

Policy paper

# Revenue and Customs Brief 2 (2017): VAT - care homes and hospitals

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## 1. Purpose of this brief

This brief sets out HM Revenue and Customs (HMRC) revised policy on the VAT zero rate for new buildings intended for use solely for a relevant residential purpose as care homes. It explains the distinction between buildings used as care homes (and similar facilities) which are eligible for zero rating and hospitals which are not.

## 2. Who should read this brief

All parties involved in the construction and supply of buildings that are designed as care homes and hospitals.

## 3. Background

The construction and first grant of an interest in a building, intended for use solely for a relevant residential purpose as a care home, is zero rated. A care home is one that provides residential accommodation with personal care to people in need of such care. Care may be needed because of:

- old age
- disability
- past or present dependence on alcohol or drugs
- past or present mental disorder

The construction of a hospital is standard rated. However, just because an institution is badged as a 'hospital' doesn't necessarily exclude it from being treated as a care home. If the intended purpose of the building is to provide accommodation for the care detailed above, its construction may be zero rated.

There are 2 key areas of difference between care homes and hospitals:

<b>Hospitals</b>	<b>Care homes</b>
Aim to treat patients quickly then discharge them to make space for other patients needing treatment.	Allow lengthy periods of residence for individuals suffering from conditions that need longer term care.
Deal with injuries, illnesses and conditions that need medicinal or clinical intervention and rely on staff with the appropriate qualifications to carry out these functions.	Provide personal care that tends to be for the purpose of enabling a person to look after themselves.

There have been a number of cases involving the status of care homes and whether they qualify for zero rating. In the latest of these, Pennine Care NHS Trust (TC04998), the First-tier Tribunal held that 'personal care' is a term that must reflect current times; it may go beyond the basics of feeding and washing and in our view, in the context of mental health illness, the inclusion of the type of bespoke and specialist care provided by the Unit doesn't trespass into the arena of a 'hospital or similar institution'.

## **4. The change in HMRC policy**

Following the decision in Pennine, HMRC has reviewed its policy with regard to the VAT treatment of the construction or first grant of new care homes. It accepts that personal care may go beyond a supportive and supervisory role to assist with living. The term may include both therapeutic and clinical treatment that can alleviate or improve the condition of the individual. When determining whether an institution is a care home or a hospital, HMRC will now consider whether there is provision for a person to be in residence for a lengthy period.

Personal care may incorporate a high level of medical treatment if it's essential to the accommodation that's being provided. Care homes, as distinct from hospitals, may be set up to offer an extended period of in-

house treatment or to offer treatment that assists recovery or rehabilitation.

A care home may have a treatment centre that occupies a building, or a distinct part of a building. The treatment centre will be subject to zero rating if it's to be used solely for the residents of the care home - used 95% or more by those residents. If it's used more than 5% by non-residents of the care home, the zero rate won't apply to its construction or first grant of a major interest (freehold or long lease over 21 years or 20 years in Scotland).

The decision in Pennine was in the specific context of care provided for persons detained under the Mental Health Act 1983. HMRC accepts that the approach adopted by the First-tier Tribunal will apply to other institutions (such as hospices) which allow for a longer period of convalescence or rehabilitation than would commonly be the case in a hospital.

## 5. Claims for overpaid VAT

If you have previously incurred VAT on supplies that you believe would have been eligible for zero rating under the revised policy, you may be able to recover the overpaid VAT where you have:

- been supplied services of construction
- received first grants in buildings used solely as care homes
- received first grants of conversions into buildings used solely as care homes

You will need to recover the VAT from your supplier who may be able to make an adjustment to his VAT account and repay to you the amount that was overcharged. In order for you to be entitled to the repayment of VAT the supplies, to which it relates, must not have occurred more than 4 years previously. You will need to produce a certificate to enable your supplier to repay the VAT that has been overcharged - see Section 17 of [VAT Notice 708: buildings and construction](#). Paragraph 17.6 of this notice allows a customer, who has received services from a supplier to issue a late or belated certificate provided that:

- at the time the supply was made the customer could demonstrate that they had an intention that the building would be used in the way being certified
- all other conditions for zero rating have been met

Those who believe that they've accounted for VAT on supplies on which none was due are entitled to bring claims under section 80 of the VAT Act. HMRC has the power to refuse claims and make payment conditional on

the reimbursement of the claimant's customers where they can show that the claimant passed the economic burden of the tax charge on to his customers (meaning that he would be unjustly enriched by payment of his claim).