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VAT and tax for academies

Socrates Socratous and Luke Savvas

Agenda

01 Introductions and housekeeping

02 Overview of VAT implications

03 Overview of direct tax implications

04 Q&A

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Academy VAT implications

Socrates Socratous

Academy VAT implications

VAT and Section 33b status

- From 1 April 2011, academies could obtain refunds for the VAT they incur in their non-business activities under new Section 33b.
- VAT registered academies recover non-business VAT by including the VAT amount in box 4 on the VAT return.
- Non-VAT registered academies reclaim non-business VAT from HMRC using form VAT 126.

Non-business – VAT on costs recoverable via S33b

- Statutory education (i.e. funded by central grant income) is non business/outside the scope
- Closely related supplies to pupils receiving such education also outside the scope:
    - Pupil meals and vending (unless supplied by caterer or trading co)
    - Transport
    - Sale or hire of musical instruments
    - Classroom materials e.g. books calculators
    - Laptops necessary for use at school but only if no fee charged
    - School trips
    - Pupil accommodation
    - Charges for breakfast or after school clubs
- Charges must be “at or below cost” - see [VATEDU70000 – Academies - HMRC internal manual - GOV.UK]

Academy VAT implications

Supplies not closely related

These supplies are not seen by HMRC as closely related.

VAT liability depends on what is supplied, and VAT recovery depends on whether exempt or taxable.

- School uniforms (zero rated)
  - Children's clothing and shoes (generally in sizes for under 14s (See HMRC Notice 714)
  - Donated second hand uniform (zero rated)
- School photographs – either sale by school or commission – (standard rated)
- Use of laptops – where fee charged, standard rated
- 'Prom' tickets (standard rated)
- Supplies to staff or charges to parents for own use catering, or trip charges (standard rated)

Academy VAT implications

<table>
<tr><th>Types of activity undertaken</th><th>Academy is VAT registered</th><th>Academy is not VAT registered</th></tr>
<tr><td>Only non-business</td><td rowspan="2">N/A – cannot register</td><td>Reclaim all VAT on purchases via VAT 126 claims</td></tr>
<tr><td>Only non-businesses and exempt</td><td rowspan="3">Apportion VAT on purchases between business and non-business.

Reclaim VAT on non-business via VAT 126</td></tr>
<tr><td>Only non-business and taxable</td><td>Recover and reclaim all VAT on purchases on VAT return</td></tr>
<tr><td>Non-business, exempt and taxable</td><td>Apportion VAT between non-business, exempt and taxable
Only recover exempt if de minimis
Recover VAT on taxable and reclaim VAT on non-business via VAT return</td></tr>
</table>

Other academy income

- Business education/training
  - Supplies of education for fees or funded by the EFA when supplied by “eligible bodies” – exempt. E.g. adult evening classes
  - Supplies closely related to business education e.g. catering and accommodation supplied to students or students of other eligible bodies e.g. other Academies or Colleges – exempt
- Holiday clubs
- Recreational trips
- Lettings of sports facilities
- Teaching school income
- Room hire
- Catering contracts
- Supplies of staff
- Consultancy income
- Fundraising events and lotteries

VAT recovery

How the purchase will be used	Academy is VAT registered	Academy is not VAT registered
Wholly to make taxable supplies	Recover VAT on purchase via VAT return	Cannot recover or reclaim VAT
Wholly to make exempt supplies	Only recover VAT on purchase if overall exempt activity is *de minimis*	Cannot recover or reclaim VAT on purchases
Wholly in the academy's non-business activities	Recover VAT on purchase via VAT return	Reclaim via VAT 126 claims
For a mix of the above ('residual')	Apportion between taxable, exempt and non-business use. Recover VAT apportioned to taxable use via VAT return, recover VAT apportioned to exempt use only if exempt activity is de-minimis, reclaim VAT apportioned to non-business via VAT returns	Apportion between taxable, exempt and non-business use. Reclaim only the VAT apportioned to non-business use via VAT 126 claims

Academy VAT implications

The deduction process for VAT registered academies

1. Recover all VAT that directly relates to the non-business S33b educational activities
2. Recover all VAT that directly relates to taxable business activities
3. Do not recover any VAT that directly relates to exempt business activities*
4. Identify residual VAT that relates to both business and S33b non-business activity
5. Apportion residual VAT between business and non-business activity (generally on income based method). S33b part can be reclaimed.
6. Residual VAT allocated to business should then be further apportioned under the partial exemption rules

*subject to de minimis

Capital projects

Can the construction works be zero rated?

- New build
- Annexes
- Professional fees will always be at the standard rate
- Can the VAT on the works be recovered?
- Should you consider a design and build company?

Academy VAT implications

Misc. issues

Current issues:

- Increased HMRC enquiry
- MTD
- VAT groups & VAT registration – late registrations
- Option to tax
- Voluntary disclosures – 4yr cap
- HMRC Business Brief business/non-business – nursery/creche facilities
- HMRC focus on exempt activity – sports facilities, rental income
- Catering contracts – agent/principal, consider HMRC MOU
- Delays with processing repayment claims
- Bespoke training – something to consider

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Academy direct tax implications

Luke Savvas

Tax exemptions

Trading exemptions

- Charity tax exemptions apply – (sections 478- 483 CTA 2010)
  - Primary purpose trading
    - “provision of education”
    - but confirm in membership and arts plus if any restrictions?

- Ancillary to the primary purpose
    - Canteen usually

Other exemptions

- Carried on by the beneficiaries
- Small trading de minimis limit
  - £80,000 total of all taxable trading and miscellaneous income.

- One-off fundraising events (s483 CTA 2010)
- Rental income (s485 CTA 2010)
  - Use of space only; no additional services, e.g. cleaning, catering, equipment hire.

Provided profits are applied to the purposes of the charitable company only

Capital Gains exemption (s256 TCGA 1992)

Other trading income

Examples:

- Hire of facilities (watch contracts with third parties taking over hire)
- Teaching school
- Sale of uniforms
- Canteen/“tuck” shop
- Summer school
- Ticket sales for theatre performances
- Breakfast and after school clubs
    - No specific position taken by HMRC
- Preschool / nursery education
    - No specific position taken by HMRC

Academy direct tax implications

Use of a trading subsidiary

- A subsidiary trading company can be formed to carry out activities which would otherwise be taxable in the academy
- Ring-fences commercial activity and risk
- Profit shed by Gift Aid to the academy/charity
- Academies must make qualifying investments
    - Trustees must review business plans
- Financing and intercompany debts
- Accounting vs taxable profits
- VAT issues – VAT group?

Academy direct tax implications

Fundraising events

- Exemption for both direct tax and VAT
- Various conditions apply:
  - Not more than 15 per year of the same type in the same location or
  - Small scale events (no more than £1,000 per week)
  - Must be held out as a fundraising event
  - Exemption can extend to sponsorship payments directly connected with the event
  - Examples: ball, performance, fair, exhibition, jumble sale, sports event, quiz

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Gift Aid and fundraising

- 25p for every £1 can be claimed
- Only available on donations not sales!
  - Not fundraising event tickets? Can ask for donations
  - Not for raffles
  - Not laptop schemes
- Waived refunds for cancelled events and waived loans qualify now
- The Donor can get limited benefits 'in consequence' of the donation:
  - 5% - 25% of donation
- Benefits of nil value
  - Acknowledgements of donation – but watch for advertising
  - Fundraising event in honour of a donor
  - Naming rights
  - Information about academy's work

Gift Aid Small Donations scheme

- Cash donations of £30 or less
  - No Gift Aid declaration required
  - School fairs, PTA meetings etc.
  - Deadline to claim: two years from end of tax year (6 April to 5 April)
- £8,000 per academy trust or £8,000 per school under Community Building Scheme
  - School must qualify as a community building – planning opportunity?
  - Must carry out a charitable activity open to the public with no charge for access at least six times per tax year with at least 10 people in attendance
  - Donations do not have to be collected during the public activity

Academy direct tax implications

Off payroll working in the public sector

- Since 6 April 2017 – all academy trusts are responsible for assessing deemed employment status of contractors using personal service companies ('IR35' rules).

- Rules applying:
  - The academy must issue a Status Determination Statement to each worker with its employment status determination and the reason for the decision.
  - The academy must also establish and lead a process for allowing workers to challenge the status determination.
  - HMRC has a Check Employment Status for Tax (CEST) tool online.

Academy direct tax implications

Corporate sponsorship and joint ventures

- Entering sponsorship arrangements or joint ventures – care for both direct tax and VAT
  - Get advice sooner, ahead of finalising contracts

Examples:

- Sharing space
- Outsourcing
- Schools Plus contracts
- Local business sponsorships
- Property development

Contact us

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Thank you for attending

Time for drinks and canapés!