consider if there has been the appropriative causative link between the disability and the

²²² [1981] RA 189.

²²³ This view was shared by Turner J in *Luton Borough Council v Ball*, [2001] EWCH Admin 328, a case dealing with eligibility for relief in relation to a shower room, who referenced the *Williams* case in his judgment.

²²⁴ Candidate underlining for emphasis.

²²⁵ [2003] EWHC 1749 Admin.

²²⁶ At para 14. Candidate underlining for emphasis.

requirement of the use of the room, because the use has to be essential or of major importance, because of the nature and extent of the disability.

These judgments collectively emphasise that, to meet the requirements of Regulation 3, establishing disability is not sufficient: there needs to be a causative link between the disability and the additional room required to qualify for the Band Reduction Scheme.

Both the 'causative link' and 'major importance' tests were considered in the case of *R (on the application of Hanson) v Middlesbrough Borough Council*²²⁷. In this case, a Tribunal judgment had previously dismissed Mrs Hanson's appeal that she should be entitled to relief under the Band Reduction Scheme in Regulation 3 in respect of a converted bedroom and *en suite* bathroom. Mrs Hanson suffered – as certified by her GP - from blindness, hypothyroidism and hypotension. The Tribunal had accepted that the 'causative link' test was met; but were not satisfied as to the facility's 'major importance'.

The judge, James Goudie QC, found that the Tribunal had introduced a test as to whether, if the facility were not there, it would be 'extremely difficult' to live in the property. He observed that 'extremely difficult' was not the statutory language. He allowed Mrs Hanson's appeal – concluding that the bathroom was of 'major importance'.

Section 89 IHTA trusts: drafting issues

The case of *Barclays Bank Trust Company Limited as Trustees of the Constance Mary Poppleston Will Trust & Another v HMRC*²²⁸ considered whether, by virtue

²²⁷ [2006] EWHC 1700 (Admin).

²²⁸ [2011] EWCA Civ 810.

of the way in which a number of clauses in a will trust were drafted, the trust fell within the provisions of section 89 IHTA 1984 ('Trusts for disabled persons'). The court considered a number of provisions in the will trust.

The points considered by the court were highly specific to the drafting of the will trust. However, the case illustrates the need for extreme care in drafting trust arrangements which meet the requirements of section 89.

The need for careful drafting was again emphasised in *Pitt and another v The Commissioners for Her Majesty's Revenue and Customs*²²⁹, a Supreme Court case considering whether there could be retrospective amendment made to trust arrangements following negligent advice. In this case, Mr Pitt had suffered serious injury in a road traffic accident, and his wife had taken advice that the proceeds of the award made to him should be settled into a discretionary trust. Unfortunately, the trust arrangements did not – amongst other matters – properly consider Inheritance Tax.

Although there were tax consequences as a result of the negligent arrangements, the scope of matters considered by the Supreme Court were far broader – including the power of the court to set aside a disposition on the grounds of mistake. For the purposes of this thesis, however, the case – like that in *Barclays Bank Trust Company Limited* - emphasises the need for great care in the construction of trusts so as to meet the requirements of available statutory reliefs.

²²⁹ [2013] UKSC 26.

VAT and zero-rating under Schedule 8 Group 12 VAT Act 1994

In Chapter 19, Tolley's VAT Cases 2019 references some 96 cases connected with the zero-rating or otherwise of supplies specifically to disabled people (other provisions of the VAT Act 1994 zero rate certain medical and other supplies – but these are available to able-bodied as well as disabled people and are therefore not considered here).

Many of the cases in *Tolley's* consider whether zero-rating should or should not apply to specific goods or services under particular circumstances. This section seeks to develop two key themes, referable to the judgments in five cases.

The first theme considered is the qualification for zero rating or otherwise due the design of goods. For example, one case highlights that the fact that goods designed for disabled people can be used by the able-bodied does not disqualify them from zero rating if they were actually designed for disabled people. In *Hulsta Furniture (UK) Limited*²³⁰, a Tribunal considered whether a bed bought by a person with a disability (whose General Practitioner endorsed her acquiring it) met the requirements for zero rating under Schedule 8, Group 12, Item 2(b) of the VAT Act 1994. This zero-rates:

The supply to a handicapped person for domestic or his personal use, or to a charity for making available to handicapped persons by sale or otherwise, for domestic or their personal use, of –

(a) ...

(b) *electrically or mechanically adjustable beds designed for invalids*

The judgment summarises a complex evidential base surrounding the intentions of Hulsta, the bed manufacturer, who contended that the bed (the 'Hulsta Flex')

²³⁰ LON/98/936 (VTD 16289).

had been designed to address the needs of people with disabilities, particularly those leaving nursing homes or hospital. In the judgment, the Tribunal Chair summarised the essence of the case as:

‘The only issue in this appeal was whether the bed in question was designed for “invalids”’, commenting that ‘objective factors must be looked at as well as subjective statements from the company’.

The Tribunal found in favour of Hulsta that sales of the Flex bed should be zero rated *when sold to invalids*, observing that:

There is no requirement that to qualify for zero-rating a bed should be sold through outlets specifically for the disabled.

The Tribunal finds as a matter of fact that it was the intention of the manufacturers of the Hulsta bed to produce a bed which was suitable for people who were temporarily in a state of invalidity, or suffering from permanent minor disabilities.

The case highlights two key points: first, that being ‘designed for invalids’ does not prohibit sales to able-bodied people (albeit that such supplies would not be zero-rated); and second, that there is no requirement for permanent disability for zero-rating purposes – ‘temporary invalidity’ is sufficient.

The case of *Softley Limited (t/a Softley Kitchens)*²³¹ considered whether a customised kitchen from a range specifically designed to meet the needs of disabled people should be zero-rated for VAT purposes. The judgment explained that:

The relevant legislation is contained in the Value Added Tax Act 1994 schedule 8 group 12 item 2(g) which provides for the zero rating of:

‘2. The supply to a handicapped person for domestic or his personal use, or to a charity for making available to handicapped persons by sale or otherwise, for domestic or their personal use of –

²³¹ LON/96/1810 (VTD 15034).

(g) equipment and appliances not included in paragraphs (a)-(f) above designed solely for use by a handicapped person.'

Compared to *Hulsta*, the requirement in 2(g) prescribed that the goods should be 'solely for use by a handicapped person'.

The Tribunal considered a number of arguments contending that a specific 'Saint Roch' kitchen should not be zero rated, referable to a range of previous decisions. In paragraph 23 of the judgment, the appellant's case is summarised as:

Saint Roch kitchens [the type of kitchen considered in this case] are marketed for, designed for, manufactured for and supplied to only the disabled and they are quite unsuitable for the able bodied. The units therefore fall within item 2(g) and should be zero rated.

The overall kitchen installed did contain appliances which were accepted by the appellants as not being zero rated. The appellant argued, however, that various units in the kitchen were '*designed solely for use by a handicapped person*' illustrating, with pictures, features such as design points facilitating wheelchair access.

The Tribunal accepted the appellant's arguments, finding that the Saint Roch kitchen did fall within the criteria for 2(g) above. Paragraphs 45 and 46 of the judgment state that:

45. [] *It appears quite clear to us that the majority of the units that have been described to us are designed specifically and solely for the disabled. All the floor based units have the very high deeply recessed plinth which would be quite unnecessary for an able bodied person and indeed would never be chosen by an able bodied person designing his or her own kitchen. Combined with the low level of the working surfaces these units would be quite impractical for use by anyone other than a handicapped person and indeed probably by anyone other than the specific disabled person for whom they were designed.*

46. *We accept that some of the mechanisms used in the fitting of the units are on general sale but this alone cannot prevent units which otherwise were designed for a handicapped person from falling within zero rating. It is the end product which we are considering not the individual components*

which make it up. Provided that end product was designed solely for a handicapped person then the fact that individual components are on general sale cannot alter its VAT rating.

Softley distinguishes itself from *Hulsta* in particular through the introduction of the word 'solely' [for use by a handicapped person] in the legislation: in *Hulsta*, the Tribunal accepted that the Flex bed might be used by able-bodied people. In *Softley*, the requirement for the units to have been designed '*specifically and solely for the disabled*' seems pivotal.

The second theme arising from decided VAT cases considered in this thesis is the complexity of – and apparent uncertainty caused to taxpayers by – the various provisions dealing with the installation of modifications to living accommodation to address the needs of disabled people.

The case of *BH Cannings-Knight*²³² has some parallels with the Council Tax case of *R (on the application of Hanson) v Middlesbrough Borough Council* discussed above: in this case, the taxpayer contended that certain work spent on home improvements (part of a wider programme of work) to facilitate wheelchair access should be zero rated. The judge, David Potter QC, explained the background as follows:

Bedroom 1 has thus been extended, one purpose of the extension being to facilitate access through bedroom 1 to the dressing room for the Appellant in a wheelchair.

In practice the Appellant in his wheelchair is likely to use access the through bedroom only when the lift is not working; but there have been several occasions since June when the lift has not been working. It is therefore important that there be access from the staircase landing through bedroom 1 into the dressing room able to be used by the Appellant in his wheelchair. The question presented to me was whether the extending of bedroom 1 is zero-rated by reason of Schedule 5 Group 14 item 8 (as amended) which is:-

²³² LON/92/2256A (VTD 18733).

'The supply to a handicapped person of a service of constructing ramps or widening doorways or passages for the purpose of facilitating his entry to or movement within his private residence'.

Note – in comparison with *Softley* – that the legislation does not stipulate a 'sole' purpose in the zero-rating requirement. The judge allowed the appeal, commenting that²³³:

Clearly bedroom 1 was not a passage to the dressing room beforehand. Now that the dressing room is a bedroom with its own bathroom, and an important bedroom, being adapted for the handicapped Appellant, I think it can fairly be said that bedroom 1 serves in part the purpose of being a passage into the converted dressing room. Bedroom 1 had to be widened in order to facilitate a wider doorway into the dressing room. The question is one of fact and degree, and each case must depend on its particular facts. I therefore decide in favour of the Appellant that the extension to bedroom 1 constituted the supply of widening doorways or passages for the purpose of facilitating the entry of the Appellant or his movement within his private residence. I allow the appeal.

BH Cannings-Knight can be contrasted with *J Drury*²³⁴ and *Mrs L J Brailsford*²³⁵:

in the case of *J Drury*, the taxpayer had certain adaptations made in her bathroom to assist with her disability (poliomyelitis, significantly affecting the functionality of her right leg), whilst undertaking other works such as roof replacement work.

The judge found that, whilst it was appropriate to zero rate the adaptations in respect of her disability, the other works should not benefit from zero rating, stating that:

I find it impossible to say that any of the disputed work was essential to the basic requirement of adapting the bathroom to suit Mrs Drury's condition as a disabled person. The roof was renewed because it was leaking and the flooring on the ground floor because it was rotten. Any reasonably careful occupier would have had that work done without delay. Similarly, the replacement of the radiators and other work to the heating system was made necessary because Mrs Drury had inherited a defective system. That was an expense which any other occupier would have been likely to incur sooner or later.

²³³ Candidate underlining for emphasis.

²³⁴ LON/90/1398Y (VTD 6030).

²³⁵ MAN/95/562 (VTD 13472).

In *Brailsford*, the taxpayer had constructed a room to house a dialysis machine for her husband, together with 'a lavatory and an enlargement of the existing hallway'. It was accepted that the dialysis equipment should be zero rated. The question under consideration was the VAT treatment of the goods and services in the construction of the dialysis room.

The judge, Mr J D Demack concluded that the construction of the dialysis room did not fall within relevant statutory definitions and denied the appeal. He wrote in the judgment that:

If the supplies of goods and services relating to the provision of the dialysis room within the extension to the house are to be zero-rated, they must fall within the term 'bathroom, washroom, or lavatory' in item 10 of Group 12. None of those three words is statutorily defined, so that I must decide what each means... Giving the words contained in the term 'bathroom, washroom or lavatory' their ordinary meanings, I find myself unable to extend the meaning either of the entire term or of any one of its constituent parts to include a room containing a renal haemodialysis unit in isolation from washing facilities or a water closet: and there is nothing within item 10 itself which would permit me to extend the meaning.

A number of the cases considered above appear to support a 2007 PwC / LITRG report²³⁶ considering VAT and disabled people which observes that:

It should be noted that the UK courts have tended to take a literal rather than purposive approach to interpreting the zero-rating provisions. In other words, the courts have strictly applied the provisions based solely on the interpretation of the words used in the legislation rather than using a broader approach that takes into account the purpose behind the legislation. ... Such a limited approach clearly carries the risk that the needs of disabled people are not sufficiently or appropriately addressed, and that the stated aim of Government policy is not met, and we recommend that the authorities consider how best to ensure that Government policy is properly implemented.

²³⁶ LITRG and PwC, 'VAT and disabled people - the case for removing the barriers', 2007, available at:

< <https://www.litrg.org.uk/latest-news/reports/070130-vat-and-disabled-people-case-removing-barriers> > accessed 15 January 2023.

Consideration of these and other cases is given in Chapter 6 when considering tax system effectiveness; and in Chapter 8 when making recommendations for reform.

7. Conclusions

UK tax legislation contains a broad range of tax reliefs relevant to disabled people and those who care and provide for them. The provisions have substantially arisen in the past 50 years in line with a growth in the provision for, and rights in respect of, disabled people – in particular anti-discriminatory legislation.

Building on the information platform provided in this chapter, Chapters 4-6 evaluate the effectiveness of these provisions relative to the normative principles and effectiveness criteria set out at Chapter 1²³⁷.

²³⁷ Chapter 1 at Sections 7 and 8.

Chapter 4 – provisions related to general financial support: effectiveness evaluation

1. Introduction

This chapter analyses the effectiveness of the existing UK tax provisions relating to general financial support for people with disabilities. Such support takes a range of forms – but essentially results in the mitigation of tax obligations. Prior to analysing the effectiveness of existing provisions – categorised in the table below – Section 2 considers whether there is a supportable case for some form of general disability-related tax relief. The provisions considered are as follows:

<i>Blind Person's Allowance</i>	Section 3
Blind Person's Allowance	Sections 38-40 ITA 2007
<i>Council Tax reliefs</i>	Section 4
Council Tax – 'Band Reduction Scheme'	Council Tax (Reductions for Disabilities) Regulations 1992, SI 1992/554
Council Tax – 'disregard' in relation to severe mental impairment	Sections 2(1) and 2(2) of Schedule 1 of the Local Government Finance Act 1992
Council Tax – exemptions in respect of annexes for dependent relatives	The Council Tax (Chargeable Dwellings, Exempt Dwellings and Discount Disregards) Amendment Order 1997 (SI 1997/656)
Council Tax – 'disregard' for certain qualifying carers	The Council Tax (Additional Provisions for Discount Disregards) Regulations 1992 (SI 1992/552)
Rates in Northern Ireland – discount in respect of disability	Rates (Northern Ireland) Order 1977; and Rates (Amendment) (Northern Ireland) Order 2006
<i>Provisions relating to benefit payments</i>	Section 5
Exemption from tax for certain state benefits	Table B, Section 677 ITEPA 2003
Certain Income Tax exemptions in respect of Incapacity Benefit	Sections 663 and 664 ITEPA 2003
Class 2 NIC relief under certain conditions	Regulation 43(1) SSCR 2001

<i>Provisions relating to health and care</i>	Section 6
Exemption from tax for 'immediate needs annuities'	Section 725 ITTOIA 2005
Exemption from tax for accommodation provided to home care workers	Section 306A ITEPA 2003
Qualifying Care Relief for certain care workers	Sections 803-828 ITTOIA 2005
<i>Provisions relating to savings and investments</i>	Section 7
Inheritance Tax relief in respect of 'Pre-1981 Trusts' for disabled persons	Section 74 IHTA 1984
Inheritance Tax relief for certain trusts for disabled beneficiaries	Section 89 IHTA 1984
Inheritance Tax relief for certain self-settled trusts for disabled people	Section 89A IHTA 1984
Income and Capital Gains Tax relief for trusts with 'Vulnerable Beneficiaries'	Chapter 4, Finance Act 2005 – including formulae set out in Section 25 (Income Tax); Section 30 (Capital Gains); and Schedule 44 Finance Act 2013
Relief from tax in respect of certain employment-related securities	Sections 439(4) and 477(5) ITEPA 2003

2. Should there be a general disability Income Tax relief?

Introduction

Section 8 of Chapter 2 explained that many people with disabilities have to meet incremental costs as a result of those disabilities. Scope analysis summarised in that section suggested that existing benefit payments were not, on average, sufficient to meet these incremental costs. A number of authors²³⁸ have argued that disability-related costs may create asymmetries in 'ability to pay' in framing a personal Income Tax base.

²³⁸ See, for example, Seto and Buhai, n27; and Paragraph 201 of the Radcliffe Commission second report – see Chapter 3, Section 2.

The concept of some form of general disability-related Income Tax relief to help alleviate ‘costs of disability’ and better align ‘ability to pay’ has been raised on a number of occasions: Section 2 of Chapter 3 explained that Blind Person’s Allowance is an isolated relief which was introduced in 1962 following a number of parliamentary debates around the possibility of a general disability Income Tax relief following the Second Report of the Radcliffe Commission. These and other debates have highlighted a range of questions around whether, and to what extent, tax reliefs should be used to support people with disabilities with their ‘costs of disability’ by reducing their tax obligations and better aligning their ‘ability to pay’; or whether alternative forms of provision, such as the benefits system, can provide more targeted, or more equitable, forms of support²³⁹. Following comparative analysis, therefore, this section considers the case for a general disability Income Tax relief in the UK.

By way of background, Canada, Germany and the US offer income tax reliefs for people with disabilities – albeit that the nature and effect of those reliefs vary markedly. In the UK, for example, Blind Person’s Allowance sits alongside a range of benefit payments for people with disabilities. At a national level, Canada uses tax credits extensively alongside national and provincial welfare payments. In Australia, policy emphasis is focused on a personalised National Disability Insurance Scheme (‘NDIS’)²⁴⁰ which provides people with disabilities with a range of publicly-funded ‘supports’ to help meet their costs of disability and other costs to support participation.

²³⁹ As discussed in Chapter 1, Section 6 and n44, a number of disadvantages in using tax reliefs for social purposes have been identified in the ‘tax expenditure’ literature.

²⁴⁰ Considered further in Chapter 5.

Canada operates a Disability Tax Credit ('Credit for mental or physical impairment')²⁴¹ which Canadian Governmental guidance²⁴² describes as follows:

The DTC helps reduce the income tax that people with physical or mental impairments, or their supporting family members, may have to pay. It aims to offset some of the costs related to the impairment.

If the DTC total is more than the amount an individual owes on their taxes, the CRA will not refund the remaining amount of the credit.

Duff comments that²⁴³:

[In this respect], the disability tax credit can be likened to an additional personal exemption to recognize non-discretionary but difficult-to-itemize costs associated with a mental or physical disability.

The Disability Advisory Committee for the Canadian Revenue Agency ('DAC') emphasises the role of DTC in seeking to align 'ability to pay'²⁴⁴:

The credit is based on the assumption that these individuals likely incur a range of disability-related costs that they are not able to claim under the medical expense tax credit. The DTC also assumes that persons with severe and prolonged disabilities likely have their income-earning capacity negatively affected because of the extra time they must devote to their severely disabling condition. The purpose of this tax measure is to help persons with disabilities retain more from their work efforts.

In 2022, the maximum level of DTC was CAN \$8,870 (approximately £5,400), with a maximum supplement for persons under 18 of CAN \$5,174 (approximately

²⁴¹ Income Tax Act Division E, Subdivision A, section 118.3.

²⁴² See Canadian government guidance, 'What is the DTC', at:

< <https://www.canada.ca/en/revenue-agency/services/tax/individuals/segments/tax-credits-deductions-persons-disabilities/disability-tax-credit/about-dtc.html> > accessed 15 January 2023.

²⁴³ Duff, n22, at 836.

²⁴⁴ DAC, 2019 First Annual Report, Section 1, accessible at:

<https://www.canada.ca/en/revenue-agency/corporate/about-canada-revenue-agency-cra/disability-advisory-committee/2019-full-report.html#_Toc5712826> accessed on 12 March 2023.

£3,200)²⁴⁵. Eligibility – which is based upon ‘severe and prolonged impairment’²⁴⁶ – requires medical practitioner certification and, once confirmed, provides a basis for accessing other financial support at state, provincial or territorial levels (including Registered Savings Disability Plans – see Section 7 below)²⁴⁷. Unused levels of DTC are transferable to dependents, subject to various conditions²⁴⁸.

The nature and provisions of the DTC, including its administration, have been the subject of extensive commentary²⁴⁹, including by the DAC²⁵⁰. One feature of the DTC which has been challenged by a number of commentators²⁵¹ – including the DAC – is that it is a non-refundable credit against tax: there have

²⁴⁵ See Canadian government guidance ‘Disability Tax Credit (DTC) – Claiming the credit’, at:

<<https://www.canada.ca/en/revenue-agency/services/tax/individuals/segments/tax-credits-deductions-persons-disabilities/disability-tax-credit/claiming-dtc.html>> accessed 12 February 2023.

²⁴⁶ Income Tax Act, Division E, Subdivision A, section 118.3(1).

²⁴⁷ For Canadian government guidance in relation to the DTC and how it sits alongside other relevant provisions, ‘Tax credits and deductions for persons with disabilities’, see:

< <https://www.canada.ca/en/revenue-agency/services/tax/individuals/segments/tax-credits-deductions-persons-disabilities.html> > accessed 15 January 2023.

²⁴⁸ For Canadian Government guidance around transfers to dependents, ‘Disability amount transferred from a dependant’, see:

< <https://www.canada.ca/en/revenue-agency/services/tax/individuals/topics/about-your-tax-return/tax-return/completing-a-tax-return/deductions-credits-expenses/line-31800-disability-amount-transferred-a-dependant.html> > accessed 15 January 2023.

²⁴⁹ See not only, for example, Duff n22, but also Philipps, ‘Disability, Poverty, and the Income Tax: The Case for Refundable Credits’, *Journal of Law and Social Policy*, Volume 16, Article 4, 2001.

²⁵⁰ For details of the DAC’s work in relation to the Disability Tax Credit, see various reports on its website at:

<<https://www.canada.ca/en/revenue-agency/corporate/about-canada-revenue-agency-cra/disability-advisory-committee.html>> accessed on 12 March 2023.

²⁵¹ Duff, n22, at 834 at (4) – ‘The DTC should be made fully refundable...’

been suggestions that it should be a refundable amount. In their 2019 report²⁵², the DAC write:

The fact that the DTC is non-refundable means that it is of little or no value to Canadians who are too poor to pay income tax, except for any benefits resulting from the DTC being a gateway to other programs. Yet these individuals and households still must face high costs if they have a severe disability.

And:

A refundable tax credit, by contrast, not only reduces income taxes to 0, but also pays a benefit if the taxpayer deducts the value of the credit from taxes owing and has a negative balance. In other words, Canadians who are below the taxpaying threshold and have no other government debt would receive a refund from the federal government. A refundable DTC would provide some financial assistance to lower- and modest-income individuals with severe disabilities to help offset their disability-related costs.

Finally, in addition to commentary about its scope, the DTC has been the subject of controversy – with organisations encouraging claims in exchange for a share of the associated tax benefit: the Disability Tax Credit Promoters Restrictions Act was introduced in 2014 to ‘*limit the fees that can be accepted or charged, directly or indirectly, by a promoter who makes a disability tax credit request under the Income Tax Act on behalf of a claimant.*’²⁵³

Germany operates a flat-rate deduction for people with disabilities linked to their level of disability²⁵⁴, with – importantly - a further deduction for ‘exceptional costs’²⁵⁵. This needs to be seen in the context of a tax system with multiple

²⁵² DAC, n250.

²⁵³ For an analysis of the provisions, see Canadian government guidance, ‘Questions and answers to the Disability Tax Credit Promoters Restrictions Regulations’, at:

< <https://www.canada.ca/en/revenue-agency/services/tax/individuals/segments/tax-credits-deductions-persons-disabilities/disability-tax-credit/promoters-restrictions-regulation.html> > accessed 15 January 2023.

²⁵⁴ EstG 33(1).

²⁵⁵ EstG 33(1), (2) and (3).

deductions from personal taxes in a range of settings – not just in respect of people with disabilities²⁵⁶.

On the basis that it had not been increased for a number of years, the flat-rate deduction – *Behindertenpauschbetrag* – doubled in 2021 compared to 2020 as part of a package of reforms in relation to people with disabilities. The deduction is based on an individual's assessed level of disability (*Grad der Behinderung*) on a scale of 1-100: this needs to be medically certified. The rates from 2021 range in tiers from Euros 384 at a disability level of 20; to Euros 2,840 at a level of between 95 and 100. For severely disabled people, including blind and deaf people, the rate increases to Euros 7,400.

Importantly, although these are standardised flat-rate deductions, the German relief for 'exceptional expenses' can allow claims for itemised expenses, subject to eligibility criteria, where these exceed the flat-rate deductions: the combination of the 'personalisation' through the *Grad der Behinderung*; and the deduction for 'exceptional expenses' result in tax reliefs which are more tailored compared solely to 'round-sum' reliefs.

The US provides a Tax Credit for the elderly and permanently disabled²⁵⁷ - but not for all disabled people. This is a means-tested amount for people meeting a number of defined qualification criteria – as illustrated in the IRS charts overleaf²⁵⁸. Note that (i) in relation to retired claimants, there is a requirement for

²⁵⁶ Germany offers a very substantial range of tax deductions for private and employment-related expenses. A synopsis of deductions in English by 'Settle in Berlin' can be found at:

<<https://www.settle-in-berlin.com/tax-return-germany-steuererklaerung-english-for-foreigners/tax-deductions-germany/>> accessed 15 January 2023.

²⁵⁷ IRC s22.

²⁵⁸ Copied from IRS guidance, 'Credit for the Elderly or Disabled', at:

being *retired* 'on permanent and total disability'; and (ii) the relief is subject to income limits – set out in the subsequent table. The Credit is therefore not a generally-available tax relief for people with disabilities – but a means-tested amount available in certain defined circumstances.

Figure A. Are You a Qualified Individual?

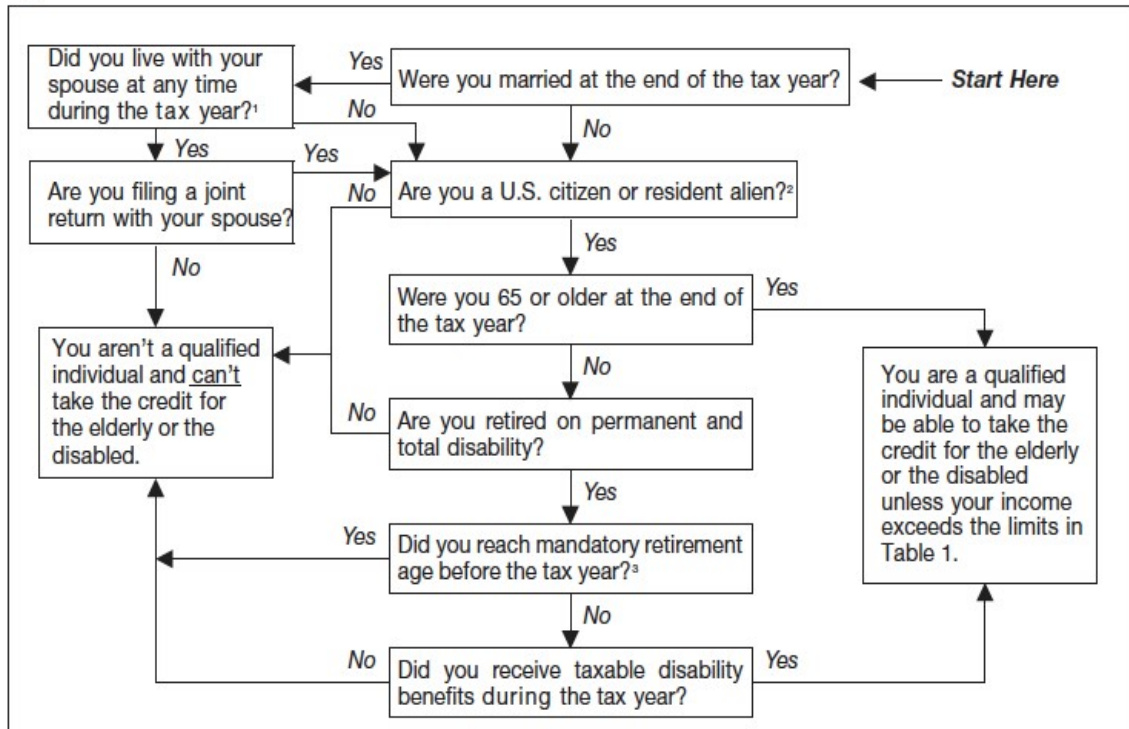


Table 1. Income Limits

IF your filing status is...	THEN, even if you qualify (see Figure A), you CAN'T take the credit if...	
	Your adjusted gross income (AGI)* is equal to or more than...	OR the total of your nontaxable social security and other nontaxable pension(s), annuities, or disability income is equal to or more than...
single, head of household, or qualifying widow(er)	\$17,500	\$5,000
married filing jointly and only one spouse qualifies in Figure A	\$20,000	\$5,000
married filing jointly and both spouses qualify in Figure A	\$25,000	\$7,500
married filing separately and you lived apart from your spouse for all of 2018	\$12,500	\$3,750

* AGI is the amount on Form 1040, line 7.

< <https://www.irs.gov/publications/p524> > accessed 15 January 2023.

Implications for the UK

By way of background, Section 2 of Chapter 3 explained that the concept of a general disability tax relief had been repeatedly rejected by Parliament. A summary of the objections to such a provision is contained in comments by Henry Brooke²⁵⁹ (amongst a detailed commentary around the concept of a relief):

These objections to the idea of a general tax relief [identified by the Second Report of The Radcliffe Commission] for the disabled remain as valid as ever. There are the difficulties about settling how far one is to go—if one goes at all— beyond relief for 100 per cent disablement; the difficulties of medical assessment; the essential fact that one ought not to enable people to have tax free benefits from more sources than one—that is to say, from a Finance Act provision and from a social service—and, behind it all, what I believe to be the general conviction of all of us that the primary way to help those who are disabled is by social benefits and not by the more artificial method of tax relief.

Brooke's objections broadly fall into three areas: defining and administering eligibility; potential duplication with other forms of public support; and the use of the benefits system as a preferable vehicle to tax reliefs.

Acknowledging Brooke's comments, this thesis contends that, at the heart of the answer to the question as to whether any form of disability-related tax relief is an appropriate means of assisting with 'costs of disability' lies the more fundamental question of what such a relief is seeking to achieve, and how this would align with other provision through the benefits system and public services²⁶⁰.

²⁵⁹ HC Deb 02 July 1962 vol 662 col 230.

²⁶⁰ See Weisbach and Nussim, n46, contending that systemic effectiveness in delivering policy objectives is important when considering the appropriate vehicle, such as the tax system, for doing so.

One case for a general tax relief to help mitigate ‘costs of disability’ is to balance more equally ‘ability to pay’²⁶¹ [tax] by reference to ‘costs of disability’ incurred in earning²⁶²: contextually, the historical analysis in Section 2 of Chapter 3 suggests that a core intent behind Blind Person’s Allowance was to alleviate additional costs incurred by sight-impaired people ‘earning a living’ – and this is reflected in the present legislation governing the allowance in Scotland and Northern Ireland²⁶³. However, such non-specific, general reliefs arguably still suffer from equity issues – in that many disabled people may not earn income above the Personal Allowance threshold (albeit, they pay no tax); and some may benefit from a general relief at higher rates where their costs of disability are lower than the level of the relief: put simply, general tax reliefs may provide untargeted support to those who are least in financial need.

If the purpose of a tax relief would be to help *all* disabled citizens²⁶⁴ – not just those who earn or pay Income Tax - meet a proportion (or all) of their general

²⁶¹ Seto and Buhai, n27 and n238.

²⁶² In an analysis of the tax treatment of commuting expenses, Dagan argues that the boundary between personalised and work-related expenses can be artificial when considering tax reliefs. Whilst acknowledging this view, this thesis has sought to consider how recompense for disability-related costs is best allocated as between tax reliefs and the benefits system. See: Dagan, ‘Commuting’, 26 VA. TAX REV. 185- 207, 220-245 (2006).

²⁶³ Section 38(3) ITA 2007 states that (candidate underlining for emphasis):

‘The second condition is that—

(a) the individual is ordinarily resident in Scotland or Northern Ireland, and

(b) because of the individual's blindness, the individual is unable to do any work for which eyesight is essential.’

²⁶⁴ In their paper, ‘Questioning Market Aversion in Gender Equality Strategies: Designing Legal Mechanisms for the Promotion of Gender Equality in the Family and the Market’, 2018, Cornell Journal of Law and Public Policy: Vol. 27: Issue 3, Article 9, Shamir, Dagan and Carmelli write at 729:

‘A key element that shapes the consequences and effects of any given policy is whether the mechanism targets only low income families, using income tests, or whether it applies

'costs of disability', then this thesis argues that the UK benefits system, rather than the tax system, is a more appropriate vehicle for achieving this objective.

This is not to say that the benefits system currently addresses 'costs of disability' in full – the Scope analysis suggests that it does not²⁶⁵. But that does not seem to be a reason to use the tax system for general support around costs of disability in addition to benefits - noting that tax reliefs require further administration and compliance when people may already be engaged with the benefits system as a single point of contact with public provision.

Even if a general Income Tax relief were to be considered, given the variety of disabilities and their implications, a universal 'round sum' tax relief does not seem appropriate and any relief should be 'personalised' as far as practically possible along the lines of the German *Grad der Behinderung* system. Whilst the *Grad der Behinderung* system seeks to achieve a tailoring based around the severity of disability, to implement such a detailed system broadly in the UK would likely require very substantial investment²⁶⁶. To make that investment *only* to

universally so that all members (however defined) of society will be equally entitled to the same treatment regardless of economic need.'

²⁶⁵ Scope, n130.

²⁶⁶ There is an existing system for assessing disability on a scale of up to 100% under the Industrial Injuries Scheme – see UK Government, 'Industrial Injuries Disablement Benefits: technical guidance', at:

<<https://www.gov.uk/government/publications/industrial-injuries-disablement-benefits-technical-guidance/industrial-injuries-disablement-benefits-technical-guidance> > accessed 4 February 2023.

Under 'Degree of disablement', this states that:

'Your disablement is assessed as a percentage up to 100%.

The degree of disablement for certain defined injuries is laid down in the Regulations. For example, for serious disablement such as loss of both hands or loss of sight the degree of disablement is 100%, for the loss of one hand it is normally 60%, and for the loss of an index finger it is usually 14%. The percentages listed in Regulations for different disablements is in Appendix 2. (Legislation (33) - SS (Gen Ben) Regs 1982 Sched 2).'

support some form of tax relief would clearly require a strong case for implementation²⁶⁷.

In summary, this thesis contends – in line with Brooke’s comments - that the tax system should not use a general ‘round sum’ disability allowance against an individual’s Income Tax base as a means of addressing general ‘costs of disability’.

Relief for exceptional disability-related expenses

Although there does not appear to be a compelling case for expanding the use of the UK tax system to provide a general ‘round sum’ disability allowance given the existing routes for support through the benefits system and the other factors mitigating against such a relief, there does remain a question as to whether some form of relief for ‘exceptional’ disability-related expenses connected with specific costs which are not addressed by other forms of public provision might be appropriate – noting the Scope analysis of additional costs faced by people with disabilities summarised in Section 8 of Chapter 2. In Germany, subject to eligibility criteria, such relief is given through the tax system – which operates in parallel with the benefits system.

Although such an arrangement might assist in helping people with disabilities better meet their ‘costs of disability’ – thereby improving horizontal

The degree of disablement for injuries not listed in the Regulations is arrived at by comparing them with these standards.’

²⁶⁷ A point made by Brooke at HC Deb 02 July 1962 vol 662 col 229:

‘Therefore, for any general relief far the disabled, one would have to inaugurate a system of specialist medical examinations of a great many people who would claim the new tax relief because of a disability not arising out of war, and not arising out of industrial injury.’

equity with non-disabled taxpayers - it would inevitably be the subject of HMRC discretion in the agreement of qualifying expenditure; and would have greater value to wealthier taxpayers if the expenses were deductible at higher marginal rates – albeit, they pay higher levels of tax. If such an arrangement was implemented through the tax system to mitigate – in whole or in part – certain ‘costs of disability’ which non-disabled taxpayers do not have to meet, then it would seem that that a full credit against tax, rather than just a deduction from the tax base, would be appropriate: unless the tax credit was a refundable credit applicable to non-taxpayers as well as taxpayers, it could be of limited value to people on low incomes (similar to the Canadian DTC). Given that this would result in further complexity through ‘parallel systems’, the benefits system would seem to be a better vehicle for delivering this support.

Issues associated with specific tax reliefs for health and care-related expenses are discussed in Section 6 below.

3. Blind Person’s Allowance

The government statistics in Chapter 2²⁶⁸ showed that some 36,900 people were estimated to have claimed Blind Person’s Allowance in 2021-22 at a cost of some £20 million. This implies a claimant rate of some 11% of the number of registered blind and partially sighted people in the UK²⁶⁹.

²⁶⁸ Chapter 2, Section 4.

²⁶⁹ The NHS suggests that some 340,000 people are registered as blind or partially sighted: see ‘Blindness and vision loss’, at:

< <https://www.nhs.uk/conditions/vision-loss/> > accessed 15 January 2023.

In 2023/24, the Allowance - an additional personal allowance to be offset against taxable income - is £2,870²⁷⁰. This level of allowance leads to an effective tax saving at an Income Tax rate of 20% of £574; and at 40%, £1,148. Compared to its level of £2,320 in 2017/18, it has risen at a compound rate of just over 3.5% per annum over six fiscal years. Eligibility is by reference to being registered as 'severely sight impaired' in England and Wales – but *'because of the individual's blindness, the individual is unable to do any work for which eyesight is essential'* in Scotland and Northern Ireland²⁷¹.

Research has not identified any specific, up-to-date schedule of incremental costs a blind person might incur to inform the basis of the allowance: it seems to be a round-sum allowance, progressively indexed over time. Section 2 of Chapter 3 outlined its evolution as a targeted relief following the Second Report of the Radcliffe Commission - when the concept of a general disability tax relief recommended by the Report had been rejected by Parliament.

Although it appears to have been a relief to assist with costs of sight impairment associated with earning, from a current policy perspective the Blind Person's Allowance seems problematic, both in terms of sight impairment being the only specific disability qualifying for such a relief; and for reasons of vertical equity, noting that it is of more value to higher rate taxpayers. Further, the Allowance has a provision in section 38 ITA 2007 allowing any unused amount to be transferred to a spouse or civil partner – who may not be severely sight

²⁷⁰ See UK Government, 'Blind Person's Allowance – What you'll get', at:

< <https://www.gov.uk/blind-persons-allowance/what-youll-get> > accessed 16 August 2023.

²⁷¹ Section 38(3) ITA 2007, n280.

impaired themselves. If both parties to the relationship are severely sight impaired, then they are both entitled to a full allowance.

In Chapter 2 of their March 2011 Final Report on the Review of tax reliefs²⁷², the OTS made the following comments about Blind Person's Allowance:

4.16. *The blind person's allowance is an additional allowance for individuals who are certified blind or severely sight impaired. The relief is not used by the majority of blind people as they do not earn sufficient income and there may be better ways to assist those with a visual handicap.*

4.17. *However, we recommend not abolishing this relief until an alternative and equivalent funding route is put in place.*

These comments emphasise that the allowance is clearly only of value to qualifying people with incomes above the Personal Allowance threshold. This may reflect the original policy intent as, when originally introduced in 1962, a Parliamentary debate²⁷³ illustrates a then emphasis on the reasoning for the allowance as a basis to support working blind people (candidate underlining for emphasis):

The House will appreciate that the people most likely to benefit from the provisions of the new Clause are blind persons who are seeking, despite their disability, to earn their living in the open market, so to speak - blind men and women who are earning their living as teachers, musicians and in other walks of life which, with great courage, they have managed to lay open for themselves.

The LITRG have provided both a historical synopsis, and a critique, of the allowance²⁷⁴, commenting that:

²⁷² OTS, Review of tax reliefs, n199, Section E of the report.

²⁷³ HC Deb 2 July 1962, vol 662, cols 227-231.

²⁷⁴ LITRG, n50, at 2.4.11 and 2.4.12.

2.4.11 *From the above we conclude that the BPA:*

- *adds complexity to the tax system being one of the very few allowances now remaining after a deliberate drive to eliminate tax allowances for social purposes;*
 - *is a misunderstood allowance and restrictive in its application – for example, it is not given to all those with significantly impaired sight, but only to those who are ‘registered’ (who in turn do not need to be blind, or without sight, in lay terms)*
 - *provides the most financial help to those who need it least and is not related to actual need;*
 - *as a tax allowance is out of reach of the majority of the blind population.*
- i. *If it is intended to give extra cash help to blind people on the grounds that they as a group are particularly prone to be on low incomes, it would surely be better to redistribute the funds for their benefit within the social security or tax credits systems, thereby at least ensuring that they reached those who are in the greatest financial need.*

In addition to the allowance seeming problematic from an implementation and equity perspective, it also requires a claim – although the Government website implicitly acknowledges the problems of sight impairment by providing HMRC telephone details to make a claim²⁷⁵. Notwithstanding these limitations, the provision has remained stable and seems robust to avoidance on the basis of the eligibility requirements²⁷⁶.

In summary, Blind Person’s Allowance seems to be a provision whose overall effectiveness is questionable; and which – as the LITRG observe – might be better replaced by a targeted benefit or grant. It seems unusual to have differing qualification criteria in England and Wales, and Scotland and Northern Ireland.

²⁷⁵ See UK Government guidance, ‘Blind Person’s Allowance - How to claim’, at:

< <https://www.gov.uk/blind-persons-allowance/how-to-claim> >, accessed on 15 January 2023.

²⁷⁶ Income Tax Act 2007, s38(2).

A cash allowance, calculated by reference to a defined framework of costs, and claimable upon meeting certain criteria, would seem a more coherent, effective and equitable alternative – such to the national variations for eligibility. However, this would not be without its cost: if illustratively 340,000 sight-impaired people were provided with an annual grant of, say, £500, the incremental cost to the government – by reference to the recent annual cost of Blind Person's Allowance of £20 million - would be of the order of £150 million. This would likely raise the question as to why, building on one of the normative principles in Section 7 of Chapter 1, there was positive discrimination in favour of people with sight-related disabilities when compared to those with other disabilities – in turn stimulating debate around whether equivalent support should be provided for non-sight-related disabilities.

In summary, whilst Blind Person's Allowance seems only to have limited effectiveness, the cost of alternatives – however justifiable - may in practice mitigate against change given the associated cost and political saliency.

Comparative analysis

Comparative analysis reveals a number of different approaches to targeted allowances for blind people – but does not reveal any compelling case for maintaining the existing UK Blind Person's Allowance in its present form.

Section 63 of the US IRC provides for an additional deduction (presently \$US600) for blind people. In Germany, EStG 33b provides for a graduated flat rate deduction for disabled people, including blind people - but this is in the nature of a relief in respect of a broad range of disabilities rather than a targeted relief for blind people. Interestingly, the precursor to the present Canadian Medical

Expenses Tax Credit and Disability Tax Credit was, as Duff explains²⁷⁷, an allowance introduced during the Second World War for people who were totally blind in any one year (since rescinded). Duff explains the original concept behind the quantum of the allowance²⁷⁸:

Although the deduction did not require blind persons to itemize particular expenses associated with their disability, the provision was justified on the grounds that it recognized ‘the additional expenses’ that blind persons are required to incur.

4. Council Tax and Rates reliefs

Introduction

There are four specific Council Tax reliefs relating to people with disabilities - the ‘Band Reduction Scheme’; the exemption for severe mental impairment; the exemption for annexes for dependent relatives (in England and Wales); and the ‘disregard’ in relation to qualifying carers. Separately, there is a specific relief from Rates in Northern Ireland.

Whilst the Council Tax reliefs are set in relevant legislation, their specific financial effects vary from council to council depending on locally-set rates of tax. Importantly, the architecture of certain of the reliefs may mean that the person benefiting from them may either be the disabled person or, if different, the person responsible for paying Council Tax²⁷⁹. Note that the property valuations upon

²⁷⁷ Duff, n22, at 826.

²⁷⁸ Duff, n22, at 826.

²⁷⁹ See UK Government guidance ,‘How Council Tax works, Discounts for disabled people’, at:

< <https://www.gov.uk/council-tax/discounts-for-disabled-people> > accessed on 12 March 2023.

which Council Tax bands are based are now out of date – but this is a broader issue than one specifically related to disability²⁸⁰.

The nature of the reliefs vary: the ‘Band Reduction Scheme’ effectively mitigates tax in respect of additional space required due to a disability – eliminating what would otherwise be a ‘cost of disability’. The severe mental impairment discount appears to provide relief in relation to people whose impairment may mean that they cannot work. The exemption for annexes for dependent relatives (in England and Wales) effectively creates a symmetry with the Council Tax position of care home residents where a person lives in a relative’s property. The ‘disregard’ for qualifying carers mitigates Council Tax costs in relation to carers providing substantial levels of care.

Candidate analysis in Appendix 2 suggests that – notwithstanding the value to those claiming them – these tax reliefs represent a modest proportion of the total value of tax reliefs in respect of people with disabilities.

Comparative analysis – municipal tax reliefs

A number of countries in the comparative analysis offer relief from municipal or property taxes for people with disabilities – although these can be regionally-specific or limited in scope.

For example, Sydney (Australia) offers a 100% rebate on rates and charges for people holding Department of Veterans’ Affairs concession card where they are ‘considered totally and permanently incapacitated under the

²⁸⁰ See UK Government, ‘How domestic properties are assessed for Council Tax bands’, at:

< <https://www.gov.uk/guidance/understand-how-council-tax-bands-are-assessed> > accessed 17 August 2023.

law²⁸¹. In Canada, disability exemptions for municipal property taxes seem to be territory-specific: for example, Alberta does not seem to offer exemptions for people with disabilities²⁸² whereas the Northern Territories do²⁸³. Germany does not seem to offer any blanket exemptions in respect of *Grundsteuer* – property tax - rates of which are locally set. An exemption in the *Grundsteuergesetz* (the Property Tax Act) for war-disabled people is being phased out by 2024²⁸⁴. In the US, property tax exemptions for people with disabilities seem to be state-specific²⁸⁵.

In summary, comparative analysis does not seem to reveal any discernible pattern or compelling alternative reliefs. Against this backdrop, the effectiveness of the individual provisions is evaluated below.

²⁸¹ For details, see City of Sydney, 'Apply for a pensioner rebate on rates', at:

< <https://www.cityofsydney.nsw.gov.au/rates/apply-pensioner-rebate-rates> > accessed 21 January 2023.

²⁸² The principal legislation is the Municipal Government Act 2000, with Part 9 dealing with property assessment and Part 10 Taxation with Division 2 Property Tax. Tax rates are set by bylaws. See:

<<https://www.canlii.org/en/ab/laws/stat/rsa-2000-c-m-26/latest/rsa-2000-c-m-26.html>> accessed on 12 March 2023.

²⁸³ For details, see Government of Northern Territories, Municipal and Community Affairs, 'Property Assessment and Taxation', at:

< <https://www.maca.gov.nt.ca/en/services/seniors-and-disabled-persons-propertytax-relief> > accessed 21 January 2023.

²⁸⁴ The candidate is grateful to former student Emmanuel Benning for this clarification.

²⁸⁵ For an example from Washington state, see Department of Revenue, Washington State, 'Property tax exemptions and deferrals', at:

<<https://dor.wa.gov/taxes-rates/property-tax/property-tax-exemptions-and-deferrals>> accessed 21 January 2023.

Council Tax ‘Band Reduction Scheme’ – effectiveness evaluation

The policy intent behind the Council Tax Band Reduction Scheme seems equitable – to ensure that people with disabilities, or those providing accommodation to them, are not unduly taxed on additional space needed as a result of those disabilities. This seems consistent with non-discrimination through taxation and, therefore, with one of the normative principles set out in Section 7 of Chapter 1.

The relief arises where, very broadly, an extra room, or space for a wheelchair, is needed to accommodate the needs of a person with a disability. It is a relief requiring a written application to the relevant local authority. Crucially, there is a statutory ‘overrider’ in Regulation 3 of the Council Tax (Reductions for Disabilities) Regulations 1992, SI 1992/554, which incorporates some subjectivity; and which has been the subject of various decided cases²⁸⁶ – and ultimately involves agreement by a local authority:

(2) For the purposes of paragraph (1), and subject to paragraph (3), references to anything being required for meeting the needs of a qualifying individual are references to its being essential or of major importance to his well-being by reason of the nature and extent of his disability.

The statutory definition of a ‘qualifying individual’²⁸⁷ for the purposes of the scheme is a person who is ‘*substantially and permanently disabled (whether by illness, injury, congenital deformity or otherwise)*’. Whilst a question might arise as to why a disability needs to be substantial and permanent, these qualifications do emphasise that the relief is only provided where there is a long-term need for the additional space – arguably mitigating avoidance risks.

²⁸⁶ See Chapter 3, Section 6. Candidate underlining for emphasis.

²⁸⁷ Regulation 1 of The Council Tax (Reductions for Disabilities) Regulations 1992 (SI 1992/554).

Depending on their means, the relief may make a meaningful difference to taxpayers. The relief mechanism – a reduction in a Council Tax bill – is, once granted, financially convenient. However, the principal challenges with the relief seem to be around definition and implementation – including whether a room is ‘essential’ or of ‘major importance’. In a September 2022 response to a Welsh Government consultation in relation to Council Tax²⁸⁸, as one of a number of comments (including in relation to property valuations being out-of-date), the LITRG identified a number of definitional issues relating to the relief and queried, for example, whether the intermittent use of a sensory room would qualify²⁸⁹. Further, the LITRG observed that the scheme may be regressive²⁹⁰:

We think the tests [for the band reduction scheme] generally and the way the reduction is applied regressively (a band reduction provides more relief for houses in higher bands) are in need of review and reform to better reflect the needs of disabled persons and the policy intent.

The LITRG also commented around consistency of implementation²⁹¹:

As part of any reform, it will be necessary to consider the Equality Act 2010 and how it interacts with the local taxation. Any rules should be applied uniformly across all 22 local authorities [in Wales] and if there is a discretionary approach then it should be supported through monitoring and clear guidance.

Notwithstanding the LITRG’s concerns around regressivity, absent tailored alternatives – which could be costly to implement and risk significant disputes - it

²⁸⁸ LITRG, ‘A Fairer Council Tax: Response by the Chartered Institute of Taxation and its Low Incomes Tax Reform Group’, 30 September 2022, available at:

<https://www.litrg.org.uk/sites/default/files/220929%20A%20Fairer%20Council%20Tax%20%28Wales%29%20-%20joint%20CIOT%20and%20LITRG%20response.pdf> > accessed on 5 March 2023.

²⁸⁹ LITRG, n288, at 8.

²⁹⁰ LITRG, n288, at 8.

²⁹¹ LITRG, n288, at 8.

seems difficult to envisage a better alternative statutory definition for a measure which aims to relieve Council Tax in respect of a need for necessary incremental living space as a result of disability. Nonetheless, as for the severe mental impairment discount discussed below, and in line with the LITRG's comments, consistency of implementation between authorities seems key.

Council Tax discount in respect of severe mental impairment – effectiveness evaluation

Under this provision, people with a qualifying (and certified) severe mental health impairment and who are claiming certain benefits are entitled to a Council Tax discount, saving them from a tax cost (the level of discount varies from 100% to 25% depending on the other occupants, if any, at the property). This is one of a number of Council Tax discounts given to various categories of people who are principally on low incomes²⁹². Nonetheless, the arguments around potential regressivity of the discount advanced by the LITRG in relation to the Band Reduction Scheme apply to this discount where given in relation to more expensive properties.

By way of recap, the statutory definition of severe mental impairment in section 2(2) of Schedule 1 to the Local Government Finance Act 1992 is: *'For the purposes of this paragraph a person is severely mentally impaired if he has a severe impairment of intelligence and social functioning (however caused) which appears to be permanent.'* It seems likely that many people eligible for this discount could be unable to work and so the discount may represent a material

²⁹² For a UK Government synopsis of categories of eligibility for Council Tax discounts, see 'How Council Tax works – Who has to pay', at:

< <https://www.gov.uk/council-tax/who-has-to-pay> > accessed 23 January 2023.

financial saving unless they are eligible for other reliefs in any event. However, based on an in-depth survey carried out in 2017 by Good, Nowotny, French and Dougall²⁹³ the implementation of this provision seems to have been highly problematic. A summary of the report is reproduced below²⁹⁴:

The key findings from our investigation, which included data obtained under the Freedom of Information Act from 265 councils, a mystery-shopping exercise across 100 councils and separate mystery shopping of some of the councils with the highest and lowest uptake, are:

- ***This is a postcode lottery.*** We found a staggering difference in the proportion of households claiming the discount in different areas. Uptake in Renfrewshire is 77 times higher than just 40 miles away in East Ayrshire – which is unlikely to be accounted for by demographic differences alone.
- ***Two-thirds of councils provided incorrect information.*** During the mystery-shop exercise, council tax staff were unable to clearly explain to the MSE 'applicant' the criteria for eligibility or how to submit a claim for the discount.
- *Five call handlers were unaware of the existence of the SMI discount, with some confusing it for a means-tested benefit.*
- *Sixty-nine out of 100 gave out some form of incorrect information – eg, that the form to make a claim was not available online, even though it was, or that the claimant needed to be in receipt of rather than just eligible for certain benefits – potentially deterring someone from making a claim in the first place.*
- *Just a quarter (26) provided advice that was completely correct.*
- ***There is some correlation between low uptake and poor information.*** In a second mystery shop, 35% of the councils with the

²⁹³ Good, Nowotny, French and Dougall: 'The Disregarded Discount: MoneySavingExpert.com report into the 'Severely Mentally Impaired' SMI Council Tax Discount', September 2017, available at:

https://images6.moneysavingexpert.com/images/documents/SMI_report-2017_final-interactive.pdf?_ga=2.161572217.430383936.1674323396-531255118.1674323394&_gl=1*7q9dz*_ga*NTMxMjU1MTE4LjE2NzQzMjMzOTQ.*_ga_X74CWQS9F0*MTY3NDMyMz5My4xLjEuMTY3NDMyMzUxMS41OS4wLjA. > accessed 23 January 2023.

²⁹⁴ The summary, 'Revealed: Councils overcharging 10,000s who are 'severely mentally impaired'', is provided by moneysavingexprt.com at:

<https://www.moneysavingexpert.com/news/2017/09/revealed-councils-overcharging-10000s-who-are-severely-mentally-impaired/> > accessed 23 January 2023.

highest uptake of the SMI discount correctly told the 'applicant' how to make a claim, vs just 5% of the councils with the lowest uptake.

- ***It is likely up to 100,000 people are missing out.*** *There are no official figures for how many potential claimants are failing to receive the SMI discount. Our back-of-the-envelope calculations suggest it is up to 100,000 people – but the Government needs to urgently carry out an assessment of how many people could be eligible.*

The report makes a series of recommendations for improvements²⁹⁵ - both to central and devolved governments and to local authorities: at the heart of a number of these recommendations is standardisation and simplification of application processes.

Following the publication of the report, the moneysavingexpert.com website on which it was originally published has provided a number of examples of successful applications for refunds by carers looking after people with severe mental impairments²⁹⁶. The website also comments that the Welsh Government have adopted its recommendations in full²⁹⁷:

'...the Welsh Government and all 22 Welsh local authorities agreed to make every change we called for...This means the application form for the discount has been standardised across the country, and backdating is allowed by EVERY council in a standardised way.'

Based on the results of the survey – and acknowledging that the report is more than five years old and improvements (such as those made by the Welsh

²⁹⁵ Good, Nowotny, French and Dougall, n293, at 24.

²⁹⁶ See, for example, moneysavingexpert.com, 'Couple get 'severe mental impairment' council tax discount back dated TEN years after appeal – how to fight for a backdated payment', at:

< <https://www.moneysavingexpert.com/news/2021/03/couple-get--severe-mental-impairment-discount-backdated-by-ten-/> > accessed 12 February 2023.

²⁹⁷ See moneysavingexpert.com, 'How to claim the "severely mentally impaired" council tax discount', updated 25 April 2023, at:

<<https://www.moneysavingexpert.com/reclaim/severe-mental-impairment-dementia-council-tax-rebate/>>

Government) have been made since - the effectiveness of this provision seems limited by the way in which it is implemented by a number of local authorities: it requires an application to a local authority by or on behalf of the person with a severe mental impairment – which in turn requires knowledge of the available discount.

In summary, the effectiveness of this provision seems mixed. On the one hand, it provides direct savings in relation to people with substantial disabilities (and, once in place, is therefore financially convenient); depending on circumstances, it may make a meaningful difference; and – given the requirement for certification – it seems robust to avoidance by taxpayers. On the other hand, its greater value in relation to higher value properties may lead to equity concerns; and based on the survey referred to above, it seems far from universally effective in its application and implementation: possible options for reform are considered below.

Council Tax – exemption in respect of annexes for dependent relatives

This relief provides an exemption for Council Tax in England and Wales where an elderly or disabled person lives in – broadly - an annexe to a property.

From a policy perspective, this measure seems to provide some symmetry with the treatment of people in care homes: care homes are not subject to Council Tax in respect of their residents (but may be in respect of staff living on site)²⁹⁸. The provision also allows for people to receive care close to relatives, recognising that the costs of care home fees can be very substantial.

²⁹⁸ See Schedule 1, Section 7, of The Local Government Finance Act 1992; and Regulation 2, Class A, The Council Tax (Liability for Owners) Regulations 1992, SI 1992/551.

The provision seems to be effective on the basis that it is convenient – the exemption is provided ‘at source’; and seems to be the best vehicle for alleviating what would otherwise be a tax cost. Subject to taxpayer circumstances, it makes a meaningful difference; and it is equitable – removing a cost obligation in respect of a person with a disability and creating a symmetry with the treatment of residents in care homes.

The legislation is clear and, from a sample review, is clarified by online local authority guidance. Subject to updates to reflect, for example, civil partnerships, the legislation has remained stable.

Council Tax – disregarding certain qualifying carers

This relief results in certain carers being ‘disregarded’ in England for the purposes of calculating Council Tax in respect of a dwelling. Both categories of carer in legislation need to be resident at the property for minimum periods (35 and 24 hours per week). The ‘disregard’ needs to be applied for.

The thesis notes that the earnings limit at £44 per week for employed carers seems very modest, although does not seek to comment on this, save for observing that any limit should not unduly limit the intended application of the relief. More broadly, the criteria for the ‘disregard’ are clear and the relief – ‘disregard’ or discount - results in a cost mitigation in relation to qualifying ‘informal carers’ or employed carers on very modest incomes. Subject to periodic statutory amendments in relation to earning levels and the levels of benefits needed to be claimed by the person being cared for, the relief has been stable. Once granted, the disregard is provided at source and so is financially convenient.

Rates discount: Northern Ireland

Northern Ireland provides a discount from rates in respect of a household where a person living in the household suffers from a disability and, broadly, additional space is required as a result of that disability. The relief (i) provides a fixed 25% discount – rather than a band reduction (with the same potential regressivity issues as the Band Reduction Scheme); and (ii) explicitly references mental disorders in relation to the definition of disability – whereas the legislation underpinning the Band Reduction Scheme does not. A question arises as to whether the legislation governing eligibility for the Band Reduction Scheme might also incorporate a specific provision governing mental impairments.

Conclusions in relation to Council Tax reliefs

In contrast to tax reliefs such as the Blind Person's Allowance – or any form of similar general disability tax relief – subject to any regressivity in relation to people living in more expensive properties, Council Tax reliefs offer savings to all eligible taxpayers, irrespective of means, resulting in a direct cash saving of tax delivered 'at source'.

The basis of the reliefs seems consistent with appropriate roles for a tax system – whether mitigating a tax 'cost of disability' (the Band Reduction Scheme); providing financial support through tax alleviation in respect of people whose disability may limit their earnings potential (the severe mental impairment discount); or mitigating tax costs where a person receives significant levels of care – including by relatives at home. Comparative analysis does not provide a compelling alternative system of municipal tax relief.

Subject to arguments around regressivity, the challenges with two of the reliefs in particular – the Band Reduction Scheme and the discount in respect of severe mental impairment – derive principally from their implementation. In the case of the Band Reduction Scheme, the legislative definitions for eligibility place a strong emphasis on local authority discretion – for example, whether additional space in a dwelling is ‘essential’ or of ‘major importance’. In the case of the discount for severe mental impairment, the Good, Nowotny, French and Dougall²⁹⁹ survey illustrates a (then) broad range of issues arising from the application of this relief in practice.

Candidate estimates of the annual total financial cost of the Band Reduction Scheme of some £30 million, when coupled with the size of individual claims (estimated by the candidate to be of the order of £230 each on average), raise the question as to whether there could be a more streamlined and objective way of helping people meet this residential space-related ‘cost of disability’. Finding an alternative to this relief seems challenging: the Northern Ireland Rates reduction illustrates the possibility of providing a single discount for both physical and mental impairments – albeit that, similar to the Band Reduction Scheme, eligibility for the discount is based broadly around a need for extra space.

Separately, the case for adapting the application process in respect of the severe mental impairment discount to address the associated implementation issues seems compelling – recognising that changes have been made by the Welsh Government. Beyond the standardisation and other recommendations made in the Good, Nowotny, French and Dougall³⁰⁰ report, a question arises as

²⁹⁹ Good, Nowotny, French and Dougall, n293.

³⁰⁰ Good, Nowotny, French and Dougall, n293.

to whether it might be possible – subject to further research – to address the challenges arising by putting in place a register to be maintained by local authorities, confirmed annually by GP practice data, of people with severe mental impairments within the catchment. The existing Council Tax legislation requires medical certification of severe mental impairment in any event: section 2(1)(b) of the Local Government Finance Act 1992 requires that people claiming the relief have a ‘*certificate of a registered medical practitioner to have been or to be likely to be severely mentally impaired*’. Council Taxpayers at addresses living with people on that register would be required to confirm periodically that, amongst other matters, they – or, if not the taxpayer, a person living with them – were severely mentally impaired; and the discount would be applied automatically without the need for application to the Local Authority. Clearly, there would need to be notification provisions upon any change of address.

5. Provisions relating to benefit payments

There are a range of benefits available to people with disabilities and those who care and provide for them³⁰¹: most of these are paid tax-free with the exception of Carer’s Allowance. Other than in respect of ‘earnings’³⁰², Carer’s Allowance is not means-tested and so recipients may otherwise benefit from substantial investment income which are not ‘earnings’.

³⁰¹ A UK Government synopsis, ‘Financial help if you’re disabled’, is provided at:

< <https://www.gov.uk/financial-help-disabled/disability-and-sickness-benefits> > accessed 20 February 2023.

³⁰² See Government guidance, ‘Carer’s Allowance’, ‘Your eligibility’, at:

< <https://www.gov.uk/carers-allowance/eligibility> > accessed 23 January 2023.

The exemption of certain benefit payments from tax has the effect of providing an identified 'after-tax' amount; and avoids the need for undue tax administration. Any tax implications can be 'priced in' by the state to the net award. A question arises as to whether this leads to progressivity issues: extracts from an Office of National Statistics ('ONS') table setting out the distribution on an illustrative 'per household' basis of a number of disability-related benefits for 2019/20 is set out overleaf – noting that Disability Living Allowance and Severe Disablement Allowance are being replaced by other benefits.

Average incomes, taxes and benefits of ALL households by decile group, 2019/20

	Decile groups of all households ranked by equivalised household disposable income										
	Bottom	2nd	3rd	4th	5th	6th	7th	8th	9th	Top	All households
Number of households in the population ('000s)	2,876	2,910	2,981	2,931	2,881	2,878	2,840	2,823	2,768	2,648	28,535
Attendance allowance	11	44	149	151	151	152	96	70	52	14	89
Disability living allowance	91	159	255	324	245	278	211	99	57	43	176
Personal independence payment	208	302	386	647	621	455	292	155	122	41	323
Severe disablement allowance	-	3	7	5	17	14	8	6	2	-	6
Equivalised gross income	10,448	17,845	23,204	27,641	32,356	38,476	45,920	55,178	68,657	138,651	45,837

Source: Office of National Statistics³⁰³

³⁰³ ONS – data extracted from spreadsheet at ‘Average incomes, taxes and benefits of all households by income decile group from financial year ending 2018 to financial year ending 2020, UK,’ at:

<https://www.ons.gov.uk/peoplepopulationandcommunity/personalandhouseholdfinances/incomeandwealth/adhocs/12809averageincomestaxesandbenefitsofallhouseholdsbyincomedecilegroupfromfinancialyearending2018tofinancialyearending2020uk> > accessed 23 January 2023.

The table above shows the average amount of specified benefit claimed per household in 2019/20 in each decile of equivalised household disposable income. In 2019/20, the higher rate of Income Tax was payable for taxable incomes in England between £37,500 and £150,000. Whilst it might appear that a number of taxpayers in the higher rate band benefited from the exemption of the benefits listed from Income Tax, the precise impact will depend on each taxpayer's and household's circumstances: for example, some households may have relatively high incomes – whereas a disabled householder member may have very limited income. It therefore is challenging to conclude whether the tax exemption results in material progressivity issues.

Even if people on comparatively high incomes were benefiting from the tax exemption on various disability-related benefits, allowances such as PIP and Attendance Allowance are not means-tested in any event. There is an argument that, given these are amounts designed to address 'costs of disability', to reduce their effect through taxation (varying according to taxpayer circumstances) could be discriminatory – and inconsistent with the normative principles set out in Section 7 of Chapter 1.

Comparative analysis shows that other countries operate varying systems for exempting benefits from tax: in Australia, for example, section 52-10 of the Income Tax Assessment Act 1997 exempts wholly or partially a range of social security payments. In some cases, just a 'supplementary amount' is exempt: section 52-15 prescribes a range of 'supplementary amounts' including, for example, rental assistance and 'pharmaceutical allowance'.

The Canadian national disability benefits system is orientated around the contributory (and taxable³⁰⁴) Canada Pension Plan which includes provisions for early retirement due to disability; and, where relevant, benefits for children. Further welfare support is provided provincially.

In the US, social security benefits other than Supplemental Security Income are taxable if the taxpayer's individual or joint income, including half their benefits, exceeds prescribed limits³⁰⁵ – effectively providing a means testing to part of the payments which, for many (but not all) UK benefits, takes place in the benefit eligibility and award process.

For any comparative analysis to be meaningful would require a full like-for-like analysis of state financial support for individuals with different characteristics: this is beyond the scope of this chapter. Overall, however, it seems that the UK arrangements for substantially exempting certain benefits from tax can be seen to be effective in that they explicitly reflect policy intent; they are equitable in that the benefits themselves are either means-tested - or, if not, the payments (such as PIP or Attendance Allowance) are specifically designed to help with the 'costs of disability'; and their tax-free status is an efficient and financially convenient way of delivering the payments the recipients whilst avoiding undue tax administration.

The arrangements are as stable as the underlying benefits (which, with the introduction of Universal Credit, have been changing materially). Their basis

³⁰⁴ Income Tax Act, Division G, s146(1).

³⁰⁵ See IRS Publication 915 'Social security and Equivalent Railroad and Retirement Benefits', 2021, Page 3 ('Are Any of Your Benefits Taxable?'). Accessible at:

< <https://www.irs.gov/pub/irs-pdf/p915.pdf> > accessed 12 February 2023.

of payment makes them robust to avoidance from a tax perspective (although benefit fraud may affect underlying benefit claims). The underlying legislation is clear: Table B of section 677 ITEPA 2003 sets out clearly both the tax treatment and in-scope benefits.

6. Provisions relating to health and care

Introduction

Many people with disabilities need significant health and care support. The statistical analysis in Section 6 of Chapter 2 illustrates the extent of ‘informal carers’ – and the distribution of their gender, age and economic status.

Before considering the extent to which the UK tax system might provide broad-ranging or targeted tax reliefs in respect of health and care costs, this section considers the effectiveness of the three identified existing provisions relating to care – in addition to the Council Tax ‘disregard’ for qualifying carers discussed above. One relates to a tax exemption for ‘immediate need annuities’ to cover qualifying care costs; another exempts from tax the cost of reasonable accommodation provided to a home care worker; and the third relates to the Income Tax relief under Qualifying Care Relief.

The provisions of section 735 ITTOIA 2005 in respect of payments received under certain health insurance arrangements are considered in Chapter 6.

Immediate need annuities

Immediate need (or care) annuities are transactions whereby, for a capital sum, an individual can purchase an annuity from an insurance company to pay for their care. The legislation (now in sections 725 and 726 ITTOIA 2005) was

originally introduced in the Finance Act 2004. Section 725(3) stipulates that the relief is available where the person needing care has:

(a) mental or physical impairment, or

(b) injury, sickness or other infirmity, which is expected to be permanent.

Broadly, absent an exemption, annuity taxation in respect of a purchased annuity taxes the 'income element' of annuity receipts, not the capital element³⁰⁶. For many individuals, the tax benefit of the immediate need annuity exemption could be significant depending on the assumed income element of the annuity payments: depending on a person's underlying conditions and needs, standard of accommodation and geographic location, the cost of full-time care can, in 2023, range from some £35,000 to well in excess of £55,000 per annum³⁰⁷.

Research by Forder from 2011³⁰⁸ - more than ten years prior to the date of this thesis - suggested the possibility of a multi-fold increase in the size of the market³⁰⁹ to some 40-50,000 holders³¹⁰, skewed towards those with the greatest housing wealth³¹¹. Updated market statistics do not appear to be easily

³⁰⁶ For an HMRC analysis of the taxation of purchased life annuities, including statutory references, see Insurance Policyholder Taxation Manual IPTM4300 - Purchased life annuities: charge to tax and partial exemption scheme: general', at:

<<https://www.gov.uk/hmrc-internal-manuals/insurance-policyholder-taxation-manual/iptm4300>> accessed 12 February 2023.

³⁰⁷ An overview is provided by The UK Care Guide, 'Care Home Costs & Care Home Fees in the UK in March 2023', at:

< <https://ukcareguide.co.uk/care-home-costs/> > accessed 18 March 2023.

³⁰⁸ Forder, 'Immediate Needs Annuities in England', Personal Social Services Research Unit, Discussion Paper 2776, January 2011.

³⁰⁹ Forder, n308, p12.

³¹⁰ Forder, n308, Table 1.

³¹¹ Forder, n308, Table 2.

available – but online research shows that many major insurance providers are participants in this market.

From both tax equity and neutrality perspectives, this provision does seem potentially problematic. First, it follows that – for annuities spanning identical time periods - the larger the capital sum and the greater the income element of the annuity, the greater the tax relief. Further, if the capital sum were otherwise invested by the individual to pay for care, then – absent investment in tax-advantaged products – the returns which financed ongoing care payments would be subject to tax. This analysis is clearly made complicated by how annuity provider taxation is factored into their pricing.

A second potential problem with this provision is that the tax system may act as a stimulus for people to take annuities which, whilst providing an element of certainty, may not represent the best financial approach to paying for care: this issue was addressed in a separate context, for example, in the ‘pension freedoms’ introduced in 2015 which allow people greater flexibility in how they used their pension savings. A number of commentators such as Citizens Advice emphasise that an immediate needs annuity may not be the most appropriate financial choice for all people seeking to purchase care³¹².

Notwithstanding issues of tax equity, it is arguable that this type of annuity creates a form of social benefit by ensuring that a person does not run out of money to pay for care before they die – saving public money.

³¹² See, for example, Citizens Advice, ‘Immediate needs annuity’, at:

< <https://www.caba.org.uk/resource/immediate-needs-annuity.html> > accessed 23 January 2023.

In summary, from a tax perspective, for taxpayers able to take advantage of it, this provision is effective in many ways: the legislation is clear; it is convenient (relief is effectively provided 'at source'); and case law does not indicate widespread levels of avoidance. The legislation has been stable – the current section being based on section 580C ICTA1988, itself inserted by section 147 Finance Act 2004.

However, notwithstanding this functional effectiveness, this is a provision available only to those with substantial resources; and one where the tax system may drive a distinct 'channel choice' between annuities and 'pay-as-you-go' self-funding – where an annuity may not be the financially optimal choice for the taxpayer. This emphasises the need for taxpayers to take financial advice before committing to such a product.

Exemption from tax for board or lodging (or both) provided to home care workers

The exemption on Section 306A ITEPA 2003 sits alongside the Council Tax 'disregard' for qualifying carers discussed in Section 4.

Whilst there is some apparent subjectivity in certain of the statutory tests for the exemption – for example, what might be 'board' or 'lodging'; and what might be of a 'reasonable scale' - there is no apparent incentive for people to provide unduly generous board or lodging to home care workers. The provision results in reduced administration for a person with a disability needing a home care worker and, by implication, reduced cost if the price of that worker would need to reflect any incremental tax charge.

This provision seems effective on the basis that it meets the policy intent; the legislation is clear; it is universally available (given that it is available to

everyone irrespective of means); and it is convenient (on the basis that neither the carer nor the person being cared for are required to account for tax on what is provided). Given the long-term nature of many live-in care arrangements, the provision would be meaningful for many people on the basis that an increased tax cost – which may be passed on to the person being cared for in the price of their care – could be substantial. On the basis of the broad scope of the provision, it seems unnecessary to provide any further definition of ‘disability’ in this instance.

Exemption from Income Tax in relation to Qualifying Care Relief

This relief applies to both foster carers and carers under approved ‘shared lives’ arrangements. Its effect is to exempt from Income Tax certain defined amounts – both a fixed amount and amounts linked to the person(s) being cared for. The exempt amounts were increased markedly in the 2023 Spring Budget. The exempt amounts are in addition to an individual’s Personal Allowance – meaning that the Personal Allowance can still be offset against an individual’s other income.

In calculating the amounts paid to carers by authorities, estimates will be made of associated costs including food and utilities³¹³. The relief is pro-rated where care is provided for less than a year. Broadly, any losses arising in a year

³¹³ Shared Lives Plus summarises the composition of the payments: ‘*Shared Lives carers are paid a weekly fee to support someone living with them long term, as well as a contribution towards accommodation and household costs, such as food, electricity and water.*’ See:

<<https://sharedlivesplus.org.uk/start-your-shared-life/how-it-works/>> accessed 17 March 2023.

where qualifying care receipts are equal to or less than the exemption claimed are lost.

HMRC commentary emphasises that the provisions are focused on tax simplification – albeit recipients of care amounts are self-employed and still need to complete a self-assessment form where they claim the relief³¹⁴: the claim reduces substantially the amount of information required on the return³¹⁵. To the extent that a carer’s income exceeds the exempt amounts, there are two bases upon which the excess can be assessed for tax (at the taxpayer’s discretion) – the ‘profit method’ and the ‘simplified method’³¹⁶.

At a purposive level, this relief seems effective as a means of supporting the policy intent of individuals providing shared lives care. Carers need to be appropriately trained and the scheme approved. Providing shared lives care can be of considerable benefit to people with certain disabilities receiving it³¹⁷. The exemption limits are set centrally by the Government: the candidate has been unable to assess the extent to which the tax reliefs may provide any financial incentive to provide care – in addition to simplification advantages.

³¹⁴ See HMRC, n184.

³¹⁵ See HMRC, n184.

³¹⁶ See HMRC, n184.

³¹⁷ By way of an example, see a review of one provider by the Care Quality Commission which states that:

‘People receive a person-centred service that met their needs and helped them to achieve their goals and ambitions. Whether that was to live a quiet comfortable life, or to gain the confidence and skills to try new things and move on to live more independently. [] People were supported and encouraged to be involved in decisions about their own life and care, including who they chose to live with and how they spent their time. Shared Lives carers went through a comprehensive assessment period before they were approved to welcome someone to live with them in their own home.’

Accessible at: < <https://www.cqc.org.uk/location/1-2036348051/reports> > accessed on 17 March 2023.

At a functional level, although the legislation is complex, the relief is designed to provide simplicity – and is effectively given ‘at source’, subject to the claim, making it financially convenient. Given the specified limits and the regulated nature of shared lives schemes, the relief seems robust to avoidance provided that appropriate declarations are made by carers. In summary, this seems an effective relief supporting a valuable social purpose.

Health and care expenses: the need for a ‘whole system’ view

The three provisions discussed above, together with the Council Tax carer ‘disregard’, seem isolated but need to be seen as part of a ‘broader whole’: health and care provision is an area where comparative analysis illustrates a range of different tax reliefs in use in other countries, but where a ‘whole system’ view is essential before drawing definitive comparative conclusions. For example, the UK National Health Service (‘NHS’) is a ‘free-at-the-point-of-delivery’ universal healthcare system – including in respect of the healthcare requirements of people with disabilities; whereas the approach in the US is principally based on private insurance-based funding, with the Medicaid system providing a safety net for people on low incomes³¹⁸.

In the UK, the cost of care provision for many people with disabilities is the responsibility of local authorities under the Care Act 2014 – subject to (currently) means testing above certain limits in relation to the funding of care³¹⁹. ‘Informal

³¹⁸ For US Government guidance around Medicaid, see:

< <https://www.medicaid.gov> > accessed 20 February 2023.

³¹⁹ Note the proposed cap on care fees is now delayed until October 2025.

carers' may receive benefits such as Carers Allowance. Eligible disabled people may receive Attendance Allowance or Constant Attendance Allowance.

Importantly, however, unless funded by the state, the cost of care may not be the only economic cost experienced by carers: in many cases, family members partially or wholly give up work to attend to the needs of disabled relatives³²⁰: the statistical analysis in Section 6 of Chapter 2 illustrated the extent of 'informal carers' – many of whom may be in full-time or part-time employment or self-employment. Although the Institute of Public Care at Oxford Brookes University paper³²¹ was published in 2017, it stated that: *'People who provide unpaid care for a disabled, seriously-ill or older loved one in the UK save the state £132 billion a year – close to the cost of a second NHS (Buckner and Yeandle, 2015).'*

Following extensive political debate, the UK regime for the funding of social care generally is set to change with prospective caps on care expenditure³²². A new Health and Social Care Levy to contribute towards care costs has been repealed by the Health and Social Care Levy (Repeal) Act 2022.

³²⁰ Foley et al, from Parliamentary Briefing Paper 07756, 'Informal Carers', House of Commons Library, 1 June 2022, at 4:

'The Family Resources Survey estimated that in 2020/21 around 6% of the UK population (4.2 million people) were providing informal care. The survey defines informal caring as care that is not a paid job, and can occur for many, or only a few, hours a week. Since 2009/10, around 60% of informal carers are women.'

At: < <https://researchbriefings.files.parliament.uk/documents/CBP-7756/CBP-7756.pdf> >.

In relation to compensation mechanisms for family carers, see both Alstott, 'No Exit – what parents owe their children and what society owes parents', Oxford University Press, 2004; and McCaffery, *Taxing Women*, University of Chicago Press, 1997.

³²¹ Institute of Public Care at Oxford Brookes University, n70.

³²² Care fees delay, n319.

Health and care expenses: comparative analysis

Against the backdrop of existing UK state support and funding frameworks, tax reliefs in respect of health and care expenses (not just for people with disabilities) are limited.

In contrast to the UK, Australia, Canada, Germany and the US variably offer a range of tax reliefs for medical expenses or health insurance premiums – not just in relation to people with disabilities; together with reliefs for a range of care-related expenses. Given the focus of this thesis on disability – and recognising a very broad literature around tax and medical expenses – the synopsis of comparative provisions below solely serves to illustrate contrasting approaches to tax relief for health and care-related expenses before considering whether there might be further options to consider in the UK.

Australia offers a means-tested rebate or tax offset for private health insurance premiums. The rebate or tax offset are regarded as a government contribution towards the premiums³²³. The Australian system actively draws attention to private healthcare³²⁴, characterising contributions to public

³²³ For Australian government guidance, 'Private health insurance rebate calculator', see:

< <https://www.ato.gov.au/Calculators-and-tools/Private-health-insurance-rebate-calculator/> >
> accessed 22 January 2023:

'The private health insurance rebate is an amount the government contributes towards the cost of your private hospital health insurance premiums.'

'The rebate is income tested, which means a higher income may reduce your rebate or you may not be entitled to any rebate at all.'

³²⁴ See background information from the Australian Government Department of Health – 'About private health insurance', at:

< <https://www.health.gov.au/topics/private-health-insurance/about-private-health-insurance> >
> accessed 22 January 2023:

'Private health insurance works with our public health care system to offer you more choice and quicker access to some health services.'

healthcare – the Medicare Levy Surcharge - as a ‘surcharge’ rather than (mandatory) National Insurance contributions. The Medicare Levy Surcharge is means-tested, and not payable by people or families whose income sits below defined thresholds³²⁵.

In terms of care-related payments, similar to the UK Australia offers a range of benefit payments³²⁶ to carers – including Carer Payment; Carer Allowance; Carer Supplement; the Child Disability Assistance Payment; and Carer Adjustment Payment. In addition, it offers a means-tested tax offset in relation to ‘invalid’ care³²⁷, subject to meeting a range of eligibility and other criteria. The maximum amount claimable for each eligible dependent in 2022/23 is Aus\$2,943 (approximately £1,650).

At a national level, Canada offers a specific non-refundable Medical Expenses Tax Credit (‘METC’)³²⁸ – again, not just for people with disabilities. Additionally, it offers a (broader) Disability Supports deduction – discussed in more detail in Section 4 of Chapter 5 in the context of participation in work; and where Canadian Government guidance³²⁹ states that ‘*If you have an impairment*

³²⁵ For an Australian Government summary of the Medicare Levy Surcharge, see:

<https://www.privatehealth.gov.au/health_insurance/surcharges_incentives/medicare_levy.htm> accessed 22 January 2023.

³²⁶ For an Australian government summary, ‘What payments you can get as a carer’, see:

< <https://www.servicesaustralia.gov.au/individuals/subjects/payments-carers> > accessed 22 January 2023.

³²⁷ For an Australian government summary, ‘Offset for maintaining an invalid or invalid carer’, see:

<<https://www.ato.gov.au/Individuals/Income-and-deductions/Offsets-and-rebates/Offset-for-maintaining-an-invalid-or-invalid-carer/>> accessed 18 March 2023.

³²⁸ Duff, n22, 809-823, provides an analysis and critique of the METC.

³²⁹ Canadian Government, ‘Disability Supports deduction’, at:

*in physical or mental functions, you may be able to claim **some** medical expenses as a disability supports deduction.*

The METC is a non-refundable tax credit whereby, subject to a range of financial limits and specific arrangements around claims by spouses and dependents, a broad range of medical expenses can be offset against tax. As Philipps observed³³⁰:

Low-income people receive limited benefits from the METC because it is non-refundable, but also because they have relatively little money to spend on the goods and services covered by the METC.

In terms of care, the Canadian federal tax system provides a range of tax-related reliefs in respect of care under the umbrella of the non-refundable Canada Caregiver Credit³³¹. The arrangements need to be considered in the context of a system which uses tax reliefs – including credits - extensively in addition to national and provincial benefit payments. Note that provincial / territorial tax systems operate in parallel with the federal system: the overview below considers federal taxation alone.

The level of Canada Caregiver Credit depends on a number of factors including the taxpayer's relationship with the dependent person; the dependent person's income; and the age of the dependent person³³². Its value also varies

<<https://www.canada.ca/en/revenue-agency/services/tax/individuals/topics/about-your-tax-return/tax-return/completing-a-tax-return/deductions-credits-expenses/line-21500-disability-supports-deduction.html#wb-auto-4>> accessed 18 March 2023.

³³⁰ Philipps, n249, at 88.

³³¹ For Canadian government guidance, 'Canada caregiver credit', see:

<<https://www.canada.ca/en/revenue-agency/services/tax/individuals/topics/about-your-tax-return/tax-return/completing-a-tax-return/deductions-credits-expenses/canada-caregiver-amount.html>> accessed 22 January 2023.

³³² Canadian government, n331.

by province / territory. A credit of CAN \$2,295 (as at January 2023 - approximately £1,400) is available where the taxpayer cares for a child under 18 with impairment in physical or mental function where they are likely to 'be dependent on others for an indefinite duration' and need significantly more help with their personal needs and care compared to other children of the same age³³³. Depending on the disabled person's income, this amount rises to CAN \$7,348 (as at January 2023 – approximately £4,400) where the infirm dependent is over 18³³⁴. This credit can be claimed in respect of infirm dependent adults more broadly – subject to their means. A person who has more than one infirm dependent can claim for each of them.

In Germany, consistent with a tax system which allows for a broad range of deductions generally, a very broad range of medical expenses are deductible above certain limits³³⁵. The limits are set by reference to the number of family members, resulting in lower thresholds for claims where a family has increasing numbers of children. Germany operates a universal healthcare system funded by both public and private insurance. Germany offers tax relief in respect of 'Exceptional costs'³³⁶.

³³³ Deduction for caregiver amount for infirm child – Income Tax Act Division E, subdivision A, s118(1)(b.1).

For Canadian government guidance, Canada caregiver amount for infirm children under 18 years of age', see:

<<https://www.canada.ca/en/revenue-agency/services/tax/individuals/topics/about-your-tax-return/tax-return/completing-a-tax-return/deductions-credits-expenses/line-30499-30500-canada-caregiver-infirm-children-under-18-years.html>> accessed 22 January 2023.

³³⁴ Income Tax Act, Division E, Subdivision A, s118(1)(d).

³³⁵ A summary is provided by Wundertax, 'Claim Medical Expenses on your Tax Return (Krankheitskosten)' at:

< <https://germantaxes.de/tax-tips/medical-expenses-tax-return/>>, accessed 25 March 2023.

³³⁶ EstG 33.

Germany has undergone a series of reforms to its (insurance-based) care system. An EU 'peer review' summarises Germany's care arrangements as follows³³⁷ (candidate underlining for emphasis):

The German social and private long-term care insurance introduced in 1995 is a compulsory insurance to cover a portion of long-term care costs. For home care, entitled beneficiaries have a free choice between benefits in kind provided by professional nursing and personal assistance services and cash benefits for informal care. Benefits in cash and in kind can be combined and the long-term insurance also offers counselling when choosing the provider. In addition, benefits are provided for care in residential care homes and semi-residential facilities (e.g. day care). In 2017, about 3.3 million people received support from the long-term care insurance funds, and about 73% of these beneficiaries got long-term care at home.

The arrangements have been extended by 'Long Term Care Strengthening Acts': for example, in December 2015³³⁸ there were further modifications to the nature and extent of care (for example, around dementia); and compulsory contribution rates were raised³³⁹.

Similar to Canada, Germany offers a range of caring-related tax reliefs – consistent with a tax system which offers extensive tax reliefs for family and social purposes. Tax deductions are available for, amongst other matters, certain disability and long-term care insurance premiums³⁴⁰. Similar to the UK,

³³⁷ DG Employment, Social Affairs and Inclusion, European Commission, 'Peer review on Germany's latest reforms of the long-term care system – Synthesis Report', March 2018, at 3. Available at:

< <https://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=9008> > accessed 22 January 2023.

³³⁸ For details, see a German Federal Ministry of Health overview at:

<https://www.bundesgesundheitsministerium.de/en/topics/topics/long-term-care/germanys-long-term-care-strengthening-acts.html> accessed 22 January 2023.

³³⁹ German Federal Ministry of Health, n338.

³⁴⁰ EstG 5{10): discussed further in Chapter 6.

Germany operates a child benefit system – *Kindergeld* – which in the case of disabled children extends to children over 25 they are unable to look after themselves³⁴¹. There is also, however, a tax deduction in EstG 10(1)(5) as ‘special expenses’ for two thirds of the care expenses for a disabled child for up to Euros 4,000 per annum.

EstG 3(10) exempts as taxable income amounts received where a family ‘accepts’ a person with a disability or at risk of a disability under the provisions of Section 2, Paragraph 1, Book Nine of the Social Code (‘Rehabilitation and Participation of Disabled Persons’)³⁴².

Finally, as discussed in Section 2, Germany allows a broad range of deductions in respect of ‘exceptional costs’ of a range of types - including care expenses³⁴³. EstG 33(1)³⁴⁴ states that:

In case that a person subject to taxation inevitably incurs higher expenditures than the predominant majority of persons subject to taxation with the same income conditions, same financial situation and same personal status (exceptional costs), the income tax shall be reduced, upon application, by deduction of the portion of expenditures beyond the reasonable own contribution that may be expected from the person subject to taxation (paragraph 3) from the total amount of revenues.

Subsection 2 goes on to say that:

³⁴¹ The City of Hamburg provides an overview of the *Kindergeld* arrangements in English – including in relation to disabled children (at 8):

<<https://www.hamburg.com/contentblob/11701410/ea05a11c60b0a17720b30802397bdba7/data/child-benefit-leaflet.pdf>> accessed 22 January 2023.

³⁴² For an outline of the German Social Code relating to disabled workers, and links to legislation, see ILO synopsis at:

<http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=&p_isn=60647&p_classification=08.01> accessed 22 January 2023.

³⁴³ Deduction for exceptional costs – EstG 33(1), (2) and (3).

³⁴⁴ From the English translation by Dr Thomas Rittler, 2019.

Expenditures are incurred inevitably by a person subject to taxation, if he is unable to evade them for legal, factual or moral reasons and to the extent that the expenditures are necessary pursuant to the circumstances and do not exceed an appropriate amount.

The US operates a broad tax deduction system for medical expenses (not just for people with disabilities)³⁴⁵, together with deductions for certain payments into health savings accounts³⁴⁶. The US also operates a number of refundable tax credits together with deductions for long term care premiums³⁴⁷. The IRS summarises the Child and Dependent Care Credit³⁴⁸ as follows (candidate underlining for emphasis):

You may be able to claim the child and dependent care credit if you paid expenses for the care of a qualifying individual to enable you (and your spouse, if filing a joint return) to work or actively look for work.

The guidance states that a ‘qualifying individual’ includes:

A qualifying individual for the child and dependent care credit is:

- *Your dependent qualifying child who was under age 13 when the care was provided,*
- *Your spouse who was physically or mentally incapable of self-care and lived with you for more than half of the year, or*
- *An individual who was physically or mentally incapable of self-care, lived with you for more than half of the year, and either: (a) was your dependent; or (b) could have been your dependent except that he or she received Tax gross income of \$4,400 or more, or filed a joint return, or you (or your spouse, if filing jointly) could have been claimed as a dependent on another taxpayer's 2022 return.*

³⁴⁵ IRS guidance, ‘Medical and Dental Expenses’, at:

< <https://www.irs.gov/taxtopics/tc502> > accessed 22 January 2023.

³⁴⁶ IRC s223.

³⁴⁷ IRC s213.

³⁴⁸ Child and Dependent Care [Tax] Credit – IRC, ss151-2; noting specific rules for people with disabilities. For IRS guidance, ‘Child and Dependent Care Credit, see:

< <https://www.irs.gov/taxtopics/tc602> > accessed 22 January 2023

The expenses covered by the credit in 2021 are capped at US \$3,000 for one qualifying individual; and US \$6,000 for two³⁴⁹. The emphasis is on relief for care costs incurred whilst the taxpayer is working or looking for work.

Earned Income Tax Credit is a means-tested tax credit for people who work and who have a ‘qualifying child’ – including one who is ‘any age and permanently and totally disabled at any time during the year’³⁵⁰. Once again, the emphasis of the credit is on supporting people in work – with a requirement to show evidence of ‘earned income’³⁵¹.

Health and care expenses: analysis and commentary

Meaningful comparisons of tax relief for health care expenses are extremely challenging given the different health systems in force in different countries. The EU Peer Review material reviewing Germany’s long term care system³⁵² illustrates the vast economic and political complexities of care funding – including the interaction between various elements of public services and finances - meaning that any meaningful analysis and recommendations for UK tax reliefs in relation to health and care expenses in a thesis of this nature is unrealistic. The comments below should be considered in this light.

³⁴⁹ IRS guidance at n348, accessed 22 January 2023.

³⁵⁰ Child Earned Income Tax Credit – disabled child – IRC, s24. For IRS guidance, ‘Qualifying Child rules’, see:

< <https://www.irs.gov/credits-deductions/individuals/earned-income-tax-credit/qualifying-child-rules#Tests%20for%20a%20Qualifying%20Child> > accessed 22 January 2023.

³⁵¹ For IRS guidance, ‘Who Qualifies for the Earned Income Tax Credit (EITC)’, see:

<<https://www.irs.gov/credits-deductions/individuals/earned-income-tax-credit/who-qualifies-for-the-earned-income-tax-credit-eitc#without>> accessed 22 January 2023.

³⁵² DG Employment, Social Affairs and Inclusion, European Commission, n337.

Taking the example of the deductibility of 'Exceptional costs' in Germany, there is a question to be considered as to whether the UK should allow a specific tax relief in relation to privately incurred disability-related health or care expenses – subject to defined criteria and limits, including where alternative state provision is not easily available: such a provision would help people meet incremental costs that people without disabilities do not have to meet; and potentially relieve pressures on the NHS and other public services.

Given potential vertical equity issues – and recognising that many people with disabilities are on low incomes – an appropriate vehicle for reimbursement might be a refundable tax credit; or another form of recovery through the benefits system, based on evidence of expense incurred. However, this concept would require detailed analysis around scope and potential take-up; administrative complexity and cost; and boundaries and limits for any recovery bearing in mind alternative state provision. At this stage, therefore, it is simply advanced as a concept for possible consideration.

For many people providing care, a substantial economic cost may be lost earnings³⁵³ – which, particularly when driven to leave work to care for a child with disabilities – may arise at a crucial part of a parent's working life and economic potential. Available benefits - including, amongst others, Carer's Allowance - may fall considerably short of a carer's earnings prior to needing to stop work to provide care.

In relation to the broader economic loss of caregivers losing income to care for others, there is a broad literature addressing the position of unpaid

³⁵³ In a US context, McCaffery, n320, discusses the concept of 'imputed income' for carers.

carers, including parents, in the context of social and distributive justice: for example, in her book 'No Exit'³⁵⁴ – which considers parental caring more broadly than solely in relation to children with disabilities - Alstott argues in a US context for additional compensation mechanisms for parents, and suggests mechanisms for delivering these including annual sum Caretaker Resource Accounts³⁵⁵; and, in the case of 'catastrophic' events such as child illness or disability, life planning insurance arrangements³⁵⁶.

Although this thesis explicitly does not evaluate the nature of scale of redistribution to disabled people and their carers, it notes that there seems to be a legitimate question as to whether help might be given to working people forced to give up work to care – for example, for disabled children – to help manage the transition to lower income through some form of tax reimbursement. In July 2022, the concept of treating families as a single unit and transferring Personal Allowances between partners where one needs to provide care was raised by one of the Conservative Party leadership candidates³⁵⁷. An alternative option might be some form of tax recovery from prior year earnings – perhaps on a tapered and / or capped basis – to assist carers meeting certain criteria in making a transition to a lower income position such as part time working. This idea is only advanced conceptually, recognising the ongoing substantial debates in UK

³⁵⁴ Alstott, n320.

³⁵⁵ Alstott, n320.

³⁵⁶ Alstott, n320, see implementation analysis at Chapter 11, 197 – 204.

³⁵⁷ Using the tax system as a way of alleviating care costs was signalled in Liz Truss's Conservative Party leadership campaign. See:

< <https://www.reuters.com/world/uk/uk-pm-candidate-truss-eyes-tax-breaks-carers-2022-07-21/> > accessed 5 February 2023.

social care policy-making; and would clearly need to be subject to considerable anti-avoidance and other measures to ensure that relief claimed was for *bona fide* reasons.

Nonetheless, the provision of care by family members can result in very material savings to the state. Against this backcloth, some form of tax relief or reimbursement of disability-related expenses above certain levels; and some form of tax 'clawback' for people forced to give up work to care for a person with a disability, both seem to be legitimate questions for consideration as part of the ongoing debate around social care provision generally.

7. Provisions related to savings and investments

Introduction

A central theme of this chapter is the extent to which the UK tax system might help contribute to meeting 'costs of disability' – in a manner which is coherent with other provision by public services and the benefits system. Savings by, or on behalf of, a person with a disability can provide for future expenditure – whether in relation to ongoing 'costs of disability' alone; or any care requirements which are not otherwise met by the state.

This section considers, drawing on comparative analysis, whether the relevant tax provisions of the UK trust-based system facilitate an effective basis for savings, recognising that the UK does not presently have other tax-advantaged savings vehicles specifically for people with disabilities (albeit ISAs and similar products are available – although these may have an impact on means-tested benefits).

For completeness, there is a provision under section 477(5) ITEPA 2003 in relation to certain employment-related securities where a benefit is received 'on account of disability'. This may be a provision which arguably fits more naturally within the scope of the 'compensation and insurance provisions' in Chapter 6 given that the benefit arises 'on account of disability' - but is included here given its referability to employee share schemes.

Section 2 of Chapter 3 highlighted that, in their March 2011 final report on tax reliefs, the OTS were unable to source the policy background to this provision³⁵⁸. The financial analysis in Section 4 of Chapter 2 suggested that its fiscal cost was 'negligible'. Given the rather unclear policy intent or use of this provision; and the absence of any data around its use, it is challenging to form a meaningful view of its effectiveness.

The current trust-based framework

Section 2 of Chapter 3 explained that the existing trust-based regimes for Disabled Beneficiaries (Inheritance Tax); and for Vulnerable Beneficiaries (Income Tax and Capital Gains Tax) have the broad effect – subject to the provisions' various conditions – of:

1. Ensuring that money set aside in a discretionary trust for a qualifying disabled person is not subject to the periodic tax charges under section 64 IHTA 1984 which would otherwise apply; and is a Potentially Exempt Transfer when settled.

³⁵⁸ OTS, n199, paragraphs B.129 – B.135.

2. Ensuring that qualifying vulnerable beneficiaries are taxed on a trust's income and capital gains as if these accrued to the beneficiaries themselves, not the trustees (who would otherwise be taxed at higher marginal rates and with lower personal allowances).

Using trusts as a vehicle for these arrangements allows money or assets to be legally set aside for a disabled or vulnerable person and managed by trustees in accordance with the terms of the trust, in circumstances when the beneficiary may not have the capacity to manage trust assets themselves. The nature of trusts can also mean that the assets are the legal property of the trustees – meaning that the value of any trust assets can be ignored in the assessment of beneficiaries' eligibility for means-tested benefits.

Essentially, subject to their various conditions, the tax provisions seek – in broad terms - to create a form of tax neutrality by ensuring that the qualifying disabled or vulnerable person bears no greater tax charge from the arrangements than if they were gifted the monies themselves for their own use or investment. They do not create (a potentially regressive) 'tax bonus' through further tax advantages. However, as discussed below, legislative complexity can limit the achievement of this neutrality objective.

Two key questions arise from the trust-based system of relief: does the scope of the provisions go far enough (or too far)? And are trusts the best vehicle for achieving the underlying policy objectives?

It seems challenging to argue against the broad scope of the existing provisions – in that they effectively seek to achieve a form of tax neutrality in respect of funds which people may not be able to manage for themselves. The scope could be argued to be regressive if its economic effect was to provide

material tax advantages to disabled or vulnerable people who were fortunate enough to have benefactors able to gift them substantial assets. Anti-avoidance measures were introduced in the Finance Act 2013 to prevent non-disabled beneficiaries from being eligible for the favourable tax treatments where, *subject to de minimis* provisions, they were potentially entitled to a significant proportion of a trust's assets³⁵⁹.

However, given the uncertainty around individuals' futures and needs – and the availability of publicly-financed support - a policy question does arise as to whether effective neutrality is sufficient; and whether some level of tax-exempt (or low tax) savings vehicle beyond the existing ISA regime might be appropriate at a broad level to enable people with disabilities (and those to provide for them) to set aside amounts to provide either for (i) their future costs of disability; (ii) their future costs of care; and (iii) their participation in certain defined activities, without compromising their access to means-tested benefits.

A second key question arising from the use of the trusts regime is whether trusts are the right vehicle to deliver the intended policy benefits. Whilst the legal framework for trusts helpfully allows for the independent stewardship of assets on behalf of people who, for example, might not be able to manage them themselves, the nature of trust arrangements is that they can be costly and complex to set up and administer; and, as a result, may not be cost-effective where the amounts to be saved are modest. The current trust regime was the subject of ongoing consultation in late 2018 and the Chartered Institute of

³⁵⁹ See Chapter 3, Section 3.

Taxation, for example, responded to the consultation³⁶⁰. In relation to the complexity of trusts for disabled people and their interaction with different aspects of the tax system, they commented³⁶¹:

The existing complexities of the rules for disabled person interests for IHT and the vulnerable beneficiary rules for income tax and CGT make these regimes unattractive. By way of example only, the capital disregards in respect of a disabled person's interest which is an actual interest in possession for a disabled beneficiary as opposed to a deemed interest in possession (ie an interest in possession falling within s89B(1)(c)) have different commencement rules. The aim of the special income tax treatment is to ensure that the amount of tax charged on income accruing to the trustees is no more than it would have been had the income belonged to the vulnerable person. This apparently simple objective is obscured by some impenetrable drafting.

As highlighted in Section 3 of Chapter 3, on 23 March 2021, the Government indicated in relation to the consultation that *'The responses did not indicate a desire for comprehensive reform of trusts at this stage. The government will keep the issues raised under review.'*³⁶² Nonetheless, this thesis contends that there are potential options for improving savings arrangements in respect of people with disabilities beyond the existing trust-based regime.

Before answering the two questions around the scope and effectiveness of the existing trust regime and whether further vehicles might be introduced, the comparative analysis below highlights both similarities and differences in approaches to savings in respect of people with disabilities used in other countries.

³⁶⁰ 'The Taxation of Trusts: A review Response by the Chartered Institute of Taxation', 7 March 2019, available at:

< <https://www.tax.org.uk/ref518> > accessed 22 January 2023.

³⁶¹ Chartered Institute of Taxation, n360 at 10.2.

³⁶² UK Government, n191.

Comparative analysis

Similar to the UK, the tax systems of Australia, Canada and the US operate trust-based regimes providing specific tax treatments for people with disabilities. However, both Canada and the US also offer additional specific tax-advantaged savings vehicles for people with disabilities – the Registered Disability Savings Plan and ABLE accounts respectively.

Australia operates a system of Special Disability Trusts: government guidance³⁶³ summarises these as follows:

Since 20 September 2006, families have been able to establish a Special Disability Trust, which attracts social security means test concessions for the beneficiary and eligible contributors. The purpose of the trust is to assist immediate family members and carers who have the financial means to do so, to make private financial provision for the current and future care and accommodation needs of a family member with severe disability and receive means test concessions.

It is necessary that, before a Special Disability Trust is established, the prospective trust beneficiary be assessed as severely disabled under the legislation for this type of trust...

The trusts are – broadly, and subject to a range of conditions – taxed at the beneficiary's marginal tax rate³⁶⁴.

³⁶³ For Australian government guidance around Special Disability Trusts, see 'Disability and Carers – Special Disability Trusts', at:

<<https://www.dss.gov.au/disability-and-carers-programs-services/special-disability-trusts>> accessed 22 January 2023.

³⁶⁴ For an Australian government overview, see 'Reporting the income of a special disability trust', at:

<<https://www.ato.gov.au/general/trusts/specific-rules-for-some-trusts/reporting-the-income-of-a-special-disability-trust/>> accessed on 12 March 2023: 'The tax rules for special disability trusts are designed so that the net income of the trust is taxed at the principal beneficiary's marginal tax rate...'

There are two principal types of trusts in Canada relating to disabled beneficiaries – ‘Henson Trusts’³⁶⁵ and ‘Qualified Disability Trusts’³⁶⁶. Henson Trusts have many similarities to the UK trust-based regime – including, subject to drafting, protecting beneficiaries from being means tested in respect of trust assets for the purposes of benefits³⁶⁷. Qualified Disability Trusts are testamentary trusts which apply where, subject to a range of other conditions, beneficiaries are people eligible for Disability Tax Credit³⁶⁸.

Beyond the trust regime, Canada also provides for Registered Disability Savings Plans (‘RDSPs’) which, in summary, allow for monies to be invested with an authorised provider on behalf of a disabled person. Of RDSP’s and their related provisions, Section 3 of the Canada Disability Savings Act 2007 states that:

The purpose of this Act is to encourage long term savings through registered disability savings plans to provide for the financial security of persons with severe and prolonged impairments in physical or mental functions.

³⁶⁵ ‘Henson Trusts’ are discretionary trusts named after the Ontario case of *The Minister of Community and Social Services v Henson*, [1987] OJ No 1121, aff’d [1989] OJ No 2093 (Ont CA).

³⁶⁶ For a Canadian government overview, ‘T3 Trust Guide - 2022’, see:

<https://www.canada.ca/en/revenue-agency/services/forms-publications/publications/t4013/t3-trust-guide.html#P1302_146510> accessed 22 January 2023.

³⁶⁷ This point was reaffirmed by the Canadian Supreme Court in 2019. See *S.A. v. Metro Vancouver Housing Corp.*, 2019 SCC 4, [2019] 1 S.C.R. 99.

³⁶⁸ Canadian government, n366.

A Canadian government explanatory note³⁶⁹ explains that eligibility for an RDSP requires the beneficiary to be eligible for Disability Tax Credit. It goes on to say that:

Contributions to an RDSP are not tax deductible and can be made until the end of the year in which the beneficiary turns 59. Contributions that are withdrawn are not included as income to the beneficiary when they are paid out of an RDSP. However, the Canada disability savings grant (grant), the Canada disability savings bond (bond), investment income earned in the plan, and the proceeds from rollovers are included in the beneficiary's income for tax purposes when they are paid out of the RDSP.

The RDSP forms part of a network of provisions designed to incentivise savings on behalf of people with disabilities – with means-tested state contributions to support those savings. Canadian governmental guidance describes the Canada disability savings grant as follows³⁷⁰:

The grant is an amount that the Government of Canada pays into an RDSP. The government will pay a matching grant of 300%, 200%, or 100%, depending on the beneficiary's adjusted family net income and the amount contributed.

[]

An RDSP can get a maximum of \$3,500 in matching grants in one year and up to \$70,000 over the beneficiary's lifetime. A beneficiary's RDSP can receive a grant on contributions made until December 31st of the year in which the beneficiary turns 49.

The same governmental guidance describes the Canada disability savings bond as:

³⁶⁹ For details provided by the Canadian Government, 'What is a registered disability savings plan (RDSP)', see:

<<https://www.canada.ca/en/revenue-agency/services/tax/individuals/topics/registered-disability-savings-plan-rdsp.html> > accessed 22 January 2023.

³⁷⁰ For details provided by the Canadian Government, 'Canada disability savings grant and Canada disability savings bond', see:

<<https://www.canada.ca/en/revenue-agency/services/tax/individuals/topics/registered-disability-savings-plan-rdsp/canada-disability-savings-grant-canada-disability-savings-bond.html> > accessed 22 January 2023.

The bond is an amount paid by the Government of Canada directly into an RDSP. The government will pay a bond of up to \$1,000 a year to low-income Canadians with disabilities. No contributions have to be made to get the bond. The lifetime bond limit is \$20,000. A bond can be paid into an RDSP until the year in which the beneficiary turns 49.

RDSP's are subject to a range of conduct, investment and anti-avoidance provisions – including the purposes for which funds may be used³⁷¹. Subject to detailed provisions, there is no annual limit on contributions to an RDSP but the maximum lifetime amount that can be contributed is capped at CAN \$200,000³⁷².

One of the advantages of an RDSP compared to the UK trust-based system appears to be the comparative ease of establishing and running the Plan. Canadian government guidance sets out guidance for opening an RDSP³⁷³.

In summary, the Canadian legal and tax system offers multiple vehicles for providing savings for people with disabilities – including both trusts and RDSP's. Which vehicle is appropriate for any individual will depend on circumstances³⁷⁴.

Germany, being a civil law country, does not operate a trust regime – but there is a limited Inheritance and Gift Tax (*Erbschafts-und Schenkungssteuergesetz*) exemption in respect of bequests to people with disabilities³⁷⁵. The exemption covers the first Euros 41,000 of a bequest to a

³⁷¹ Canadian government, n369, 'What types of payment are made from an RDSP?'; and Chapter 3 – 'Anti-avoidance rules for RDSP'.

³⁷² Canadian government, n369, 'What is the contribution limit for RDSPs?'

³⁷³ See Canadian government guidance, 'Opening an RDSP', at:

<<https://www.canada.ca/en/revenue-agency/services/tax/individuals/topics/registered-disability-savings-plan-rdsp/opening-rdsp.html>>, 'accessed 22 January 2023.

³⁷⁴ The Canadian law firm Siskinds provides a comparison of Henson trusts and RDSPs: see <<https://www.siskinds.com/rdsps-working-with-henson-trusts/>> accessed 22 January 2023.

³⁷⁵ Erbschaftsteuer-und Schenkungsteuergesetz (ErbStG), 3(6).

qualifying relative who is *'is to be regarded as incapable of work due to physical or mental disabilities'*, with potentially reduced tax being applied to any excess over Euros 41,000, subject to specified limits.

Similar to Australia, Canada and the UK, the US operates a trust-based system for disabled beneficiaries – Qualified Disability Trusts³⁷⁶. In 2022, these trusts had an exempt band of up to \$4,400³⁷⁷ in respect of US federal Income Tax. Certain expenses are deductible in arriving at their taxable income. The exempt band is usually aligned with the personal tax exemption – but the personal exemption has been cut to \$nil until 1 January 2026 under the Tax Cuts and Jobs Act 2017³⁷⁸. The alignment – under normal circumstances – places the beneficiary in a similar position to if they received the trust's income on their own account.

The legislation requires all of the beneficiaries to have been classified as disabled by the Commissioner of Social Security for some portion of the year³⁷⁹. The trust needs to be constituted as a disability trust under section 1917 of the Social Security Act 1935³⁸⁰.

³⁷⁶ IRC s642 referencing the exemption in s151(d).

³⁷⁷ See IRS guidance under 'What's new, Qualified disability trusts', at:

< <https://www.irs.gov/instructions/i1041> > accessed 22 January 2023.

³⁷⁸ See an IRS summary, 'Personal Exemption Deduction Eliminated', at:

< <https://www.irs.gov/newsroom/individuals> > accessed 22 January 2023.

³⁷⁹ IRC s642(2)(C)(ii)(II).

³⁸⁰ IRC s642(2)(C)(ii)(I).

Separately from the Qualified Disability Trust provisions, the US Tax Code contains provisions in respect of 'ABLE accounts'. The IRS explains that³⁸¹:

The Achieving a Better Life Experience (ABLE) Act of 2014 allows states to create tax-advantaged savings programs for eligible people with disabilities (designated beneficiaries). Funds from these 529A ABLE accounts can help designated beneficiaries pay for qualified disability expenses. Distributions are tax-free if used for qualified disability expenses.

The inter-relationship between ABLE accounts and means-tested benefits is a central aspect of the policy behind ABLE accounts. The ABLE National Resource Centre writes that³⁸²:

To remain eligible for [these] public benefits, an individual must remain poor. For the first time in public policy, the ABLE Act recognizes the extra and significant costs of living with a disability. These include costs related to raising a child with significant disabilities or a working-age adult with disabilities, accessible housing and transportation, personal assistance services, assistive technology and health care not covered by insurance, Medicaid or Medicare. For the first time, eligible individuals and their families will be allowed to establish ABLE savings accounts that will largely not affect their eligibility for SSI, Medicaid and means-tested programs such as FAFSA, HUD and SNAP/food stamp benefits.

ABLE accounts are subject to annual and cumulative contribution limits with some variance between states³⁸³. In 2022, subject to certain state variations, the maximum annual contribution was US \$16,000³⁸⁴: excess contributions in a year

³⁸¹ See IRS guidance, 'ABLE Accounts - Tax Benefit for People with Disabilities', at:

< <https://www.irs.gov/government-entities/federal-state-local-governments/able-accounts-tax-benefit-for-people-with-disabilities> > accessed 22 January 2023.

³⁸² See 'About ABLE accounts', Able National Resource Centre – 'Why the need for ABLE accounts?', accessible at:

< <https://www.ablenrc.org/what-is-able/what-are-able-accounts/> > accessed 22 January 2023.

³⁸³ See IRS publication 907, 'Tax Highlights for Persons with Disabilities' (for use in preparing 2022 returns), at 8 ('Contribution limitation'). Accessible at:

< <https://www.irs.gov/pub/irs-pdf/p907.pdf> > accessed 22 January 2023.

³⁸⁴ IRS, n383.

must be returned to contributors within a set time limit or the excess is subject to tax at 6%³⁸⁵.

The ABLE National Resource Centre provides online advice around the establishment of ABLE accounts – including a comparator which compares features between up to three different (user-selectable) states³⁸⁶. The comparator illustrates that there can be marked variations in provisions between states – including, for example, whether tax relief is given on contributions to an ABLE account.

Distributions from ABLE accounts are limited to ‘qualified disability expenses’³⁸⁷:

You can take distributions from your ABLE account to pay for any qualified disability expenses such as expenses for maintaining or improving your health, independence, or quality of life. Qualified disability expenses include those for education, housing, transportation, employment training and support, assistive technology, personal support services, health, prevention and well-ness, financial management, administrative services, legal fees, expenses for oversight and monitoring, and funeral and burial expenses.

If distributions from your ABLE account during a year aren't more than your qualified disability expenses for that year, no amount is taxable for that year. If the total amount distributed during a year is more than your qualified disability expenses for that year, the earnings portion of the distribution is included in your income for that year, after the calculation in Table 1.

³⁸⁵ IRS, n383, at 8.

³⁸⁶ The Able National Resource Centre comparator is available at:

< <https://www.ablenrc.org/compare-states/> > accessed 22 January 2023.

³⁸⁷ IRS, n383, 8 and 9 – ‘Distributions’.

Conclusions

The UK trust-based regime in respect of savings for disabled beneficiaries is complex; hard to understand; expensive to set up and administer; and – realistically – is likely to be accessible only to settlors with sufficient means to make the arrangements financially worthwhile. The case law analysis in Section 6 of Chapter 3 illustrates the risks of not managing the trusts in accordance with the precise legislative provisions³⁸⁸. The CIOT, amongst others, have identified a range of legislative difficulties with the existing provisions.

However, the trust system does offer a number of benefits including: (i) the legal ‘ringfencing’ of assets for people who may not have the capacity to manage them themselves; (ii) the separation of the assets from the beneficiary for benefits means-testing purposes; and (iii) the (targeted) tax neutrality of the arrangements if the relevant IHT, Income Tax and Capital Gains Tax tests are met. In the round, the existing trust-base arrangements seem partially effective – but not of realistic application in respect of many disabled beneficiaries.

Comparative analysis does show that a range of other trust-based arrangements for beneficiaries with disabilities are in force in Australia, Canada and the US. A number of these seek to achieve similar outcomes of asset ringfencing; tax neutrality; and – in the case of Canadian Henson trusts – separation in relation to benefits means testing.

However, notwithstanding the common use of trusts across these countries, both the RDSP and ABLE accounts stand out as alternatives to the trust-based regime – offering potentially more straightforward, tax-advantaged

³⁸⁸ Chapter 3, at Section 6 *Barclays Bank Trust Company Limited as Trustees of the Constance Mary Poppleston Will Trust & Another v HMRC* [2011] EWCA Civ 810; and *Pitt and another v The Commissioners for Her Majesty's Revenue and Customs* [2013] UKSC 26.

savings vehicles at lower administrative cost and complexity. The RDSP benefits from elements of other state support including Canada disability grants and bonds.

Given the complexity and expense of the UK trust-based regime, a question arises as to whether there is a case for a straightforward, low cost, easy-to-set up and administer, tax-advantaged savings vehicle for people with disabilities which offers the benefits of trusts – including legal asset separation for benefit eligibility purposes; and independent stewardship of the assets for people who may lack capacity.

Clearly, this may raise questions of vertical equity. Further, there is an existing tax-advantaged ISA regime available to all people – whether disabled or not - albeit that an ISA in a disabled person's name would not offer the legal asset ringfencing provided by a trust.

If a policy decision were to be taken to extend the levels of tax-exempt savings for people with disabilities, then given the existence of the ISA regime in the UK, one option might be to develop a specific 'disability ISA' with agreed limits – combining a number of the benefits of trusts and leveraging the range of institutions and platforms which operate in this market. The ISA could be ignored for means testing purposes and, similar to ABLE accounts, withdrawals might be limited to meeting certain agreed schedules of 'costs of disability'.

Clearly, the limits on such arrangements may make them inappropriate for very substantial bequests or gifts in which case a benefactor could consider using the existing trust-based regime.

8. Conclusions and areas for further review

This chapter has considered a broad range of provisions in relation to general financial support for people with disabilities – covering day-to-day support; the tax treatment of benefits; health and care expenses; and savings. It has identified a number of areas where existing provisions might be made more effective – or alternative provisions might be introduced. For completeness, they include:

1. Considering an alternative to Blind Person's Allowance – recognising the identified challenges with this.
2. Considering alternative arrangements for the implementation and administration of the exemption from Council Tax for severe mental impairment – acknowledging the existing recommendations of the Good, Nowotny, French and Dougall report.
3. Considering whether, through further research, the tax exemption for immediate need annuities may drive an inappropriate financial 'channel choice' for people purchasing care; and whether the relief is equitable given that it is most likely of use to people with significant means.
4. Considering whether some form of tax relief - such as a credit - might be made available for privately-met health and care expenses relating to disability above certain limits.
5. Considering whether some form of transferable Personal Allowance or tax clawback might be made available for people forced to give up work to care for a person with a disability.
6. Considering the ongoing value and effectiveness of the employment-related securities provision in section 477(5) ITEPA 2003.

7. Considering options for simplifying the existing trust regime and addressing the various points made by the CIOT.
8. Considering options for a simplified, cost-effective savings vehicle such as a 'disability ISA'.

Chapter 5 – Participation provisions: effectiveness evaluation

1. Introduction

This chapter considers the effectiveness of a range of provisions connected with the participation by disabled people in work and other activities. Specifically, the chapter considers support with mobility both at work and more broadly.

Following contextual commentary in Section 2 around the role of a tax system in supporting participation, Section 3 considers existing reliefs relating to mobility. Section 4 considers other disability-related reliefs in a work setting. Section 5 considers VAT reliefs other than those connected with mobility – recognising that these may provide broader support than in respect of ‘participation’. Section 6 considers options for supporting participation in non-work activities. Conclusions to the chapter are drawn in Section 7.

Provisions covered by this chapter

<i>Mobility-related reliefs</i>	Section 3
Tax relief for transport provided to disabled employees	Section 246 ITEPA 2003
Tax relief for cars provided to disabled employees	Section 247 ITEPA 2003
Exemption from Class 1A NICs in respect of car provided to a disabled employee for business / commuting purposes	Regulation 38 SSCR 2001
Reduction in taxable benefit for automatic cars provided to disabled employees	Section 124A ITEPA 2003
Adjustment in CO2 charge for automatic cars provided to disabled employees	Section 138 ITEPA 2003
Reduction in taxable benefit for accessories fitted to cars enabling disabled people to use them	Section 125(2)(c) ITEPA 2003

Exemption from tax for certain car maintenance grants provided to disabled people	Section 780 ITTOIA 2005
Exemptions from Vehicle Excise Duty	Sections 5, 18 and 19 of Schedule 2; and Section 1ZA of Part 1 of Schedule 1 of VERA 1994
Insurance Premium Tax exemption for certain leased vehicles	Sections 2 and 3 of Schedule 7A of the Finance Act 1994
<i>Other tax reliefs facilitating participation by disabled people in a work setting</i>	Section 4
Exemption from tax for certain equipment provided to disabled employees	Income Tax (Benefits In Kind) (Exemption for Employment Costs resulting from Disability) Regulations 2002 SI 2002 /1596
Exemption from tax in relation to the receipt by an employee of 'recommended medical treatment'	Section 320C ITEPA 2003
<i>VAT reliefs</i>	Section 5
Zero rating of certain goods and services for VAT purposes	Schedule 8 of Group 12; and Schedule 4 of Group 12, VAT Act 1994.

2. The role of a tax system in supporting participation

Introduction

Chapter 1 explained that increasing participation and inclusion in society – including in work and other activities – is central to the UK National Disability Strategy³⁸⁹; and is consistent with international commitments to support people with disabilities³⁹⁰. Chapter 1³⁹¹ also illustrated the multi-faceted approach that the UK Government has been taking to increase participation by disabled people at work. Measures include, amongst others, anti-discriminatory legislation; support in training and development; and various forms of financial support

³⁸⁹ National Disability Strategy, n32.

³⁹⁰ Chapter 2, Section 4.

³⁹¹ Chapter 2, Section 3.

including Access to Work grants. Section 3 below describes a similar multi-dimensional approach underpinning the Motability scheme³⁹² – which combines both (effectively) hypothecated benefits with tax reliefs to provide vehicles to disabled users at attractive rates.

These various approaches, whether in relation to improving work participation or mobility, illustrate the importance of a ‘whole system’ view in considering options for any enhanced use of the tax system to support participation – consistent with the social model of disability which seeks to address disabling environments holistically³⁹³.

Against this backdrop, a tax system may play a part in facilitating participation in four key ways: first, as a minimum, it can (and, it would seem both under normative principles and current UK anti-discrimination legislation³⁹⁴, should) ensure that people with disabilities do not pay additional tax directly as a result of their disability – for example, being taxed as a benefit on the cost of equipment made available to them which has been modified for their use.

Second, through appropriate reliefs, a tax system can assist – in addition to other forms of provision - in meeting ‘costs of disability’ in participating in work or other activities. Taking account of benefit and other payments under a ‘whole

³⁹² For details of the Motability scheme, see a summary provided by Motability, ‘How the Motability scheme works’, at:

< <https://www.motability.co.uk/about/> > accessed 22 January 2023.

³⁹³ Oliver, n26.

³⁹⁴ See Equality Act 2010, s13(1): ‘A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.’

system view', it seems that the incremental 'cost of disability' to be met by a disabled employee in participating in work, net of public support, is as follows³⁹⁵:

*The sum of: **A** - being the total incremental costs of attending work met by a person with a disability when compared to a person without a disability performing an equivalent role; less **B** (i) an appropriate share of relevant benefits such as PIP; (ii) any Access to Work grant or similar subvention covering the expenditure; (iii) amounts met by or reimbursed by an employer; and (iv) to the extent available, any tax relief or similar provision.*

If cost equivalence for people with disabilities was a policy objective, then in the formula above – referred to in this chapter as 'the cost of disability equilibrium' - A must equal B.

Third, a tax system may be able to create direct financial incentives, or reliefs, for employers and other organisations to employ and retain people with disabilities. Existing UK tax reliefs do not include these types of incentives. This position contrasts, for example, with the US where the Work Opportunity Tax Credit³⁹⁶ is explicitly designed to provide a financial incentive to employers to hire employees from a number of target groups – including disabled people.

Finally, the administration of a tax system can be arranged to so as to ensure that support provided is accessible in a straightforward way.

Given these potential roles of a tax system, this chapter considers not only the effectiveness of the existing identified provisions; but also - building on international examples - identifies areas where additional tax reliefs might help disabled people attain the 'cost of disability equilibrium'; or further facilitate participation.

³⁹⁵ Candidate analysis.

³⁹⁶ Discussed in Section 5.

3. Reliefs relating to mobility

Introduction

ONS analysis in Section 3 of Chapter 2 shows that impairment to mobility is the impairment with the greatest prevalence amongst working age adults and amongst adults who have reached state pension age. The table overleaf summarises a range of existing forms of public support for mobility for people with disabilities from public services; concessions; and through the benefits system.

Area of support	Specific measures
Public services and concessions	<p>Subject to meeting eligibility criteria, people with disabilities may be entitled to a Disabled Person's Bus Pass or Railcard³⁹⁷; or, in London, a Disabled Person's Freedom Pass³⁹⁸.</p> <p>Transport services may be available locally depending on need, eligibility and local availability – for example, assisting children with Special Education or Disability ('SEND') needs to attend school; non-emergency Patient Transport Services to health appointments; or a mobility vehicle provided by an NHS Clinical Commissioning Group³⁹⁹.</p>
Benefits	<p>The Personal Independence Payment ('PIP') regime has two rates of mobility component – the standard rate (£26.90 per week – 2023/24) and the enhanced rate (£71.00 per week - 2023/24)⁴⁰⁰.</p> <p>Recipients of PIP at the enhanced rate can 'lease a car, scooter, powered wheelchair or Wheelchair Accessible Vehicle' under the Motability scheme.</p>
Grants from the Access to Work scheme	<p>People with disabilities can apply for discretionary grants for support to access work – including, for example, necessary taxi fares to get to and from work; or for necessary vehicle modifications⁴⁰¹.</p>

³⁹⁷ For details, see UK Government, 'Transport services for disabled people', at:

< <https://www.gov.uk/transport-disabled> > accessed 22 January 2023.

³⁹⁸ For details, see London Councils, 'Disabled persons Freedom Pass', at:

<<https://www.londoncouncils.gov.uk/services/freedom-pass/disabled-persons-freedom-pass>> accessed 22 January 2023.

³⁹⁹ See ss 9-11, Schedule 1 of the National Health Service Act 2006 and its equivalents in Scotland and Northern Ireland.

⁴⁰⁰ For details, see DWP, 'Policy paper: Benefit and pension rates 2023 to 2024', at:

<<https://www.gov.uk/government/publications/benefit-and-pension-rates-2023-to-2024/benefit-and-pension-rates-2023-to-2024>> accessed 23 January 2023.

⁴⁰¹ For a DWP synopsis, see 'Access to Work: factsheet for customers', at:

<<https://www.gov.uk/government/publications/access-to-work-factsheet/access-to-work-factsheet-for-customers>>. This states that grants may be available for 'money towards any extra travel costs to and from work if you can't use available public transport, or if you need help to adapt your vehicle.' Accessed 22 January 2023.

Relevant tax reliefs – overview

Mobility-related tax reliefs broadly fall into two areas: direct tax reliefs in respect of employment-related transport provision; and non-employment related mobility reliefs – including Vehicle Tax, IPT and VAT reliefs.

The employment-related provisions principally aim to ensure that: (i) eligible disabled people are not taxed where their employer provides transport for them to commute to and from work (referred to below as ‘the commuting provisions’); and (ii) that where vehicles are modified for their needs, they are not taxed on the cost of those modifications (referred to below as ‘the modification provisions’). These provisions are consistent with the non-discrimination normative principle set out in Section 7 of Chapter 1. The position of the self-employed – for whom there are no specific disability-related tax reliefs – is considered below alongside these provisions.

Additional Vehicle Tax, IPT and VAT reliefs provide certain direct cost savings in respect of mobility outside of a work setting; and are key elements of the Motability scheme.

The position of the self-employed

Relief for transport costs in relation to self-employed people is subject to the ‘wholly and exclusively’ rule applying to the deductibility of expenses generally: there is no specific tax relief connected with transportation and disability for the self-employed.

In relation to self-employed people, the LITRG have written in support of additional relief, commenting that⁴⁰²:

In particular, we think there should be tax relief for costs incurred by a disabled self-employed person in getting from home to a permanent place of work. HMRC would probably currently regard these costs as non-allowable 'ordinary commuting'.

This point is developed further below on when suggesting enhancements to tax provisions relating to commuting.

The 'commuting provisions' – effectiveness⁴⁰³

The 'commuting provisions' are those in sections 246 and 247 ITEPA 2003 (tax relief for transport costs reimbursed, or cars provided, to employees with disabilities); together with Regulation 38 SSCR 2001 which, broadly, exempts employers from paying Class 1A NICs when a disabled employee is provided with a car which is used between home and a place of employment.

Although the Income Tax provisions seem to provide support to disabled employees through not taxing them on qualifying transportation costs reimbursed or provided by their employer, their application is in practice subject to stringent conditions. For example, the eligibility definition in section 246(4) is:

(4). In this section 'disabled employee' means an employee who has a physical or mental impairment with a substantial and long-term adverse effect on the employee's ability to carry out normal day to day activities.

⁴⁰² LITRG, 'Department for Work and Pensions (DWP) and Department of Health Work, health and disability green paper: improving lives. Response from the Low Incomes Tax Reform Group (LITRG)', 17 February 2017, 8.1.2 at 8, at:

<https://www.litrg.org.uk/sites/default/files/files/170217-LITRG-response-disability-green-paper-FINAL.pdf> > accessed 15 March 2023.

⁴⁰³ Dagan, n262, considers the nature of commuting-related tax reliefs in detail – arguing, amongst other matters, that the distinction between business and personal use in tax legislation can be artificial.

Based on this definition, HMRC Manuals⁴⁰⁴ state that:

There are circumstances in which an employee will not qualify for tax exemption under section 246, although that employee may be within the meaning of 'disabled person' for the purposes of the Equality Act, which may then apply to prevent discrimination against that person. Circumstances that do not qualify for tax exemption include, for example, where the employee:

- *has a potentially recurring disability that is currently in remission such that the impairment ceases to have a substantial adverse effect.*
[]

The LITRG have challenged the provisions of section 246 and HMRC's approach as being unduly limiting⁴⁰⁵, commenting that:

Restricting the scope of this useful relief seems counterproductive. We think that the first bullet point [of HMRC's manual extract above] for example, is potentially harsh on someone with a fluctuating mental health condition. Such a person may find that they can better manage daily tasks, such as going to work – and perhaps even prolong their period of steady state – if they can avoid the stress of travelling on the tube in the rush hour. The tax system should support them to do this as far as possible.

Recommendation: *We believe it would aid clarity and simplify matters if HMRC interpreted the ITEPA legislation to reflect the Equality Act.*

This interpretation of the Equality Act definition seems supported by the Office for Disability Issues which has published the following guidance in relation to fluctuating conditions and the Equality Act 2010⁴⁰⁶ (candidate underlining for emphasis):

⁴⁰⁴ HMRC Employment Income Manual, EIM10080 – 'Employment income: travelling and subsistence payments: home to work travel of disabled persons, Section 246 ITEPA 2003', at:

<<https://www.gov.uk/hmrc-internal-manuals/employment-income-manual/eim10080>> accessed 15 March 2023.

⁴⁰⁵ LITRG, n402, at 7.

⁴⁰⁶ Office for Disability Issues, Equality Act 2010 Guidance, Para c5, 29, available at:

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/570382/Equality_Act_2010-disability_definition.pdf> accessed 22 January 2023.

The Act states that, if an impairment has had a substantial adverse effect on a person's ability to carry out normal day-to-day activities but that effect ceases, the substantial effect is treated as continuing if it is likely to recur.

[] Conditions with effects which recur only sporadically or for short periods can still qualify as impairments for the purposes of the Act, in respect of the meaning of 'long-term' (Sch1, Para 2(2), see also paragraphs C3 to C4 (meaning of likely).)

Although there is a risk that making the relief available to people with fluctuating conditions might create challenges such as avoidance risks and administrative requirements, for the reasons advanced by the LITRG it would seem helpful to revisit this provision and consider whether there are defined criteria within which it could operate satisfactorily.

Beyond section 246, the eligibility requirements of section 247 ITEPA 2003, and Regulation 38 SCR 2001⁴⁰⁷, are also stringent. Eligibility condition B of section 247 effectively prohibits use of a vehicle other than for business purposes or commuting. Clauses 5 and 6 of Regulation 38 SSCR 2001 also completely prohibit private use of a car to be eligible for the relief (other than commuting to and from work).

This potentially leads to the situation where a disabled person provided with a car for commuting by reason of their employment cannot get relief for their commuting in it unless they undertake no private use: in other words, for private

⁴⁰⁷ Subsequent to the abolition in 2004 of Regulation 37 SSCR 2001 (dealing with Class 1A NIC's in relation to cars made available to disabled drivers), there is no definition of 'disability' in Regulation 38 and so HMRC manuals state that – consistent with sections 246 and 247 ITEPA 2003 - 'the definition within the Disability Discrimination Act 1995, which defines a disability as 'a physical or mental impairment which has a substantial and long term adverse effect on his ability to carry out normal day-to-day activities' should be used.'

For details, see HMRC National Insurance Manual, NIM16025, 'Class 1A National Insurance contributions: Special Class 1A NICs cases: Cars provided for private use: Cars provided to disabled drivers: Definition of a disabled driver', at:

<<https://www.gov.uk/hmrc-internal-manuals/national-insurance-manual/nim16025>> accessed 22 January 2023.

motoring they are required to have two cars - unless a car is provided to them under the normal rules governing company car provision. In practice, this may mitigate against using the relief. In many cases, the disabled person may simply not have the space (or financial capacity) to operate two cars. The theme of 'duality of purpose' which emerges here also arises in respect of expense deductions for disabled self-employed people and in relation to certain VAT provisions.

Against this backcloth, whilst the existing reliefs in the 'commuting provisions' provide an element of support for people with disabilities, they only do so under tightly defined circumstances. A key question which arises - in the context of an overarching policy framework which is seeking to close the disability employment gap⁴⁰⁸ - is 'do they go far enough?' None of the provisions, for example, are directed at the self-employed; and certain of the provisions – such as the provision of a car to a disabled person under section 247 ITEPA 2003 - are highly specific and subject to stringent tests which prohibit private use. There can, therefore, be a direct 'cost of disability' in accessing work where:

1. A person with a disability needs to incur 'incremental' commuting costs (more than those incurred by a person without a disability); where
2. Public transport does not take them close to their place of work – or, even if it did, the person would struggle to access it; and

⁴⁰⁸ See Department of Work and Pensions, and Department of Health, n77, para 15 at 8.

3. Their employer (if the disabled person is employed) does not meet the incremental costs; or provide them with transport or a car under the provisions of sections 246 and 247 ITEPA 2003 respectively; and
4. These costs are not covered by a benefit such as a mobility component under PIP; or by an Access to Work grant.

From a functional perspective, the legislation surrounding the 'commuting provisions' seems both clear and stable – being unchanged since introduction. As drafted, the legislation is financially convenient – in that the taxpayer is not taxed on the value of the associated provision. Further, there is no apparent evidence of widespread avoidance. Within the limits of the existing provisions, they seem equitable. In summary, subject to the limitations around scope highlighted above, the provisions seem functionally effective.

Comparative analysis

In Germany all employees are able to claim a deduction in arriving at their tax liability in relation to their commuting, subject to statutory limits, using a round sum allowance; or their specific expenditure⁴⁰⁹. For disabled employees, there is an unlimited commuting allowance under EStG 9(2)(2)⁴¹⁰ for taxpayers meeting certain defined eligibility criteria around restricted mobility⁴¹¹:

⁴⁰⁹ For a summary in English from Wundertax, see:

< <https://germantaxes.de/income-related-expenses-taxes-employees> > accessed 22 January 2023.

⁴¹⁰ From the Translation by Dr Thomas Rittler, n344.

⁴¹¹ In Germany, under the *Grad der Behinderung* system (see Section 2 of Chapter 4), disability is categorised on a scale of 0-100 depending on severity, rather than using broad definitions such as under the Equality Act 2010.

...Disabled people,

1. *Whose degree of disability is at least 70;*
2. *Whose degree of disability does not reach 70 but reaches at least 50 and whose mobility in road traffic is significantly reduced*

May recognise the actual expenditure for ways between the home and first workplace and for home journeys to the family instead of the commuting allowance.

The example from Germany highlights two important but distinct points: first the relief is coherent with the overall system for disability assessment (based on a scoring from 0-100) used in welfare and other assessment; and second, the relief allows people with disabilities unlimited tax relief for their actual expenditure.

In Canada, there is a broad-ranging relief from Income Tax⁴¹² for reasonable home-to-work transportation costs – whether by way of reimbursement or (reasonable) allowance – qualified by reference to blindness or mobility impairment.

The US tax code contains reliefs for certain transportation expenses under the category of ‘impairment-related work expenses’: this relief is discussed in more detail below.

Potential improvements to the ‘commuting provisions’

First, there appears to be a strong case for reviewing the restrictions in relation to the private use of cars in section 247 ITEPA 2003; and Clauses 5 and 6 of Regulation 38 SSCR 2001 – perhaps introducing some form of charge in respect of private use to eliminate the private use ‘cliff edge’. More broadly, the

⁴¹² Income Tax Act, Subdivision A, 16.

LITRG have argued for wider support through the tax system for transport (and other costs) for working disabled people⁴¹³:

Disabled people experience additional costs in most areas of everyday life – including work. For example, in terms of getting to work they may be unable to use public transport and need to use a specialist taxi service instead.

Disappointingly there is no blanket exemption or relief for the extra costs which are incurred by a disabled employee in work, over and above those incurred by a non-disabled employee. Instead there are piecemeal reliefs, such as that contained in s246 Income Tax (Employment and Pensions) Act 2003 (ITEPA).

Section 246 ITEPA 2003 gives an income tax exemption if transport is provided between home and work for a disabled employee, or if the employer pays for such transport or reimburses the expense incurred. On the basis that inaccessible transport is the second biggest barrier to employment for disabled people (after lack of job opportunities) this is a sensible relief.

However, disabled employees cannot claim a tax deduction for costs which they bear themselves and are not reimbursed by the employer.

While we appreciate Access to Work plays an important part in helping to fund a disabled person's extra costs such as transport costs, we are in the era of cuts to grants, drops in applications, and problems with the Access to Work process, so the funding will not offer complete coverage in every instance, potentially leaving the employee to make up the difference. We think the tax system should, as far as possible, recognise such expenditure.

Given the importance of mobility support for many disabled people, and the UK Government's strategic imperative to support work participation, there seems to be a strong case for ensuring that disabilities do not financially disadvantage them in their participation in work through support with mobility to get to and from work where employers are unwilling or unable to meet these costs.

However, recognising support made available through, for example, PIP and Access to Work; but mindful of the 'costs of disability equilibrium', providing

⁴¹³ LITRG, n402, at 5.

a fair and robust basis of financial support would need careful design and, for system coherence, be aligned with a 'whole system' view of mobility support – including the other mobility-related tax reliefs such as the Vehicle Tax, IPT and VAT reliefs discussed later in this chapter.

Building on the examples of Germany, Canada and the US, some form of tax relief may be one option. For full reimbursement, a mechanism such as a refundable credit based on actual expenditure would be needed: a simple Income Tax deduction for incremental expenses incurred would (i) not benefit people on low incomes below the Personal Allowance threshold; and (ii) in any event would not provide a true cost reimbursement.

Such an arrangement could also apply to employed and self-employed people. It would clearly need robust anti-avoidance provisions to prevent abuse.

The 'modification provisions' – effectiveness

Sections 124A, 125(2)(c) and 138 ITEPA 2003 make provisions in respect of cars provided for employment purposes which have specifications necessary to meet the needs of a disabled driver. Eligibility is based upon qualification for a disabled person's badge (a 'Blue Badge').

Section 138 ITEPA 2003 provides relief where a disabled employee is provided with a car where, as a result of the disability, automatic transmission is required; and section 125(2)(c) ITEPA 2003 – amplified by section 172 - seeks

to ensure that disabled drivers who qualify for a ‘Blue Badge’⁴¹⁴ are not taxed on specialist equipment installed on a car.

As a minor point, mixing eligibility criteria in the ‘commuting provisions’ (based on Equality Act-based definitions) with those in the ‘modification provisions’ (based upon qualification for a Blue Badge) does not seem consistent: the provisions which require a driver to have a Blue Badge – as their car has been modified to reflect their disability – could straightforwardly be reframed so as to use the Equality Act definition of disability, with the proviso that the modifications are specifically required as a result of any impairment.

Subject to their limitations on scope, the ‘modification provisions’ seem effective from a functional perspective: they are reflective of the broader legislative and policy framework surrounding disability in that they ensure that employees are not taxed as a result of their disability.

The provisions are equitable – they achieve neutrality and non-discrimination, consistent with the normative principles in Section 7 of Chapter 1; and they make a meaningful difference to taxpayers by mitigating what might otherwise be a material tax cost. They are financially convenient, and the best vehicle for providing support, in that relief is provided prior to any charge to tax being incurred. The legislation setting out the ‘modification provisions’ appears clear and stable: updates have reflected broader changes to car taxation. No systemic avoidance has been identified.

⁴¹⁴ As outlined in Section 4 of Chapter 3, the ‘Blue Badge’ scheme has been reviewed and further provisions related to eligibility for a badge in the light of ‘hidden disabilities’ introduced with effect from 30 August 2019. See announcement from Department for Transport, ‘People with hidden disabilities can access Blue Badges for the first time from today’, 30 August 2019, at:

<<https://www.gov.uk/government/news/people-with-hidden-disabilities-can-access-blue-badges-for-the-first-time-from-today>> accessed 22 January 2023.

Vehicle Tax reliefs – effectiveness

Section 5, and sections 18 and 19 of Schedule 2 of the Vehicle Excise and Registration Act 1994 exempt vehicles from Duty including invalid carriages of 508kg or less unladen weight (section 18 of Schedule 2); and vehicles – broadly - used or kept for the use of a disabled person meeting certain specified criteria (section 19(1) of Schedule 2). Section 1ZA of Part 1 of Schedule 1 provides that, subject to various criteria, a 50% exemption from Duty applies for disabled people in receipt of Personal Independence Payment where they are entitled to the mobility component at the standard rate.

The vehicle must be ‘used, or kept for use, by or for the purposes of a disabled person...’⁴¹⁵: where a person with a disability has a ‘nominated driver’, Government guidance emphasises that, in relation to the vehicle: ‘*It must only be used for the disabled person’s personal needs. It cannot be used by the nominated driver for their own personal use.*’⁴¹⁶ This seems a reasonable requirement to avoid undue benefit passing to non-disabled people – although clearly restricts use of the car by, for example, other family members.

In 2021/22⁴¹⁷, rates of Vehicle Tax for the first year of a vehicle’s registration varied considerably depending on CO2 emission levels – with higher emission levels resulting in higher rates of duty. In subsequent years, the rate

⁴¹⁵ Schedule 2, s19(1).

⁴¹⁶ See UK Government guidance, ‘Financial help if you’re disabled – Vehicle Tax exemption’, at:

< <https://www.gov.uk/financial-help-disabled/vehicles-and-transport> > accessed 22 January 2023.

⁴¹⁷ The rates and other information in this paragraph were sourced from UK Government guidance, ‘Vehicle Tax rates’, at:

< <https://www.gov.uk/vehicle-tax-rate-tables> > accessed 22 January 2023.

of duty for petrol or diesel vehicles is a 'flat' £165 per annum with discounts for electric or alternatively fuelled vehicles. Unless they are 'zero emission vehicles', vehicles with a list price of over £40,000 attract an additional level of duty of £355 per annum for five years after the first year of registration.

This relief seems to have advantages and disadvantages: on the one hand, it can be argued to be providing some form of alleviation of mobility costs for eligible people with disabilities. On the other hand, the relief seems to suffer from equitability problems – in that it becomes more valuable as the vehicle becomes more expensive (and, in the first year of registration, discharges higher emissions). Further, it is a relief only available to people able to purchase or lease a qualifying vehicle. A question arises, therefore, as to whether there should be some form of cap on the relief. These potential equitability problems also apply to vehicles benefiting from VAT and IPT relief, including vehicles leased under the Motability scheme. This is considered in more detail below.

From a functional perspective, notwithstanding its equitability problems, the Vehicle Tax-related legislation appears clear – and broadly stable subject to its needing to reflect developments in both Duty more broadly and in relevant benefits which form the basis of eligibility in many cases. As the eligibility criteria for exemptions from Duty are explicitly linked to benefit or grant entitlements, there appears to be more limited scope for ambiguity or dispute compared to definitions in other reliefs which have more subjectivity – such as those in relation to Council Tax.

The relief is financially convenient for those benefiting from it – being an 'up-front' saving of tax; and might be expected to make a meaningful difference to recipients, depending on their means.

The DVLA publish Vehicle Tax evasion statistics periodically: the latest edition, published in November 2021⁴¹⁸, made no reference to evasion in relation to the disability exemptions.

The Motability scheme

The Motability scheme is a vehicle leasing scheme for disabled end-users⁴¹⁹ which incorporates a range of public support, including substantial tax reliefs. It is of such significance to personal mobility for disabled people that it is considered separately here – albeit that it is not a pure state enterprise.

The scheme is run on a day-to-day basis by Motability Operations Limited under contract to Motability, a registered charity⁴²⁰. Motability was established in 1977 and incorporated under Royal Charter⁴²¹. The online 2021/22 annual report for Motability Operations Limited states that⁴²²:

The Scheme is available to disabled people who receive one of the following:

- – *Higher Rate Mobility Component of Disability Living Allowance (HRMC of DLA)*

⁴¹⁸ See 'Vehicle excise duty evasion statistics (Vehicle Tax), Data on unlicensed vehicles', produced by the Department for Transport, at:

< <https://www.gov.uk/government/statistical-data-sets/vehicle-excise-duty-evasion-statistics-Vehicle-Tax> > accessed 22 January 2023.

⁴¹⁹ For details of Motability and how the scheme works, see the Motability website, 'How the Motability Scheme works', at:

< <https://www.motability.co.uk/how-it-works/> > accessed 22 January 2023.

⁴²⁰ For details, see Motability, 'Who we are':

< <https://www.motability.co.uk/how-it-works/who-we-are/> > accessed 22 January 2023.

⁴²¹ For details, see Motability, 'About us': < <https://www.motability.org.uk/about/> > accessed 22 January 2023.

⁴²² The 2021/22 financial report for Motability Operations is available online at:

< <https://www.motability.org.uk/about-us/annual-reports-and-accounts/> > accessed 22 January 2023. Quote from 31.

- – *Enhanced Rate Mobility Component of Personal Independence Payment (ERMC of PIP)*
- – *War Pensioners' Mobility Supplement (WPMS)*
- – *Armed Forces Independence Payment (AFIP)*

Today, more than 640,000 people benefit from the Motability Scheme...

In summary, qualified lessees are able to lease a vehicle – including a car, Wheelchair Accessible Vehicle, scooter or powered wheelchair - from Motability using mobility-related benefits, such as the mobility component of PIP, which are effectively hypothecated to the scheme. These rates also reflect both the scale economies of Motability as a major lessor⁴²³; and importantly the impact of VAT, IPT reliefs. Given the combination of both benefit hypothecation and tax reliefs to deliver targeted outcomes, the scheme illustrates the benefits of a 'whole system' approach to financial support in respect of disability. Of leasing a car, for example, Motability states that⁴²⁴:

How much you pay depends on the allowance you receive.

Choose your allowance and look for the part or component you receive to find out how much you get each week. []

You can exchange all or part of your mobility allowance, but for most of our vehicles you'll need to use all of it.

So you know – you might need to top this up with an Advance Payment. If you choose any optional extras, you'll need to pay extra for these too.

⁴²³ See Work and Pensions and Treasury Committees, The Motability Scheme, Section 2 paragraph 20, published 21 May 2018: *'Motability Operations estimates that leasing a vehicle using its scheme is "45 per cent cheaper" than sourcing a vehicle on the open market. It is able to achieve this in part because of its scale, and in part because of two tax exemptions that Motability scheme users are able to access.'*

⁴²⁴ See Motability. 'How you pay and what it costs', at:

< <https://www.motability.co.uk/how-it-works/payments/> > accessed 24 January 2023.

The scheme has been the subject of a specific National Audit Office (‘NAO’) report⁴²⁵ who have provided an analysis of the VAT and IPT benefits to the scheme in 2017⁴²⁶, reproduced overleaf:

Figure 5

Tax concessions available to Motability Operations

Legislation	Description of tax concession	Current rate	Maximum value per annum (2017)
Value Added Tax Act 1994, Schedule 8, Clause 14	The provision of the hire of a motor vehicle to individuals in receipt of specified disability benefits is zero-rated for VAT purposes.	20%	£401m
Value Added Tax Act 1994, Schedule 8, Clause 15	The sale of vehicles used in the provision of a lease which is eligible for the zero rating of VAT is itself eligible for the zero-rating of VAT where the sale constitutes the first supply after the end of the lease.	20%	£424m
Insurance Premium Tax Regulations 1994 (Statutory Instrument 1994/1774 – as amended)	Insurance contracts supplied to people leasing vehicles under the same arrangements as above are exempt from insurance premium tax.	12%	£63m

Notes

- 1 The estimates are based on tax concessions not being in place and Motability Operations charging VAT and Insurance Premium Tax (IPT) through lease costs.
- 2 The estimates are based on figures taken from Motability Operations’ Annual Report and Accounts to 30 September 2017.
- 3 The maximum estimate assumes that there would be no impact on the volume of scheme customers as a result of lease prices increasing in the absence of tax concessions.

Source: National Audit Office analysis of Motability Operations data

Further, the scheme has been considered at some length by the Work and Pensions and Treasury Committees⁴²⁷; and its role in supporting mobility for disabled people was examined extensively in a 2020 Social Security Advisory Committee Occasional Paper reviewing the use of public funds to support the

⁴²⁵ National Audit Office, ‘The Motability Scheme’, 7 December 2018, available at:

< <https://www.nao.org.uk/report/the-motability-scheme/> > accessed 24 January 2023.

⁴²⁶ National Audit Office, n425, Figure 5 at 20.

⁴²⁷ Work and Pensions and Treasury Committees, n423.

mobility needs of disabled people⁴²⁸. Having access to a vehicle is regarded as highly important for many disabled people. For example, the Social Security Advisory Committee Paper comments that⁴²⁹:

In terms of the broad findings, public transport was highlighted as inaccessible for many disabled people; conversely the importance of a car, or other suitable private vehicle, was indicated as paramount, not only to the ability to live independently but also to the ability to continue in paid work, and take an active role in society. Having access to their own vehicle was often quoted by disabled people as a 'lifeline'.

Nonetheless, a number of concerns about aspects of the Motability scheme have been expressed⁴³⁰. This thesis does not seek to comment on the organisation or operation of Motability – rather, it focuses on a number of key tax policy implications from the scheme including equitability considerations and the potentially broader use of the funds made available by the relevant tax reliefs.

⁴²⁸ On 17 November 2020, the UK Government's Social Security Advisory Committee published its Occasional Paper number 23 entitled 'The use of public funds in supporting the mobility needs of disabled people'. This is accessible at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/935743/ssac-occasional-paper-23-mobility-needs-of-disabled-people.pdf > accessed 24 January 2023.

⁴²⁹ Social Security Advisory Committee, n428, Executive Summary.

⁴³⁰ For example, in their Report conclusions online, n425, the NAO write that: '*Motability acknowledges that the scheme benefits from structural advantages afforded to it through government support – for example, tax concessions, direct payment of mobility allowances and an effective monopoly. However, we do not see that Motability Operations reflects these advantages adequately in its consideration of risk when compared to other companies, how it assesses its performance, and how executives are rewarded. Its prudent view of risks and reserves tends to reinforce their 'exceptional' performance viewpoint, which we think leads to very high executive reward.*'

Further, the Work and Pensions and Treasury Committee (n423) noted that: '*To the extent that the tax breaks enable the provision of low cost mobility aids, they are an appropriate use of public money. [] Potential rivals cannot compete with Motability Operations. This is because it receives substantial tax breaks from the Government to which no other company is entitled. Nor does it face any competitive pressure when tendering for the contract to run the scheme on behalf of Motability. Without any competitors on an equal footing, it is impossible to know whether disabled drivers would be able to access better loans elsewhere.*'

One of the issues identified by the Social Security Advisory Committee around the scheme was the extent of its use: the report suggested that only some 36% of eligible people used it⁴³¹. One of the six identified barriers to use was financial – with the report stating that⁴³²:

[Financial capacity] was by far the most frequently cited barrier to accessing the Motability scheme, and often intersected with other process and practical barriers. For many eligible disabled people, it was simply a case of being unable to afford to take part in the scheme; the higher rate mobility allowance was prioritised for other costs such as food or household bills.

Building on this issue, the Committee's second recommendation in their paper was that⁴³³:

Recommendation 2

DWP, in collaboration with colleagues in other government departments as appropriate, to explore the feasibility of extending to those who do not obtain a private vehicle via Motability advantages for broader transport options that are equivalent in value to the tax reliefs that those who do use Motability benefit from. This may include taxi schemes, buses on demand or other community bus schemes, as well as alternative vehicle lease providers to compete with Motability Operations.

In summary, the Motability scheme provides essential mobility to a considerable number of disabled users. It combines different strands of public financial support – including mobility benefits and tax reliefs – to deliver vehicles at a price which is attractive to its end-users. Subject to the structural and operational concerns expressed around the scheme (upon which this thesis does not express a view) for those who can afford to use it, the incorporation of the VAT, IPT and Vehicle Tax reliefs seems, from a tax perspective, 'effective' in supporting disabled people.

⁴³¹ Social Security Advisory Committee, n428, at 5.

⁴³² Social Security Advisory Committee, n428, at 7.

⁴³³ Social Security Advisory Committee, n428, at 8.

Nonetheless, the Social Security Advisory Committee's paper has identified that not all potential end-users can afford to use it – raising issues of equitability in the use of the (considerable) tax reliefs. The principle of ensuring that eligible people with disabilities who are unable to afford a vehicle can also benefit from an equivalent transport subsidy seems equitable.

Non-employment related transportation provisions: maintenance grants for vehicles provided under NHS and similar arrangements

Section 780 ITTOIA 2005 provides relief from tax for maintenance grants in respect of vehicles provided for disabled people under specific English National Health Service legislative provisions, and similar ones in Scotland and Northern Ireland. These arrangements are unconnected with any office or employment. From a policy perspective, to tax recipients on these grants could be argued to be taxing them on account of their disability and therefore discriminatory.

4. Other disability-related expenses in a work setting

Introduction

Aside from transportation costs, a person with a disability may incur additional costs in participating in work in other activities.

The Equality Act 2010 requires employers make 'reasonable adjustments' required to facilitate work by a person with a disability. However, a person may incur other costs in participating in, or seeking to participate in work which are not met by their employer; or by either the Access to Work scheme or benefits system. The net costs of disability in work participation – costs uncovered by benefits or reimbursement by employers - will clearly vary from individual to individual.

Before commenting on how the tax system might contribute further towards the ‘cost of disability equilibrium’, this section first considers the effectiveness of two existing employment-related reliefs for: (i) equipment provided to disabled people; and (ii) the provision of recommended medical treatment – a provision which covers all eligible employees and is not limited to those with disabilities. This latter provision is included given Governmental policy emphasis on helping disabled people return to work⁴³⁴; and supporting them whilst in work⁴³⁵. The analysis in this section also comments on the position of the self-employed.

Exemption from tax for certain equipment provided to disabled employees

Following the Disability Discrimination Act 1995, the Income Tax (Benefits in Kind) (Exemption for Employment Costs resulting from Disability) Regulations 2002, SI 2002/1596, exempts certain equipment provided to disabled people from being treated as a taxable benefit for Income Tax purposes, subject to a number of conditions – including that:

*The main purpose of providing the benefit is to enable the employee to perform the duties of his employment*⁴³⁶; and

*The benefit is provided under, or within the terms of the provisions of, the Disability Discrimination Act 1995, the Access to Work programme, or any other statutory provision or arrangements, whether or not the employer has any legal duty to provide the benefit.*⁴³⁷

⁴³⁴ A theme of the November 2017 White Paper at n77 – see, for example, 8; and the March 2023 White Paper, n81.

⁴³⁵ For example, White Paper, n81, at 16-18.

⁴³⁶ The Income Tax (Benefits in Kind) (Exemption for Employment Costs resulting from Disability) Regulations 2002, SI 2002/1596 – Condition 2. Note that the Equality Act 2010 has superseded the Disability Discrimination Act 1995.

⁴³⁷ Regulations, n436, Condition 4.

This provision has the effect of ensuring that people with disabilities are not unduly taxed simply as a result of their disability. It is important to note that it covers equipment provided by an employer to an employee: it does not cover expenses incurred solely by the employee themselves.

Subject to its scope, the purposive and functional effectiveness of the provisions of the Regulations is mixed: on the one hand, the legislation seems clear and has remained stable; and the candidate has not identified systemic avoidance. Within the limits of its scope, the relief is equitable and convenient – removing any charge to tax which might otherwise arise on equipment provided to people with disabilities to enable them to work. The provisions are consistent with the broader legislative framework – being explicitly qualified by the Disability Discrimination Act 1995 and ‘other statutory provision or arrangements’.

The principal limitations of the provisions surround their scope – and the extent to which this might be broadened to allow tax relief for disabled people, whether employed or self-employed, incurring expenses personally to enable them to access or participate in work: this is considered further below.

Exemption from tax in relation to the receipt by an employee of ‘recommended medical treatment’

Section 320C ITEPA 2003 provides, subject to a number of conditions, for an exemption from Income Tax in relation to the receipt by an employee of ‘recommended medical treatment’. Section 320C(3)(b) sets out that the relief applies where it *‘is made for the purpose of assisting the employee to return to work after a period of absence due to injury or ill health’*. The provision may,

therefore, be one which facilitates enablement for a person with a disability to return to work.

Section 320C is subject to a £500 annual limit: consistent, therefore, with Government policy around supporting disabled people to stay in work, a question arises as to whether there should be no limit for disabled employees meeting the Equality Act definition of disability where employers elect to provide recommended medical treatment to support their staying in, or returning, to work.

Section 320C ITEPA 2003 seems an effective provision subject to its £500 cap – noting the policy issue as to whether this might be extended for people with disabilities. The relief is designed to support people in returning to work and is available to all employees meeting its eligibility criteria. The legislation seems clear and has remained unchanged since its introduction. Administration is undertaken by the employer making the provision financially convenient for employees; and relief at source makes the provision an appropriate vehicle for delivering the relief. No systemic avoidance has been identified.

On 15 March 2023, the UK Government announced the following consultation in the Spring Budget⁴³⁸:

4.158 Consultation on occupational health tax incentives – *The government will consult on options to increase investment in occupational health services by UK- wide employers through the tax system.*

⁴³⁸ HM Treasury, 2023 Spring Budget, at:

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1144441/Web_accessible_Budget_2023.pdf> at 101. Accessed 25 March 2023.

The outcome of this consultation, which was launched on 20 July 2023, and its implications for disabled people at work remain to be seen.

Do the expenditure reliefs go far enough?

Similar to the transport-related reliefs considered above, a question arises as to whether these reliefs go far enough; and whether there is scope for some form of broader arrangement – such as a tax credit - for disabled people participating in work to help them achieve the ‘cost of disability equilibrium’ referred to above. Indeed, in 2017 the LITRG wrote – including in relation to home working - that:⁴³⁹

... disabled employees cannot claim a tax deduction for costs which they bear themselves and are not reimbursed by the employer.

[]

Recommendation: *A holistic approach to the work-related rules should be considered whereby all employed disabled people should be able to claim as an employment expense the costs of putting themselves, as far as possible, on a par with non-disabled people.*

[]

Of course, with recent technological advances, it seems to us that homeworking could help disabled people avoid a commute altogether. But here too, the relief rules for things like the additional costs of heating and lighting are restrictive. Currently, the rules are skewed to favour situations where the employer pays for or reimburses expenses. Again, tax relief is restricted if the employee incurs the expenses themselves. As such, there is probably also a case for reviewing these rules with a view to incentivising homeworking.

In relation to any tax relief on disability-related expenses, although a deduction would arguably make the ‘base’ upon which tax is raised more comparable between disabled and non-disabled people (more closely aligning ‘ability to pay’), a deduction – to which a marginal tax rate is applied – would not seem to

⁴³⁹ LITRG, n402, clauses 5.4, 5.6 and 5.7, at 5 and 6.

provide the net equilibrium discussed above, particularly if a taxpayer's marginal rate is nil or low. Rather, subject to the other parameters in the 'equilibrium equation', an actual tax credit by way of reimbursement of the actual net costs suffered, irrespective of marginal tax rates, would seem to be required to achieve genuine equity. Subject to scope, this might result in some overlap with the existing Access to Work grants and benefits frameworks. Nonetheless, a deduction would be an improvement on the current position from the perspective of disabled people – and is consistent with the approach used in certain other jurisdictions.

For example, in Canada a Disability Supports deduction for Income Tax purposes in Division B, subdivision E, section 64 of the Income Tax Act covers tax relief for a wide range of specialist services where for disabled people who work; go to school; or conduct research for which they receive a grant (note that these provisions extend into other settings beyond work). There are limits as to what can be claimed.

The supports eligible for deduction are very specifically targeted at disability-related expenses⁴⁴⁰ – but do include certain attendant and job coaching services, in addition to specialist equipment to assist disabled people in different work and educational tasks. Certain, but not all, of the expenses require certification from a medical practitioner. Similar to benefits in the UK and VAT reliefs (discussed in Section 5), these provisions also need to be seen alongside the Canadian Disability Tax Credit (see Section 2 of Chapter 4); and

⁴⁴⁰ Commentary around certain of these provisions can be found in Duff, 'Disability and the Income Tax', n22, at 886 and 887.

the broad range of Canadian GST exemptions for people with disabilities – again, discussed in Section 5.

Arguably, one of the most significant reliefs for working people with disabilities in the US IRC in Sections 67(b)(6) and 67(d). Although the general rule in Section 67(a) imposes a 2 percent floor on ‘miscellaneous itemised deductions’, there is a carve-out for ‘impairment-related work expenses’ (‘IRWE’) with a deduction permitted in respect of ‘impairment-related work expenses’ of a ‘handicapped individual’. IRWE are also deductible in arriving at earnings for the purposes of assessment for a number of means-tested social security benefits⁴⁴¹. IRS guidance⁴⁴² summarises IRWE as:

Impairment-related expenses are those ordinary and necessary business expenses that are:

- *Necessary for you to do your work satisfactorily;*
- *For goods and services not required or used, other than incidentally, in your personal activities; and*
- *Not specifically covered under other income tax laws*

IRWE are deductible even if there is *incidental* private use of the purchases, provided that they meet the conditions for relief and are necessary for a person’s work. They can be deducted both by employees and the self-employed.

⁴⁴¹ See ‘Impairment Related Work Expenses’, including a worked example, published by the US Social Security Administration, see:

<<https://choosework.ssa.gov/library/2018-11-28-faq-impairment-related-work-expenses>> accessed 24 January 2023.

⁴⁴² See IRS Publication 502, ‘Medical and Dental Expenses’, at 21. Available online at:

< <https://www.irs.gov/pub/irs-pdf/p502.pdf> > accessed 13 February 2023.

Eligible expenses include...*‘goods and services not required or used, other than incidentally, in your personal activities...’*

Taking the Canadian and US examples, there does seem to be precedent for expanding the range of UK tax reliefs for people with disabilities required to meet their costs of disability to participate in work where not met by their employer. This would seem consistent with the social model of disability – whereby barriers to, for example, work should be addressed on a holistic basis⁴⁴³.

However, building on the ‘equilibrium formula’ referred to above, any deductions would need avoid duplication with, for example, relevant benefit payments or Access to Work grants. For the ‘equilibrium formula’ to be met in full, some form of full tax credit – or other subvention – net of other state support received would be needed, rather than a simple deduction from taxable income – recognising that simple deductions may be of limited or no value to people on low incomes.

The position of the self-employed

Self-employed disabled people are presently limited to claiming for tax relief on disability-related expenses under the ‘wholly and exclusively rule’ - subject to the restrictions and case law governing the test of ‘wholly and exclusively’, such as ‘duality of purpose’⁴⁴⁴. Once again, the limitations of this approach have been the subject of comment by the LITRG who write, amongst other relevant comments, that⁴⁴⁵:

As with employment income however, there is no blanket tax exemption or deduction for the extra costs incurred when putting themselves, as far as possible, on a par with non-disabled people. We would like to see this changed.

⁴⁴³ Oliver, n26.

⁴⁴⁴ For example, in the case of *Murgatroyd v Evans-Jackson*, n206.

⁴⁴⁵ LITRG, n402, 8.1.2 at 8.

Drawing on the comparative analysis with Canada and the US above, and consistent with both the Social Model of disability and the ‘equilibrium formula’, there seem to be opportunities for greater reliefs for self-employed people with disabilities to meet their costs of disability in work participation. However, as for employees, any further reliefs would need to be defined and structured carefully so as to achieve their intended purpose – and not unduly allow tax reliefs for expenditure whose principal purpose was, for example, non-work related.

5. Key theme for further consideration: employer incentivisation mechanisms

Introduction

Given the Government’s stated objective of improving participation by disabled people in work – a key element of both the National Disability Strategy and the 15 March 2023 Health & Disability White Paper – a question arises as to whether the tax system might facilitate greater participation through tax-related incentives and subsidies to stimulate employment and self-employment. In the US, by way of example, a 2017 paper ‘*Why Employers don’t hire People with Disabilities: a Survey of the Literature*’⁴⁴⁶ – based on a number of US studies – drew out the impact of reduced productivity and cost as key obstacles to the employment of people with disabilities.

⁴⁴⁶ Lengnick-Hall, Gaunt and Brooks, ‘Why Employers Don’t Hire People With Disabilities: A Survey of the Literature’, for the CPRF, 2017, available at:

<<https://www.cprf.org/studies/why-employers-dont-hire-people-with-disabilities-a-survey-of-the-literature/>> accessed 5 February 2023.

This thesis acknowledges that subsidies to stimulate employment can be provided in numerous ways, and that the tax system is one of a number of routes. However, at present, aside from Access To Work grants (see below), state subventions designed to provide financial support for the employment of people with disabilities seem limited.

There has been a considerable level of analysis and consultation undertaken by the UK Government, and other bodies such as the IFS, considering how to improve participation by people with disabilities in work⁴⁴⁷. These publications acknowledge that increasing participation in work by disabled people is multi-faceted – and needs to consider a very broad range of areas including healthcare; personalised coaching and support; and engagement with employers.

The principal measure in force in the UK which provides direct financial support to assist with the employment of people with disabilities is the Access to Work ('ATW') scheme⁴⁴⁸. ATW provides people with disabilities grants to access work. In 2021/22, the scheme had some 38,000 participants⁴⁴⁹ and cost

⁴⁴⁷ Examples of literature in this area include:

DWP, 'What works for whom in helping disabled people into work?', October 2013, at:

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/266512/wp120.pdf> accessed 19 March 2023.

The 2016 Green Paper, and subsequent 2017 White Paper, n77, entitled 'Improving Lives: Work, Health and Disability'.

Emmerson, Joyce and Sturrock, 'Working-age incapacity and disability benefits', IFS Green Budget, February 2017, Pages 177-202.

⁴⁴⁸ For details of the Scheme, see UK Government, 'Access to Work: factsheet for customers', at:

<<https://www.gov.uk/government/publications/access-to-work-factsheet/access-to-work-factsheet-for-customers>> accessed 5 February 2023.

⁴⁴⁹ For DWP statistics around take-up and cost of the Access to Work Scheme for 2021/22, see: 'Access to Work statistics: April 2007 to March 2022', at:

some £150 million. Grants are provided to support people with disabilities in accessing work. Aside from ATW, much support to incentivise and support workforce participation by disabled people seems to be non-financial support⁴⁵⁰.

In contrast to a number of other countries, there do not appear to be direct tax-based incentives in the UK for employers to employ people with disabilities. Against this backdrop, this thesis questions whether there may be a case for considering further financial incentives or support through the tax system, to help support greater participation by people with disabilities in work – whether as employees or self-employed.

Reviews of different incentivisation mechanisms

A DWP 2013 paper (some ten years old at the date of this thesis), ‘What works for whom in helping disabled people into work?’⁴⁵¹, made some limited comments around employer incentivisation following a review of some relevant literature drawn principally from systems then in place in Canada, Denmark and Finland⁴⁵²:

The evidence on financial incentives is rather patchy, focusing only on a small number of initiatives. However, the evidence on these individual initiatives is robust and can provide useful indications of what does and does not work.

<<https://www.gov.uk/government/statistics/access-to-work-statistics-april-2007-to-march-2022/access-to-work-statistics-april-2007-to-march-2022>> accessed 5 February 2023.

⁴⁵⁰ For details, see DWP, ‘Employing disabled people and people with health conditions’, at:

<<https://www.gov.uk/government/publications/employing-disabled-people-and-people-with-health-conditions/employing-disabled-people-and-people-with-health-conditions>> accessed 5 February 2023.

⁴⁵¹ DWP, n450.

⁴⁵² DWP, n450, at 16.

The same study considered briefly various financial incentives *for individuals* in place in different countries to ‘increase motivation’ to work⁴⁵³ – including the UK’s then Disability Tax Credit system. Again, it concluded that⁴⁵⁴:

The evidence in this area is patchy, limited to a small number of examples and with findings mainly at the ‘headline’ level. This makes it difficult to establish what works best, or how future interventions should be designed.

There is a very considerable literature on the subject of government wage and other subsidies – including tax incentives - to support people with disabilities into, or to remain in, work. A full analysis of subsidy types and their effectiveness is beyond the scope of this thesis. However, by way of background, a 2014 EU study⁴⁵⁵, examining the effects of wage subsidies of different types across a number of member states found that wage subsidies and other measures are in active use across a number of member states to support different categories of people into work. Of wage subsidies for people with disabilities, the study writes that⁴⁵⁶:

There are few studies of the employment impact of wage subsidies, and those that exist are sometimes contradictory, fewer still have tried to assess the relative efficiency of employment subsidies.

⁴⁵³ DWP, n450 at 20.

⁴⁵⁴ DWP, n450 at 21.

⁴⁵⁵ European Employment Policy Observatory Review, ‘Stimulating job demand: the design of effective hiring subsidies in Europe’, 2014, available via the Publications Office of the EU at:

<https://op.europa.eu/en/publication-detail/-/publication/e6edd690-1dda-448d-aa16-865e3112e3c6/language-en> > accessed 5 February 2023.

⁴⁵⁶ European Employment Policy Observatory, n455, at 25.

Approaches in use in Australia, Canada, Germany and the US: summary

In Australia, employers are offered a direct subsidy of up to Aus \$1,650 as ‘funding for employers who hire job seekers registered with a Disability Employment Service provider to help people with disability gain skills and experience through employment.’⁴⁵⁷

At a national level, the Canadian tax code – similar to the UK – does not appear to provide direct tax incentives to employers to employ disabled people. Canada operates a number of initiatives at both national and provincial levels to support people with disabilities into work – including an Opportunities Fund for Persons with Disabilities⁴⁵⁸ (which, similar to ATW, provides grants upon application); and regional targeted programmes.

In Germany, there are a considerable number of legislative and financial mechanisms to mandate or support the integration of people with disabilities into the workforce. In relation to financial support for reduced productivity by people with disabilities, the German Federal Association of Sheltered Workshops write⁴⁵⁹:

...there is a compensation for the lower working performance of people with disabilities who work under the conditions of the open labour market. The

⁴⁵⁷ For details of the scheme, see Australian Government, ‘Funding for employers of people registered with a Disability Employment Service provider’, at:

< <https://business.gov.au/Grants-and-Programs/Wage-Subsidy-Scheme> > accessed 5 February 2023.

⁴⁵⁸ For a Canadian Government overview of the Opportunities Fund for Persons with Disabilities, see:

< <https://www.canada.ca/en/employment-social-development/services/funding/disability-opportunity-national.html> > accessed on 5 February 2023.

⁴⁵⁹ Details of a range of financial support for people with disabilities in Germany as at 19 October 2018 are provided by Bundesarbeitsgemeinschaft Werkstätten für behinderte Menschen e. V. (BAG WfbM) – ‘the political representative of sheltered workshops in Germany’ – at:

< <http://www.bagwfbm.eu/page/quota> > accessed 5 February 2023.

amount of money paid depends on the level of performance and also on the need for qualification, adjustment to the new job, etc. Support of up to 70 % of the wages for a period of 24 months is possible. For people with particular severe disabilities – for example people with disabilities who come from sheltered workshops and are no longer considered fully incapacitated for work – can receive support for a period of 60 months. If the work performance improves after 12 months, the financial support is reduced by 10 % per year.

The US provides a series of targeted federal tax reliefs designed to facilitate the employment of people with disabilities (and other under-represented groups) in work – including a specific tax credit, Work Opportunity Tax Credit ('WOTC'). WOTC provides incentives for businesses to hire individuals from various targeted groups, including certain disabled people. Further, a number of states provide direct financial incentives to hire people with disabilities: a synopsis provided by the Employer Assistance and Resource Network on Disability Inclusion ('EARN') references (in some cases, substantial) tax credits available for hiring people with disabilities in Delaware, Iowa, Louisiana, Maryland, New York and Tennessee⁴⁶⁰.

Work Opportunity Tax Credit ('WOTC') provides a credit against an employer's business income tax or social security payments of a percentage of an eligible worker's first year pay up to certain limits. There are various timing options for using the credit; and compliance provisions⁴⁶¹. Importantly, WOTC

⁴⁶⁰ For details, see EARN, 'State Employer Incentives' under 'Employer Financial Incentives', accessible at:

< https://askearn.org/topics/laws-regulations/employer_financial_incentives/ > accessed 5 February 2023.

⁴⁶¹ Details are provided in a paper published by The Congressional Research Service, 'The Work Opportunity Tax Credit', updated as at 25 September 2018, and accessible at:

< <https://fas.org/sqp/crs/misc/R43729.pdf> > accessed 5 February 2023.

applies to a broad range of targeted groups – of which disabled people (‘vocational rehabilitation referrals’) are one.

There is a considerable literature considering the effectiveness of WOTC, including academic research and governmental enquiries, noting that WOTC considers a range of targeted groups, not just people with disabilities⁴⁶².

In addition to the WOTC, the IRC includes a series of broad-ranging reliefs to facilitate participation in work by people with disabilities: for example, Section 44 of the IRC provides a tax credit for ‘reasonable’⁴⁶³ expenditures on access for disabled people by eligible small businesses (very broadly, turning over less than \$1m or employing 30 people or less⁴⁶⁴).

... in the case of an eligible small business, the amount of the disabled access credit determined under this section for any taxable year shall be an amount equal to 50 percent of so much of the eligible access expenditures for the taxable year as exceed \$250 but do not exceed \$10,250.

What tax reliefs and incentives might be used in the UK?

The examples from the US demonstrate a diversity of tax reliefs to support people with disabilities into work, ranging from wage subsidies in the form of tax credits (such as the WOTC) payable to employers; to a wide range of reliefs available to employees (including, amongst others, in respect of Impairment-Related Work Expenses (‘IRWE’ – see Chapter 5).

Clearly, one ‘spillover effect’ of a wage subsidy – including tax incentives – which would need to be considered in the setting of any rate is the risk of crowding

⁴⁶² See, for example, Cappelli, ‘Assessing the effect of the Work Opportunity Tax Credit’, Director of the Center for Human Resources at the Wharton School, University of Pennsylvania, 2012.

⁴⁶³ IRC Section 44(3).

⁴⁶⁴ IRC Section 44(1)(b).

out workers without disabilities from roles if the subsidy is set at a level which effectively discriminates against workers without disabilities.

A 2017 study by Localis and the University of Birmingham⁴⁶⁵ made a series of recommendations around a ‘sector deal for disability’ – arguing for a number of measures to support people with disabilities into employment including the abolition of Employer National Insurance Contributions in respect of workers with disabilities⁴⁶⁶; together with the enhancement of Enterprise Investment Relief for⁴⁶⁷:

‘...businesses operating in the disability industry where there is a credible export opportunity. In addition where a new start up is owned, significantly co-owned and / or led by disabled people the SEED scheme should be permitted to apply to a wider range of sectors and business focuses.’

Against this backdrop, if tax reliefs were to be used to provide support in the UK, example approaches might include:

Relief	Purpose	Comment
Employer tax credit	A deduction from a business’s tax liability giving a direct cash incentive to support the hiring of people with disabilities.	Examples include the US WOTC and various US state equivalents.
National Insurance exemption(s)	A direct cash saving by employers (in respect of employer contributions) as financial support to take on employees with disabilities.	Recommended by the Localis / University of Birmingham paper on a sector deal for disability ⁴⁶⁸ .

⁴⁶⁵ Booth-Smith and Davis, Localis and The University of Birmingham, ‘A Sector Deal for Disability’, at:

<https://www.localis.org.uk/wp-content/uploads/2017/07/A-sector-deal-for-disability.pdf>
accessed 5 February 2023.

⁴⁶⁶ Localis and The University of Birmingham, n465, Recommendation 2.

⁴⁶⁷ Localis and The University of Birmingham, n465, Recommendation 5.

⁴⁶⁸ Localis and The University of Birmingham, n465.

VAT exemption on expenditure incurred on a start-up business for a defined period.	A cash reduction in costs to support workers with disabilities in starting businesses through self-employment.	A simple VAT exemption may not be sufficient to make a meaningful difference to a person's ability to start a business.
Tax relief for investment in businesses operated by, or connected with, people with disabilities.	Subject to defined limits, the EIS and SEIS schemes offer significant tax advantages to investors.	The Localis / University of Birmingham paper argues for expanding the scope of the schemes to support people with disabilities. ⁴⁶⁹

Conclusions

Against the backdrop of a substantial – but closing – Disability Employment Gap; and US-based evidence that costs and productivity issues are substantial impediments to the employment of people with disabilities, the potential expansion of tax reliefs does seem one area of clear opportunity to help to address the Gap. However, a 2016 study by the All Party Parliamentary Group on Disability⁴⁷⁰ around closing the Disability Employment Gap shows that closing the gap is complex; and on this basis, such an approach would need to form part of the broader overall strategy for disability and work participation. Based on a range of literature, the effectiveness of different wage subsidy schemes – including tax credits – seems variable.

In summary, this section concludes by recommending that further tax-based support is a clear area for exploration to support greater participation in

⁴⁶⁹ Localis and The University of Birmingham, n465.

⁴⁷⁰ Connolly et al, 'Ahead of the Arc – a Contribution to Halving the Disability Employment Gap,' The All Party Parliamentary Group on Disability, 6 December 2016, at:

< <https://www.disabilityatwork.co.uk/wp-content/uploads/2016/11/All-Party-Parliamentary-Group-on-Disability-Ahead-of-the-Arc-Report.pdf> > accessed 26 March 2023.

work by people with disabilities – but alongside other financial and non-financial measures; and in a way which is coherent with overall policy objectives and economic constraints.

6. VAT reliefs

Introduction

The zero-rating provisions in Schedule 8, Group 12; and Schedule 8, Group 4 of the Value Added Tax ('VAT') Act 1994 have been categorised in this thesis under the heading of 'participation' as many of the existing reliefs apply to goods designed to facilitate participation by people with disabilities in daily life – whether through reducing the cost of vehicles and equipment supporting mobility; assisting with the costs of certain home modifications; or with the costs of other equipment or appliances. The candidate acknowledges that the categorisation of 'participation' does not necessarily apply to all affected supplies. However, for ease of reference VAT reliefs are evaluated collectively given a number of common themes arising from them.

Schedule 8, Group 12 covers an extensive range of supplies under the heading of 'Drugs, medicines, aids for the disabled etc.' The list of supplies – certain of which apply to individuals and to charities – covers items such as medical, surgical and mobility-related devices; certain qualifying vehicles; certain home modifications; and the costs of adapting goods to suit the condition of a disabled person. Schedule 8, Group 4 covers a more limited range of supplies under the heading 'Talking books for the blind and disabled and wireless sets for the blind'.

The analysis in Section 4 of Chapter 2 suggests that the cost of VAT reliefs in respect of supplies of qualifying vehicles to people with disabilities was some £850 million in 2021/22 - of which a substantial proportion was connected to lease and other arrangements under the Motability scheme⁴⁷¹. The same analysis provides a very high-level estimate of the value of other VAT reliefs in respect of 'supplies to disabled people other than vehicles' of some £1bn (based on 2016/17 data – although this estimate is heavily caveated. A number of VAT reliefs apply to charities as well as individuals. In combination, these reliefs represent the single largest body of tax reliefs to benefit people with disabilities.

Scope of this section

Section 7 of Chapter 1 argued as a normative principle that a tax system should not discriminate against disabled people by taxing them on their 'costs of disability': the current approach to targeted VAT reliefs seems consistent with this principle. However, given the potential for VAT reliefs to provide broader financial savings, this section considers whether their use might be expanded – concluding that, whilst there might be superficial attractions to more widespread use, issues of equitability, subjectivity in application and administrative complexity mitigate against using VAT reliefs as a 'blunt tool' to support disabled people: whilst their extended use in certain circumstances might be justified, there seem to be better alternatives for providing targeted public financial support.

⁴⁷¹ National Audit Office report, n425, Figure 5.

Against this backdrop, this section first considers the effectiveness of the use of VAT reliefs generally for social purposes. Second, it considers a number of areas where the existing provisions might be enhanced. Third, it sets out a comparative analysis with the tax systems of Australia, Canada, Germany and the US. And fourth, it considers whether, and how, the use of further or alternative VAT reliefs might be justified.

Acknowledgement of a broad literature

This section acknowledges that the existing VAT-related provisions considered in this section have been the subject of considerable commentary and analysis by, amongst others, the LITRG alone⁴⁷²; and in conjunction with PwC⁴⁷³. The commentary with PwC encompasses both domestic and international comparative analysis. The Social Security Advisory Committee Paper in relation to financial support for mobility⁴⁷⁴ has also commented on the use of public funds – including VAT reliefs – in supporting people with disabilities. Whilst this section references some (but by no means all) of the points within this literature, the key focus of its policy analysis is on the nature and scope of the existing reliefs and whether there might be better alternatives to VAT reliefs in achieving desired policy objectives.

⁴⁷² Examples include the LITRG, 'Treasury Committee: VAT Inquiry Evidence from the Low Incomes Tax Reform Group (LITRG)', 31 May 2018, at:

<https://www.litrg.org.uk/sites/default/files/180531-LITRG-response-HMT-VAT-Inquiry-FINAL.pdf> > accessed 28 January 2023.

⁴⁷³ PwC for the Chartered Institute of Taxation, n236. Note that this report predates the Equality Act 2010 and other subsequent legislation.

⁴⁷⁴ Social Security Advisory Committee, n428.

The general effectiveness of VAT reliefs for social purposes

VAT reliefs can mitigate the cost of supplies to end-users. They can provide support to individuals irrespective of their Income Tax base, whereas – unless they are refundable tax credits - Income Tax reliefs clearly only support those whose income exceeds their Personal Allowance. They can also markedly reduce the cost to charities, such as Motability, of fulfilling their charitable objectives. The actual economic saving to end-users – and the costs through the supply chain - will depend on the nature of the underlying supply⁴⁷⁵.

Nonetheless, whilst VAT reliefs can reduce the cost of supplies of goods and services to end-users, their use as a targeted means of providing financial support to people with disabilities need to be considered alongside other options to ensure that their use is effective. The use of VAT reliefs for social purposes has been questioned: for example, De la Feria and Krever argue of VAT exemptions that⁴⁷⁶:

[VAT] Exemptions as a social welfare measure fare quite badly compared to the alternative of full taxation and targeted income support, and constitute a blunt instrument for redistribution. They come at a significant revenue cost to the government, a cost that far exceeds the benefit derived by lower income persons. Even though consumption of any particular commodity will represent a lower percentage of the total income of a wealthy person compared to the consumption of a poorer person, in absolute terms the high income person is likely to spend more on the commodity. If the item were fully taxed and low income persons compensated for the tax by direct payments, the government could return the tax to lower income persons and have additional revenue left over to apply to other redistributive programs. In this sense, lower income persons may be much worse off with a tax system that contains exemptions designed to assist them than they would be in a tax system with no exemptions and redistribution of the excess revenue raised under a more neutral tax base.

⁴⁷⁵ de la Feria and Krever, 'Ending VAT Exemptions: Towards a Post-Modern VAT,' February 2013, at 6. In Rita de la Feria (ed.), *VAT Exemptions: Consequences and Design Alternatives* (Wolters Kluwer, 2013), pp. 3-36.

⁴⁷⁶ de la Feria and Krever, n475, at 23.

Against this backdrop, in the context of disability, the use of VAT reliefs seems complex and nuanced. On the one hand, taxing people on their ‘costs of disability’ (for example, specialist equipment to help mitigate the impacts of disability) irrespective of income or means seems problematic as the tax burden would add to this cost. However, building on de la Feria’s and Krever’s analysis, providing ‘broad brush’ reliefs for goods or services which may benefit certain categories of taxpayers disproportionately – such as those able to afford to leased vehicles under the Motability scheme – poses questions both of taxpayer equitability and whether the use of resources is as effective in supporting disabled people as it might be⁴⁷⁷.

In summary, this thesis argues that the widespread use or expansion of VAT reliefs should not be regarded as a panacea for cost mitigation or financial support for people with disabilities compared to other measures such as targeted benefit support or grants: each relief needs critical evaluation to ensure that it represents the optimal means of achieving its underlying policy objective.

Following commentary around a number of limitations with the existing provisions, this section explores whether VAT reliefs *could* be extended – and whether, and how, they *should* be.

⁴⁷⁷ Social Security Advisory Committee, n428: see ‘Financial Barriers to Mobility’ at 38: ‘*Accessing the Motability scheme was not possible for many individuals simply because it was unaffordable; the income they received via the enhanced rate mobility allowance had to be prioritised for other costs such as food or household bills.*’

Identified limitations with the existing provisions

This section considers four identified limitations with the existing provisions, drawing upon commentary by the LITRG and others. It excludes comments around the equitability of the Motability scheme which has already been addressed above.

The first key limitation is the overall scope of the provisions. The second is the requirement in Item 2.g of Group 12 for 'equipment and appliances' to be designed solely for disabled people (referred to in this section as the 'duality of design' problem). The third comprises the stringent criteria for relief eligibility in relation to building works at home. The fourth relates to certain definitions used in the relevant legislation. The second and third issues in particular have been the subject of considerable case law⁴⁷⁸.

Overall scope of the provisions

Whilst the overall scope of the provisions covers considerably more than medical-related goods, it seems that the 'medical model' of disability was heavily influential in their initial scoping when they first appeared in Group 14 of Schedule 5 of the VAT Act 1983.

Subsequently, Group 12 of Schedule 8 of the VAT Act 1994 – the successor to the VAT Act 1983 – included a number of additional and expanded reliefs, notably in respect of mobility⁴⁷⁹. Nonetheless, Group 12 still includes a

⁴⁷⁸ Chapter 3, Section 6.

⁴⁷⁹ Notably the leasing and sale provisions in Items 14 and 15 of Group 12.

strong emphasis on reliefs for equipment designed to support physical disability; and mobility⁴⁸⁰.

The scope of reliefs is not extended to a range of other supplies which might support disabled people unless they met the test of being 'equipment and appliances' designed 'solely' for disabled people. For example, relief in relation to computing and telephony supplies which could facilitate participation in work and other activities⁴⁸¹ would not be permissible unless they were designed 'solely' for disabled people – such as assistive technology equipment.

Against the backcloth of the scope of current reliefs, and their emphasis on support for physical disability, the LITRG have recommended that⁴⁸²:

The UK should introduce equality of VAT treatment by introducing VAT reliefs aimed at alleviating or treating mental impairment, as most reliefs relate to physical disability. The range of current reliefs does not currently align with the modern-day definition of disabled, which includes mental impairments.

This thesis agrees that extending reliefs to include supplies which specifically assist people with impairments not covered by the existing legislation – such as mental impairments - is an appropriate avenue for exploration. However, it contends that any extensions would need careful boundaries to prevent either avoidance or relief being claimed by people for whom it is not necessary: these points are expanded upon below.

⁴⁸⁰ The provisions include the reliefs in Item 2f for 'motor vehicles designed or substantially and permanently adapted for the carriage of a person in a wheelchair or on a stretcher and of no more than 11 other persons'; and in Items 14 and 15 in relation to the lease, and subsequent sale, of vehicles to people with disabilities who are eligible for the mobility component of the Personal Independence Payment. These latter provisions are central to the Motability scheme – see National Audit Office, n439.

⁴⁸¹ Relief is available on these items – but only when they are sold as part of an assistive technology system: see also LITRG, n472, para 1.5 at 2.

The 'solely' design requirement

Item 2.g of Group 12 provides an additional broad relief for 'equipment and appliances' not otherwise specified in Group 12 provided these have been 'designed solely [candidate underlining for emphasis] for use by a disabled person'. This seems to be a 'cliff edge' provision: as the LITRG and others have commented, it may prove unduly restrictive where relief could be a real help to a person with a disability seeking to access equipment at an affordable price to facilitate their participation in work and other activities – but that equipment has not been designed 'solely for use by a disabled person'⁴⁸³. The extent of the restriction can be seen in HMRC's guidance⁴⁸⁴:

'It is not enough to qualify for relief that the general or standard equipment or appliance:

- *is sold to or for use by a disabled person*
- *may help a person in coping with their disability*
- *is essential for persons with disabilities*

For example, general purpose equipment such as most computer hardware, air conditioning, orthopaedic beds, or reclining chairs may benefit a disabled person, but cannot be zero-rated because they're not designed solely for disabled people.'

Each of the examples given by HMRC in the quotation above might help alleviate a disability; or – in the case of computer hardware – facilitate participation. However, absent clearly defined boundaries, removing the 'solely' requirement

⁴⁸³ The LITRG, n472, comment in para 1.5 that '*The Government should amend the provisions which limit VAT relief to goods 'designed' solely for disabled people*'. They develop this point at section 3.3, explaining that the legislation '*...can produce some arbitrary results and could result in equipment and appliances which are in fact purchased specifically to aid or relieve the relevant disability, but which cannot be proved to be designed solely for this purpose, being excluded from VAT relief in the UK.*'

⁴⁸⁴ See HMRC, VAT Notice 701/7, at 4.5.1, accessible at:

<<https://www.gov.uk/guidance/reliefs-from-vat-for-disabled-and-older-people-notice-7017> >
accessed 28 January 2023.

could open up significant risks of people claiming VAT relief for expenditure which is essentially for equipment unconnected with the impact of their disabilities – or which might be used by, for example, non-disabled family members.

These concerns reinforce the caution needed in considering VAT reliefs as mechanisms for targeted financial support.

Eligibility conditions for home modifications

A number of the reliefs for building works in Group 12 – for example, the modification provisions in Item 12⁴⁸⁵ – are subject to stringent eligibility conditions which have been the subject of a broad range of decided cases in this area⁴⁸⁶.

By way of example, the LITRG have raised the possibility of allowing VAT relief on workplace modifications at home⁴⁸⁷: this might facilitate participation by people with disabilities in work. This specific matter was raised in the House of Lords⁴⁸⁸ following the publication of the LITRG / PWC report in 2007 in an exchange between Lords Addington and Davies:

Lord Addington: *My Lords, does not the Minister agree that there is some degree of confusion in the tax system? As the noble Lord has pointed out, although you get some tax relief for certain repairs in your home, if you are carrying out workplace initiatives to enhance the Government's policy of getting disabled people into work, you do not get VAT relief. Does not the Minister agree that that is an absurdity?*

Lord Davies of Oldham: *My Lords, with all these issues there is a borderline and, depending on which side of the border a particular decision is taken, it can create disquiet. The noble Lord is right that we are concerned to help the disabled to enjoy full-time work when they are able, but he will recognise that we have to protect our system from exploitation in which VAT is avoided when works are for the benefit not of the disabled*

⁴⁸⁵ Item 12, Group 12, Schedule 8, VAT Act 1994.

⁴⁸⁶ Chapter 3, Section 6, including *Softley* LON/96/1810 (VTD 15034).

⁴⁸⁷ As the LITRG (n472, para 1.5) observe, expanding the scope of existing reliefs might include extending existing residential reliefs to workplace modifications as '*This would assist greatly in the Government's objective to get more disabled people into work.*'

⁴⁸⁸ HL Deb, 1 May 2007, Disability: VAT, Col 956.

but of others in the household. Those circumstances do not justify VAT relief.

Lord Davies' observations illustrate the tension between any desire for appropriate reliefs to support, for example, workplace participation and the need to avoid granting relief to people who do not need it - or, worse, facilitating abuse of the tax system. Whilst in terms of workplace and social participation, it might seem desirable – in broad terms – to provide relief for the costs of supplies made to people with disabilities to enable them to participate in work and other activities, for reasons of fairness mechanisms would be needed to ensure that relief was only granted to those targeted for it.

Definitions used in the legislation

Finally, the LITRG have questioned the definition of 'disabled' for the purposes of the reliefs. By way of background, the influence of previous attitudes to disability was also reflected in the wording of the legislation prior to amendments in the Finance Act 2017 - which changed historic references to 'the handicapped' to 'the disabled'⁴⁸⁹; and amended the statutory definition of 'disabled' for the purposes of the VAT legislation by reference to chronic sickness and disability.

This definition is not symmetrical to the definition of disability in the Equality Act 2010. Although HMRC online guidance⁴⁹⁰ sets out in some detail their view as to what qualifies as 'chronically sick and disabled' – with reference in part to certain of the language used in the definition of disability in the Equality Act 2010 – the LITRG contend that *'the Equality Act 2010 definition of disability*

⁴⁸⁹ Chapter 3, Section 4.

⁴⁹⁰ See: HMRC, n472 – at 3.2.1.

should be incorporated in the VAT Act 1994.⁴⁹¹ At one level, this drive for consistency is understandable. However, as the analysis of options for expanding VAT reliefs sets out below, the diversity of types of disability may mitigate towards a more stratified or personalised approach to VAT relief (or other support) given the scale of targeted economic benefits that enhanced reliefs might bring.

Could the reliefs be expanded?

The concept of broadening VAT-related reliefs for people with disabilities has been raised in Parliament on a number of occasions – but the UK’s historic membership of the EU has been cited as a constraint. For example, the following exchange took place in the House of Commons on 25 February 2009⁴⁹²:

Mr. Harper

To ask the Chancellor of the Exchequer what plans he has to review the rules relating to value added tax relief for people with disabilities; and if he will make a statement.

Mr. Timms

VAT zero-rating currently applies to a wide range of goods and services supplied to disabled people for their personal use. Under the VAT agreements with our European partners signed by successive governments, we can retain our existing VAT zero rates, but we may not extend them or introduce new ones. It is therefore not possible to remove VAT from additional goods and services purchased by disabled people.

The same VAT agreements allow EU member states to introduce reduced rates of VAT of not less than 5 per cent. on a prescribed list of goods and services. All taxes are kept under review, but given the wide range of the UK's zero rates we see little scope within the reduced rate list for the introduction of further VAT reliefs that would benefit disabled people.

⁴⁹¹ LITRG, n472, para 1.5 at 2. In Section 3.1 of the LITRG submission, there is a recommendation in 3.1.5 that the Government legislate the (apparently circular) definition of ‘disabled’ in the VAT Act 1994; and, in 3.1.4, address an apparently undue restriction arising from VAT Notice 701/7 in relation to people with terminal illness.

⁴⁹² HC, Deb, 25 February 2009, vol 488, col 534WA – candidate underlining for emphasis.

From 1 January 2021, the UK became a ‘Third Country’ outside the EU Customs Union and, subject to the provisions of the associated ‘Withdrawal’ and ‘Free Trade’ agreements⁴⁹³, there is greater flexibility for the UK in relation to determining its VAT structure and provisions⁴⁹⁴. Given these developments, it does seem that the existing reliefs *could* be expanded.

Should the reliefs be expanded?

VAT reliefs reduce the costs of goods and services to end-users. Given both the UK’s National Strategy for Disabled People⁴⁹⁵ with its emphasis on participation in work and other activities; and the additional costs that people with disabilities face, expanding VAT exemptions to help mitigate those costs might seem to be one option to explore.

However, this thesis contends that any expansion of VAT reliefs to provide further financial support for disabled people would need to represent the best means for delivering the desired level of support (compared to, for example, the benefits system, tailored grants or other forms of tax relief). For example, given the broad range of disabilities and their variable implications, some degree of ‘personalisation’ might be appropriate should VAT reliefs be expanded to prevent claims for relief by people for whom the supply is only incidental to their disability.

⁴⁹³ ‘Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community’, (2019/C 384 I/01), 12 November 2019; and ‘EU-UK Trade and Cooperation Agreement’, 30 December 2020.

⁴⁹⁴ Note that the LITRG report at n472 was focussed on the VAT impacts of the UK leaving the European Union

⁴⁹⁵ National Disability Strategy, n32.

Absent defined limitations, and developing de la Feria's and Krever's analysis⁴⁹⁶, 'blanket' additional reliefs could provide further financial benefit to people who could already comfortably afford the goods or services subject to the reliefs; or whose disability does not actually require the relief - but make no meaningful difference to those who might need them but could not⁴⁹⁷.

Against this backdrop, before considering options for expanding the reliefs further, comparative analysis is set out below.

Comparative analysis

By way of overview, Australia, Canada and Germany all offer relief for disabled people from sales taxes (VAT or GST / HST) on certain goods and services. The US does not operate a VAT or other sales tax system. The provisions between Australia, Canada and Germany vary quite markedly in scope and approach.

In Australia, specified GST exemptions apply for people with disabilities – subject to certain eligibility criteria – in relation to a number of specified goods and services including, amongst others, cars⁴⁹⁸; medical aids and appliances⁴⁹⁹; specialist disability services⁵⁰⁰; and disability 'supports' provided to National Disability Insurance System participants⁵⁰¹ (described in more detail below).

⁴⁹⁶ de la Feria and Krever, n475.

⁴⁹⁷ A point emphasised by the SSAC in relation to VAT reliefs and mobility – see n428.

⁴⁹⁸ A New Tax System (Goods and Services Tax) Act 1999 – s38-510.

⁴⁹⁹ A New Tax System (Goods and Services Tax) Act 1999 – s38-45.

⁵⁰⁰ A New Tax System (Goods and Services Tax) Act 1999, s38-40.

⁵⁰¹ A New Tax System (Goods and Services Tax) Act 1999, s38-38; and summarised in ATO guidance, 'GST and health: National Disability Insurance Scheme' at:

The provisions in relation to medical aids and appliances illustrate a variant on the present UK need for supplies to be designed ‘solely’ for use by disabled people. The Australian legislation provides that (candidate underlining for emphasis)⁵⁰²:

(1) A supply is **GST-free** if:

- (a) it is covered by Schedule 3 (medical aids and appliances), or specified in the regulations; and
- (b) the thing supplied is specifically designed for people with an illness or disability, and is not widely used by people without an illness or disability.

The conditions in paragraph (b) – whilst arguably not as ‘absolute’ as the ‘solely’ design requirement in the UK legislation – still fall short of permitting broad ‘duality of purpose’ in the design of goods.

The Australian GST legislation also contains provisions which allow for broad GST exemptions under the NDIS using a ‘personalised’ approach. An extract from the relevant legislation is set out below⁵⁰³ (candidate underlining for emphasis):

A supply is **GST-free** if the supply:

- (a) is a supply to a participant (within the meaning of the National Disability Insurance Scheme Act 2013) for whom a participant’s plan is in effect under section 37 of that Act; and
- (b) is a supply of one or more of the reasonable and necessary supports specified in the statement included, under subsection 33(2) of that Act, in the participant’s plan; and
- (c) is made under a written agreement, between the supplier and the participant or another person, that:

<<https://www.ato.gov.au/business/gst/in-detail/your-industry/gst-and-health/?page=6>>, accessed 18 March 2023.

⁵⁰² A New Tax System (Goods and Services Tax) Act 1999 – s38-45(1)(b).

⁵⁰³ A New Tax System (Goods and Services Tax) Act 1999, s38-38.

- (i) *identifies the participant; and*
- (ii) *states that the supply is a supply of one or more of the reasonable and necessary supports specified in the statement included, under subsection 33(2) of that Act, in the participant's plan; and*

(c) *is of a kind that the Disability Services Minister has determined in writing.*

In terms of what qualifies as 'reasonable and necessary supports', an extract from Australian Governmental guidance⁵⁰⁴ is reproduced below (candidate underlining for emphasis):

'Reasonable and necessary supports

The NDIS funds a range of supports and services which may include education, employment, social participation, independence, living arrangements and health and wellbeing. [] In order to be considered reasonable and necessary, a support or service:

- *must be related to a participant's disability*
- *must not include day-to-day living costs not related to your disability support needs, such as groceries*
- *should represent value for money*
- *must be likely to be effective and work for the participant, and*
- *should take into account support given to you by other government services, your family, carers, networks and the community.'*

And⁵⁰⁵:

'The types of supports that the NDIS may fund for participants include:

- *daily personal activities*
- *transport to enable participation in community, social, economic and daily life activities*
- *workplace help to allow a participant to successfully get or keep employment in the open or supported labour market*
- *therapeutic supports including behaviour support*
- *help with household tasks to allow the participant to maintain their home environment*

⁵⁰⁴ NDIS, 'Reasonable and necessary supports', at:

< <https://www.ndis.gov.au/understanding/supports-funded-ndis/reasonable-and-necessary-supports> > accessed 18 March 2023.

⁵⁰⁵ NDIS, 'Supports funded by the NDIS, What types of supports are funded?', at:

< <https://www.ndis.gov.au/understanding/supports-funded-ndis> > accessed 18 March 2023.

- *help to a participant by skilled personnel in aids or equipment assessment, set up and training*
- *home modification design and construction*
- *mobility equipment, and*
- *vehicle modifications.'*

Importantly, this personalised GST relief is not independent of other public financial provision – the supports under the NDIS are themselves funded by the Scheme through agreed budgets provided to disabled people in relation to their disability-related (not general) expenses⁵⁰⁶. The 'supports', and their tax treatment, form part of the Scheme as a whole - and the GST savings, therefore, reduce costs otherwise payable from the Australian public finances. They also require written agreements to underpin relief – based on the scope of the taxpayer's 'reasonable and necessary supports'.

On this basis, whilst these provisions illustrate the option of GST / VAT relief 'personalisation', they should not be confused with simple VAT relief for privately funded expenditure. Clearly, the NDIS is a fundamentally different approach to supporting people with disabilities and one which, it would seem, merits consideration as part of the broader UK Government implementation of the National Disability Strategy.

The Canadian tax system does not include the 'personalised' GST exemptions provided under the Australian NDIS system. Rather, similar to the UK, there are a series of identified supplies – set out in considerable detail in relevant legislation, including exempt supplies in Part II ('Health Care Services') of Schedule V of the Excise Tax Act 1985; and zero-rated supplies in Part II ('Medical and Assistive Devices') of Schedule VI of the Act.

⁵⁰⁶ Australian Government, NDIS, 'Supports and services funded by the NDIS', at:

< <https://www.ndis.gov.au/providers/becoming-ndis-provider/am-i-ready/supports-and-services-funded-ndis> > accessed 17 August 2023.

By way of background – and illustrating the use of alternative types of relief - tax relief for qualifying expenditure on home modifications in Canada is provided through a non-refundable tax credit⁵⁰⁷ for people with disabilities eligible for Canadian Disability Tax Credit or over 65 years old. Subject to meeting certain conditions, the credit can also be claimed by ‘eligible individuals’ incurring expenditure for qualifying dependants⁵⁰⁸. This approach to providing financial support for home modifications (or other supplies) emphasises that GST / VAT reliefs are not the only tax vehicle for doing so.

In Germany, VAT reliefs are more limited – covering reduced rates on carriages for disabled persons⁵⁰⁹; and on certain medical supplies for the disabled⁵¹⁰

How might UK reliefs be extended?

Given the National Disability Strategy⁵¹¹, one theoretical option for providing financial support to people with disabilities to enable them to participate in work and other activities might appear to be to broaden reliefs where these are in

⁵⁰⁷ For Canadian government guidance, see: ‘Home Accessibility Tax Credit (HATC)’, at:

<https://www.canada.ca/en/revenue-agency/programs/about-canada-revenue-agency-cra/federal-government-budgets/budget-2022-plan-grow-economy-make-life-more-affordable/home-accessibility-tax-credit.html> > accessed 28 January 2023.

⁵⁰⁸ See Canadian government guidance, ‘Line 31285 [tax returns] – Home accessibility expenses’, at:

https://www.canada.ca/en/revenue-agency/services/tax/individuals/topics/about-your-tax-return/tax-return/completing-a-tax-return/deductions-credits-expenses/line-31285-home-accessibility-expenses.html#qlfng_ndvdl > accessed 13 February 2023.

⁵⁰⁹ Umsatzsteuergesetz, Appendix 2, s51.

⁵¹⁰ Umsatzsteuergesetz, Appendix 2, s52.

⁵¹¹ National Disability Strategy, n32.

respect of supplies of goods or services which presently attract VAT; and where the relief could be of direct assistance in helping alleviate their disability-related costs or meet specific additional costs of participation. Whilst the broad scope of the GST exemption for ‘reasonable and necessary supports’ under the Australian NDIS might seem to corroborate such an extension of reliefs, it must be emphasised that the NDIS adopts a ‘whole system’ approach – with GST reliefs forming one part of a broader ‘value chain’ of public support.

Examples of supplies which might be considered for further relief might include personal computers and mobile telephones (arguably essential for participation by people in contemporary society – and certainly for those with restricted mobility); telephony and broadband services⁵¹²; equipment which, whilst not designed ‘solely for disabled people’, could alleviate disability; or workplace modifications at home⁵¹³ where they might not presently be eligible for relief.

In these cases, a reduction in VAT which would otherwise be payable could clearly result in savings. Given that many people with disabilities are on low incomes, such additional relief might seem to provide broader and more equitable support than, for example, further Income Tax allowances which would only benefit people with incomes in excess of the Annual Personal Allowance.

⁵¹² BT, for example, already provides a low-cost broadband service, ‘BT Home Essentials’ for people on certain benefits. See:

< <https://www.bt.com/broadband/home-essentials> > accessed 28 January 2023.

⁵¹³ LITRG, n472.

However, such an approach seems to suffer from a number of challenges and limitations. First, it would be important to define eligibility clearly: for example, allowing further ‘universal’ VAT relief – irrespective of means – and based on a broad definition of disability (such as that in the Equality Act 2010), could lead to a situation where people are benefiting from relief who do not actually need it given their particular impairments; or purchase equipment which is used by non-disabled friends or relatives. In the case of the VAT relief in Group 12 Item 14 (which applies to the Motability scheme), the specific application of the relief to its intended recipients is – in part - addressed through a requirement for entitlement to a mobility component of PIP. Second, for many people on low incomes, a ‘20% discount’ may not be sufficient to allow them to purchase the goods in any event – and so the effects of any VAT relief, as opposed to another more direct form of subvention such as grant, could in practice be regressive (as evidenced by the limited take-up of the Motability scheme).

An alternative option to ‘blanket reliefs’, which might benefit those who do not need them but not those people who do, could be to allow a VAT reclaim by people with disabilities in respect of expenditure incurred either to alleviate their disability or to enable them to participate in work or other prescribed activities (a ‘purpose test’), on the basis that (i) the relief was commensurate with the needs of their actual condition(s); and that, (ii) in all cases, they had a disability which met the definition in the Equality Act 2010.

Whilst this may seem to have some apparent attractions as a targeted measure, the disadvantages of such an approach for the taxpayer would include cash flow (VAT would need to be reclaimed after the expenditure was incurred

and would only cover the VAT element of any supplies); and the risks associated with subjective assessment and / or dispute with HMRC. From an administrative perspective, such an approach would clearly entail substantial administrative and compliance costs. The questions would also remain as to whether VAT relief was truly enough to make a difference for people on low incomes; and whether alternative support to the VAT system would be preferable – noting the existing availability, for example, of Access to Work grants.

A third – and somewhat differentiated - approach to support people on low incomes in participation in work and other activities through VAT reliefs might be to identify a series of supplies deemed necessary for participation – such as computing and telephony - and then establish a centralised ‘quasi-Motability’ arrangement to allow them to select and use these supplies on deferred terms, including the benefit of VAT reliefs⁵¹⁴ in conjunction, potentially, with other targeted forms of support. In the same way that participation in Motability is qualified by reference to eligibility for the mobility element of the Personal Independence Payment and other benefits; and the Severe Mental Impairment discount for Council Tax requires medical certification⁵¹⁵, eligibility for such a scheme could be structured by reference to, for example, eligibility for other benefits or certified medical criteria. However, in addition to substantial administrative complexity and cost, the downsides of such an approach might include losses or damage to the equipment and who would be responsible for these; determining eligibility; and avoiding unintended use by non-disabled people.

⁵¹⁴ Note that the BT Home Essentials scheme, n500, is referable to eligibility for certain benefits.

⁵¹⁵ Chapter 3, Section 3.

Conclusions

The financial implications of the present range of UK VAT reliefs are substantial – but there is a strong argument that to charge VAT on the various supplies would in any event have the effect of discriminating against disabled people by taxing them on their ‘costs of disability’. Nonetheless, the scope of the reliefs has been argued to be potentially restrictive given their emphasis on physical, rather than mental, impairments; and the ‘cliff edge’ effects of certain of their eligibility criteria.

Extending VAT reliefs on a ‘blanket basis’ seems problematic as they might result in benefits to people who do not need them; or not make a meaningful difference to people struggling to afford the relevant supplies.

However, whilst there *might* be scope to use VAT reliefs to support people with disabilities in meeting the costs of supplies which might either alleviate their disabilities or assist them in participating in work and other activities, in order to avoid unduly generous relief being provided to those who may not need it, it seems that any additional reliefs should be qualified by reference to specific needs and condition – rather than be made available to any person meeting, for example, the Equality Act 2010 definition of disability. The section above identifies options for extending reliefs – including targeted bases of reclaim. None are straightforward and all have disadvantages. Any additional reliefs would need to be coherent with other forms of provision such as Access to Work grants.

On this basis, notwithstanding apparent opportunities from expanding the scope of VAT reliefs, it must be emphasised that other mechanisms such as non-refundable tax credits, or direct grants, may be a better means of achieving

policy objectives, particularly if policy is to provide financial support for all – not just part – of expenditure.

The next section considers the effectiveness of the existing VAT provisions from a functional perspective.

VAT reliefs – functional effectiveness

Aspects of the VAT legislation are subject to a variety of complex eligibility and definitional issues. Indeed, in their February 2017 ‘Progress report and call for evidence’ as part of their review of VAT, the OTS wrote⁵¹⁶:

‘A similar issue [the application of different VAT rates to relatively similar products] occurs with zero-rating of some goods for disabled people. Not only do people find the definitions extremely complicated, it’s also very difficult to apply precisely, especially for new products and services.’

The volume of case law associated with a number of the existing provisions⁵¹⁷, together with independent commentary⁵¹⁸, suggests that there might be a case for revisiting a number of definitional and compliance complexities within the existing provisions, and some of their eligibility ‘cliff edges’. However, building on earlier analysis in this chapter, whether these criteria are relaxed clearly depends on broader policy – and whether VAT reliefs should accommodate ‘duality of purpose’ in relation to supplies to disabled people.

⁵¹⁶ OTS, ‘Review of Value Added Tax, Progress report and call for evidence’, February 2017, at 6. Accessible at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/613522/VAT_review_interim_report_final.pdf > accessed 18 March 2023.

⁵¹⁷ Chapter 3, Section 6.

⁵¹⁸ For example, the LITRG and PwC, n236, 28-30.

HMRC guidance emphasises the responsibilities of customer and supplier in determining the appropriate VAT treatment of goods and services: the onus is on the end-user to confirm their status – and on the supplier to be receive confirmation of it. Suppliers are also required to ascertain whether certain items are designed solely for disabled people⁵¹⁹. In relation to customer eligibility for relief, HMRC state that⁵²⁰:

‘HMRC does not supply an ‘exemption certificate’ to the customer for this purpose. But you should get a written declaration from each customer confirming that the person is entitled to VAT relief. This should hold enough information to demonstrate that a customer fulfils all the criteria for eligibility. HMRC cannot say whether a person is chronically sick or disabled.

The declaration should be separate, or clearly distinguishable from, any order form or invoice against which the goods or services are supplied.

A customer signing an order should not automatically be signing a declaration of eligibility for VAT relief.’

In terms of the nature of supplies and the responsibilities of suppliers, HMRC write that⁵²¹:

‘You, the supplier, are responsible for making sure that your customer meets all the conditions for zero rating.

You may not know whether the equipment or appliance is designed solely for use by disabled persons and eligible for VAT relief. In such cases, it may help if you get written confirmation of the designer’s intention or the design specification of the product from the manufacturer.

HMRC will not ordinarily provide binding VAT rulings to a retailer or distributor on the eligibility of specific items for VAT relief.’

⁵¹⁹ See Item 2b of Group 12, Schedule 8 VAT Act 1994.

⁵²⁰ HMRC, n484, at 3.6.

⁵²¹ HMRC, n484, at 2.3.

These comments – whilst a clear statement of HMRC’s position – place a considerable responsibility on both customer and supplier around confirming eligibility. There seems to be a strong case for considering whether some form of ‘eligibility certificate’ might be appropriate to avoid problematic claims for zero-rating. Notwithstanding these challenges, there is a specific HMRC helpline for enquiries in relation to disabled people and VAT queries⁵²² – together with comprehensive online guidance⁵²³.

From a stability perspective, the statutory analysis in Chapter 3⁵²⁴ summarised the evolution of the VAT legislation from the Value Added Tax Act 1983 onwards. The principal modifications to the 1994 VAT Act have been as a result of the Finance Act 2017 which made a number of amendments to the legislation – including changing the definition of ‘disabled’⁵²⁵; or by statutory instruments to give effect to relevant changes arising from, principally, other legislation such as changes to benefits, or changes to departmental structures or NHS provision arrangements⁵²⁶. Broadly, therefore, the core provisions have remained stable since the enactment of the VAT Act 1994.

⁵²² For details of the helpline, see HM Government, ‘VAT: reliefs for disabled and older people’ at:

< <https://www.gov.uk/government/organisations/hm-revenue-customs/contact/vat-reliefs-for-disabled-and-older-people> > accessed 4 February 2023.

⁵²³ HMRC, n484.

⁵²⁴ Chapter 3, Section 4.

⁵²⁵ Chapter 3, Section 4.

⁵²⁶ See the annotated amendments provided against the Value Added Tax Act 1994 at:

< <https://www.legislation.gov.uk/ukpga/1994/23/schedule/8> > accessed 4 February 2023.

The various current provisions appear financially convenient for end-users on the basis that they result in reduced costs of supplies of goods and services for people with disabilities, or charities, at the point of supply.

Finally, in terms of robustness to avoidance, the complexity of the various provisions, and the ‘cliff edges’ associated with them may make them at risk of ‘unintended avoidance’ where HMRC consider that a claimed basis of zero-rating has ‘fallen on the wrong side of the line’. Indeed, in their 2017 review of VAT and call for evidence, the OTS commented on issues with ‘boundaries’ – not just in relation to disability-related reliefs⁵²⁷, but in this and their final report into simplification did not refer to any widespread avoidance problems⁵²⁸.

7. Participation by people with disabilities in non-work activities

Given national strategic objectives for participation by people with disabilities, there is a question as to whether the tax system can support participation through reducing costs to increase accessibility.

VAT Notice 701/45 explains a broad range of existing VAT exemptions (for people with and without disabilities) for sporting activities; and VAT Notice 701/47 explains a number of VAT exemptions (again, for people with and

⁵²⁷ OTS, n516, at 7: ‘*What we will be concentrating on in this review is looking at the number of definitions and boundaries and seeing if complexities caused can be reduced or better managed.*’ Note that this comment was around broader VAT issues – not just reliefs connected with disability.

⁵²⁸ OTS, ‘Value added tax: routes to simplification’, November 2017, accessible at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/657213/Value_added_tax_routes_to_simplification_web.pdf > accessed 4 February 2023.

without disabilities) for access to certain cultural exhibitions and events. These exemptions do not apply to, for example, sporting equipment.

Building on the ONS participation analysis in Section 3 of Chapter 2, one means of reducing the cost of sporting or cultural participation by people with disabilities would be to provide a VAT relief on necessary sporting clothes, or musical or artistic equipment and supplies for eligible participants. It is challenging to imagine other tax reliefs being used as a tax-based vehicle for financial support. For the reasons discussed in the previous section, VAT reliefs may be a sub-optimal means of providing support if they (i) do not actually help people who could still not afford the VAT-exempt supply; or (ii) significantly benefit people who can comfortably afford to, and do already, participate in the targeted activities. Once again, they should not be seen as a cost-saving panacea.

8. Conclusions and areas for further review

Participation in work and other activities by disabled people is a stated objective of current policy, including in the National Disability Strategy – and in turn is reflective of international approaches and conventions. The UK Government has implemented - and continues to look to implement⁵²⁹ - a very broad range of support mechanisms to assist disabled people in accessing and staying in work.

A tax system may have a role in providing financial support to people with disabilities in participating in work and other activities in a number of different ways. As a minimum, it should avoid discriminating against disabled people through taxing them on their ‘costs of disability’: through, for example, the

⁵²⁹ DWP, Health and disability White Paper, 15 March 2023, n81.

'commuting provisions' and 'modification provisions' in relation to employment-related transport, the UK tax system does that, although the analysis in this chapter identifies a number of areas where the provisions could be strengthened, including in relation to certain costs which are not reimbursed by employers. The chapter also identifies options for relieving work-related costs even where there may be a 'duality of purpose' as between work and private use; and potentially introducing employer incentivisation mechanisms to help stimulate the employment of disabled people, consistent with policy intent.

More broadly, a tax system can reduce the actual costs of goods and services – principally, in the UK, through VAT reliefs. This chapter has considered, in outline, how those reliefs might be expanded to support disabled people – arguing that extended use of VAT reliefs should not be seen as panacea for reducing costs for disabled people. As emphasised by the Social Security Advisory Committee's report into the Motability scheme⁵³⁰, any approach of increasing support through the tax system needs to be coherent with other bases of support – such as through grants or benefit payments; and equitable as between different cohorts of taxpayers.

⁵³⁰ Social Security Advisory Committee, n428.

Chapter 6 – Compensation and insurance provisions: effectiveness evaluation

1. Introduction

The purpose of this chapter is to consider the effectiveness of the identified provisions connected with compensation and insurance for 'event-led' disability arising across a range of settings. The chapter analyses the effectiveness of these provisions under the following headings:

2. General provisions relating to compensation awards for disability arising from personal injury.
3. Provisions relating to compensation for disability arising at work.
4. Provisions relating to disablement pensions.
5. Provisions relating to certain health insurance payments.
6. Provisions related to disability arising from criminal or motor injury.
7. Provisions related to certain specialist conditions.

Conclusions are drawn in section 9.

The reliefs considered by this chapter are:

<i>General provisions relating to compensation awards for disability arising from personal injury</i>	Section 2
Tax relief for personal injury compensation paid as periodic payments	Section 731 ITTOIA 2005
Income Tax relief in relation to interest on damages for personal injury	Section 751 ITTOIA 2005
Tax relief for compensation payments in respect of personal injury	Section 51(2) TCGA 1992

<i>Provisions relating to compensation for disability arising at work</i>	Section 3
Tax relief for certain employment termination payments on account of employee injury or disability	Section 406(1) ITEPA 2003
<i>Provisions relating to disablement pensions</i>	Section 4
Tax relief for wounds and disability pensions	Section 641 ITEPA 2003
Tax relief for certain other disablement pensions	Section 644 ITEPA 2004
<i>Provisions relating to certain health insurance payments</i>	Section 5
Exemption from Income Tax of payments received under certain health insurance policies	Section 735 ITTIOA 2005
<i>Provisions related to disability arising from criminal or motor injury</i>	Section 6
Tax relief for criminal injuries compensation awards	Section 732 ITTOIA 2005
<i>Provisions related to certain specialist conditions</i>	Section 7
Tax relief for asbestos compensation payments	Section 31 and Schedule 14 Finance (No3) Act 2010

Of all of the categories of tax reliefs considered, the provisions discussed in this chapter seem more challenging to align with the objectives of the National Disability Strategy⁵³¹: essentially, they are provisions principally connected with the tax effects of ‘event-led’ financial compensation, awarded under statutory, judicial or contractual (including insurance) frameworks, rather than forming part of a strategic design aimed at improving the lives of disabled people.

⁵³¹ National Disability Strategy, n32.

The doctrine underlying a number of the provisions in this chapter is that of *Resitutio ad Integrum*⁵³² - putting the claimant back to the position they would have been had it not been for the relevant event. This seems consistent with the normative principles set out in Section 7 of Chapter 1. Other provisions exempt payments by the state from tax where it appears that the tax effects are 'priced in' to the payments. Whilst there may be a temptation to comment on the nature and limitations of the various compensation mechanisms themselves, to do so would be beyond the scope of this thesis which is limited to an evaluation of the effectiveness of the relevant tax provisions.

2. General provisions relating to compensation awards for disability arising from personal injury

Introduction

As an overarching principle, the UK tax system exempts payments in respect of personal injury from Income Tax or Capital Gains Tax⁵³³. The analysis at Section

⁵³² A synopsis of the *Restitutio ad Integrum* doctrine is provided by Earl Jowitt in *British Transport Commission v Gourley*, [1956] AC 185:

'The broad general principle which should govern the assessment of damages in cases such as this is that the tribunal should award the injured party such a sum of money as will put him in the same position as he would have been in if he had not sustained the injuries: see per Lord Blackburn in Livingstone v. Rawyards Coal Co. The principle is sometimes referred to as the principle of restitutio in integrum; but it is manifest that no award of money can possibly compensate a man for such grievous injuries as the respondent in this case has suffered.'

⁵³³ The origins of this treatment are multi-faceted. For example, following *Gourley* (n532), the House of Lords debated the treatment of damages received in respect of a loss of earning capacity (HL Deb 29 January 1959 vol 213 cols 982-1004) and during the debate, Lord Douglas stated that:

It is undoubtedly correct that a lump sum received in compensation in a case of this kind is exempt from income tax, and very properly so, because it is a capital sum. The plaintiff has suffered a diminution in his earning capacity, and although under conditions of freedom the services of a human being are not sold outright for lump sums, they are in a sense equivalent to a capital loss. They are the means by which he earns his living, and it is quite appropriate that it should be a capital sum which he receives in compensation.

Note, however, that this statement was made before the introduction of Capital Gains Tax in 1965.

4 of Chapter 1 showed that the total value of the Income Tax exemption amounted to £1.3bn based on 2019-20 data – one of the most substantial quantified reliefs. However, beneath the principle of tax exemptions lie a number of subtleties – in particular, relating to how the Courts calculate awards and their associated tax effects.

Court awards for personal injury claims reflect both statutory provisions and a wide body of case law⁵³⁴. Essentially, awards may take the form of lump sums or structured settlements including Periodic Payment Orders ('PPOs')⁵³⁵. Under established doctrine⁵³⁶, compensation should be set so as to ensure that the injured party is placed in no better – or worse – position than if they had not suffered their injury. In practice, this may involve the courts evaluating a number of potential future economic flows – ranging from losses of future earnings to future care costs and to payments for pain, suffering and loss of amenity ('PSLA')⁵³⁷. This evaluation usually involves:

1. Identifying the different economic flows underpinning the compensation.
2. Where appropriate, multiplying annual flows by a multiplier reflecting factors such as assumed longevity; and

⁵³⁴ There is a very broad literature in this area: see – for example - Munkman and Exall *On Damages For Personal Injuries and Death*, 14th edition, Butterworth, 2019.

A helpful synopsis is provided by Julian Benson, Barrister, in Benson, 'A Barrister's Guide to Your Personal Injury Claim', Edition 1, 2012, accessible at:

< <https://www.headway.org.uk/media/2849/a-barristers-guide-to-your-personal-injury-claim.pdf> > accessed 28 January 2023.

⁵³⁵ See Damages Act 1996, s2.

⁵³⁶ Principally the doctrine of *Restitutio ad Integrum*: see n532.

⁵³⁷ A helpful summary is provided in Benson, n534, at 9.

3. Discounting those flows to – in the case of lump sum awards – a ‘present value’ amount reflecting the fact that the recipient might invest the money so as to generate a return and mitigate against inflation.

The basis of identifying the multipliers for annual flows, or discount rates for single future flows, is set out in a periodical publication called the ‘Ogden Tables’, jointly prepared by actuarial and legal experts. The most recent edition was published in August 2022⁵³⁸. Key tax treatments used in compiling the tables include⁵³⁹:

1. There is a presumption that earnings and pensions are compensated for on an after-tax basis. It follows that, so as to avoid a mismatch, the tax system should ensure that these sums are not taxed upon receipt; and
2. The assumed discount rate is calculated on an after-tax basis. There is a considerable academic literature which reviews the advantages and disadvantages of using an after-tax rate⁵⁴⁰ - but given that the flows seem to be aimed at arriving at an after-tax position, the approach used seems consistent with the tax framework.

⁵³⁸ Government Actuary’s Department, ‘Actuarial Tables with explanatory notes for use in Personal Injury and Fatal Accident Cases’, Eighth edition, updated August 2022, accessible at:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1098911/Ogden Tables 8th Edition Updated Final 8-8-22.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1098911/Ogden_Tables_8th_Edition_Updated_Final_8-8-22.pdf) accessed 28 January 2023.

⁵³⁹ Government Actuary’s Department, n538, at 8.

⁵⁴⁰ See, for example, Marlin, ‘The Problem of Discounting with an After-Tax Rate of Return in Cases of Personal Injury or Wrongful Death’, *Journal of Legal Economics*, February 2007 at 14.

In relation to the judicial approach for calculating earnings and pensions-based compensation on an after-tax basis, this follows the ‘Gourley Principle’⁵⁴¹ whereby, in summary, awards are set so as to ensure that tax effects do not unduly advantage or disadvantage the recipient in circumstances of a tax asymmetry where⁵⁴²:

(1) the loss compensated by the damages would have been subject to tax

(2) the damages would not be subject to tax

As HMRC observe⁵⁴³, *Gourley* was not a tax case – but clearly has had a substantial impact on the basis of damages awards where tax consequences are in point.

The specific tax provisions

As a starting point, the receipt of a lump sum under a court award, negotiated settlement or insurance claim in respect of compensation for disability arising from personal injury is exempt from Capital Gains Tax under section 51(2) TCGA 1992 which provides that:

It is hereby declared that sums obtained by way of compensation or damages for any wrong or injury suffered by an individual in his person or in his profession or vocation are not chargeable gains.

⁵⁴¹ Derived from *Gourley*, n532. This case has been the subject of a considerable literature: see, for example, Stevenson and Orr, 'The Tax Element in Damages' (1956) 1956 British Tax Review, 5.

⁵⁴² From MacGregor in 'Taxation of Damages, Costs and Interest (2)', GITC [Gray's Inn Tax Chambers] Review, Vol.II No2, April 2003, at:

< http://taxbar.com/wp-content/uploads/2016/01/tax_damages2_mcg_000.pdf > accessed 28 January 2023.

⁵⁴³ See HMRC Employment Income Manual EIM 10370, 'Termination payments and benefits: damages: the "Gourley principle"', at:

<<https://www.gov.uk/hmrc-internal-manuals/employment-income-manual/eim10370>> accessed 28 January 2023.

Note the operative word ‘or’ after ‘in his person’. HMRC manuals⁵⁴⁴ state that:

The words ‘in his person’ should be read in distinction to ‘in his finances’ but they should be read as including distress, embarrassment, loss of reputation or dignity in addition to physical injury.

HMRC manuals⁵⁴⁵ also explain that:

‘Paragraph 12 of ESC D33⁵⁴⁶ extends the exemption in section 51 TCGA 1992, by concession, in the following circumstances:

- *where compensation is received by a person other than the individual who suffered the wrong or injury, such as relatives or personal representatives of a deceased person*
- *[]*
- *where compensation is received for loss of financial support due to wrong or injury suffered by another individual.’*

The latter ‘carve-out’ in ESC D33 seems particularly important in the case of dependent relatives – and, in the context of ‘effectiveness’ in supporting disabled people and their families, would seem appropriate for formalising into statute.

Where compensation is paid periodically under a PPO or similar arrangement, (as opposed to under a lump sum arrangement), then - in summary - these payments are exempt from Income Tax under section 731(2)(c) ITTOIA 2005 as periodical payments in respect of ‘damages in respect of personal injury’⁵⁴⁷.

⁵⁴⁴ HMRC Capital Gains Manual, CG13030, ‘Compensation: personal compensation or damages’, at:

< <https://www.gov.uk/hmrc-internal-manuals/capital-gains-manual/cg13030> > accessed 28 January 2023.

⁵⁴⁵ HMRC, n544.

⁵⁴⁶ Note that ESC D33 was the subject of HMRC consultation in 2014, with the summary of responses published in November 2015. Changes in legislation are yet to be made.

⁵⁴⁷ An overview of structured settlements and periodic payment arrangements from a number of sources is provided by HMRC in their Insurance Policyholder Taxation Manual, IPTM5010 – ‘Periodical payments in personal injury cases: introduction and overview’, at:

<<https://www.gov.uk/hmrc-internal-manuals/insurance-policyholder-taxation-manual/iptm5010>> accessed 28 January 2023.

The definition of ‘personal injury’ in section 731(5) states that ‘*personal injury*’ includes disease and impairment of physical or mental condition.’ Note that this definition is broader than the Equality Act 2010 definition of disability – and encompasses injuries which might, therefore, not be categorised as ‘disabilities’ under the Act.

In summary, therefore, provided the award or settlement is calculated correctly taking account of future estimated tax effects, then whether received as a lump sum or structured settlement, the amount is received tax-free by any disabled recipient, whether directly or through a trust (under Section 734). *Prima facie*, this seems to be an ‘effective’ basis in which the tax system supports event-led disability – given the doctrines of *Restitutio ad Integrum* and *Gourley*; and recognising that a critique of compensation law is outside the scope of this thesis.

However, the fairness of this approach depends on how accurately any potentially long-term tax effects can be calculated. Indeed, in *Gourley*, the basis proposed by Earl Jowitt was that tax effects should be estimated on ‘broad lines’⁵⁴⁸. Given the reliance a disabled person might place on an award for a very long time, a question arises as to whether some form of tax variation mechanism might be appropriate (and workable) so as to ensure that, ultimately, the person disabled as a result of a personal injury claim is not unduly

⁵⁴⁸ In *Gourley*, n532, Earl Jowitt stated that:

‘It would, I think, be unfortunate if, as the result of our decision, the fixation of damages in a running-down case were to involve an elaborate assessment of tax liability. It will no doubt become necessary for the tribunal assessing damages to form an estimate of what the tax would have been if the money had been earned, but such an estimate will be none the worse if it is formed on broad lines, even though it may be described as rough and ready. It is impossible to assess with mathematical accuracy what reduction should be made by reason of the tax position, just as it is impossible to assess with mathematical accuracy the amount of damages which should be awarded for the injury itself and for the pain and suffering endured.’

disadvantaged as a consequence of future tax rate reductions; or increases in allowances over and above those assumed in setting any award.

Given that many awards are ultimately paid by insurance companies⁵⁴⁹, it can be anticipated that the uncertainty associated with such an approach might lead to vigorous resistance by the insurance industry. The industry might also require 'claw-backs' where changes to tax rates benefited the recipient of damages at the expense of the payer and these could be difficult to enforce if the funds had already been spent. On this basis, whilst such a mechanism may result in a more strictly accurate result, is likely to be challenging to implement and may actually disadvantage some recipients of awards. On this basis, it is not pursued further here.

Tax treatment of returns from investing lump sum awards

Although annuities and structured settlement payments in relation to damages in respect of personal injury are exempt from Income Tax under section 731 ITTOIA 2005, returns from investing a lump sum compensation award are not necessarily⁵⁵⁰ exempt. Given that (i) the discount rate used in calculating an award is an after-tax rate; and (ii) the investment portfolio assumed is comparatively low risk⁵⁵¹, it does seem equitable that enhanced investment

⁵⁴⁹ In the House of Lords debate following *Gourley* (n533), Lord Douglas observed that:

'In the vast majority of these cases which arise out of accidents, and particularly out of accidents upon, the streets and highways, the defendant is insured with an insurance company, and it is the insurance company which, under this judgment [Gourley], is relieved from paying as much as otherwise it would have had to pay. I suppose it can be argued that in the long run the profits of the insurance company might be slightly increased upon that account and the amount of income tax which it paid would also be increased.'

⁵⁵⁰ Recognising that there are certain forms of tax-advantaged investment in UK tax legislation.

⁵⁵¹ See advice from the Government Actuary - 'Setting the Personal Injury Discount Rate' – 25 June 2019, at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_d

returns are subject to tax. To exempt such returns from tax could – potentially - mean that the tax system leads to ‘over-compensation’ where an award recipient invests for, and receives, tax relief on greater returns than those assumed in the award.

Interest on delayed awards and returns from investing lump sum awards

Section 751 ITTOIA 2005 exempts from Income Tax interest on damages awards from the date the cause of action arose to the date that a court award is finally made⁵⁵². This provision seems less susceptible to problems of mis-estimation as it reflects actual interest arising in the (potentially short in comparative terms) period up until the making of the award of damages.

Comparative analysis

Australian tax legislation contains a range of provisions addressing the treatment of lump sum compensation payments in respect of personal injury and annuity payments under structured settlements. Essentially, there are tax exemptions for both types of payment⁵⁵³ – including where the compensation is settled into trust for the benefit of the injured person⁵⁵⁴. Similarly, subject to a number of

[ata/file/817236/Setting_the_Personal_Injury_Discount_Rate_web_.pdf](#) > accessed 28 January 2023.

⁵⁵² HMRC summarise this in their Savings and Investment Manual SAIM2330 – ‘Interest: exemptions: personal injury damages’: ‘*Such interest may be granted for the period, or any part of the period, from the date the cause of action arose to the date of the award.*’ Accessible at:

<<https://www.gov.uk/hmrc-internal-manuals/savings-and-investment-manual/saim2330>> accessed on 13 March 2023.

⁵⁵³ ITAA 1997 subdivision 54-C (lump sums); and subdivision 54-B (personal injury annuities).

⁵⁵⁴ ITAA 1997, s54-70.

conditions, interest on a judgment debt relating to personal injury is also exempt from Australian Income Tax⁵⁵⁵. Broadly, therefore, the provisions mirror those in the UK.

In Canada, the tax treatment of personal injury claims seems to derive from statute, case law and fiscal authority practice. A 2010 paper⁵⁵⁶ by Larre comments that '*The Canada Revenue Agency (CRA) maintains that all personal injury damages are exempt from income tax, but has provided little explanation for its position.*' Section 81(g)(1) of the Canadian Income Tax Act broadly exempts from tax income and gains arising from property derived from 'damages in respect of physical or mental injury to that person', with the treatments qualified with respect to the injured person's age – but there do not appear to be other generalised statutory exemptions: as Larre observes, the CRA general treatment of personal injury awards as exempt from income tax seems to be non-statutory⁵⁵⁷.

The basis of compensation for personal injury claims in Germany is set out in the German Civil Code (Bürgerliches Gesetzbuch - 'BGB')⁵⁵⁸ under Division 8, Title 27 – 'Torts'. Damages can be awarded under a range of heads; and injuries

⁵⁵⁵ ITAA 1997, s51.57.

⁵⁵⁶ Larre, 'Taxing Personal Injury Damages: Tax Policy Analysis from the Canadian Perspective', *Canadian Tax Journal / Revue Fiscale Canadienne* (2010) vol. 58, no 3, 577 – 608.

In a separate paper, Larre has argued in relation to Canadian tax exemptions for personal injury awards that these are not properly reflective of modern approaches to disability: 'Pity the Taxpayer: The Tax Exemption for Personal Injury Damages as Disability Policy', Tamara Larre, *Queen's Law J* 33 no1 Fall 2007.

⁵⁵⁷ Duff, n22 at note 15 also provides comments on the Canadian tax treatment of personal injury awards.

⁵⁵⁸ An English translation of the Bürgerliches Gesetzbuch - BGB - can be accessed at:

<https://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html> accessed 28 January 2023.

affecting a person's earning capacity settled by lump sum or annuity⁵⁵⁹. Under EStG 24.1.a), such income would usually be taxable – meaning that awards should be made gross of tax. An exception is annuities awarded for increased needs: these are not taxed on the basis that the injured person does not receive any additional income but merely compensation⁵⁶⁰.

In the US, Section 104(a)(2) of the IRC⁵⁶¹ broadly exempts:

(2) the amount of any damages (other than punitive damages) received (whether by suit or agreement and whether as lump sums or as periodic payments) on account of personal physical injuries or physical sickness;

The IRS has provided guidance on the provisions – including the treatment of 'emotional distress or mental anguish' arising from the injury, which form part of the tax-exempt amount⁵⁶².

In summary, and arguably unsurprisingly given the UK approach, comparative analysis does not reveal any provisions which clearly confer tax advantages to people disabled by those injuries when compared to the UK.

⁵⁵⁹ BGB 843.

⁵⁶⁰ The candidate is grateful to Emanuel Benning, a former fellow student, for guidance on this point. The treatment derives from a Federal Fiscal Court Ruling – see: BFH, 25.10.1994 – VIII R 79/91, DStR 1995, 49.

⁵⁶¹ Sourced from Cornell Law School, Legal Information Institute, '26 U.S. Code § 104 - Compensation for injuries or sickness' at:

< <https://www.law.cornell.edu/uscode/text/26/104> > accessed 28 January 2023.

⁵⁶² See IRS, 'Settlements – taxability' – accessible at:

< <https://www.irs.gov/pub/irs-pdf/p4345.pdf> > accessed 28 January 2023.

Other effectiveness criteria

The provisions of section 51(2) TCGA; section 731 ITTOIA 2005; and section 751 ITTOIA 2005 seem consistent with the normative principles in Section 7 of Chapter 1; and effective relative to the other criteria identified in Section 8: the provisions are equitable – given the doctrine of *Restitutio ad Integrum*; make a meaningful difference – recognising that their objective is to deliver economic neutrality; and seem to be the best vehicle for providing relief on the basis that relief is given at source.

The legislation is succinct and clear; and has been stable - with only minor amendments to Section 731 ITTOIA 2005, linking the provisions to certain secondary legislation connected with a number of specialist areas of compensation. The provisions are financially convenient – the recipient receives their awards free of tax; and there has been no evidence of systemic avoidance.

3. Provisions relating to compensation for disability arising at work

A person may become disabled at work either through illness or injury. They may be an employee or self-employed.

Compensation and insurance arrangements in respect of work-related disability are broad-ranging and include, for example, disablement pensions – considered in section 4 below; and payments under certain health-related insurance policies – considered in section 5 below. These various arrangements sit alongside the general principles surrounding the award of compensation for personal injury discussed above in section 2.

This section considers specific provisions in relation to termination payments made to employees ‘on account of disability’ set out in section 406(1)

ITEPA 2003. It draws on the key case law commentary set out in Chapter 3⁵⁶³ - in particular, the judgment of Lightman J in the earlier case of *Horner v Hasted*⁵⁶⁴ which included the following:

In short, there must be established as an objective fact a relevant disability and as a subjective fact that the disability is the motive for payment by the person making it.

The judgment clearly sets out the required 'cause and effect' for the Income Tax exemption to apply. HMRC's manuals emphasise that where payments are in respect of multiple factors – for example as part of a compromise agreement – some form of apportionment may be necessary on a 'just and reasonable' basis⁵⁶⁵. In SP10/81⁵⁶⁶, HMRC accepts that disability can be progressive:

[HMRC] now accepts that 'disability' covers not only a condition resulting from a sudden affliction but also continuing incapacity to perform the duties of an office or employment arising out of the culmination of a process of deterioration of physical or mental health caused by chronic illness.

The exemption was originally incorporated into section 38(1)(a) of the Finance Act 1960. The inclusion of the provision was extensively debated – particularly in the light of *Gourley* and fears that employers might 'arbitrage' an out-of-court settlement with a court award⁵⁶⁷. Conceptually, the policy intent behind the

⁵⁶³ Chapter 3, Section 6.

⁵⁶⁴ [1995] STC 766.

⁵⁶⁵ See HMRC Employment Income Manual EIM13637, 'Termination payments and benefits: Section 401 ITEPA 2003: exceptions: payments on account of injury or disability: termination agreements include matters other than disability', at:

<<https://www.gov.uk/hmrc-internal-manuals/employment-income-manual/eim13637>> accessed 28 January 2023.

⁵⁶⁶ See HMRC, 'Policy paper - Statement of Practice 10 (1981)', 3 November 1981:

<<https://www.gov.uk/government/publications/statement-of-practice-10-1981/statement-of-practice-10-1981>> accessed 29 January 2023.

⁵⁶⁷ HC Deb 26 May 1960 vol 624 cols 739-72.

exemption seems to be to exempt a ‘capital loss’ in relation to a loss of earnings capacity⁵⁶⁸:

If we add the Clause to the Bill the result will be that any such payment as that will not attract tax and I gather that there is no disagreement on either side of the Committee that a payment of that sort ought not to create a liability to tax.

If that is the view of the Committee, such a view implies that we regard that payment as compensation for a capital loss suffered by the person to whom it is made. He has suffered an irreplaceable capital loss of the ability to earn. By putting this into the Clause, we are declaring our opinion that being a capital loss no compensation in respect of it should be taxable.

In terms of the general effectiveness of Section 406(1) in supporting a disabled person receiving a termination payment on account of their disability, outright tax relief does provide a clear economic benefit when compared to the amount being taxed.

Under current anti-discrimination legislation, an employer terminating employment on account of the disability of the employee⁵⁶⁹ will presumably wish to be satisfied that to do so will not expose them to a successful claim for discrimination on account of disability⁵⁷⁰. It appears to follow that matters such as the making of ‘reasonable adjustments’ for the disabled worker are likely to have been exhausted; and that the employee is simply unable to discharge their duties on account of their disability.

⁵⁶⁸ HC Deb, n567, Mr Powell, col 765.

⁵⁶⁹ HMRC manuals, n585, provide commentary on this – including where an apportionment may be necessary: *[EIM13630] explained that the disability exception is only available where the payment is wholly on account of disability. Sometimes the termination agreement may indicate that other issues are also being dealt with. If so, an apportionment may be necessary.*

⁵⁷⁰ For UK Government guidance around disability, redundancy and dismissal – ‘What to do if you become disabled’ - see:

< <https://www.gov.uk/if-you-become-disabled/if-youre-in-employment-and-become-disabled> > accessed 29 January 2023.

Disability leading to reduced working as opposed to termination

A question arises as to the tax position of a person with a disability which reduces their ability to perform their role – as opposed to curtails it altogether. By way of background, HMRC SP10/81 does accept that a disability leading to the termination of employment may be progressive rather than arising as a sudden affliction⁵⁷¹.

In the circumstances of disability leading to reduced working hours, an employee may suffer reduced earnings – but still have income or assets above the relevant thresholds for means-tested benefits and other forms of support. Reduced earnings will be taxable at their relevant marginal tax rates. Employees may in these circumstances face increased ‘costs of disability’ – for example, transportation or care – albeit that they may be eligible to apply for Access to Work grants or other support. A question arises, therefore, as to whether some form of additional tax relief might be offered in these circumstances – where matters have not reached outright termination leading to compensation; but where proven disability is resulting in material economic loss from reduced working.

There is some symmetry between this point and the position of carers forced to reduce working hours to provide care for a disabled person⁵⁷² - and, again, the position is advanced conceptually for consideration.

⁵⁷¹ HMRC, n566.

⁵⁷² See Chapter 4, Section 6.

The position of self-employed people

The provisions of section 406(1) clearly apply only to employees. Self-employed people would usually expect to address loss of earnings arising from disability – including a curtailment in their ability to work at all – through, in the event of an event-led claim, compensation; or through insurance.

Ill-health retirement relief from Capital Gains Tax under the former section 164 TCGA 1992 was abolished in relation to disposals up to 2002/03: disposals of business assets – irrespective of health status - are now eligible for Business Asset Disposal Relief ('BADR' - formerly Entrepreneur's Relief⁵⁷³). BADR – broadly - results in a tax rate of 10% being applied up to a lifetime limit of £1m of gains on a disposal of a qualifying asset(s).

A question arises as to whether some further relief might be available in respect of a person disposing of their business 'on account of disability' – perhaps an exempt band. This may provide an element of symmetry to employees who benefit from relief under section 406(1) in respect of termination payments 'on account of disability'.

Comparative analysis

The tax treatment of employment termination payments varies between jurisdictions and there does not seem to be a discernible theme around a materially improved position when compared to the UK.

⁵⁷³ BADR was introduced in Finance Act 2020 in substitution of Entrepreneur's Relief with effect from 6 April 2020: a UK Government summary details of the relief can be found at 'Business Asset Disposal Relief' at:

< <https://www.gov.uk/business-asset-disposal-relief> > accessed 29 January 2023.

The position in Australia depends on a number of factors⁵⁷⁴. Sections 82-140 and 82-150 of the Australian Income Tax Assessment Act 1997 contain provisions whereby a component of an employment termination payment is tax-free to the extent of an 'invalidity segment' of the payment where *'it is unlikely that the person can ever be gainfully employed in the capacity for which he or she is reasonably qualified because of education, experience or training'*⁵⁷⁵. The 'invalidity segment' is – broadly – calculated by reference to the estimated proportion of working life remaining until retirement, relative to (i) the sum of total days in the employment to which the payment relates; and (ii) the total days to retirement.

In Canada⁵⁷⁶, severance payments are generally subject to Income Tax unless, subject to a range of criteria, they are paid into a registered savings or pension plan. Payments under insurance-based 'wage loss replacement plans' may be taxable unless the employee pays the premiums in full⁵⁷⁷.

⁵⁷⁴ For an ATO synopsis, 'Employment termination payments', see:

<<https://www.ato.gov.au/Individuals/Jobs-and-employment-types/working-as-an-employee/leaving-your-job/employment-termination-payments/>> accessed 29 January 2023.

⁵⁷⁵ ITAA 1997, s82-150(1)(d).

⁵⁷⁶ For a Canadian Government synopsis of tax treatments of severance payments, 'Understanding your severance pay', see:

<<https://www.canada.ca/en/financial-consumer-agency/services/losing-job/understanding-severance-pay.html>> accessed 11 February 2023.

⁵⁷⁷ For a Canadian Government synopsis of Wage Replacement Plans – 'Income-maintenance insurance plans (wage loss replacement plans)' - see:

<<https://www.canada.ca/en/revenue-agency/services/tax/individuals/topics/about-your-tax-return/tax-return/completing-a-tax-return/personal-income/line-10400-other-employment-income/line-10400-income-maintenance-insurance-plans-wage-loss-replacement-plans.html>> accessed 11 February 2023.

Severance payments in the US are generally subject to Income Tax⁵⁷⁸ – unless payable to qualifying veterans, subject to a number of conditions⁵⁷⁹. Germany has stringent requirements for seeking to retain disabled people in work where possible⁵⁸⁰; and provides a pension arrangement in respect of lost earnings upon termination for disabled people meeting certain qualification criteria⁵⁸¹. The tax treatment of these amounts is discussed in Section 4 below.

Other effectiveness criteria – summary

Section 406(1) seems reflective of the broader legislative and policy framework on the basis that anti-discriminatory legislation is presumed to prohibit termination of employment on account of disability unless wholly justified. Further, the provision seems equitable to the extent that tax relief is directly proportionate to the termination payment made; and avoids problems of substantial payments being subject to high marginal tax rates, thereby materially depleting their after-tax value. The tax relief can be expected to make a meaningful difference to the recipient, depending on the scale of the payment; and seems to be the best vehicle for meeting the policy objective as relief is given at source.

⁵⁷⁸ For an IRS briefing note, 'Tax Impact of Job Loss', Publication 4128, see:

< <https://www.irs.gov/pub/irs-pdf/p4128.pdf> >, accessed 13 March 2023.

⁵⁷⁹ For an IRS briefing note, 'Combat-Injured Veterans Tax Fairness Act Claim Information Available', see:

< <https://www.irs.gov/individuals/military/combat-injured-veterans-tax-fairness-act-claim-information-available> > accessed 11 February 2023.

⁵⁸⁰ The law is set out in statute in the Behindertengleichstellungsgesetz – BGG (Disability Equality Act).

⁵⁸¹ A European Commission summary in English – 'Germany – disability benefits' - is provided at:

<<https://ec.europa.eu/social/main.jsp?catId=1111&intPagId=4551&langId=en>> accessed 11 February 2023.

The legislation appears clear. Statutory interpretation has been clarified by case law⁵⁸²; and has been stable - the provision broadly follows section 188(1) ICTA 1988, subject to the carve-out for 'injury to feelings' in section 5(7)(b) of the Finance (No2) Act 2017. It is financially convenient as the recipient receives the termination payment free of Income Tax. Finally, no systemic avoidance has been identified.

4. Provisions relating to disablement pensions

Introduction

Both sections 641 and 644 ITEPA 2003 provide tax exemptions for forms of disablement pension arising as a result of disability arising from military or civilian service or employment. Whilst the scope of pensions covered by section 641 is clear, the arrangements to which section 644 might apply in practice seem relatively limited.

Wound and disability pensions

The origins of section 641 – an Income Tax exemption for wound and disability pensions arising from military service (often referred to as 'war disablement pensions') - arose after the Great War in the Finance Act 1919. The exemption was granted because of a policy view that the pension was *compensation* for the injury suffered – and that to tax it would be contrary to public sentiment⁵⁸³.

⁵⁸² *Horner v Hasted*, Chapter 3, Section 6.

⁵⁸³ Mr Baldwin - HC Deb 13 February 1919 vol 112 col 278.

Nonetheless, it was acknowledged that prior to any exemption, these pensions would have been within the scope of Income Tax⁵⁸⁴.

Ministry of Defence ('MoD') statistics⁵⁸⁵ stated that, as at 31 March 2022, there were 85,681 disablement pensioners; and 11,463 war widow(er)s in receipt of a war pension. The same statistics⁵⁸⁶ state that £462.1m (of which £14.1m was lump sum expenditure to compensate for mesothelioma) was paid to disablement pensioners; and £160.5m to war widow(ers) in 2021/22.

Clearly, the value of any associated tax relief to individual recipients will depend on their marginal tax rate – noting that the 2023/24 Personal Allowance is £12,570. Candidate calculations based upon the MoD statistics suggest that the average disablement pension was some £5,400 per annum and war widow(er) pension some £14,000 per annum. The government analysis set out at Section 4 of Chapter 2 suggests that the total value of the tax exemption in relation to war disablement pensions was some £40m in 2021/22⁵⁸⁷.

War disablement pensions are administered by Veterans UK. By way of background⁵⁸⁸, members of the UK armed forces are members of one of the UK

⁵⁸⁴ Baldwin, n583, stated that: *'The Chancellor of the Exchequer asks me to say that wound and disability pensions are chargeable with Income Tax under the law as it now stands, and that he has no power to remit the charge by executive action.'*

⁵⁸⁵ Ministry of Defence, 'War Pension Scheme Annual Statistics, 1 April 2012 to 31 March 2022', published 27 August 2020, at:

<[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1085839/20220512 - War Pension Scheme Statistical Bulletin March 22.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1085839/20220512_-_War_Pension_Scheme_Statistical_Bulletin_March_22.pdf)> accessed 29 January 2023.

⁵⁸⁶ n585 at 14.

⁵⁸⁷ Chapter 1, Section 4.

⁵⁸⁸ Information in this paragraph is derived from Brooke-Holland et al, Parliamentary Briefing Note number CBP 07693, 'Support for UK Veterans', 2 November 2022, at:

< <https://commonslibrary.parliament.uk/research-briefings/cbp-7693/> > accessed 29 January 2023.

armed forces defined benefit pension schemes irrespective of injury or disability incurred in service. In addition to eligibility for a pension, members of the armed forces may also become eligible for one of the armed forces compensation schemes: the 'War Pension' scheme which existed prior to 6 April 2005 was replaced by the Armed Forces Compensation Scheme ('AFCS') on that date.

The scope of war disablement pensions has been extended since the original tax exemption of 1919 (and now covers, for example, sporting injuries by personnel in non-combat related roles⁵⁸⁹).

The tax treatment of these amounts⁵⁹⁰ may derive from the view that these payments are in the nature of 'compensation' and 'payments on account of disability' and have some symmetry with the tax treatment of personal injury awards described in Section 2 (and, depending on their nature, employment termination payments in Section 3).

In 2003 – before the introduction of the AFCS - the LITRG wrote⁵⁹¹ of war disablement pensions ('WDPs') that *'The pensions are regarded by the DWP as compensation rather than earnings replacement. Hence WDPs (and associated widow's pensions) are tax free.'*

⁵⁸⁹ Parliamentary Briefing Note, n588 at 50.

⁵⁹⁰ HMRC manuals provide a listing of the types of pension exempt under Section 641: see HMRC, 'EIM75920 - The taxation of pension income: armed forces pension payments' at:

<<https://www.gov.uk/hmrc-internal-manuals/employment-income-manual/eim75920>> accessed 18 August 2023.

⁵⁹¹ LITRG, n50, at 2.4.15.

A broad question arises as to whether there is a supportable basis for all war disablement pension payments being exempt from tax. Indeed, of war disablement pensions, the LITRG wrote in 2003⁵⁹² that:

2.4.17 *Our review of the [BPA and] WDP raises delicate questions as to whether tax allowances, or tax exemption, are the right vehicles to respond to the needs of individuals with specific impairments. Why should a source of public funds set aside for a particular group be so structured that it is inaccessible to those on very low incomes, who nevertheless form the majority? And should one person disabled in identical circumstances to another but having a less favoured employer be denied a more favourable tax exemption?*

2.4.18 *We recommend that the interaction between the tax regime and the supporting benefits system should be reviewed to see whether it is still appropriate to use tax advantages for delivering partial compensation to some groups with disabilities or impairments, but not others.*

Answering the question as to whether there is a supportable basis for tax exemption seems to link back to (i) being clear what the payments are for; and (ii) comparing their tax treatment to other equivalent payments.

Given that many of these payments largely seem to be compensation in respect of personal injury⁵⁹³, it seems that ‘first principles’ around the tax treatment of personal injury point to either a capital gains tax exemption under section 51(2) TCGA 1992 (‘... *wrong or injury suffered by an individual in his person...*’); or, in the case of structured settlements, an Income Tax exemption under the relevant provisions of ITTOIA 2005.

Based on this analysis, section 641 ITEPA 2003 seems to be a long-standing provision whose origins arose after the First World War in very specific circumstances; and which now sits alongside both the Armed Forces

⁵⁹² LITRG, n50.

⁵⁹³ Noting that Guaranteed Income Payments under the AFCS can be compensation for lost earnings.

Compensation Scheme and the contemporary tax treatment of personal injury claims generally.

The LITRG's comments regarding the breadth of scope where the tax treatment might arise – including, for example, sporting injuries – and their comments on equitability, are revisited under 'Other effectiveness criteria' below.

Comparative analysis

The Australian Income Tax Act 1997 ('ITAA') contains a number of very specific, targeted treatments for Military Rehabilitation and Compensation Act payments (section 52-114 ITAA 1997). Section 53-10 also exempts payments for wound and disability pensions, explicitly referencing the UK section 641 ITEPA 2003 – but then elaborating upon this with a series of defined types of veterans affairs payments.

Subdivision G, 81(1)(d), (d1) and (e) of the Canadian Income Tax Act exempt various forms of veteran disability-related awards from tax. The Canadian system for compensating veterans is complex⁵⁹⁴, and a strategic review of various options for improving the system was undertaken by the Veterans' Ombudsman in a report entitled '*Financial Compensation for Canadian Veterans: A Comparative Analysis of Benefit Regimes report*'⁵⁹⁵.

In Germany, Section 3(6) EStG⁵⁹⁶ provides an exemption for:

⁵⁹⁴ For a summary of the variety of veterans awards and associated rates, see Canadian Government guidance, 'Rates', at:

< <https://www.veterans.gc.ca/eng/resources/rates> > accessed on 13 March 2023.

⁵⁹⁵ Canadian Veterans' Ombudsman's review, 'Financial Compensation for Canadian Veterans: A Comparative Analysis of Benefit Regimes report', at:

<<https://ombudsman-veterans.gc.ca/en/publications/reports-reviews/financial-compensation-analysis>> accessed 29 January 2023.

⁵⁹⁶ This is reproduced from the EStG English translation provided by Dr Thomas Rittler, n344.

Emoluments paid as pension on the basis of statutory provision from public funds to persons disabled in military service or voluntary military service, persons disabled in civilian service and in the Federal voluntary civilian service or their surviving dependants, war-disabled persons, surviving dependants of war-dead and persons treated as such, to the extent that the emoluments are not granted for the time of service. Persons who are entitled to benefits pursuant to the Federal Act on War Pensions or to accident care benefits pursuant to the Military Pensions Act, the Civil Services Pensions Act or comparable law of a German Federal State shall likewise be deemed as persons treated as such within the meaning of sentence 1.

This provision can be seen to exempt from tax a very broad range of ‘emoluments paid as pension’ arising from disability both in civilian and military service: given that these payments are paid ‘from public funds’, the tax effects seem likely to be ‘priced in’ to the quantum of the award.

Finally, section 104 of the IRC provides that (candidate underlining for emphasis):

§104. Compensation for injuries or sickness

(a) In general

Except in the case of amounts attributable to (and not in excess of) deductions allowed under section 213 (relating to medical, etc., expenses) for any prior taxable year, gross income does not include -

[]

(4) amounts received as a pension, annuity, or similar allowance for personal injuries or sickness resulting from active service in the armed forces of any country or in the Coast and Geodetic Survey or the Public Health Service, or as a disability annuity payable under the provisions of section 808 of the Foreign Service Act of 1980;

(3) amounts received by an individual as disability income attributable to injuries incurred as a direct result of a terroristic or military action (as defined in section 692(c)(2)); and []

This synopsis of international comparisons demonstrates that all four countries have some degree of tax exemption for pensions payable to disabled veterans – albeit that the scope of these exemptions varies: the exemption may be highly

targeted (for example, Australia); or form part of a broad range of state-funded exemptions (for example, Germany).

There seems to be no obvious reason to abandon the tax exemption for disablement pensions paid to members of the armed forces as a matter of principle.

Other disablement pensions

The current exemption under section 644 ITEPA 2003 for ‘pensions payable where employment ceased due to disablement’ was made statute in 2003 – as a legislative codification of ESC A62. The legislation does not contain a definition of ‘disablement’ – but rather focuses on the consequences of ‘disablement’:

- (2) For the purposes of this section a pension is a ‘disablement pension’ if—*
 - (a) the pension is payable because a person has ceased to hold an employment or office because of disablement, and*
 - (b) that disablement is attributable to—*
 - (i) performance of the duties of the employment or office, or*
 - (ii) war injuries.*

Central to the exemption is that the person becomes disabled *because* of an event or disease acquired at work – as opposed to taking early retirement and drawing a pension as a result of a non-work-related disability. Section 4 of Chapter 3 explained that the legislation explicitly carves out payments from a registered pension scheme from the exemption from Income Tax; and limits the exemption to that incremental element of any disability pension which arises from disablement. The candidate identified through an online search an example of

such an arrangement as compensation paid to certain firefighters⁵⁹⁷. The Income Tax exemption in section 644 is only available in relation to that incremental amount of pension due to 'disablement'.

In relation to pensions paid to beneficiaries on death, HMRC manuals state that⁵⁹⁸:

The exemption does not apply where the person who has suffered the illness or injury dies and a pension is subsequently paid to their beneficiary. This is because the beneficiaries' pension is paid because of a person's death, and not because a person has suffered a work-related injury or illness.

Comparative analysis

Pensions payable to people becoming disabled at work (whether 'event-led' or through illness), and their tax treatment, very much reflect the social security, insurance arrangements and other private sector benefit and pension arrangements operating in different countries. This can make direct comparisons challenging. What follows is necessarily summarised.

In Australia, contributions to a 'Super' – a superannuation scheme – are mandatory and an element of tax relief is provided in respect of the

⁵⁹⁷ For details, see Local Government Association, 'Firefighters Pension Scheme Technical Note: Taxable treatment of Ill-Health pension paid from the compensation scheme', at: <https://www.fpsregs.org/images/admin/Technotes/Technote2.0917.pdf> > accessed 17 August 2023.

This note contains clarification of the tax treatment of various payments by HMRC.

⁵⁹⁸ See HMRC Employment Income Manual EIM75080 – 'The taxation of pension income: pension payments exempt from tax' - 'Disability pensions paid due to injury or illness at work', at: <https://www.gov.uk/hmrc-internal-manuals/employment-income-manual/eim75080#disability-pensions-paid-due-to-injury-or-illness-at-work> > accessed 11 February 2023.

contributions⁵⁹⁹. 'Super' pension arrangements are often combined with insurance arrangements which can pay benefits on events such as incapacity or death: this can include Total and Permanent Disability ('TPD') cover.

Australia permits a number of flexibilities around superannuation schemes for people becoming disabled at work⁶⁰⁰. First, subject to a range of conditions, lump sum payments from schemes are not subject to tax when they are received by people who – broadly - are terminally ill⁶⁰¹. This is not dissimilar to the UK relief for serious ill-health pension lump sums in section 636(A)(1)(b) ITEPA 2003. Second, there may be a tax-free element on an element of a lump sum withdrawal if a superannuation scheme is accessed early due to disability⁶⁰². The tax treatment of 'Super' withdrawals generally is complex and the full detail is not rehearsed here⁶⁰³.

At a national level, Canada operates a national Canada Pension Plan ('CPP'). The CPP has provisions which provide for pensions upon disability

⁵⁹⁹ For Australian Government guidance, 'Tax and super', see:

< <https://moneysmart.gov.au/how-super-works/tax-and-super> > accessed 11 February 2023.

⁶⁰⁰ For details provided by the ATO, 'Invalidity or disability payments from employers or super funds', see:

<<https://www.ato.gov.au/Individuals/People-with-disability/Invalidity-or-disability-payments-from-employers-or-super-funds/>> accessed 11 February 2023.

⁶⁰¹ ITAA 1997, s11-55. See ATO guidance, 'Access due to a terminal medical condition', at:

<<https://www.ato.gov.au/Individuals/Super/In-detail/Withdrawing-and-using-your-super/Access-due-to-a-terminal-medical-condition/>> accessed 11 February 2023.

⁶⁰² ITAA 1997, s307-145.

⁶⁰³ For ATO guidance, 'How tax applies to your super', see:

<<https://www.ato.gov.au/individuals/super/in-detail/withdrawing-and-using-your-super/withdrawing-your-super-and-paying-tax/?anchor=Howtaxapplies toyoursuper#Howtaxapplies toyoursuper>> accessed 11 February 2023.

where this is ‘severe and prolonged’ – although disability pensions are treated as earned income for Canadian Income Tax purposes⁶⁰⁴. The system provides a monthly basic disability pension, with further amounts payable depending on historic contributions to the Plan⁶⁰⁵. Although the amounts are taxable, Canada provides a non-refundable Disability Tax Credit (discussed in detail in Chapter 4). As for the UK, workers may supplement their CPP with other workplace arrangements.

Disability pensions and benefits in Germany are a key part of the German social security system. Again, they are often supplemented by company pension plans or personal retirement savings. State benefits are contributory by both workers and employers. Under EStG 22(1), state and certain other pension payments are subject to Income Tax up to maximum percentages with contributions being tax-deductible. The present regime is being phased out by 2040 when pension income will be taxed in full, with full deductibility for contributions⁶⁰⁶.

In the US, state pension provision forms part of social security arrangements – with, again, workers able to participate in workplace pension plans or to invest personally for retirement⁶⁰⁷. Disability benefits are payable as

⁶⁰⁴ ITA, Division G, s146(1).

⁶⁰⁵ For Canadian Government guidance, ‘Canada Pension Plan disability benefits’, see:

< <https://www.canada.ca/en/services/benefits/publicpensions/cpp/cpp-disability-benefit.html>
> accessed 11 February 2023.

⁶⁰⁶ This commentary was provided by Emanuel Benning, a former fellow student, who helpfully reviewed the German comparative analysis comments in this thesis.

⁶⁰⁷ For a US Government synopsis, ‘Retirement planning tools’, see:

< <https://beta.usa.gov/retirement-planning-tools> > accessed 11 February 2023.

part of social security arrangements⁶⁰⁸. Social security benefits are taxable if certain income thresholds are met⁶⁰⁹. There are no explicit tax reliefs for disability pensions.

In summary, the comparative analysis above demonstrates that:

1. Any pensions tax relief for disability needs to be considered as part of a 'whole system' - including state and private provision and insurance - and that tax reliefs for disability pensions need to be considered holistically alongside other tax reliefs.
2. From a tax perspective, no country in the comparative analysis seems to offer an overwhelmingly greater level of tax relief when compared to the UK: although Australia offers a partial exemption for a lump sum withdrawal from a 'Super' scheme in the case of disability, this needs to be considered alongside the existing Tax-Free Lump Sum provisions in respect of approved pension schemes already available in the UK.

Other effectiveness criteria – summary

The provisions of sections 641 and 644 ITEPA 2003 seem reflective of the broader legislative and policy framework, both due to their alignment with the tax treatment of compensation for personal injury claims; and, in the case of war

⁶⁰⁸ For a US Government synopsis, 'Disability benefits', see:

< <https://www.ssa.gov/benefits/disability/> > accessed 11 February 2023.

⁶⁰⁹ For a US Government synopsis, 'Income Taxes and your Social Security Benefit', see:

< <https://www.ssa.gov/benefits/retirement/planner/taxes.html> > accessed 11 February 2023.

disablement pensions, given that the tax effects are likely to be 'priced into' the calculation of amounts paid.

In terms of equitability, the LITRG contend⁶¹⁰ that section 641 seems to provide tax relief in circumstances where people outside the armed forces experiencing equivalent injury would not be eligible for it (for example, sporting injuries). However, the incidence of such events would appear to be relatively low – and people in service may be required to participate in sport in any event.

The provisions are financially convenient as relief is provided at source. The legislation appears both clear and accessible; and stable (noting the codification of ESC62 into section 644). No systemic avoidance has been identified.

5. Provisions relating to certain health insurance payments

Introduction

There are a number of statutory provisions connected to the Income Tax treatment of certain annual health and employment insurance payments, with the principal provision being section 735 ITTOIA 2005. A parallel series of provisions

⁶¹⁰ See LITRG, n50.

under section 743 and section 325A ITEPA 2003 apply to employer-provided schemes⁶¹¹.

Essentially, provided relief has not been claimed by the insured for any part of the premiums paid, then – subject to a number of conditions - the amounts received are exempt from Income Tax. Section 736 sets out a number of important qualifying criteria for the relief: it distinguishes between insurance policies which cover health risks; and those which cover employment risks. The relief applies to one or the other. Section 731(1) states that:

- 1) *For the purposes of sections 735 and 737 to 743, a policy insures against a health risk if it insures against the insured becoming, or becoming in any specified way, subject—*
 - (a) *to any physical or mental illness, disability, infirmity or defect, or*
 - (b) *to any deterioration in a condition resulting from any such illness, disability, infirmity or defect.*

Section 737 provides that the Income Tax exemption applies during a period during which an:

an illness, disability, infirmity or defect insured against by the part of the policy relating to the insured risk continues’; or ‘a period throughout which, in circumstances insured against by the part of the policy relating to the insured risk, the insured’s income is less than it would otherwise have been...

⁶¹¹ HMRC Insurance Policyholder Taxation Manual, IPTM6120, ‘Sickness disability and unemployment insurance: tax treatment: employer’s schemes and other situations where someone else has paid part of the premiums: ITTOIA05/S743’, at:

<<https://www.gov.uk/hmrc-internal-manuals/insurance-policyholder-taxation-manual/iptm6120> > accessed on 13 March 2023 explains that:

‘The exemption provided by ITTOIA05/S735 applies only to payments to the insured person. But, for example, where an employer has an insurance policy to cover sick pay to employees – an employer’s scheme – the employer is the insured, because the employer holds the contract with the insurer. It follows that without a special rule, even where the employees have paid the premiums, their sick pay would be taxable as annual payments under ITTOIA05/S684. ITTOIA05/S743 provides an exemption from tax in such circumstances. A parallel exemption from liability to income tax as employment income is provided under ITEPA03/S325A.’

Section 737(3) provides that ‘*For the purposes of subsection (2)(a), an illness, disability, infirmity or defect is treated as continuing during a period of convalescence or rehabilitation related to it.*’ Essentially, these provisions allow for flexibility of relief during periods with a disability including where the disability means that a person works on a reduced income. The exemption also applies during a period of convalescence or rehabilitation. Various provisions govern the position where policies cover multiple risks, including health risks⁶¹²; or are ‘linked [or connected] policies’⁶¹³.

The tax exemptions in section 735 and other sections are central to the amount of compensation received from insurance by people becoming disabled in a work-related setting – including self-employed people. An internet search reveals a very broad range of policies covering a variety of health-related risks – including income protection insurance⁶¹⁴ and self-employed income protection insurance⁶¹⁵. A Which? synopsis⁶¹⁶ suggests that:

Income protection payouts are usually based on a percentage of your earnings: 50% to 70% is the norm. Sometimes, an insurer might pay out a higher percentage of one portion of your salary (perhaps the first £50,000), and a lower percentage on anything above that.

⁶¹² ITTOIA 2005, s739 – ‘Conditions to be met by policies providing other benefits’.

⁶¹³ ITTOIA 2005, s740 – ‘Conditions to be met where policies are linked’.

⁶¹⁴ A synopsis of this product by Which? – including market survey statistics – is provided at ‘Income protection explained’ at:

<https://www.which.co.uk/money/insurance/life-insurance/income-protection-explained-aum068h7cqr3> > accessed 11 February 2023.

⁶¹⁵ For example, see money.co.uk, ‘Income protection insurance’, at:

<https://www.money.co.uk/income-protection-insurance/self-employed-income-protection.htm>> accessed 12 February 2023.

⁶¹⁶ Which? n614.

Comparative analysis

True comparability between jurisdictions is complex given that some countries such as the US operate a principally insurance-based health system. The comments here are, by necessity, highly summarised.

Subject to a number of conditions, Australia permits an Income Tax deduction for income protection insurance premiums – but not for protection under certain other types of policy such as critical care insurance or life insurance⁶¹⁷. Payments received under an income protection plan are taxable at the taxpayer's marginal rate⁶¹⁸. For tax relief, the policy has to be taken out separately to the taxpayer's 'Super'; and payments resulting in a capital sum are ineligible for relief⁶¹⁹.

Canadian government guidance states that⁶²⁰:

Disability insurance benefits and taxes

Generally, if you pay the entire amount of the disability premium yourself, your disability benefits will be tax-free. This may bring your income while on disability closer to your current take-home pay.

⁶¹⁷ For an ATO synopsis, 'Income protection insurance', see:

< <https://www.ato.gov.au/individuals/income-and-deductions/deductions-you-can-claim/other-deductions/income-protection-insurance/> > accessed 11 February 2023.

⁶¹⁸ ATO synopsis, n617, 'You must include any payment you receive under an income protection policy in your tax return.'

⁶¹⁹ ATO synopsis, n617:

'You can't claim a deduction if the policy:

- *you take out is through your superannuation fund and the premiums are deducted from your contributions*
- *pays you a capital sum to compensate you for injury.'*

⁶²⁰ For a Canadian Government overview of disability insurance, 'Disability insurance', including tax treatment, see:

< <https://www.canada.ca/en/financial-consumer-agency/services/insurance/disability.html> > accessed 11 February 2023.

If your employer pays all or part of the disability premium, your disability benefits will be subject to income taxes.

In Germany, the EStG allows for Income Tax relief as ‘special expenses’ for the costs of a broad range of protection cover – including against⁶²¹:

...the occurrence of occupational disability or reduced earning capacity (insured event) provided that the contract only provides for payment of a life-time pension payable in monthly instalments taken out on the life of the person subject to taxation for an insured event occurred until this person has reached the age of 67...

The EStG also allows for the treatment of ‘health and long-term nursing care insurances’ to be treated as ‘special expenses’ – subject to a number of conditions⁶²². This type of premium is also exempt from Insurance Tax under Section 4(5) of the German Insurance Tax Act (Versicherungsteuergesetz)⁶²³.

An IRS summary of the position in the US⁶²⁴ explains that the taxability of disability insurance depends on who has paid the premiums: similar to the UK, if the taxpayer has paid them in full, then the amounts are not taxable; whereas if an employer has paid some or all of them, the compensation attributable to the employer’s premiums is taxable.

⁶²¹ EStG 5(10)(2)(b)(bb) – from translation by Dr Rittler, n358.

⁶²² EStG 5(10)(3a).

⁶²³ For a German Government translation into English of the German Insurance Tax Act – Versicherungsteuergesetz - see:

< https://www.gesetze-im-internet.de/englisch_versestg/englisch_versestg.html > accessed 11 February 2023.

⁶²⁴ See IRS summary – ‘Is the long-term disability I am receiving considered taxable?’ - at:

<<https://www.irs.gov/faqs/interest-dividends-other-types-of-income/life-insurance-disability-insurance-proceeds/life-insurance-disability-insurance-proceeds-1>> accessed 11 February 2023.

Other effectiveness criteria – summary

The provisions of section 735 ITTOIA 2005, and the related sections, are financially convenient as payments are made exempt from tax. The straight exemption from tax makes the provisions the best means of delivering the policy intent. The legislation, whilst complex, appears clear and has been stable. No systemic avoidance has been identified.

6. Provisions related to disability arising from criminal or motor injury

Beyond the general provisions applying to court awards and other negotiated settlements, section 732 ITTOIA 2005 addresses certain other types of compensation awards: section 732(1) exempts from Income Tax payments by way of annuity ‘purchased or provided under an award of compensation under the Criminal Injuries Compensation Scheme’⁶²⁵. The same sub-section exempts similar payments under the Victims of Overseas Terrorism Compensation Scheme. Of the Criminal Injuries Compensation Scheme, Government guidance⁶²⁶ states that:

The rules of the Scheme and the value of the payments awarded are set by Parliament and are calculated by reference to a tariff of injuries. Although the size of the award varies to reflect the seriousness of the injury, we know that it will never fully compensate you for what you have suffered or lost - it is just society’s way of recognising that you have been a victim.

⁶²⁵ Details of the Scheme can be found at a UK Government summary, ‘Claim compensation if you were the victim of a violent crime’, at:

< <https://www.gov.uk/claim-compensation-criminal-injury> > accessed 11 February 2023.

⁶²⁶ For details of the guidance, ‘Criminal injuries compensation: a guide’, see:

< <https://www.gov.uk/guidance/criminal-injuries-compensation-a-guide#what-payments-are-available-from-the-scheme> > accessed 11 February 2023.

Detailed documentation setting out how the Scheme operates⁶²⁷ explains that payments under the Scheme can cover injuries, loss of earnings and certain 'special expenses'.

The Victims of Overseas Terrorism Compensation Scheme provides compensation for physical or mental injury arising from one of a series of defined terrorist events⁶²⁸. Similar to the Criminal Injuries Compensation Scheme, awards are set by reference to a tariff⁶²⁹; and payments under the Scheme can also cover a range of areas, including injuries, loss of earnings and certain 'special expenses'⁶³⁰.

Section 731(2)(e) ITTOIA 2005 exempts from Income Tax periodical payments of personal injury damages in respect of 'a Motor Insurers' Bureau ['MIB'] undertaking in relation to a claim or action in respect of personal injury (including an undertaking as varied).' Information about the MIB, including details of The Uninsured Drivers' Agreements and the Untraced Drivers' Agreements, is provided on the Bureau's website⁶³¹.

⁶²⁷ A Ministry of Justice document providing details of the Scheme and its operation, 'The Criminal Injuries Compensation Scheme 2012', can be found at:

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/808343/criminal-injuries-compensation-scheme-2012.pdf> accessed 11 February 2023.

⁶²⁸ A UK Government synopsis, 'Compensation for victims of terrorist attacks abroad', is provided at:

< <https://www.gov.uk/compensation-victim-terrorist-attack> > accessed 11 February 2023.

⁶²⁹ See UK Government guidance, 'Payment types and their qualifying conditions', at:

<<https://www.gov.uk/guidance/victims-of-overseas-terrorism-compensation-scheme-a-guide>> accessed 11 February 2023.

⁶³⁰ UK Government, n629.

⁶³¹ Details about the MIB and MIB undertakings are provided by the MIB at:

The provision in section 731(2)(e) effectively provides symmetry of tax treatment to other periodic compensation payments paid to persons disabled by road traffic accidents.

In summary, both sections seem effective in meeting their stated policy objectives: it is assumed that the effects of the tax exemptions are priced into the relevant tariffs. International comparative analysis does not seem to be relevant given the highly specific nature of these arrangements.

Other effectiveness criteria – summary

Both sections 732(1) and 731(2)e) ITTOIA 2005 seem reflective of the broader legislative and policy framework as they result in compensation payments for personal injury being received free of tax. The universal nature of the reliefs makes them equitable. The exemptions from tax make a meaningful difference to the recipient; are financially convenient; and, as tax exemptions, are the best vehicle for giving effect to the sections' intended economic benefit.

The legislation has remained stable (subject to the addition of the provisions related to the Victims of Overseas Terrorism Compensation Scheme in 2010 in Section 732(1)). It is also clear and accessible – although explicit guidance is needed around the treatment of any payments not covered by section 732(1). Finally, no systemic avoidance has been identified.

<<https://www.mib.org.uk/about-mib/management-and-governance/>>; and

< <https://www.mib.org.uk/making-a-claim/what-we-do/> >, both accessed 11 February 2023.

7. Provisions related to certain specialist conditions

There are exemptions from tax for payments received in relation to a number of specialist conditions, including Vaccine Damage Payments⁶³²; compensation payments received under the Infected Blood Schemes⁶³³; and for trusts in respect of asbestosis compensation⁶³⁴.

These highly specific provisions seem coherent with the general principles set out in Section 2 around compensation for personal injury being exempt from tax. Given their comparatively narrow application, they have not been analysed in detail: for background, similar provisions exist in other jurisdictions – for example, in Australia, payments from the Thalidomide Australia Fixed Trust⁶³⁵.

8. Conclusions and areas for further investigation

Taken in the round, and relative to the ‘effectiveness’ criteria set out in Chapter 2, the provisions considered in this chapter seem broadly effective in supporting disabled people and those who care or provide for them. In reaching this conclusion, it should be reiterated that the analysis in this chapter has focused on tax reliefs – not the underlying bases of compensation for matters such as

⁶³² See and UK Government guidance, ‘Vaccine Damage Payment,’ confirming tax-free status at: < <https://www.gov.uk/vaccine-damage-payment> > accessed 11 February 2023.

⁶³³ For background, see HMRC Policy paper, ‘Income Tax: tax relief for compensation payments from the Infected Blood Schemes’, 14 September 2017, at: <<https://www.gov.uk/government/publications/income-tax-tax-relief-for-compensation-payments-from-the-infected-blood-schemes/income-tax-tax-relief-for-compensation-payments-from-the-infected-blood-schemes>> accessed 11 February 2023.

⁶³⁴ Chapter 3, Section 5.

⁶³⁵ ITAA 1997, s51-30.

personal injury. Nonetheless, the chapter has identified some areas for further consideration, including:

1. Legislating the relevant provisions in ESC D33 so as to enshrine in statute the way in which the concession extends the relief to, for example, dependent relatives.
2. Considering whether some further relief under the BADR regime might be available in respect of a person disposing of their business 'on account of disability' – perhaps an exempt band. This may provide an element of symmetry to employees who benefit from relief under section 406(1) in respect of termination payments 'on account of disability'.
3. Considering whether some form of additional tax relief might be offered in circumstances where employees need to reduce their hours 'on account of disability' - where matters have not reached outright termination leading to compensation, but where proven disability is resulting in material economic loss from reduced working.

Chapter 7: Compliance and administration

1. Introduction

Depending on their impairments, people with disabilities may face a range of challenges interacting with tax authorities – whether in seeking information or advice; understanding specific tax issues of relevance to them; or meeting their compliance obligations. A November 2021 article⁶³⁶ in *Tax Adviser* – the journal of the Chartered Institute of Taxation and Association of Tax Technicians – observed that the charities Tax Aid and Tax Help for Older People had noticed how many callers to their helplines have a disability. As with other areas discussed in this thesis, the extent of these challenges varies depending on the nature and severity of any impairment.

Against this backdrop, this chapter principally comments on the effectiveness of HMRC in supporting people with disabilities in the administration of, and compliance with, their tax obligations. It also comments on the obligations both of local authorities and the DVLA.

The chapter is ordered as follows: first, it comments in outline on the range of challenges faced by people with disabilities in interacting with tax authorities. Second, it summarises the law applicable to public sector bodies in their interactions with people with disabilities, including obligations to make ‘reasonable adjustments’ to meet their needs. Third, it summarises specific steps taken by tax authorities – principally HMRC - to meet the needs of people with disabilities. Fourth, it summarises a number of interviews undertaken by the

⁶³⁶ Lovejoy, ‘Disabilities and Tax’, *Tax Adviser*, November 2021 at 59.

candidate with a number of people with experience of tax administration and compliance for disabled people, including representatives of the LITRG, Mencap, Scope and Tax Aid. Fifth, it considers in more detail certain themes arising from this feedback. Finally, based on the feedback and other information, it comments on the overall effectiveness of the UK tax system in facilitating compliance and administration for people with disabilities, including recommendations for further research, building on the principle of *'nothing about us without us'*.

2. Challenges faced by people with disabilities – and their carers - in interacting with tax authorities

A recurring theme in this thesis is that 'disability' encompasses a broad range of conditions with markedly different implications. For some disabled people, interacting with tax authorities – including understanding their tax obligations and available reliefs; and complying with filing and other requirements – may be straightforward and their disability may present no impediment to their doing so. For many, however, their disabilities may present real challenges in interacting with the tax system. Challenges may also be experienced by carers holding Property and Financial Affairs Deputyships supervised by the Office of the Public Guardian and the Court of Protection⁶³⁷ – where duly appointed representatives manage the affairs, including tax interactions with HMRC, of a person unable to do so themselves. Challenges encountered⁶³⁸ can include:

⁶³⁷ For a UK Government overview of deputyship provisions, see 'Deputies: make decisions for someone who lacks capacity', at:

< <https://www.gov.uk/become-deputy> > accessed 13 February 2023.

⁶³⁸ Candidate synopsis – drawing on comments by, for example, the LITRG and others.

Challenge	Comment
Understanding the tax system	<p>Tax complexity remains a general issue in the UK – but may be a challenge in particular for people with, for example, learning difficulties including dyslexia.</p> <p>Some ‘technical’ matters – such as whether a paid carer is employed or self-employed (discussed in Section 6 below) - may be extremely challenging for some taxpayers to understand.</p>
Accessing information / speaking to tax authorities	<p>Absent mitigating measures, accessing information or speaking to tax authorities about tax matters can be challenging for people with visual or auditory limitations; or learning / reading difficulties such as dyslexia.</p> <p>A specific concern which arose from the stakeholder interviews summarised in Section 6 was the increasing requirement for digital skills to obtain information or comply with tax obligations: many disabled people may lack digital skills; or the necessary equipment to access online services.</p>
Heightened anxiety around the tax system – and the price of ‘getting things wrong’	<p>The complexity of the tax system, coupled with penalties for errors, may lead to heightened anxiety for people already experiencing anxiety elevation.</p>
Compliance and filing	<p>Where information such as tax returns are required, absent mitigations, this may be immensely challenging for people with, for example, learning or visual challenges.</p>

The challenges highlighted above may lead to increased ‘costs of disability’: these costs can be financial – the cost of specialist advice or paying any unexpected interest or penalties; or they may reflect substantial additional time or mental discomfort experienced in complying with tax obligations.

In their paper ‘A better deal for the low income taxpayer’⁶³⁹ – which is not focussed solely on disability - the LITRG make a number of relevant observations around tax system design, a number of which are discussed later in this chapter based upon stakeholder interviews.

⁶³⁹ LITRG, n60.

The role of voluntary sector organisations

A number of voluntary sector organisations provide support to vulnerable people in relation to their tax affairs, including the LITRG, TaxAid, Tax Help for Older People and Citizens Advice. HMRC operate a Voluntary Sector Tax Resolution Service ('VSTRS') which engages with these four organisations. By way of background, HMRC describe the VSTRS as⁶⁴⁰:

The Voluntary Sector Taxes Resolution Service (VSTRS) in Portsmouth were officially formed from 1 February 2013 as part of HMRC's Future Service Delivery (FSD) programme.

There are four Voluntary & Community Sector (VCS) organisations with whom HMRC has a trusted relationship, and who have been given permission to use this service. They are:

- *Tax Aid*
- *Tax Help for Older People (TOP)*
- *Low Incomes Tax Reform Group (LITRG)*
- *The Citizens Advice Bureaux.*

These four organisations are allowed through the service to retain signed (or phone call recorded oral) authorisation by the customer. This allows HMRC to disclose information to them as a nominated third party for the purpose of a specific matter in the customer's tax affairs. These retained authorities are then periodically audited by HMRC for assurance purposes.

A June 2018 article in Tax Journal by Penny Hamilton⁶⁴¹ stated that:

TaxAid's considerable success in resolving problems relies to a large extent on VSTRS (Voluntary Sector Tax Resolution Service), HMRC's telephone service which deals only with TaxAid, Tax Help for Older People and similar charities. VSTRS has a dedicated team of officers, based in Portsmouth, trained and experienced in dealing with vulnerable taxpayers, who can

⁶⁴⁰ See HMRC Debt Management and Banking Manual, DMBM512015, 'The role of the Voluntary Sector Taxes Resolution Service (VSTRS)', at:

< <https://www.gov.uk/hmrc-internal-manuals/debt-management-and-banking/dmbm512015> > accessed 4 February 2023.

⁶⁴¹ Hamilton, 'TaxAid revealed', Tax Journal, 14 June 2018 – at:

< <https://www.taxjournal.com/articles/taxaid-revealed-14062018> > accessed 4 February 2023.

share information with TaxAid across all taxes, and over multiple years. It was set up to meet the particular needs of very vulnerable taxpayers who, because of literacy or numeracy issues, or poor physical or mental health, cannot articulate their problems a comprehensive, and comprehensible, account of their activities.

Representatives of both the LITRG and Tax Aid were amongst those interviewed at Section 6.

3 The law applicable to UK taxing authorities in their interactions with people with disabilities: overview

Introduction

There are a number of specific legislative provisions which, in combination, govern how public sector bodies must engage with people with disabilities. Two of these derive from the Equality Act 2010 – one under Section 29 being the need for ‘service providers’ to make ‘reasonable adjustments’ in the provision of public services; and the second under Section 149 which reflects a general ‘Public Sector Equality Duty’. A third provision in the Public Sector Bodies (Websites and Mobile Applications) (No. 2) Accessibility Regulations 2018 governs accessibility requirements in web and mobile interactions with public sector bodies. These are summarised below.

The requirement under the Equality Act 2010 to make ‘reasonable adjustments’

Section 29 of the Equality Act 2010 sets out a number of protections for certain users of public services. Section 29(1) defines both a ‘service provider’ and stipulates that a service provider cannot discriminate against a person requiring a service by not providing it. Section 29(7) confirms the requirement of public bodies and service providers to make ‘reasonable adjustments’ to deal with the

needs of people with protected characteristics – including disability – in the provision of public services.

The Public Sector Equality Duty ('PSED')

Section 149 of the Equality Act 2010 stipulates a range of requirements on public sector bodies in relation to their interaction with people, including service users, with Protected Characteristics – one of which is disability. Sections 149(3) and 149(4) provide that (candidate underlining for emphasis):

(3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—

(a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;

(b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;

[]

(4) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

The case of *Commissioners For Her Majesty's Revenue and Customs v De Freitas*⁶⁴² considered – amongst a range of matters - whether a petition for bankruptcy by HMRC in relation to a taxpayer with a mental health disability should be dismissed on the grounds both of (i) an alleged failure by HMRC to comply with the PSED; and (ii) an alleged failure by HMRC to make ‘reasonable adjustments’ in acknowledgment of the taxpayer’s disability. The case illustrates a number of intricacies in the application of both the PSED and the duty to make ‘reasonable adjustments’ – emphasising that they are two separate matters.

Although it was common ground that the taxpayer had a disability within the definition in Section 6(1) of the Equality Act 2010, having considered a complex evidential base, the judge determined that HMRC had not been in breach of the PSED. In relation to the separate issue of whether HMRC had made ‘reasonable adjustments’ in this case, the judgment states that:

‘I need to consider whether in deciding to proceed with the Petition HMRC has made all reasonable adjustments. []

I cannot be satisfied that a delay by HMRC in pursuing bankruptcy proceedings would have served any useful purpose, such that HMRC's decision to proceed with the Petition amounts to a breach of the Duty to Make Adjustments or that it would be an appropriate exercise of my discretion to dismiss the Petition to await the outcome of a further review by the Ombudsman.’

Accessibility-related legislation

Legislation in the Public Sector Bodies (Websites and Mobile Applications) (No. 2) Accessibility Regulations 2018 governs the accessibility of websites and mobile apps by people with disabilities. An extract from UK Government

⁶⁴² [2022] EWHC 1946 (Ch).

guidance⁶⁴³ is set out below – specifically addressing accessibility by disabled people (candidate underlining for emphasis):

Meeting accessibility requirements

The accessibility regulations came into force for public sector bodies on 23 September 2018. They say you must make your website or mobile app more accessible by making it 'perceivable, operable, understandable and robust'. You need to include and update an accessibility statement on your website.

[]

For example, somebody might ask for information in an alternative, accessible format, like large print or an audio recording. There are a number of factors that determine what makes something a 'reasonable' adjustment.

Case law - *LH Bishop Electric Co Ltd v Revenue and Customs Commissioners*⁶⁴⁴

This case considered whether the mandatory online filing of VAT returns breached taxpayers' human rights⁶⁴⁵. The appellants were supported by the LITRG.

Two of the four appellants concerned had disabilities which made online filing – in practical terms – impossible. HMRC contended that there were two alternatives by concession, telephone filing and visiting an enquiry office. However, these concessions were not publicised and, as a consequence, the

⁶⁴³ See UK Government guidance, 'Understanding accessibility requirements for public sector bodies' and Civil Service guidance, 'Accessibility legislation: what you need to know', at:

<<https://www.gov.uk/guidance/accessibility-requirements-for-public-sector-websites-and-apps>>

and

<<https://gss.civilservice.gov.uk/policy-store/accessibility-legislation-what-you-need-to-know/>>, both accessed 4 February 2023.

⁶⁴⁴ [2013] UKFTT 522 (TC)

⁶⁴⁵ The case had other dimensions in that it concerned questions of public law and whether these were within the tribunal's jurisdiction.

judge considered them unlawful. Of the telephone filing service, the Judge wrote in her decision:

359. Miss Pattison [an HMRC representative] said HMRC chose not to advertise the availability of telephone filing as if it was more widely known, more people would apply, even those who were not entitled to it, and it was difficult for HMRC to assess any applicant's claim to need the concession. It was put to her that the failure to advertise it was because HMRC wished to give the impression there was no alternative to online filing: in oral evidence she said the question was difficult to answer but I note her witness statement had stated it was because HMRC wished to restrict it to persons who had no other option (see § 438) which amounts to virtually the same thing.

The Judge found for the taxpayers, writing that (candidate underling for emphasis):

922. I have found that because of its disproportionate application to persons who are computer illiterate because of their age, or who have a disability which makes using a computer accurately very difficult or painful, or those who live too remotely for a reliable internet connection, that the regulations were an interference with Convention rights under A1P1 and A8 combined with A14 which was not justified.

An exemption from filing VAT returns online was subsequently introduced under regulation 25A(6)(c) of the VAT Regulations 1995, SI 1995/2518. The exemption covers 'persons for whom online filing is not reasonably practicable for reasons of disability, age, remoteness of location, or any other reason.'

4 Synopsis of specific steps taken by UK taxing authorities to meet the needs of people with disabilities

HMRC have implemented a broad range of measures to seek to meet their statutory requirements in relation to supporting people with disabilities and other vulnerable customers. A number of these relate to matters such as accessibility;

others relate to specific types of support provided for disabled people. A series of published principles for extra support cover the following four areas⁶⁴⁶:

1. Support for customers contacting HMRC by telephone or post – including the monitoring of communications to identify customers who may need extra help.
2. Help and support for customers engaging with HMRC digitally.
3. Support with responding to compliance checks and tax investigations; in managing tax debts; and in seeking to resolve issues without going to tribunal; and
4. Helping customers find a broad range of extra support in guidance, communications and letters.

In HMRC's 2021-22 Annual Report⁶⁴⁷, they explain that:

In 2021 to 2022, our work to embed the standards of the HMRC Charter included:

[]

- *improving our processes, systems and guidance – for example, providing a smooth handover between compliance and debt management for customers who need extra help*

⁶⁴⁶ HMRC, 'HMRC's principles for support for customers who need extra help', at:

<<https://www.gov.uk/government/publications/hmrc-charter/hmracs-principles-of-support-for-customers-who-need-extra-help>> accessed 4 February 2023.

⁶⁴⁷ HMRC, Annual report and accounts 2021-22, at:

<<https://www.gov.uk/government/publications/hmrc-annual-report-and-accounts-2021-to-2022/hmrc-annual-report-and-accounts-2021-to-2022--2>> accessed 26 March 2023.

HMRC – seeking customer feedback

On 13 August 2010, HMRC published a summary of ‘Disabled customers’ experiences of HMRC services’. The Executive Summary⁶⁴⁸ sets out a number of findings, two of which resonate in particular with feedback from interviewees summarised in Section 6:

- *Overall customers with disabilities expected to receive a service tailored to their needs. As ‘customers’, HMRC needs to offer a choice of customer service channels and demonstrate flexibility when responding to their needs.*

And:

- *Although telephone helplines were popular, they did not fulfil everyone’s needs. Face-to-face services were considered an important channel (particularly for older disabled customers and those facing financial hardship).*

The candidate has not been able to source similar HMRC feedback – although recognises that this does not mean that it does not exist.

HMRC – compliance with Public Sector Equality Duty

On 31 March 2022, the UK Government published a report regarding HMRC’s compliance with the Public Sector Equality Duty for the year ended 31 March 2021⁶⁴⁹ - in turn, following previous annual reports. The report comments broadly on compliance with the Duty – together with providing examples of a

⁶⁴⁸ HMRC, ‘Disabled customers’ experiences of HMRC services’, 13 August 2010, Executive Summary, at:

< <https://www.gov.uk/government/publications/disabled-customers-experiences-of-hmrc-services> > accessed 26 March 2023.

⁶⁴⁹ UK Government report, ‘HMRC compliance with the public sector equality duties: 2020 to 2021’, at:

<<https://www.gov.uk/government/publications/hmrc-compliance-with-the-public-sector-equality-duties-2020-to-2021>> accessed 4 February 2023.

number of specific steps taken in supporting disabled taxpayers including, for example, a ‘Blind Person’s Allowance Immersion Session’ with blind customers to understand their perspectives on a number of matters connected with the Allowance; details of the Extra Support service outlined further below; and commentary on HMRC’s Additional Needs Working Group which:

‘...supports and challenges planned changes, to ensure that we consider any impacts on customers with additional needs. They also provide HMRC with a forum to constructively exchange ideas about the requirements and concerns of customers who need additional support.’

Given specific legislation relating to Northern Ireland⁶⁵⁰, in May 2021, HMRC published a specific Disability Action Plan for Northern Ireland - ‘*in compliance with our obligations under Section 49A and Section 49B of the Disability Discrimination Act 1995 as amended by the Disability Discrimination (NI) Order 2006*’.

HMRC - accessibility

HMRC’s Principles for Extra Support webpage⁶⁵¹ explains how HMRC has sought to make its services accessible to, people with disabilities⁶⁵²:

⁶⁵⁰ In the ‘HMRC Northern Ireland Disability Act Plan 2021-2024’, HMRC explain that:

‘Section 75 of the Northern Ireland Act 1998 requires HMRC, in carrying out our functions relating to Northern Ireland, to have due regard to the need to promote equality of opportunity between people of different religious belief, political opinion, racial group, age, marital status or sexual orientation, gender; people with a disability and people without; and people with dependants and people without.’

See: <<https://www.gov.uk/government/publications/northern-ireland-disability-action-plan/hmrc-northern-ireland-disability-action-plan-2021-to-2024> > accessed 4 February 2023.

⁶⁵¹ See HMRC, n646.

⁶⁵² At a broader level – not just in relation to people with disabilities – HMRC has sought to understand the digital needs of taxpayers. See ‘Research report 580 - Assisted Digital and Digitally Excluded Support Needs - Characteristics and needs of UK adults who are Digitally Excluded or require Assisted Digital support’, January 2020, available at:

‘Our guidance, communications and letters to customers will signpost the extra support HMRC provides.

We have detailed guidance on how to get help from HMRC if you need extra support which covers the range of help that we can provide if, for example:

- you have dyslexia, autism or cognitive difficulties*
- you have reduced mobility or physical disabilities*
- you have sensory disabilities, like a visual, hearing or speech impairment*
- you have mental health conditions, like depression, stress or anxiety*
- you’re experiencing financial hardship - for example you cannot afford essentials like food, bills or rent*
- you’re a victim of domestic abuse, including economic abuse*
- you’re in hospital*

Please note that support available is not limited to those examples.

The guidance covers the different ways to contact HMRC if you need:

- to use textphone, webchat or BSL*
- information in a different format*
- help filling in forms*
- more time because of your circumstances*
- information in another language*
- to appoint someone to talk to HMRC on your behalf*

You can also contact HMRC if you need help with specific queries.’

HMRC – Extra Support

HMRC offers an Extra Support service for certain taxpayers⁶⁵³: this is accessible following ‘triage’ by people contacting the main helpline. Whilst HMRC publishes regular general performance statistics⁶⁵⁴, these do not appear to identify

<<https://www.gov.uk/government/publications/assisted-digital-and-digitally-excluded-support-needs>> accessed 4 February 2023.

⁶⁵³ See HMRC, n646.

⁶⁵⁴ UK Government, ‘HMRC Monthly Performance Reports’, at:

<<https://www.gov.uk/government/collections/hmrc-monthly-performance-reports>> accessed 4 February 2023.

separately data relevant to the Extra Support service. The scope and effectiveness of this service featured extensively in the candidate interviews summarised in Sections 5 and 6 below. Recommendations for obtaining further factual evidence around the effectiveness of the service are made in Section 7.

HMRC - the Adjudicator's Office

One of the responsibilities of the Adjudicator's Office is to investigate claims about HMRC or the Valuation Office Agency⁶⁵⁵. The Adjudicator's Office publishes an annual report summarising its activities⁶⁵⁶. Whilst the 2021 annual report does not segment data around complaints by people with disabilities, it does contain two case studies – numbers 3 and 5 – commenting on one complaint in respect of a customer identified by HMRC's case handler as potentially vulnerable; and a second in relation to a customer with serious mental health issues. In these examples, the Adjudicator was complimentary about HMRC's approach in the first case study; but critical of their approach in the second:

'The failure to consider the client's mental health problems at a senior level suggested lack of awareness and sensitivity in responding to customers with mental health problems.'

⁶⁵⁵ UK Government, 'Adjudicator's Office', at:

<<https://www.gov.uk/government/organisations/the-adjudicator-s-office>> accessed 4 February 2023.

⁶⁵⁶ For the 2021 and 2022 Annual Reports of The Adjudicator's Office, see:

< <https://www.gov.uk/government/publications/the-adjudicators-office-annual-report-2021> > accessed 4 February 2023; and

<<https://www.gov.uk/government/publications/the-adjudicators-office-annual-report-2022/the-adjudicators-office-annual-report-2022#performance-and-analysis-of-complaints-investigated>> accessed 26 March 2023.

In the 2022 Annual Report, Case Study 7 references the impact of an error on two married taxpayers in poor health – although the Adjudicator did not uphold the taxpayers’ complaint.

Notwithstanding these case studies, it is not possible to discern meaningful conclusions around HMRC’s treatment of disabled people from the Adjudicator’s reports. One recommendation made in Section 7 is for an in-depth analysis of complaints received by the Adjudicator in respect of disabled taxpayers (to the extent that this does not already exist).

Local authorities

Local authorities are responsible for administering Council Tax discounts and exemptions – including the Band Reduction Scheme and Severe Mental Impairment (‘SMI’) discount. Again, as public bodies, local authorities are subject to similar public sector equality duty and other obligations in relation to people with disabilities as HMRC. Section 4 of Chapter 4 explained how there has been significant variability amongst local authorities in the application of the SMI discount: this is addressed in more detail in Section 7 below.

DVLA

The DVLA is responsible for administering exemptions from Vehicle Tax for people with disabilities. As a public body, the DVLA is subject to similar public sector equality duty and other obligations in relation to people with disabilities as both HMRC and local authorities⁶⁵⁷.

⁶⁵⁷ For example, see the DVLA’s Accessible documents policy summarised at:

<<https://www.gov.uk/government/organisations/driver-and-vehicle-licensing-agency/about/accessible-documents-policy>> accessed 4 February 2023.

5 Seeking stakeholder feedback from interviews

Introduction

In order to understand external perceptions of the ease – or otherwise – of disabled people engaging with the tax system (HMRC, local authorities and the DVLA), the candidate undertook a series of interviews⁶⁵⁸ with people familiar with disability and taxation.

Those interviewed included representatives from the LITRG; Mencap; Scope; TaxAid; and two other interviewees with extensive experience in supporting disabled people with their tax affairs. HMRC did not provide an interview but drew attention to a number of relevant publications⁶⁵⁹.

Key summaries from the interviews are set out in Appendix 1. The candidate acknowledges that the feedback from the interviews is, of its nature, reflective of stakeholders' individual perceptions and does not assert that this feedback necessarily reflects proven fact.

A summary of key themes arising from the interviews is set out at Section 6. Recommendations for further research, including evidence gathering, are made in Section 7.

⁶⁵⁸ The CUREC approval reference was R80896/RE001.

⁶⁵⁹ The publications referenced by HMRC were:

- < [HMRC annual report and accounts: 2021 to 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/103122/hmrc-annual-report-and-accounts-2021-to-2022.pdf) > (see n647).
- < [Research and statistics - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/103122/hmrc-research-and-statistics-2021-to-2022.pdf) > [from which HMRC, n647, was sourced]
- < [HMRC's principles of support for customers who need extra help - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/103122/hmrc-principles-of-support-for-customers-who-need-extra-help-2021-to-2022.pdf) > (see n646).
- < [HMRC Northern Ireland Disability Action Plan 2021 to 2024 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/103122/hmrc-northern-ireland-disability-action-plan-2021-to-2024.pdf) > (see n650).
- < [HMRC compliance with the public sector equality duties: 2020 to 2021 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/103122/hmrc-compliance-with-the-public-sector-equality-duties-2020-to-2021.pdf) > (see n649).

Questions posed to interviewees

In addition to providing consent to be interviewed, and for the interview (undertaken on Microsoft Teams) to be recorded, interviewees were sent the following questions to consider in advance of their interview:

- 1. Please could you summarise your overall views of the ease of interaction with tax authorities by people with disabilities – covering ease of access; access to information and guidance; and ease of compliance.*
- 2. Please could you highlight what you consider works well – again, covering ease of access; access to information and guidance; and ease of compliance.*
- 3. Please could you highlight areas where you have seen improvement.*
- 4. Please could you highlight areas where you see a material need for improvement – again, covering ease of access; access to information and guidance; and ease of compliance.*
- 5. Please could you highlight any specific recommendations or areas for change that you would wish to see in interactions between people with disabilities and tax authorities.'*

The questions were deliberately broadly drafted so as to allow interviewees to highlight those factors which, from their experience, seemed most relevant. By using broad terms such as 'tax authorities', the questions were designed to allow interviewees to comment on interactions with HMRC, local authorities and the DVLA if they wished to. In practice, responses received focused almost exclusively upon interactions with HMRC.

6 Synopsis of key themes arising

Whilst a number of different points emerged from the various discussions, the interviews summarised in this section have surfaced a number of key themes.

These are summarised below.

HMRC's Extra Support service

There seemed to be broad conceptual support amongst interviewees for the service – and a number of interviewees made complimentary comments about aspects of it. However, a number of areas of potential improvement were suggested, including:

1. **Increasing the resourcing of the service** – a point highlighted by multiple interviewees.
2. **Improving the triaging process for service referrals** to ensure that people receive help from the service where appropriate – recognising that some people may be reluctant to disclose their disabilities but need help in any event.
3. **Researching data around usage volumes** – and why the number of people being referred to the service may have fallen.

As a development of the Extra Support service, a number of interviewees highlighted the historical benefit of face-to-face contact with HMRC in their offices or in local outreach programmes: this point was raised in the Executive Summary of HMRC's 2010 customer feedback⁶⁶⁰.

⁶⁶⁰ HMRC, n648.

The candidate acknowledges that there is insufficient evidence and data to confirm the position or to make meaningful recommendations around improving the Extra Support service. However, suggestions for further research – possibly in conjunction with stakeholders such as the LITRG and TaxAid - are made in Section 7 below.

The challenges of digitalisation

A further recurring theme from a number of interviews was the challenge presented for many disabled people by HMRC's emphasis on digital engagement – with observations that, whilst digitalisation benefited HMRC, it may present problems in serving many disabled taxpayers. Again, the issue of choice in service channels for disabled people was raised in the Executive Summary of HMRC's 2010 customer feedback⁶⁶¹.

A further risk identified was that problems may be exacerbated as Making Tax Digital is rolled out⁶⁶². Specific issues identified included:

1. Many disabled people may not have access to – or be able to access – digital media as, for example, they may not have a laptop or smartphone.
2. A number of disabled people – particularly elderly people – are not familiar with the use of digital platforms.

⁶⁶¹ HMRC, n648.

⁶⁶² See also LITRG, 'Risk of imminent VAT return filing problems under new tax reporting regime', 7 December 2022, at:

< <https://www.tax.org.uk/litrg-press-release-risk-of-imminent-vat-return-filing-problems-under-new-tax-reporting-regime> > accessed 12 February 2023.

3. People with, for example, learning disabilities or challenges with manual dexterity may become confused or overwhelmed by online processes, causing them to lose confidence and give up.

The issues presented by digitalisation to some extent have been, and may be further addressed, through any enhancements to the Extra Support service. Further options for addressing them include the measures discussed below around both information and access formats.

Information and filing formats and associated complexity

A number of interviewees acknowledged the steps taken by HMRC in, for example, developing assistive technology to help people with visual or auditory impairments. However, comments around this area included:

1. The need to ensure that guidance and other materials is straightforward to understand for, for example, people with learning difficulties. As highlighted by the representative from Mencap, this might include the participation of people with learning difficulties in the guidance drafting process.
2. The use of email: some interviewees commented that many people find email a more straightforward means of communication than, for example, some other online services; or find it a helpful alternative where they have a speech impediment which limits their ability to interact with voice recognition software or by telephone with an HMRC representative. Whilst email may be permitted when accepted for Extra Support, for many people it would be a preferable means of communication in the first instance.

Financial education and 'all in one place' guidance and compliance

A number of interviewees highlighted the importance of financial education – including in relation to tax, observing that for many disabled people the tax (and benefits) systems may be highly complex and difficult to understand. The issue of building trust with vulnerable taxpayers was emphasised – recognising that people may either be frightened of making mistakes; or deeply unsure about a subject making them reluctant to engage with HMRC.

One area highlighted to help people navigate the tax and benefits systems is to improve cross-working between departments such as HMRC and the DWP so that advice – and associated compliance – can be delivered 'all in one place'. A specific example of support with self-employment, including Access to Work, was identified by the representative from Scope. The candidate acknowledges the very considerable practical, systems and financial implications of major service reconfigurations along these lines.

Linked to the issue of an 'all in one place' approach was the concept, identified by an interviewee with extensive experience of helping disabled people into work, of 'customer journeys' as people move through different life stages - with, by way of example, service access and delivery configured to meet the needs of elderly people who often have a higher propensity to disability. This does seem to be an area which could be considered for future roll-out as part of any programme of HMRC customer service enhancement – again, acknowledging the complexity of such measures.

Specific issue: carers and employment status

The representative from the LITRG identified issues of disabled people inadvertently being persuaded that they are self-employed when they are actually employed; or inadvertently taking on employer status when hiring carers where they believed that the carer was self-employed – and, as consequence, failing to account for PAYE and risking both assessments for unpaid tax and penalties.

In January 2023, the LITRG published an article authored by Meredith McCammond⁶⁶³ setting out five key considerations affecting people hiring carers (Personal Assistants – ‘PAs’), including the responsibility of the person hiring the carer to determine employment status; the observation that *‘A genuinely self-employed PA is probably the exception rather than the rule’*; and the need to ensure that Direct Payments for care cover all costs of employing a PA, including:

- *‘The cost of employer’s liability insurance*
- *Paying at least the minimum wage*
- *Paying into a workplace pension scheme*
- *The cost of payroll support*
- *Paying holiday pay/statutory sick pay/redundancy pay’*

7. Conclusions and suggestions for further investigation

Introduction

Based on the research and interviews set out in this chapter, it is clear that HMRC have taken a considerable number of steps to facilitate tailored guidance, accessibility and tax compliance for disabled people – consistent with their obligations under the Equality Act 2010; and, specifically, their public sector equality duty. Nonetheless, the feedback from the various stakeholder interviews

⁶⁶³ McCammond, ‘Hiring a carer? 5 things you must understand’, LITRG, 9 January 2023, available at:

<<https://www.litrg.org.uk/latest-news/news/230109-hiring-carer—5-key-things-you-must-understand>> accessed 12 February 2023.

suggests that more might be done to provide a service which is widely seen as fully effective.

The candidate fully accepts that the broad nature of the comments arising in interviews means that, on their own, they do not represent compelling evidence to support calls to action without further research. Further, the candidate accepts that HMRC, local authorities and the DVLA have a range of pressing operational priorities and finite resources. Against this backcloth, the suggestions for further investigation below are designed only to be taken forward based upon both robust evidence and balanced and practical approaches to implementation: some areas for exploration have broader strategic and operational implications than others.

Finally, in making suggestions, the candidate emphasises the crucial importance of involving disabled people and organisations who represent them in the discussion and agreement of any changes – consistent with the principle of *'nothing about us without us'*.

Customer research

To the extent not already undertaken⁶⁶⁴, a logical step prior to seeking to make any further service improvements would be for HMRC and local authorities to survey disabled customers (using multiple formats) to seek their views around ease of access and compliance; and around areas that the customers consider could materially improve their engagement with the respective bodies.

⁶⁶⁴ The candidate acknowledges that such research was undertaken and published in 2010 (n648) and may have been undertaken since – but was unable to source it.

Adjudicator complaint research

Again, to the extent not already undertaken, a further body of research to inform service improvements would be to analyse complaints received by the Adjudicator from disabled taxpayers.

Guidance drafting – Easy Read formats

To the extent that this does not already happen, HMRC and local authorities could consider how to ensure that guidance relevant to people with learning disabilities is drafted in an Easy Read format – including employing people with learning disabilities to contribute to the drafting.

Extra Support service – enhancements

Given the work for vulnerable taxpayers undertaken by both the LITRG and TaxAid, it would seem helpful for HMRC to consider potential enhancements (such as improving triaging) to the Extra Support service with a working party including representatives of these organisations – taking account of the customer research and Adjudicator research referred to above.

Digitalisation and alternative formats

To the extent that this does not happen already, HMRC should ensure that disabled people are not effectively compelled to engage with them digitally where they may struggle to do so; and that a range of alternative formats are easily available where appropriate. Specifically, HMRC should consider options for making email and paper communication clearly available for taxpayers who may struggle to engage digitally.

Customer journey planning and cross-departmental working

To the extent that this does not take place already, as a broader strategic initiative, HMRC, the DWP (and others) should consider:

- (i) 'Customer journeys' for disabled people at different points in their lives – such as starting work; and how services can be tailored and coordinated so as to be as supportive and helpful as possible.
- (ii) Options for further improving financial education for disabled people, drawing together tax and benefits.
- (iii) Ensuring that relevant information around tax and benefits for disabled people is clearly available – and integrated - 'all in one place' online or in printed material.

Centralising and automating reliefs

As a development of the 'all in one place' concept, given existing DWP and other records around the nature and extent of people's disabilities, including their medical records, this thesis queries whether some form of centralised register – confidentially accessible on a limited basis by a range of agencies and periodically validated by each person's medical practitioner – might be maintained and used to allocate reliefs automatically by HMRC; by local authorities; and by the DVLA without the need for personal application but applying a relevant code whereby a relief was applied 'at source'. This builds on comments made by the representative from Scope in the interviews summarised at Appendix 1.

The candidate fully acknowledges issues of privacy and the Data Protection Act 2018 framework. However, subject to any necessary consents,

such a development could enhance not only ease of administration for disabled people but also avoid the need for multiple claims.

Avoiding confusion around employment status

HMRC should consider mechanisms – including publications and advertising - to:

- (i) Help disabled people avoid inadvertently failing to account for PAYE by being incorrectly persuaded that they are self-employed.
- (ii) Consider how to help people taking on carers determine the appropriate employment status of the carers – and how tax needs to be accounted for.

Local authorities – SMI discount

To address concerns around people not claiming the SMI discount from Council Tax⁶⁶⁵, it is proposed that the Council Tax team at the Department for Levelling Up, Housing and Communities consider options for the automatic application of the discount based on, for example, GP certifications direct to local authorities. The thesis also notes the recommendations made in the Good, Nowotny, French and Dougall⁶⁶⁶ report.

⁶⁶⁵ See Chapter 4, Section 3.

⁶⁶⁶ Good, Nowotny, French and Dougall, n293.

Chapter 8 – conclusions and recommendations

1. Introduction

The prevalence of disability in the UK is substantial; and the implications of different impairments for disabled people and those who care and provide for them highly diverse.

UK and international social policy have moved firmly towards seeking to ensure that disabled people are fully participative members of society – whether in work or other activities. The progressive adoption by many organisations of the social model of disability, which looks to address disabling environments holistically, rather than piecemeal, represents a marked evolution from attitudes which previously regarded disabled people as *‘objects of goodwill or charity’*.

Current UK public financial and other support for disabled people is multi-faceted and, in addition to social developments, has been underpinned by an evolving legal framework which seeks both to eliminate discrimination against disabled people; and improve access to public services in multiple ways. Most direct financial support in relation to people with disabilities is provided through the benefits system: this sits alongside a range of public services. Nonetheless, the tax system has a central role in supporting disabled people – both through its ‘classic’ goals (including revenue raising for redistributive purposes); and through the provision of both targeted reliefs and tax system administration which is accessible and straightforward for disabled people with a range of different needs.

The total annual value of the targeted reliefs is estimated at some £6bn across a broad range of taxes. The total value of reliefs is heavily stratified, with

a small number of reliefs representing the substantial majority of the total. That is not to say that reliefs with lower overall costs – such as Council Tax reliefs – are not of considerable value to those claiming them.

Against this backdrop, this thesis has sought to answer the question *'Is the UK tax system effective in supporting disabled people?'*. Whilst it has commented contextually upon bases for redistribution to disabled people – including different approaches to distributive justice – the sole focus of its evaluation has been on analysing the effectiveness of the existing portfolio of tax reliefs, and tax system access and administration, specifically relevant to people with disabilities, their carers and providers.

The thesis has shown, drawing on a range of international comparative analysis, that tax system 'effectiveness' as it relates to disabled people is complex and nuanced, whether normatively, purposively or functionally; and that a 'whole system' view is essential in forming conclusions.

This chapter first revisits the role of an effective tax system in supporting disabled people. It then summarises current UK tax system effectiveness by reference to the four individual categories of general financial support; participation; compensation and insurance; and compliance and administration - highlighting specific areas for improvement or further research. Finally, it provides its conclusions in answer to the thesis question – *'Is the UK tax system effective in supporting disabled people?'*.

Basis of recommendations

The conclusions and recommendations set out in this chapter – and the analysis and recommendations in the thesis as a whole – are designed to be balanced in

terms of their financial and organisational consequences. The thesis acknowledges that, in many instances, considerable further research would be needed before any implementation.

Certain of the recommendations in this chapter are very specific; others broader – suggesting areas for further research and exploration. The thesis does not seek to frame its conclusions around an assumed (and potentially infinite) level of available additional public financial support or HMRC resource – acknowledging, as of the time of writing, significant UK public financial constraint following the global Covid-19 pandemic. The thesis acknowledges that there is an inevitable balance to be struck by policy-makers in deciding what modifications or enhancements to the UK tax system to support disabled people are priorities.

Finally, prior to progressing any of the recommendations in this thesis, consultation with those potentially affected will be vital – consistent with the principle of *'nothing about us without us'*.

2. The role of a tax system in supporting disabled people

Introduction

At one level, amongst its 'classic goals' and various functions a tax system is a vehicle for facilitating financial redistribution amongst citizens, financing, for example, benefit payments and public services. The nature and extent of that redistribution to disabled people is a political choice – although a number of authors have argued for different 'distributive justice' frameworks considering, for example, individual endowments; earnings capability; and issues of relative effort. Whilst this thesis acknowledges the range of different views around distributive justice, it has not sought to propose a 'preferred' approach; nor to

evaluate the nature and quantum of redistribution to disabled people and their carers.

Beyond a tax system's 'classic goals' – such as redistribution – this thesis has illustrated how the detailed architecture of a tax system can be structured in a way which (i) provides targeted reliefs for disabled people (for a range of different reasons); and (ii) organises its administration so as facilitate access to information and compliance in (more) accessible ways for people with different impairments. The thesis has focused on an analysis of tax system effectiveness at these levels.

When can tax reliefs be most effective?

Section 4 of Chapter 1 highlighted that certain tax reliefs – or 'expenditures' – may often *not* be an optimal route for providing financial support to cohorts of citizens as they may be ineffective, inequitable or overly-complex to administer. However, the analysis in this thesis has confirmed with multiple examples that there are circumstances where they may be appropriate – including:

1. Where a relief avoids effective discrimination on account of disability should the person otherwise be taxed (for example, taxing a disabled person on equipment provided to them at work to facilitate 'reasonable adjustments').
2. Where the tax relief is designed to deliver an intended 'after-tax' receipt in an efficient way – for example, under a state benefit or compensation claim; or

3. Where the relief simply eliminates a defined tax obligation with the objective of mitigating the associated tax cost as part of an associated policy objective – for example, certain Council Tax reliefs.

Section 4 of Chapter 1 explained that the choice of any type of relief – whether allowance, deduction, tax credit or reduction in VAT – may make a material difference to its financial impact. The analysis around the Motability scheme in Chapter 5 highlighted that the effect of tax reliefs can either be ‘stand-alone’ or form part of a broader arrangement.

Chapters 4 and 5 – in relation to any general Income Tax relief or extension of VAT reliefs - both illustrated that tax reliefs should not be regarded as a form of cost-saving panacea; and that alternative mechanisms, such as the benefits system, may be better vehicles for achieving policy objectives.

3. Reliefs relating to general financial support: summary of effectiveness

General Income Tax allowances and Blind Persons Allowance

Conceptually, Section 2 of Chapter 4 acknowledges that personalised Income Tax deductions for ‘costs of disability’ incurred in earning may be consistent with concepts of equity in determining ‘ability to pay’ [tax] – although argues that generalised, ‘round sum’ reliefs should be avoided given the diversity of disability and its implications; the equity problems such generalised reliefs can raise; and the existence of the benefits system.

In general terms, there appear to be more persuasive arguments to address ‘costs of disability’ through the benefits system or public services rather than through tax reliefs: the benefits system and public services may offer the opportunity for greater personalisation without the vertical equity problems that

tax reliefs can present; and they avoid the need for many citizens (who may not normally engage with the tax system) to need to engage with multiple systems.

Separately, Section 3 of Chapter 4 concludes – in line with other commentators such as the LITRG - that the Blind Persons Allowance ('BPA') is an isolated, historic relief where there is a strong case for amendment given its comparatively limited take-up; its limited focus on sight impairment; and issues with vertical equity – with the allowance worth more to higher rate taxpayers. Its total annual value is only some £20 million. However, Chapter 4 acknowledges the financial and political economy challenges of finding alternatives to BPA – including that a logical step in revisiting it could be the creation of a range of alternative provision covering a broader range of disabilities. Whilst at one level this would be fair to people with non-sight-related disabilities, the incremental cost of such a measure would likely be very substantial; would need to be aligned to other existing benefits – and would ultimately be a political choice.

Council Tax reliefs

Whilst the four Council Tax reliefs (the Band Reduction scheme; the reduction for Severe Mental Impairment ('SMI'); the exemption for dependent relatives' annexes; and the 'disregard' for certain carers) all provide a direct tax cost reduction, their effectiveness is variable. The overall financial impact of each relief seems comparatively modest – albeit of significant value to those claiming them. The application of the reliefs varies across the devolved administrations.

Whilst there is an element of Local Authority discretion in the application of the Band Reduction Scheme, and the LITRG argues that it is regressive,

Chapter 4 suggests that it is challenging to identify a more objective basis for allocating the relief.

In relation to the SMI discount, historic research has highlighted a number of problems with the implementation of this relief given the need for claims: building on the Good, Nowotny, French and Dougall report, Section 4 of Chapter 4 sets out potential options for improvement.

The exemption of certain benefits from tax

Section 5 of Chapter 4 explains that a number of benefits for disabled people are exempt from Income Tax. The total values of these reliefs are amongst the largest considered by this thesis.

The analysis in Chapter 4 states that, whilst there may be theoretical vertical equity problems with exempting disability-related benefits from tax, in practice the position is more nuanced and, on balance, this overall framework appears effective: even if people on comparatively high incomes were benefiting from the tax exemption on various disability-related benefits, allowances such as PIP are not means-tested in any event. Finally, the exemptions result in targeted 'after-tax' payments being received by eligible recipients without the administrative and compliance costs – to both taxpayer and state – of making a claim for relief.

Provisions relating to health and care

At one level, given the existence of the National Health Service as a universal 'free-at-the-point-of-delivery' service, there would not seem to be a case for additional tax reliefs for health-related expenses. However, Section 6 of Chapter 4 queries whether some form of tax relief for 'exceptional expenses' – similar to

that incorporated in EStG 33 in Germany – might merit consideration, although concludes that any additional, targeted support would most likely better come from benefits or grants given (i) issues of equity; and (ii) that tax reliefs (unless refundable credits) are likely to be limited solely to the tax effect of the amount.

In relation to care expenses, the Care Act 2014 prescribes a range of state-provided care for people with disabilities. Nonetheless, in relation to ‘informal carers’, Section 6 of Chapter 4 explains that there seems to be a legitimate question as to whether help might be given to working people forced to give up work to care – for example, for disabled children – to help manage the transition to lower income through some form of tax reimbursement. In July 2022, the concept of treating families as a single unit and transferring Personal Allowances between partners where one needs to provide care was raised by one of the Conservative Party leadership candidates. Chapter 4 comments that an alternative option might be some form of tax recovery from prior year earnings – perhaps on a tapered and / or capped basis – to assist carers meeting certain criteria in making a transition to a lower income position such as part time working. This idea is only advanced conceptually, recognising both that this thesis does not evaluate the nature and quantum of redistribution to disabled people and their carers; and acknowledging the ongoing substantial debates in UK social care policy-making. Any option would clearly need to be subject to considerable anti-avoidance and other measures to ensure that relief claimed was for *bona fide* reasons.

Nonetheless, the provision of care by family members can result in very material savings to the state. Against this backdrop, some form of tax relief or reimbursement of disability-related expenses above certain levels; and some

form of tax 'clawback' for people forced to give up work to care for a person with a disability, both seem to be legitimate questions for consideration as part of the ongoing debate around social care provision generally.

Finally, Section 6 of Chapter 4 explains that there may be a case for reviewing the tax exemption for immediate need annuities to confirm whether the exemption might drive an inappropriate financial 'channel choice' towards an annuity for people purchasing care; and whether the relief is equitable given that it is most likely of use to people with significant means.

Provisions relating to savings and investments

As the OTS observe, the background to the employment-related securities provision in section 477(5) ITEPA 2003 is unclear and it is therefore recommended that the value of this provision is reviewed, and consideration given as to whether it is needed.

More broadly, the UK trust-based savings mechanisms for disabled people have benefits and disadvantages. Section 7 of Chapter 4 explains that their benefits include – subject to the specific terms of each trust – the ability to ringfence assets for people incapable of managing them themselves; and to prevent trust-based wealth being taken account of in considering the eligibility for benefits by disabled people. Subject to meeting their criteria, a number of the associated tax provisions can result in tax neutrality – with disabled beneficiaries effectively being taxed at their marginal rates (compared to the specific rates for Trustees). However, their disadvantages include considerable complexity, set-up and administrative costs.

Notwithstanding Government data suggesting that the cost of associated tax reliefs is 'negligible', this thesis does not recommend the abolition of the trust-

based mechanisms – but, consistent with models in the US and Canada (ABLE accounts and RDSPs respectively) does recommend consideration of an additional more simplified vehicle, such as a ‘Disability ISA’, to enable disabled people and those who care and provide for them to accumulate money tax free, and ringfenced from means-testing for benefits purposes, so as to meet future prescribed ‘costs of disability’. Both the US and Canada illustrate that it is possible to operate both trust-based and alternative models in parallel.

This recommendation is not seeking simply to create a tax-advantaged vehicle for savings accumulation for any purpose (for example, purchasing luxuries). It would be designed to allow savings to meet prescribed ‘costs of disability’; or agreed participation costs (for example, in sporting or cultural activities), consistent with the National Strategy. People contributing to the Disability ISA could include people other than the disabled person. The Disability ISA would be excluded from means-testing for benefits purposes.

There are legitimate questions as to why an additional vehicle is needed – and why a Disability ISA could be the right choice. In relation to the first question, acknowledging that ISAs are already available, the Disability ISA would be focused specifically on meeting incremental ‘costs of disability’ without additional tax cost – not used for broad spending purposes. It would sit outside a person’s assets for means-testing purposes.

In relation to the second question, there is an existing broad range of ISA providers and platforms in the UK market, making implementation simpler and more streamlined than proposing a new product with the associated costs and complexity. Clearly, there may need to be defined investment parameters for

Disability ISAs to ensure that underlying investments were appropriate and did not carry excessive investment risk.

Finally, although the recent Government consultation in relation to trusts generally has concluded without proposals for substantive change, consistent with recommendations by the CIOT and others, this thesis recommends considering options for a simplification of the trust regime as it applies to disabled people – in addition to addressing the specific technical points identified in Section 6 of Chapter 4.

4. Reliefs relating to participation: summary of effectiveness

Introduction

Participation by disabled people in all aspects of society is a core objective of the National Disability Strategy. The Strategy identifies a series of measures to improve participation in a range of areas including work, education and leisure. None of the measures in the National Strategy refer to tax reliefs.

Section 2 of Chapter 5 explains that a tax system may have a role in providing financial support to people with disabilities in participating in work and other activities in a number of different ways. As a minimum, it should avoid discriminating against disabled people through taxing them on their ‘costs of disability’ – such as equipment provided to them to perform their work. In other ways, it may assist participation by reducing costs – whether through tax reliefs or tax incentives.

Whilst participation may take many forms, the current focus of tax-based support mechanisms is on mobility and work – some combining the two. A number of VAT reliefs also assist with the costs of necessary alterations to accommodation; and with the cost of a range of specialist goods designed for

disabled people. Against this backdrop, this section summarises the effectiveness of relevant provisions under the three sub-headings of non-work-related mobility; work – including work-related mobility; and VAT reliefs.

Non-work-related mobility

The package of reliefs relating to mobility – including VAT, Vehicle Tax and IPT - represent one of the most substantial areas of financial support considered in this thesis.

Section 3 of Chapter 5 explains that the Vehicle Tax reliefs – whether an exemption or 50% reduction – appear to suffer from vertical equity problems in that the relief is more valuable for cars attracting higher levels of Vehicle Tax. This raises a question as to whether the level of relief should be capped. Aside from this, the analysis suggested that, from a functional perspective, the relief is effective as it is straightforward to claim and there is no apparent evidence of widespread avoidance.

More broadly, the Motability scheme is in widespread use and represents an example of how public financial support – benefits and tax reliefs (VAT, Vehicle Tax and IPT) – can be ‘joined up’ to provide a valuable service to end-users. Nonetheless, the scheme has been the subject of some critique - including the limited percentage of eligible people who can afford to use it. This raises a question as to whether some form of alternative transport subsidy to compensate for unused tax reliefs might be available to people unable to take advantage of the Motability scheme – acknowledging the existing range of public transport support available to disabled people; and that PIP is still available to non-users of Motability vehicles. This is clearly a policy question for consideration given the

importance of mobility to participation in activities by disabled people: no detailed recommendations are given here.

Work-related expenses – including mobility

Section 3 of Chapter 5 analyses a number of employment-related reliefs in respect of both commuting by disabled people and modifications to vehicles adapted for their use. Whilst both sets of provisions seemed effective at a functional level, a number of areas of potential improvement were identified in relation to the ‘commuting provisions’ – including considering options for mitigating the ‘cliff edge’ requirement that a vehicle eligible for relief under section 247 ITEPA 2003, and Clauses 5 and 6 of Regulation 38 SSCR 2001, could not be used for private purposes - potentially requiring a disabled person wishing to undertake private motoring to have space for two cars unless a car is provided to them under the normal rules governing company car provision. In practice, this restriction may mitigate against using the relief.

More broadly, Oliver’s comments in relation to the Social Model of disability – ‘*it [the Social Model] refuses to see specific problems in isolation from the totality of disabling environments...*’ - illustrate the importance of ensuring that support for disabled people in participating in work and other activities does not simply focus on one element of participation but addresses all obstacles, such as transportation, which may limit people’s ability to participate. This view is echoed in the views of the LITRG in relation to work-related expense tax reliefs for disabled people – an extract of which is replicated here⁶⁶⁷:

Disabled people experience additional costs in most areas of everyday life – including work. For example, in terms of getting to work they may be

⁶⁶⁷ LITRG, n402.

unable to use public transport and need to use a specialist taxi service instead.

Disappointingly there is no blanket exemption or relief for the extra costs which are incurred by a disabled employee in work, over and above those incurred by a non-disabled employee. Instead there are piecemeal reliefs, such as that contained in s246 Income Tax (Employment and Pensions) Act 2003 (ITEPA).

Comparative analysis illustrates more flexible and broad-ranging tax reliefs available in Canada, Germany and the US – both for transport-related expenses and work-related expenses more broadly (including, for example, ‘IRWE’ in the US). As Section 3 of Chapter 5 explains, notwithstanding the availability of broader tax reliefs in other countries, the design of any further UK reliefs would need to be coherent with other elements of provision – such as PIP or Access to Work grants: there may be a temptation to ‘cherry pick’ example tax reliefs from other countries without seeing them as part of a ‘broader whole’. Although this thesis does see a strong case – consistent with Oliver’s view of the Social Model; and applying fundamental principles of ‘ability to pay’ - for ensuring that disabled people are not disadvantaged by having to meet extra costs in relation to accessing or participating in work, the mechanism for delivering such support would need careful consideration.

The position of the self-employed

Chapter 5 explains that self-employed disabled people are presently limited to claiming for tax relief on disability-related expenses under the ‘wholly and exclusively rule’ - subject to the restrictions and case law governing the test of ‘wholly and exclusively’, such as ‘duality of purpose’. The limitations of this

approach have been the subject of comment by the LITRG⁶⁶⁸ who have argued for closer alignment with the position of employees.

Drawing on the comparative analysis with Canada and the US in Chapter 5, there seem to be opportunities for greater reliefs for self-employed people with disabilities to meet their costs of disability in work participation. However, Section 4 of Chapter 5 observes that, as for employees, any further reliefs would need to be defined and structured carefully so as to achieve their intended purpose – and not unduly allow tax reliefs for expenditure whose principal purpose was, for example, non-work related.

Employer incentivisation mechanisms

Drawing on comparative analysis – in particular, the WOTC in use in the US; and other literature such as a Localis and University of Birmingham study, Section 5 of Chapter 5 highlights the possibility of, and potential options for, using of employer incentivisation mechanisms through the tax system as a means of stimulating employment of disabled people – consistent with stated policy intent around enabling disabled people to access and remain in work. It acknowledges that considerable further research would be needed; and that evidence around the effectiveness of such mechanisms appears variable.

VAT reliefs

Section 6 of Chapter 5 explains that the present range of UK VAT reliefs do provide substantial financial support to people with disabilities: the total estimated value of non-vehicle related VAT reliefs is some £1bn. Nonetheless,

⁶⁶⁸ LITRG, n402, 8.1.2 at 8.

their scope has been argued to be potentially restrictive given their emphasis on physical, rather than mental, impairments; and the ‘cliff edge’ effects of certain of their eligibility criteria.

VAT reliefs can provide a direct cost saving to end-users. However, in considering options for further support in mitigating ‘costs of disability’, Section 6 of Chapter 5 explained that they should not be regarded as a cost reduction panacea – in that poorly targeted reliefs might unduly benefit some who do not need the support; whilst not making any meaningful difference to people who cannot afford the relevant supplies: other mechanisms such as non-refundable tax credits, or direct grants, may be a better means of achieving policy objectives, particularly if policy is to provide financial support for all – not just part – of items of expenditure.

Nonetheless, Section 6 of Chapter 5 argues there may theoretically be scope to use VAT reliefs – in a targeted way which is coherent with other forms of provision such as Access to Work – to support people with disabilities in meeting the costs of supplies which might either alleviate their disabilities or assist them in participating in work and other activities. To avoid unduly generous relief being provided to those who may not need it, it seems that additional reliefs should be qualified by reference to specific needs and condition.

Section 6 of Chapter 3 provides a synopsis of certain case law relating to VAT reliefs - illustrating a number of definitional challenges with the application of the provisions. The volume of case law associated with a number of the existing provisions, together with independent commentary⁶⁶⁹, suggests that

⁶⁶⁹ For example, the LITRG and PwC, n236, 28-30.

there is a case for seeking to simplify certain of the definitional and compliance complexities within the existing provisions.

5. Reliefs relating to compensation and insurance: effectiveness summary

Chapter 6 explained that the provisions governing the tax treatment of compensation and insurance payments to disabled people seem broadly effective. Specific legislative recommendations included introducing legislation such that the relevant provisions in ESC D33 would enshrine in statute the way in which the concession extends the relief to, for example, dependent relatives.

Chapter 6 also queries whether some form of additional tax relief under Section 406 ITEPA 2003 might be given in circumstances where an employee's position has not been terminated 'on account of disability' – but where proven disability is resulting in material economic loss from reduced working.

Finally, the chapter argues that consideration should be given to potential bases of tax relief for self-employed people who are forced to reduce their levels of work due to proven disability, but where the criteria for loss-of-earnings insurance claims may not have been met. This also applies to company owners and the possible extension of BADR where a sale takes place as a result of disability.

6. Existing framework for compliance and administration: summary of effectiveness

Sections 3 and 4 of Chapter 7 summarises both the developing legal frameworks governing interactions by disabled people with tax authorities – including the Public Sector Equality Duty; and the various published steps taken by HMRC to improve ease of access; access to information and guidance; and ease of compliance.

The diverse range of interviews undertaken by the candidate, summarised at Appendix 1, illustrated the importance of such ease of interaction for people with very diverse conditions: for many disabled people, ease of interaction with tax authorities is a fundamental facet of tax system effectiveness.

In framing its conclusions, Chapter 7 acknowledges that (i) the candidate does not have a full appreciation all the research and ongoing work being undertaken by HMRC and other taxing authorities; and (ii) any changes would clearly need to be subject to in-depth planning and costing – recognising multiple competing priorities. Finally, the candidate emphasises the crucial importance of involving disabled people in the discussion and agreement of any changes – consistent with the principle of *'nothing about us without us'*.

Subject to these caveats, and building on the comments from the interviews undertaken – and acknowledging comments made by the LITRG in their report *'A better deal for the low-income taxpayer'*⁶⁷⁰ - Chapter 7 makes a number of suggestions around (i) HMRC considering further surveys around the experiences of disabled customers and those who represent them; (ii) obtaining data – to the extent not already obtained - from the Adjudicator around complaints

⁶⁷⁰ LITRG, n60.

from disabled taxpayers; (iii) further developing guidance in 'Easy Read' formats; (iv) enhancing the Extra Support service – recognising positive feedback received in relation to this; and (v) considering options for making email and paper communication clearly available for taxpayers who may struggle to engage digitally.

Again, building on feedback from the interviews summarised at Appendix 1, Chapter 7 also suggests a consideration of possible improvements to cross-departmental working between HMRC and the DWP to (i) plan out 'customer journeys' for disabled people at different points in their lives – such as starting work; (ii) consider how services can be tailored and coordinated so as to be as supportive and helpful as possible; (iii) further improve financial education for disabled people, drawing together tax and benefits; and (iv) ensure that relevant information around tax and benefits for disabled people is clearly available – and integrated - 'all in one place' in online or printed material.

As a development of the 'all in one place' concept, many of the reliefs set out in this thesis – for example, Blind Persons Allowance, Council Tax reliefs and Vehicle Tax exemptions - require a claim. People with disabilities often have a range of additional challenges to deal with; and Chapter 7 has highlighted the importance of ease of use of the tax system simplicity by people with different impairments. Given existing DWP and other records around the nature and extent of people's disabilities, including their medical records, Chapter 7 queries whether some form of centralised register might be maintained and used to allocate reliefs automatically by taxing authorities.

Finally, but importantly, building on the interview feedback from the representative at the LITRG, Chapter 7 suggests that HMRC considers how to

further help disabled people avoid inadvertently failing to account for PAYE by being persuaded - wrongly - that they are self-employed; and considers how to further help disabled people taking on carers determine a carer's appropriate employment status, and how tax needs to be accounted for.

7. Overall conclusions

Based on the analysis set out in this chapter and the thesis more generally, the UK tax system is effective in many ways in supporting disabled people – but in a number of areas it can be improved and opportunities for wider use of tax reliefs explored. Many of the areas for potential improvement relate to tax reliefs – but a significant number relate to tax system access, administration and compliance.

There are more than 14 million disabled people in the UK. Having a tax system which is effective in supporting them, and coherent with other aspects of public financial provision, seems far more than a 'nice to have': given UK Government emphasis on improving the lives of disabled people, in terms of tax system improvement priorities, there would appear to be a case for it to be a key area of focus.

Appendices

Appendix 1 – feedback from interviews

Key feedback from the interviews referred to in Chapter 6 is summarised below.

In all but one case where it was not possible, the content attributable to each interviewee was shared with them for approval.

Question 1: *Please could you summarise your overall views of the ease of interaction with tax authorities by people with disabilities – covering ease of access; access to information and guidance; and ease of compliance.*

A representative of the LITRG commented that she felt that ease of compliance had two key dimensions: ease of access to HMRC; and the ease with which people can access information and guidance.

She observed that ‘HMRC are quite good at being accessible’ where they [HMRC] able to identify specific needs (such as sight or hearing difficulties). This is a ‘well-trodden path’ around which ‘front line staff are well versed’. Challenges arise when a customer is not someone with one of HMRC’s specifically identified attributes – someone without a ‘specifically identifiable issue’. She explained that in these situations, what is required is flexibility and empathy to get to the bottom of where the customer is seeking to get help – but that HMRC staff do not feel empowered to show this: what is needed is the ability to ‘personalise’ support to address specific needs. She expressed concerns over the triaging of taxpayers accessing the Extra Support service.

She further commented that disabled people are often not able to access the labour market and therefore need to understand the complexities of both the benefits and tax systems – and the interaction between the two. Further, they are less likely to have advisers. Given their propensity to ‘self-serve’, ‘good

guidance is vital'. However, she commented that it seems that the philosophy behind guidance is that if it works for 80% of users, then it is less important to cater for the needs of the remaining 20%. However, provisions relevant to the remaining 20% (including people with protected characteristics such as disabled people) are often the intended beneficiaries of concessions – and these people may therefore receive inaccurate or misleading information disproportionately. This approach risks people not claiming reliefs they may be entitled to. She further commented that sometimes guidance may be inaccurate, but that obtaining corrections can be challenging.

A representative from TaxAid emphasised that TaxAid assist a range of vulnerable people – not just those with disabilities. She explained that when people approach TaxAid, they are likely to have tried to engage with HMRC, or undertake a compliance-related task, but either have not resolved their problem or have got into difficulty.

Consistent with other interview feedback around ease of interaction with HMRC, she drew out a range of difficulties experienced by vulnerable people (including those with disabilities) including: (i) levels of literacy and numeracy – and comprehension around what is available online, what is being told to them, or what they are being asked to do; (ii) struggling to get through on the telephone to someone who could help them – particularly if they do not use the 'right words' in explaining their position; or call the wrong team (or even the wrong government department); (iii) the heavy emphasis on digital skills and difficulties in navigating different systems; and (iv) the challenges experienced by those for whom English is not their primary language. She acknowledged the statutory role of tax authorities in collecting tax – but suggested that some taxpayers may be

intimidated by HMRC and 'frightened of getting things wrong', leading to their taking no action rather than risking taking the wrong action (for example, not opening 'brown envelopes').

She observed that vulnerable people may not distinguish between HMRC (tax) and the DWP (benefits) and may believe that, in dealing with and providing information to one department, they have 'dealt with [the authority]' and become frustrated that they are required to engage with different bodies.

She considered that the Extra Support service is a positive step – but queried the effectiveness of the triage process in connecting callers to the service. She suggested that customers supported by the service had fallen from the numbers helped by the HMRC Extra Support Team as reported in the HMRC's annual report for 2019/20 at 93,342 - leading her to question whether there had been changes by HMRC in determining who needs support. TaxAid suggested that people needing their [TaxAid's] help had (by July 2022) risen to pre-Covid 19 pandemic levels - but that these people will often explain to TaxAid that they had previously called HMRC.

A representative from Scope observed that a key element of access was the requirement for people to have digital skills in accessing government websites (including for tax and benefits). This requirement had risen – but many people with disabilities, particularly those on lower incomes, may have limited digital skills or ability to access digital platforms, potentially limiting their engagement: he commented that Ofcom analysis suggested that 1 in 5 people do not have access to the internet.

He went onto explain that information about, and access to, benefits and tax reliefs – for example, VAT reliefs, Council Tax reliefs or Vehicle Tax reliefs -

is 'not all in one place' and that people requiring support need to access multiple sites. He commented that Scope – and other charities – seek to aggregate information for disabled people in single locations. Notwithstanding these issues, he observed – anecdotally – that accessibility options for disabled people have improved in recent years.

A representative from Mencap commented that it was important for taxpayers with learning disabilities that guidance was written in an 'easy read' format. She said that Mencap often needed to approach government to request 'easy read' guidance following policy announcements: this put people with learning disabilities 'on the back foot'; and she suggested Mencap should not need to do this.

A second area she identified was the variability of support for people with learning disabilities in understanding financial matters across different local authorities. Again, developing the theme of digital exclusion, she suggested that it was 'really critical' that people with learning disabilities receive help in explaining tax (and benefits): specifically, she said that she would like the government to review the advice and support available to individuals across local authorities. More broadly, she referenced the need for 'practical help' to people with learning disabilities in filling in application and compliance forms across a range of government agencies (tax and benefits).

In summary, she considered that there is insufficient accessible information for people with learning disabilities; and insufficient support to help them obtain both the benefits and tax reliefs to which they are entitled.

A current tax adviser with familiarity with disabled people's tax affairs explained that many of his clients want the comfort of using an adviser to interact

with HMRC. He observed that, overall, ‘HMRC are trying’ and have put in place mechanisms to improve accessibility. However, he felt that HMRC do not appear to have enough resource.

He observed that he understood that it can be difficult access the Extra Support service; that he perceived Tax access to it to be ‘rationed’; and that criteria for referral upon triage are not published. Notwithstanding these points, he observed that ‘it [the Extra Support service] is a good service and reviews show very positive feedback.’ However, it ‘needs resourcing’ – recognising the increased complexity of the tax system.

An interviewee who has supported disabled people start their own businesses for a number of years - including registering with HMRC and submitting tax returns - described interaction with HMRC for a number of people as being very difficult.

She commented that disabilities and their implications were very diverse – including, for example, dyslexia or visual impairments; and that there was a correlation between age and propensity of disability, suggesting that proportions of disabled people increase markedly with age. She contended that HMRC should invest in developing ‘customer journeys’ – profiling the attributes and needs of customers at differing points in their lives and reflecting people’s propensity to disability, and different types of disability, in their analysis. She felt that effective communication and building trust with customers is vital, querying how HMRC is changing its attitudes and beliefs in an effective way.

A tax specialist who previously held a role with the LITRG drew attention to *L H Bishop*⁶⁷¹, commenting that HMRC had extended their telephone filing

⁶⁷¹ See Section 3.

service in response to the Tribunal's findings. He felt that a 'mystery shopper' exercise could be helpful in determining whether access to alternative formats (for filing and guidance) was working effectively; and whether the reality was that people still need to request these online (notwithstanding problems of digital exclusion). He explained that he would still prefer a 'suite of printed matter'. Nonetheless, he commented that materials made available in large print or Braille format reflected that, in these areas, 'HMRC are doing OK'.

Question 2: *Please could you highlight what you consider works well – again, covering ease of access; access to information and guidance; and ease of compliance.*

A representative from the LITRG commented that protocols and alternative media put in place in relation to certain categories of taxpayer (for example, sign language introduced in conjunction with the Royal Association for Deaf people) seemed effective.

She commented that the LITRG do not receive complaints from people unable to use alternative media – albeit that they need to contact HMRC's main helplines in the first instance. Where the LITRG do receive complaints is from people not wishing to complete forms online – where it can be a 'labyrinthine process' to secure agreement from HMRC to post hard copy forms to taxpayers.

She commented that she had become aware that – in addition to the Extra Support service – HMRC had introduced colleagues to support mainstream compliance teams where, for example, taxpayers were showing signs of distress in responding to a tax enquiry. The LITRG had received positive feedback about this support – albeit that she was not aware of the depth of it.

A representative from TaxAid highlighted the Extra Support service as helpful – subject to the limitations identified in Question 1 above.

A representative from Scope drew out the Motability scheme as an example of ‘joined up’ tax and benefits working well. He explained that by being eligible for PIP or DLA at the enhanced rate led to eligibility for the scheme – which in turn made use of Vehicle Tax and VAT reliefs. He commented that access to Disabled Facilities Grants⁶⁷², and their associated tax treatments, is another example of ‘joined up’ tax and benefits.

A representative from Mencap observed that the provision of accessible information to taxpayers had worked well. However, consistent with her feedback in relation to Question 1, whilst there is a statutory duty to provide disabled people with reasonable adjustments, such as accessible communications (including Easy Read) when they ask for it, in practice Easy Reads are rarely produced in tandem with other accessible formats like braille or large print. Mencap usually have to request them. When Mencap do receive Easy Reads, the quality varies drastically across Departments and teams. Mencap would very much like to see the Government employ people with a learning disability to improve the quality of the ‘accessible information’ they produce. She suggested that the co-production of guidance and documents with a person with a learning disability participating on drafting teams would be a positive step in addressing this – as part of a broader drive to introduce people with disabilities into government roles to bring their lived experience to bear. This could help address comparatively lower rates of employment of people with learning disabilities: she commented that people with learning disabilities often had greater longevity within roles – but that they experienced significant obstacles at the recruitment phase. Whilst supported

⁶⁷² For Government guidance around Disabled Facilities Grants, see:

< <https://www.gov.uk/disabled-facilities-grants> >, accessed on 4 February 2023.

internships are one of the best ways Mencap have found for supporting people into work, they would like to see more training positions created with scope to become a source of long-term employment.

An interviewee who has supported disabled people in setting up businesses for a number of years said that one area which worked well for self-employed disabled people was when a local HMRC representative came out to present to them. She described the benefits of this as 'huge' – reiterating her view of the importance of communication between HMRC and disabled taxpayers; and mitigating the 'mystique' surrounding HMRC as being variably perceived as 'remote', 'online', using 'official' language and 'far too complex'. She commented that 'if HMRC get it right for disabled people, they will get it right for most'.

A tax specialist who formerly worked with the LITRG observed that the areas which work well depend on each person's disability. He commented that, since the introduction of the Extra Support service, 'things had worked a lot better' – although to the extent that disabled people need to appoint an agent to help them with their affairs as a result of their disability, the requirement to pay for this might be seen as a form of discrimination. He suggested that research into how easy it is to allow a 'trusted helper' to gain accreditation and access to a disabled person's online tax affairs would be helpful as his impression was that people need to 'jump through a number of hoops'.

Question 3: *Please could you highlight areas where you have seen improvement.*

A representative from the LITRG said that she saw the original enhanced support team (now the Extra Support service) established some 10 years previously as a

major improvement. Originally, enhanced support was available through HMRC enquiry centres and a modest outreach team visiting local libraries. She felt that this was 'really quite good' but it suffered from the problem that HMRC were 'loathe to tell people' for fear of the service becoming overwhelmed. Whilst physical access to enhanced support is no longer available, she commented that the Extra Support service is now increasingly publicised.

She commented that accessing the Extra Support service can be challenging – and that, in her view, HMRC should make the service as extensive as it needs to be to assist disabled people who are struggling and seeking help with their tax affairs. She explained that the service is accessed through HMRC's front line, 'Tier 1' caseworkers who may in practice not put people who need extra support through to the service.

Nonetheless, she had seen an improvement through the ability to access the Extra Support service through HMRC's webchat function (as opposed to through front line telephony staff), albeit that there is now a triage tool which 'filters people out' as the system had apparently become overloaded: the triage tool involves answering a series of questions – and in turn the possibility of being routed back to the Tier 1 telephone team. This triage tool seems somewhat 'mechanical' and unfair for people who really want to speak to someone who can provide them with support. Generally, however, she felt that the webchat function was a positive development – not least for people with disabilities who may lack the confidence to discuss their tax affairs on the telephone.

Separately, and in answer to a specific question, she observed that the VAT manual is 'quite good', allowing most people to find the answer they were

looking for there. However, it is 'finite' – and there may be a concern within HMRC about resource implications if it were to be widened.

A representative from TaxAid commented that HMRC had sought input from the voluntary sector (including TaxAid) around improving the accessibility of standard letters. This was in addition to the internal guidance that HMRC follow to ensure that their correspondence is easily accessible. She said that HMRC had taken feedback on board and that some of the correspondence had improved.

She observed that HMRC had worked with the Royal National Institute of Blind People in introducing adaptive technology for customers with visual impairments. She commented, however, that many people are contacting HMRC's helplines as they may have low digital skills; or not have a laptop or smartphone to access online services. She suggested that many people need the necessary hardware to be able to engage digitally. She also commented that people can lose confidence when engaging digitally with HMRC – and may 'lose their way' on a smartphone and 'stop part way through' [an online process]. Finally, in relation to digital engagement, she observed that registering for the Government Gateway [to access online services] can be challenging for people without documentation such as a passport or driving license.

A representative from Mencap commented that Mencap have observed a considerable effort on the part of government departments to make information accessible for people with learning disabilities, including through the use of videos – but she observed that there is inconsistency in this area between government departments. She said that Mencap can be brought in to assist in the development of guidance – and have a broad network of contacts with

government departments. However, sometimes it is unclear how, and with whom, to liaise when seeking to provide this input – for example, with the policy or operational teams. Nonetheless, she commented that the process of stakeholder engagement by government departments in relation to guidance production is improving.

A tax adviser familiar with disabled people's tax affairs explained that, given the emphasis on online engagement with HMRC, and the closure of their tax offices – where people used to be able to meet HMRC for face-to-face guidance – as an adviser he had not seen any improvement in the service provided by HMRC to disabled people. He commented that the digital emphasis seemed to benefit HMRC, but not all taxpayers. He also commented that gaining access to people's tax accounts as an adviser can be challenging.

He suggested that it would be helpful if, for example, people who are registered blind automatically obtained Blind Persons Allowance – rather than being required to claim it.

An interviewee who has supported disabled people in setting up businesses for a number of years commented that the Extra Support service was a 'step forward' – although she is yet to receive data around its operations, including the total number of disabled users or the number of complaints or disputes. She said that she was aware that people in the service were receiving appropriate training to 'talk on the phone with a smile' – 'because it makes so much difference'. She explained that she did not know whether the service is over or under-resourced – commenting that 'there is a real risk that a super service is under-resourced or under-targeted', querying whether HMRC's customers would be 'directed to the right place' by other customer-facing teams.

A tax specialist who formerly had a role at the LITRG said that he had seen improvements around HMRC's interactions with disabled people over the previous 20 years. For example, some years previously HMRC had introduced a dedicated telephone line for people wishing to discuss Blind Person's Allowance – although a mystery shopping exercise had revealed that the number had not been answered; and it ultimately became unobtainable. He commented that HMRC's Extra Support team was working well with 'committed and able' individuals. He also drew attention to the Voluntary Sector Taxes Resolution Service (VSTRS)⁶⁷³ in place to engage with relevant voluntary sector bodies in assisting people manage their tax affairs.

Question 4: *Please could you highlight areas where you see a material need for improvement – again, covering ease of access; access to information and guidance; and ease of compliance.*

A representative from the LITRG observed that improvements to the Extra Support service were key: HMRC have indicated that, following the COVID-19 pandemic, there will be no return to face-to-face contact with the Team – which she considered a 'huge loss', querying whether this had been subject to an Equality Act Impact Assessment in relation to disabled people. Other improvements included: (i) improving the training given to Tier 1 advisers so that they feel more empowered to allow disabled customers through the triaging process; (ii) improving voice recognition systems which are presently incapable of recognising speech impediments in triaging but equally do not allow people to 'escape' the system with a keypad: a 'quick win' which would allow people with

⁶⁷³ See commentary around the VSTRS at 333.

speech impediments to get straight through to the Extra support services by using a keypad; and (iii) increasing the resources available to the Extra Support service – including its webchat facility.

She emphasised two specific compliance matters very strongly: first, she explained that there is a significant issue where people with, for example, learning disabilities, are engaged in work on the basis that they are told (by those employing them) that they are self-employed for tax purposes whereas in fact they meet the requirements for accounting for PAYE as an employee. She felt that this was placing vulnerable taxpayers in a very difficult situation and was exacerbating the ‘false self-employment’ problem: trying to deal with tax obligations through the Self-Assessment system can be extremely challenging – leading to risks of errors. She commented that HMRC did not seem to be enforcing employers’ responsibilities for accounting for PAYE when employing people in these circumstances.

Second, consistent with policy around independent living, disabled people may receive personal health budgets or other amounts from multiple government departments to, for example, take on a carer – without guidance as to how to manage their tax obligations. In these circumstances, they may not be aware of obligations to, for example, account for tax in relation to the carer under PAYE, depending on the status of the carer. She felt that there needs to be far better ‘joining up’ in helping people with the tax consequences of receiving financial support from various government departments.

She explained that there is a distinct difference between Managed Care providers (who supervise carers and account for PAYE); and Introduction Agencies who provide care workers for disabled people – for example, live-in

carers - but do not oversee the carers' work or account for PAYE. Introduction Agencies may tell disabled people that carers are self-employed – even though the carer is likely to be employed under the status tests for employment. In these circumstances, the disabled people receiving care may not operate PAYE when they should. Again, she suggested that this is placing many disabled people unknowingly in a very difficult position – with, in her view, HMRC apparently not helping taxpayers understand or address the issue. A question arises as to whether penalties should be set aside in circumstances of accidental non-compliance such as this.

A representative from TaxAid emphasised improvements in education – and the need for developing how people are taught about the tax system: she observed that many young people do not have any apparent knowledge of the tax system – but, compared to historical work patterns whereby people were largely employed, they may now have multiple sources of income from employment or self-employment.

A representative from Scope observed that there is a degree of helpful support – but a challenge for disabled people is to be aware of its existence: the government websites explain some things but not everything. He queried how best to provide help to people who do not have the necessary skills to engage with systems such as the tax system. He felt that closer cooperation and data sharing between government departments – such as the DWP, HMRC and BEIS – would be helpful so as to (i) reduce the overall administrative burden for disabled people (and government departments) as they 'move through' various activities such as accessing work (for example, he cited 'joining up' elements of self-employment and the Access to Work programme); and (ii) use the data to

identify automatically where people may need support (he cited an example of Ofgem maintaining a database of vulnerable customers and using that data to target heating support).

A representative from Mencap commented that, building on recent surveys with Mencap's Policy Shapers group (a group including people with learning disabilities, family members and carers), awareness of the availability of financial support amongst people with learning disabilities needed to be raised: a recent survey around the cost of living had revealed that less than 50% of those surveyed were aware of the additional support provided by the government for energy costs. This raised a broader issue around the dissemination of financial information to people with learning disabilities – and the extent to which the information which is provided is 'cutting through'.

A tax adviser with familiarity with the tax affairs of disabled people commented that the ability to meet a person in an HMRC office to discuss or clarify a tax issue had disappeared. He was concerned about the increased emphasis on digital engagement with HMRC (which he felt provided cost benefits to HMRC, with taxpayers 'doing the work') – and the challenges that this posed for, for example, people with learning disabilities or dementia.

He felt that there needed to be an increase in the available levels of personal service – commenting that HMRC provide personal services for large businesses or wealthy taxpayers. A person contacting HMRC may not know about the Extra Support service. He commented that he had only had modest involvement around Council Tax but had found support provided 'very helpful'.

Finally, He saw a strong case for more co-ordination and information sharing between HMRC, the DWP and local authorities.

An interviewee who has supported disabled people in setting up businesses for a number of years commented that a material improvement was required in 'communications in all aspects', using 'simple language' and not 'officialese'. She felt that HMRC 'need to go mainstream' such that it is not solely the voluntary sector 'looking after disabled people or people on low incomes'. She felt that HMRC should communicate broadly through local media, social media with radio and television advertising.

She commented that HMRC have saved money through digitalisation – but she does not see either the investment or a strategy for engaging the public. She did not know 'how adept HMRC are at turning strategy into action plans with measurable outcomes and deliverables'.

The same interviewee also observed that there is still a stigma associated with identifying as a disabled person – and that people may feel more comfortable with stating that they have a long-term health condition than stating that they are disabled. She cited emerging dementia as a condition where people may feel reluctant to admit to a degree of disability.

A tax specialist who formerly held a role at the LITRG felt that it was important that HMRC can be contacted in a range of different ways – and that HMRC is not 'forcing people online'. He provided the example of people with speech impediments wishing to correspond with HMRC by email – but not being able to do so unless approved for Extra Support. Nonetheless, he did acknowledge the Extra Support service, commenting that he had heard improvements for disabled people talked about – although he could not say whether the service was better or not when compared to HMRC's former enquiry centres.

Question 5: *Please could you highlight any specific recommendations or areas for change that you would wish to see in interactions between people with disabilities and tax authorities.*

A representative from the LITRG emphasised the importance of improving the way in which services for disabled people are designed from the outset; how tax guidance is explained to disabled people; and for all government departments (including the DWP in relation to benefits) to take time and understand better the needs of disabled people and to build trust with them.

She also observed that increased digitalisation (such as through Making Tax Digital – ('MTD')) can be problematic for many disabled people, and that alternative means of communication – such as email – might be easier for some. She observed that the list of commercial software providers issued by HMRC is unwieldy and that disabled people are not steered towards a choice – or offered an 'in-house' option. Whilst there may be benefits for certain disabled people from digitalisation (for example, not needing to wait on a telephone line), she perceived HMRC's approach in relation to the use of digital systems as 'all or nothing': there seems to be a presumption that those with disabilities who struggle with software and other aspects of digitalisation will simply apply to be exempt from MTD and this will be granted. However, if MTD is supposed to offer a positive benefit to everyone who is in scope - as HMRC suggest - why should people with disabilities be excluded from being able to take advantage of this perceived benefit by being steered down the exemption route by HMRC?

A representative from TaxAid first recommended improvements to financial education. She felt that HMRC could harness their digital offerings in more positive ways to help [vulnerable] customers 'get things right' and obtain the reliefs they are entitled to – bringing about a shift in mindset.

A representative from Scope made two specific recommendations: first, making accessible and easily understandable information available to people with disabilities (including learning disabilities) 'all in one place'. And second, enhancing the extent to which government departments – not disabled people themselves – are required to ensure that disabled people receive the benefits and tax reliefs they are entitled to once they are 'in the system', rather than having to claim them. He questioned whether this might improve efficiency for government – as well as providing improved support for disabled people.

A representative from Mencap observed she would like to see 'better joining up' [of provision] across government: speaking more broadly than just around taxation, she commented that there is no reference point against which to benchmark the adequacy of provision to meet, for example, people's costs of disability. She suggested that the adequacy of provision had not been reviewed since the 1960's – rather, benefits had largely been indexed by inflation. The adequacy of provision was particularly important given – at the time of the interview – substantial inflationary pressures on living costs.

Specifically, she was unclear how support for living costs was assessed by the government as being adequate – and what the basis was for determining levels of support for additional heating, or power for specialist equipment, that disabled people might need, recognising that these may fluctuate markedly. She also queried what support exists to enable people with learning disabilities to save money. She questioned whether the political will exists to raise levels of financial support for disabled people.

A tax specialist familiar with the tax affairs of disabled people felt that HMRC need to do more to engage with people around Making Tax Digital ('MTD')

– recognising the efforts made in the run-up to the introduction of Self-Assessment. He commented that many people were going to be brought into the ambit of MTD - for example, people employing carers; or disabled property landlords. He queried how many people were going to cope – noting potentially increased costs for software and advisory fees (notwithstanding the support available from TaxAid and other voluntary organisations); and the fact that many people do not have broadband access. He was concerned about whether HMRC would adopt a risk-based approach to different cohorts of taxpayer and that avoidance or evasion could increase.

He suggested that HMRC introduce working groups for disabled (and other) people to share their views: he commented that historically he and other advisers attended periodic working groups with HMRC inspectors. Overall, he commented that he felt that HMRC need more well-trained staff and to make an effort to train other people involved.

An interviewee who has supported disabled people in setting up businesses for a number of years identified a number of areas of focus, including communication; leadership and accountability; legal compliance [for example, with the Equality Act 2010]; and institutional attention to HMRC's customer base. She commented that the July 2021 National Disability Strategy contained a number of 'platitudes' – but was not underpinned by clear targets.

She commented that NHS certification knowledge in relation to visual impairment for Blind Person's Allowance seemed to have diminished – potentially leading to a reduction in claimants of the Allowance.

The same interviewee observed that, given limitations with the Access to Work program, there should be further tax relief for helping disabled people get

back into work - for example, tax relief for transportation expenses to and from work – acknowledging how many disabled people are keen to get back to work. She reiterated the benefits of disabled people working – including to both their mental and physical health; and in terms of their tax contribution from working.

A tax specialist who formerly had a role at the LITRG identified improvements to the trusts for disabled people regime. He commented that a number of improvements had been secured – but that there were still areas to be addressed.

Appendix 2 – estimates of the total annual value of disability-related Council Tax and Rates reliefs

Council Taxbase statistics in England are disclosed by reference to the numbers of dwellings where reliefs or exemptions are made available⁶⁷⁴. The candidate has not been able to source equivalent statistics in respect of Rates in Northern Ireland; nor in relation to Scotland. Statistics are, however, available in respect of Wales⁶⁷⁵.

As of 12 September 2022, some 129,000 dwellings, spread across bands, had been moved down one band under the 'Band Reduction Scheme' in England. Very indicatively, if the cost of a single band was £230⁶⁷⁶, then the annual cost of the scheme would be some £30 million. From the information available, the candidate was unable to source equivalent statistics in relation to Wales.

In 2022, some 9,600 dwellings were exempt from Council Tax under an exemption for annexes in respect of dependent relatives in England. The equivalent number was 470 in Wales (for 2022/23). This relief does not apply in Scotland. Band A charges vary by local authority, but a broad sample from a review of a number of local authorities suggests that rates of the order of £1,400 are not uncommon. If the Council Tax which would otherwise be charged in

⁶⁷⁴ See UK Government, 'Council Taxbase statistics', at:

< <https://www.gov.uk/government/collections/council-taxbase-statistics> > accessed on 10 January 2023.

⁶⁷⁵ StatsWales, 'Dwellings exempt from council tax, by class (number of dwellings)', at:

<<https://statswales.gov.wales/Catalogue/Local-Government/Finance/Council-Tax/Dwellings/dwellingsexemptfromcounciltax-by-class>>, accessed 18 August 2023.

⁶⁷⁶ An illustrative amount derived from reviewing a sample of Council Tax rates at different Local Authorities.

respect of an annexe was – for illustrative purposes - £1,400 per annum, then the annual cost of this relief would be some £14 million.

In 2022, some 101,300 dwellings in England, and 5,300 in Wales (2022/23), were subject to the Severe Mental Impairment discount:

‘A dwelling occupied only by a person, or persons, who is or are severely mentally impaired who would otherwise be liable to pay the council tax or only by one or more severely mentally impaired persons and one or more students, students’ foreign spouses and school and college leavers.’

The average annual national Band D Council Tax charge for 2022-23 is £1,966⁶⁷⁷. Applying an illustrative ‘mid-point’ rate of £1,700 per annum (between the average Band D cost and a typical Band A cost of £1,400 per annum) to 106,600 dwellings implies a total annual value of the relief for these dwellings of the order of £181 million per annum. However, this calculation does not cover dwellings where a person with severe mental impairment shares the property with a person such that the applicable discount is only 25% or 50%. The implied total annual value of the relief above is therefore very indicative and is likely to be overstated. As stated above, this estimate does not include Scotland.

Finally, certain qualifying carers are disregarded for Council Tax purposes. In 2022, the total number of all dwellings in England where all or all but one resident was disregarded – encompassing a range of other people other than carers – was some 278,000. Given that this statistic covers a range of disregarded residents (not solely carers), it is not possible to estimate the financial effect of that element linked to carers from the Taxbase statistics. The

⁶⁷⁷ Department for Levelling Up and Housing, ‘Council tax levels set by local authorities: England 2022 to 23 (revised)’, May 2022, accessible at:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1076602/Council Tax Levels Set by Local Authorities in England 2022-23 revised .pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1076602/Council_Tax_Levels_Set_by_Local_Authorities_in_England_2022-23_revised.pdf) > accessed 11 January 2023.

total number of dwellings where people were receiving or giving care in Wales was 447 in 2022/23.

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