

VAT for academies and free schools

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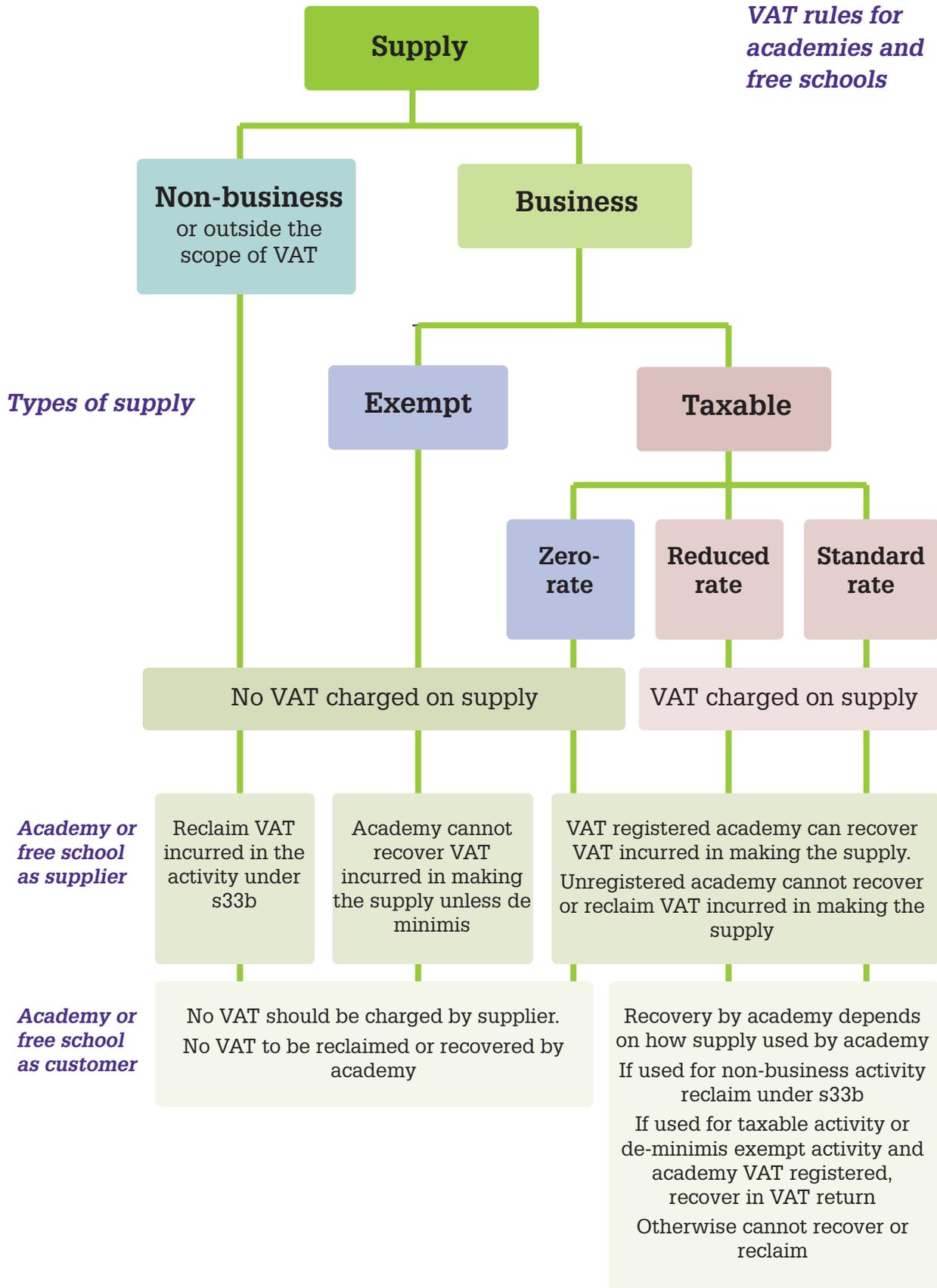
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How VAT works for an academy or free school

VAT rules for academies and free schools



1 Introduction

This guide is a general introduction to VAT for academy and free schools (collectively referred to as academies). It covers VAT law and practice as at September 2013. This guide outlines the following:

- The **normal VAT rules** – that apply to any UK business. For people new to VAT the *Appendix: Basics of VAT* explains how VAT operates. The section *Registering for VAT* explains VAT registration and the section *VAT recovery and refunds* explains the rules for getting back the VAT incurred on purchases.
- The **s33b refund scheme** – this is a special VAT refund scheme for academy schools. The section *s33b VAT refund scheme* explains the scheme and the section *VAT recovery and refunds* explains how VAT is reclaimed under the scheme.
- The **special VAT reliefs for charities** – these fit into two types:
 - **School as customer:** a charity tells a supplier to change their normal VAT treatment to a more beneficial one. A school does not have to be VAT registered to benefit from these charity reliefs.
 - **School as supplier:** the VAT treatment of a supply when made by a charity is different from the normal VAT treatment.

The key special VAT reliefs for schools are explained in the section *Particular activities*.

2 Registering for VAT

This section explains when you must register for VAT and when you can register for VAT voluntarily. It also explains when you can avoid having to register for VAT, when you can de-register voluntarily and when you must de-register.

Mandatory registration

You must register for VAT if your turnover from taxable activities exceeds the **VAT registration threshold**. That is unless you meet one of the conditions for exemption from registration explained below. The VAT registration threshold is increased annually in the government's budget. The VAT registration threshold from 1 April 2013 is £79,000.

You must register for VAT if either:

- 1 At the end of any calendar month, the value of taxable supplies in the last 12 calendar months has exceeded the VAT registration threshold.

You must notify HMRC within 30 days of the end of the month and will be registered from the first day of the second month. For example if you exceed the VAT registration threshold on 31 August, you will be VAT registered from 1 October.

- 2 At any time, there are reasonable grounds for believing that the value of taxable supplies in the next 30 days alone will exceed the VAT registration threshold.

You must notify HMRC within 30 days of becoming aware that the threshold will be exceeded. The registration is effective from the date you became aware. For example, if you sign a contract on 21 August to make a taxable supply of £100,000 on 10 September, you will be VAT registered from 21 August.

You register by completing form VAT 1 or online. Once you are registered you must provide your customers with proper VAT invoices and complete regular VAT returns. From 1 April 2012 all VAT returns have to be completed online and VAT payments made electronically unless you belong to a very small group of exceptions.

Exemption from registration

You can be exempted from mandatory registration in scenario 1, above if you can demonstrate, to HMRC's satisfaction, that your

level of taxable supplies will drop below the VAT de-registration threshold in the next 12 months. The VAT de-registration threshold is normally £2,000 less than the VAT registration threshold and is, from 1 April 2013, £77,000.

HMRC may also permit a business to be exempted from registration if it makes or will make mainly zero-rated supplies, so that it would normally recover VAT from HMRC rather than pay it.

Voluntary registration

A business can register for VAT voluntarily as long as it makes or will make some taxable supplies. It may have to provide evidence of an intention to make taxable supplies.

Deregistration

You must de-register for VAT if you cease making all taxable supplies.

You can de-register for VAT if you can satisfy HMRC that your taxable turnover will drop below the de-registration threshold in the next 12 months. HMRC will also permit a business to be exempted from registration on the grounds of making mainly zero-rated supplies even after it has been VAT registered.

VAT periods

Quarterly returns VAT returns are normally submitted quarterly. The period of four quarters ending (normally) on 31 March, 30 April or 31 May is referred to as the VAT year.

Monthly returns You can request monthly VAT returns. As explained in section 3, monthly VAT returns may be advantageous for academies from a cash flow perspective.

Varying return periods You can ask HMRC to time VAT returns to coincide with your financial year and this is usually helpful in allowing a more straightforward reconciliation between the statutory accounts and VAT returns. You can also request irregular periods or periods ending other than at a month end. However any variation to normal quarterly returns is at HMRC's discretion.

Pre-registration VAT

You can recover input VAT on pre-registration purchases for:

- Goods that have been purchased for taxable activities and are still 'on-hand' at the date of registration (for example as fixed

assets or stock), providing they were not purchased more than four years prior to registration.

- Services supplied up to six months prior to the date of registration. The services must have been supplied for a taxable activity and not re-supplied before registration.

VAT groups

It is possible for different legal entities to share the same VAT registration, in effect to be treated as one entity for VAT purposes. This is referred to as a VAT group. In order for entities to form a VAT group the following conditions must all be met:

- Each entity must be a 'body corporate'. Body corporates include companies limited by shares, companies limited by guarantee and LLPs.
- Each body corporate must either be established in the UK or have a fixed establishment in the UK. Fixed establishment means a permanent presence with sufficient human and technical resources to make or receive supplies.
- The bodies corporate must be under common control. This means one group member controls the rest (directly or indirectly) or all group members are subject to common control from outside the group.
- If the level of business supplies made by the group (excluding any intra-group supplies) exceeded £10 million in the last year or is expected to exceed £10 million in the following year, various anti-avoidance conditions must also be met.

The main advantages of forming a VAT group are:

- High levels of taxable activity in one group entity can boost VAT recovery in other group entities.
- Intra group supplies are normally ignored for VAT purposes. This means group members do not have to charge each other VAT on such supplies and they do not count for partial exemption purposes.
- Simplified administration – there is only one VAT return to complete.

Where organisations form a VAT group one of the members (the 'representative member') is seen as making and receiving all the group's external supplies and is responsible for submitting the group's VAT returns. However, where the VAT status of a supply depends on the status of the customer or supplier, it is the status of the actual group member making or receiving the supply that counts.

For example, if an academy is in a VAT group with a non-charity, then a supply of advertising to the group will only be VAT zero-rated if the advert is for the academy.

3 s33b VAT refund scheme

This section explains the special VAT refund scheme for academies, how it works and the transitional arrangements for 2010/11.

Scope of the scheme

Normally, providing goods or services for free is not seen as a business activity and any VAT incurred by the activity cannot be recovered.

Local authorities and local authority schools (via their devolved budget) can claim a refund for the VAT they incur in their non-business activities. This is a special refund scheme referred to as the 'section 33 refund scheme' or 's33 scheme'.

Academy and free schools are not part of the local authority and as a result cannot use the local authority's s33 refund scheme. Up to 1 April 2011, the YPLA provided grant funding intended to compensate academies for this.

From 1 April 2011, the law has been amended to allow academies to obtain a refund for the VAT they incur in their non-business activities. They do it under the 'section 33b refund scheme' or 's33b scheme'. This is similar to the s33 scheme but different in important ways. A key difference is that academies must make the claims themselves, directly to HMRC, rather than via their local authority.

Transitional arrangements

The s33b scheme applies to academy transactions dated on or after 1 April 2011, though claims can only be made from Royal Asset of Finance Act 2011 – 19 July 2011. The YPLA will continue to pay a sum equivalent to VAT grant for the period from April to August 2011 to academies that have already been notified of a VAT grant funding allocation for academic year 2010/11, and will then reclaim this from academies by 31 March 2012.

Newer academies, which have not been notified of a VAT grant entitlement for academic year 2010/11, will be able to claim their eligible VAT cost from the HMRC from 19 July 2011 and so will not be subject to any VAT grant clawback by the YPLA.

Claims time limit

A s33b claim must be made within 4 years of the supply date. For example, if the supply tax point is 3 June 2011, the claim for the VAT on that supply must be made before 3 June 2015.

Claim procedure

VAT registered academies make a s33b claim by including the refund amount in box 4 on the VAT return. Academies that are not VAT registered must contact HMRC and make arrangements for claiming refunds. Claims must be made on form VAT 126. This requires listing the supplier invoices in respect of which a claim is being made, including each supplier's VAT registration number.

VAT 126 claims cannot be made more frequently than once per month and must cover a period ending at the end of a calendar month.

Monthly VAT returns

If an academy is VAT registered, its VAT returns must normally be submitted quarterly. However, a business may request monthly VAT returns. This is advantageous from a cash-flow perspective if HMRC normally pays VAT to the business rather than vice versa. Many VAT registered academies are likely normally to receive VAT refunds from HMRC as a result of the s33b scheme and therefore monthly VAT returns should give a cash flow advantage. Against this must be offset the extra work of submitting monthly VAT returns.

4 VAT recovery and refunds

This section explains how academies, both VAT registered and unregistered, should go about recovering VAT under the normal VAT rules and obtaining a refund of VAT under the section 33b refund scheme.

Definitions

Recovering VAT means the procedure by which a VAT registered business can get back the VAT it incurs on purchases that are used to make taxable supplies. Only VAT registered academies can recover VAT. VAT is recovered by entering it into box 4 on the VAT return.

Reclaiming VAT means the procedure by which an academy can obtain a refund, under the s33b scheme, for the VAT it incurs on purchases that are used in its non-business activities. Both VAT registered and unregistered academies can obtain VAT refunds under the scheme, though the procedures are different.

Directly attributable: VAT on a purchase is directly attributable to an activity type (taxable, exempt or non-business) if the purchase is used wholly in that type of activity. For example the hire of an agency teacher by an academy to provide non-business education will be directly attributable to the academy's non-business activity.

Residual VAT: VAT on a purchase is residual if it will be used for different activity types. Typically where there is mix of different types of activity, VAT on overheads will be residual. For example, if an academy provides non-business education, but also lets out rooms on a business basis, then VAT on shared gas and electricity costs will be residual.

De-minimis: A VAT registered business cannot normally recover the VAT it incurs in its exempt activities. However if the overall level of exempt activity is very small, both in absolute terms and in comparison to the level of taxable activity, then the VAT incurred in exempt activities can be recovered. In this situation the exempt activity is said to be 'de-minimis'.

How purchases are used

The ability to recover or reclaim VAT incurred on a purchase depends on how the purchase will be used and whether or not the academy is VAT registered:

Table 1

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 on purchases
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	Reclaim 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, recover VAT apportioned to exempt only if exempt activity is de-minimis, reclaim VAT apportioned to non-business use via VAT return.	Apportion between taxable, exempt and non-business use. Reclaim VAT apportioned to non-business use via VAT 126 claims

In practice academies will not always need to distinguish between VAT incurred in taxable, exempt and non-business activities.

Table 2

Types of activity undertaken	Academy is VAT registered	Academy is not VAT registered
Only non-business	N/A – cannot register	Reclaim all VAT on purchases via VAT 126 claims
Only non-business and exempt		
Only non-business and taxable	Recover and reclaim all VAT on purchases via VAT return	Apportion VAT on purchases between non-business and business
Non-business, exempt and taxable	Apportion VAT between non-business, exempt and taxable. Recover VAT on taxable and reclaim VAT on non-business via VAT return	Reclaim VAT on non-business via VAT 126 claim

VAT codes

The way some commercial accounting systems such as Sage 50 deal with VAT is by assigning a VAT code or 'T-code' to every transaction. Below is a possible Sage 50 coding system for a VAT registered charity where purchases need to be split between non-business, taxable, exempt and residual activities:

Table 3

T-Code	Description	Rate	In use
T0	Income – zero rated	0%	Y
T1	Income – standard-rated	20%	Y
T2	Income – exempt	0%	Y
T3	Income – non-business	0%	Y
T4	Purchases – not bearing VAT – used for any type of activity	0%	Y
T5	Purchases – Std rated – used wholly for taxable activities	20%	Y
T6	Purchases – Std rated – used wholly for exempt activities	20%	Y
T7	Purchases – Std rated – used wholly for non-business activities	20%	Y
T8	Purchases – Std rated – used for residual activities	20%	Y
T9	Do not use – Sage designate this code as non-VAT items	0%	N
T10	Purchases – reduced rated – used for residual activities	5%	Y

For example:

- A purchase bearing standard-rated VAT for non-business use would be coded to T7.
- A purchase bearing standard-rated VAT for residual use would be coded to T8.

At the end of every VAT period, Sage generates a VAT report listing the value of receipts and payments according to T-code and the amounts of VAT due on sales and paid on purchases. This report can then be used to determine:

- How much VAT can be reclaimed (the VAT coded to T7 and a portion of the VAT coded to T8 and T10) under the s33b scheme.
- How much VAT can be recovered (the VAT coded to T5 and a portion of the VAT coded to T8 and T10, also T6 if exempt activity is de-minimis).

To use such a system, data entry staff will need to be told the correct T-code to use for a purchase. Purchase authorisers or finance staff will therefore need to be instructed in the different types of activity for VAT purposes and how to specify T-codes for purchases. Note that all accounting packages will have a similar structure for VAT.

Attributing and apportioning VAT

Where an academy must identify how a purchase is to be used, this is a two step process:

Step 1: Direct attribution

As far as possible, directly attribute purchases to the VAT categories (taxable, exempt or non-business). A purchase is directly attributable to a VAT category if it will be used wholly in that type of activity.

Step 2: Residual VAT

The remaining VAT on purchases will be used across different VAT categories (e.g. overhead costs) and is referred to as **residual VAT**. You have to carry out an apportionment of this VAT as follows:

- If the academy is VAT registered, it must first apportion residual VAT between business and non-business activities. This is referred to as the **business / non-business method** or apportionment. If the academy has exempt activities, the residual VAT apportioned to business activities must then be apportioned between taxable and exempt activities. This apportionment is referred to as the **partial exemption method** or apportionment.
- If the academy is not VAT registered but has some business activity, it must choose a business / non-business method to apportion residual VAT between business and non-business activities. There is no need for a partial exemption apportionment.

The business / non-business method

The business / non-business method apportions residual VAT between business and non-business activities. Unless an academy has either no business activities or is VAT registered and its only business activities are taxable, an academy, whether VAT registered or not, will require a business / non-business method.

There is no prescribed approach that must be used for the business / non-business method and you do not need to obtain prior approval from HMRC for whatever method you use, though you can if you wish. You can also change methods without HMRC approval. However, the method must be fair and reasonable and be capable of being independently checked. Fair and reasonable means the method accurately reflects the way that purchases are actually used.

Probably the most common business / non-business method is to use the relative levels of business and non-business income, as

this approach works well with the ‘standard’ partial exemption method, as explained below. Under this approach the residual VAT apportioned to non-business activity would be calculated as follows:

$$\text{Non- business recovery percentage} = \frac{\text{Total non-business income in the VAT period}}{\text{Total income in the VAT period}} \times 100\%$$

This percentage must be rounded to two decimal places. In both the top and bottom parts of the above fraction you should omit sales of capital assets and incidental financial or property estate transactions including non-business bank interest. The residual VAT apportioned to non-business activity is then:

$$\text{Residual VAT apportioned to non-business activity} = \text{Non-business recovery percentage} \times \text{Residual VAT in the VAT period}$$

See the section **Special methods** for comments on possible alternative approaches to an income based method.

The Children’s Society principle

Before the High Court case Church of England Children’s Society (2005, EWHC 1692 Ch) it was widely assumed that the VAT on a charity’s costs of raising donations was attributable to those donations, and, as donations are non-business income, not recoverable. However, this case established that VAT recovery on costs of raising donations depends on how those donations are used:

- 1 If they are used wholly to support taxable activities, the VAT is recoverable in full.
- 2 If they are used wholly to support exempt activities, the VAT is irrecoverable unless exempt activity is de-minimis.
- 3 If they are used wholly to support non-business activities, for an academy the VAT can be reclaimed under the s33b scheme.
- 4 If they are used to support the general purposes of the charity, the VAT on those donations is residual and is included in the business / non-business method.

In situations 1, 2 and 3, under the ‘standard’ business / non-business method you should normally add the generated income to the relevant income stream in the apportionment. In situation 4, the donated income needs to be split between non-business, exempt and taxable with each component then being added to its respective income stream before undertaking the apportionment.

The partial exemption method

The partial exemption method apportions residual VAT relating to business activities between taxable and exempt activities. An academy will only need a partial exemption method if it is VAT registered and has exempt activities. An unregistered academy cannot reclaim any VAT it incurs in its business activities.

In contrast to the business / non-business method, there is a prescribed approach that must be used for the partial exemption method unless you have agreed, in writing, another approach with HMRC. The prescribed approach is referred to as the **standard partial exemption method**. This uses the levels of turnover on exempt and taxable supplies as the basis of apportionment. Under the standard-partial exemption method the residual VAT apportioned to taxable activity would be as follows:

$$\text{Partial exemption recovery percentage} = \frac{\text{Total taxable income in the VAT period}}{\text{Total business income in the VAT period}} \times 100\%$$

This percentage must be rounded up to the nearest whole percent unless residual VAT apportioned to business activities exceeds £400,000 per month on average, in which case it must be rounded to two decimal places. In both the top and bottom parts of the above fraction you should omit sales of capital assets and incidental financial or property transactions including bank interest. Include income net of VAT.

The residual VAT apportioned to taxable activity is then:

$$\text{The residual VAT apportioned to taxable activity} = \text{Partial exemption recovery percentage} \times \text{Residual VAT apportioned to business activity in the VAT period}$$

Special methods

The 'standard' business / non-business method and the standard partial exemption method assume that activities incur VAT bearing residual costs in proportion to their turnover or level of income. There will however be many situations in which this assumption is invalid. Where the standard partial exemption method is demonstrably unfair an organisation can ask HMRC to agree a different 'special' method.

Special partial exemption methods must be agreed in writing with HMRC and you must sign a declaration that the method is fair. There is no requirement for any business / non-business

method to be agreed with HMRC however it must be demonstrably fair and reasonable.

Special methods are usually based on the organisation's internal cost allocation or absorption procedure for management and / or statutory reporting purposes. Common approaches include:

- Headcount of staff working directly in each activity area
- Time spent by staff working directly in each activity area
- Staff cost directly incurred in each activity area
- User headcount for each activity area
- Direct expenditure in each activity area
- Number of financial transactions in each activity area
- Using figures from the organisation's audited accounts.

For large organisations with diverse activities it is possible to agree a 'sectorised method' that divides the organisation into business sectors and uses different VAT recovery methods for each sector.

De-minimis test

The de-minimis test is an aspect of the partial exemption method and so will only be of concern to VAT registered academies that have exempt activities. Two definitions are required to explain the de-minimis test:

- **Input VAT** is VAT on purchases directly attributed (step 1 above) and apportioned (step 2 above) to business activities (taxable plus exempt activities).
- **Exempt input VAT** is VAT on purchases that is directly attributed (step 1 above) and apportioned (step 2 above) to exempt activities.

Exempt input VAT cannot be recovered unless it is 'de-minimis'. This means one or more of the following tests is met in any VAT quarter:

- 1 Total input VAT is no more than £1,875 and the turnover on exempt activities is no more than 50% of the turnover on all business activities.
- 2 Total input VAT less input VAT directly attributable to taxable activities is no more than £1,875 and the turnover on exempt activities is no more than 50% of the turnover on all business activities.
- 3 Exempt input VAT is not more than £1,875 and not more than 50% of total input VAT.

If VAT returns are submitted monthly, the figure of £1,875 above is replaced with £625. Note that if test 1 is met then test 2 will automatically be met. In practice there is no need to automatically apply all the tests every VAT period. The idea is

you apply test 1 first, if that is met you are de-minimis for the period and you do not need to check the other tests. If test 1 is not met, you apply test 2 etc.

The annual adjustment

Both the business / non-business and partial exemption apportionments must be repeated at the end of the VAT year using whole year figures and, for the de-minimis test, a figure of £7,500 in place of the £1,875 figure referred to above. The purpose of the annual adjustment is to correct for seasonal variations in the levels of activity and for timing differences between the time of a purchase and its use.

If the annual figures for the amounts of VAT directly attributed and apportioned to non-business, exempt or taxable activities differ from the totals of the amounts calculated each quarter or month, then the difference must be paid to or reclaimed from HMRC either in the last VAT return of the VAT year or in the first VAT return of the next VAT year.

If an academy is not VAT registered but has business activities, it should still carry out a business / non-business annual adjustment. However, it is possible HMRC will agree no annual adjustment is necessary if the relative levels of business and non-business activity are fairly constant throughout the year or if the level of business activity is very small in comparison to the level of non-business activity.

Provisional recovery rates

A VAT registered business can use, for the partial exemption apportionment, the partial exemption recovery rate determined in the previous year's annual adjustment. This saves having to calculate the levels of taxable and exempt activity anew each quarter. At the end of the year, actual (annual) levels of taxable and exempt activity must be used to determine the true recovery rate for the year. This rate can then be used on a provisional basis during the following year.

There is, however, no explicit acceptance by HMRC that a provisional recovery rate can be used for the business / non-business apportionment. If an academy wishes to use a provisional business / non-business recovery rate it should seek agreement from HMRC beforehand.

Annual de-minimis test

A VAT registered business can also assume, for the purposes of

its partial exemption calculations, it is de-minimis if it was de-minimis in the previous year's annual adjustment. This is then corrected at the annual adjustment by applying the above de-minimis tests, using an annualised £7,500 limit.

Capital goods scheme

For most purchases, VAT recovery or reclaim depends on how the purchase is used in the VAT year of purchase and no adjustment is made for any subsequent change of use. For example if an electric drill is initially used wholly in a non-business activity, the VAT on purchase can be reclaimed under s33b. If after a year the drill is then used for an exempt activity, there is no need to adjust the initial VAT reclaim.

However, for 'capital items' the initial VAT recovery or reclaim is adjusted, over a period of 5 or 10 years depending on the type of capital item. Capital items include:

- 1 A purchase of land or buildings costing £250,000 or more
- 2 The construction of a building costing £250,000 or more
- 3 Alteration or refurbishment works to a building where the cost of capital expenditure is £250,000 or more
- 4 The purchase of a single computer, boat or aircraft costing £50,000 or more.

The adjustment period for land and buildings is 10 years and 5 years for computers, boats and aircraft.

In each case, the cost is the VAT bearing cost, that is the total of costs that bear VAT at the standard or reduced rates, and excludes any costs that are zero-rated, exempt or otherwise bear no VAT, for example supplies by unregistered businesses.

For capital items purchased or created by a VAT registered academy, the percentage of taxable and non-business use in the VAT year of purchase or first use is used for the initial VAT recovery / reclaim. This percentage is referred to as the baseline percentage. In each of the next 4 or 9 years, the percentage of taxable and non-business use is calculated. If this percentage is above the baseline percentage, VAT can be claimed back from HMRC and if this percentage drops below the baseline percentage VAT must be paid to HMRC.

Bad debts

Bad debts are dealt with as follows:

- If your customer fails to pay but you have paid the output VAT to HMRC, you can reclaim the VAT when the debt is six months or older and provided the debt has been written off in your accounts.

- If you fail to pay a supplier but have recovered the VAT on the supplier's invoice, you must repay the VAT to HMRC by six months after the invoice date.

Cash accounting scheme

The cash accounting scheme allows smaller VAT registered businesses to include VAT on the return when it is received or paid. VAT is included in the return covering the following dates:

- For a sale, when the customer pays
- For a purchase, when you pay the supplier.

For sales this is advantageous as you only pay the VAT to HMRC after the customer has paid it to you and if the customer does not pay there is no need to make a claim to HMRC for refund.

However, from a purchase perspective it is disadvantageous, you will not be able to recover the VAT until you have paid your supplier.

5 Particular activities

This section explains the VAT treatment of the following activities:

Admissions to cultural events	Letting land and buildings
Advertising	Lotteries
Breakfast and after school clubs	Mentoring fees
Building and construction service	Musical instruments
Car parking facilities	Option to tax
Catering	Printed matter
Catering contractors	Pupil accommodation
Consultancy services	School photographs
Donated goods	School proms
Education	School trips
Energy saving materials	School uniforms
Export of goods	Sport and physical education
Fundraising events	Sports facilities
Gas and electricity	Supplies of staff
Holiday clubs and activities	Supplies to pupils

Admissions to cultural events, museums, galleries, art exhibitions and zoos

Examples Entrance charges to school plays and art exhibitions
The VAT exemption applies to supplies by an 'eligible body' of a right of admission to:

- a** A museum, gallery, art exhibition or zoo or
- b** A theatrical, musical or choreographic performance of a cultural nature.

Category **b** does not include film shows as these are not performances. However in the case British Film Institute [2013] UKFTT 72 (TC), the First Tier Tax Tribunal decided that UK law is ultra-vires in restricting the scope of the cultural exemption to particular types of cultural activity, and that film shows can qualify. HMRC have appealed this decision.

Eligible bodies include academies and other charities where both the following conditions are met:

- 1** Any profits from cultural admissions are applied to the continuance or improvement of the facilities made available by means of the supplies.
- 2** All the charity trustees have no direct or indirect financial interest in the charity's activities. Paid trustees or commercial

contracts between the charity and a trustee or a person or a business connected to a trustee may block the exemption from applying, for example if the school principal or head teacher is on the board of trustees.

For school plays, art exhibitions etc where entrance charges are made, if the charges are set so as to at most break even, then condition 1 above will be satisfied. Break even can be determined on a full cost recovery basis.

Advertising

Examples Adverts for the academy in third party magazines, newspapers, billboards, adverts on third party websites and broadcast media; adverts for others in the academy's own publications, website, billboards etc.

By default a supply of advertising is VAT standard-rated.

The supply of advertising services to a charity in external media is zero-rated. This applies whether or not the charity is VAT registered. The media must belong to someone else – costs of the charity's own website, publications etc. are not eligible. The advertising can be for any purpose, for example to promote awareness of the charity, to fundraise or to recruit staff, trustees, governors or volunteers. The advertising must be aimed at the general public or a section of the general public, for example the readers of a particular magazine or newspaper. Advertising aimed at selected individuals does not qualify, for example direct marketing to named individuals.

If the advert qualifies for zero-rating then so do services of design or production of the advert and supplies of goods closely related to the design or production, for example the purchase of photographs.

There is no legal obligation on the charity to provide the supplier with a certificate though it is the supplier's responsibility to ensure the correct rate of VAT is applied and suppliers may request a declaration from the charity. However, provided the conditions are met the advert is statutorily zero-rated and a supplier cannot refuse. If a supply has mistakenly been standard-rated then the charity can ask the supplier for a VAT refund up to four years after the date of the supply.

Breakfast and after school clubs

HMRC state:

Generally, any activities run by a school for the benefit of its pupils between 8.00 am and 6.00 pm are regarded as being part of the provision of free education. Therefore, any VAT

incurred in providing these activities will be recoverable under the refund scheme.

Though HMRC do not state this, you should assume the conditions referred to in **Supplies to pupils** must be met – in particular that any charges to pupils should be on at most a break even basis.

Where charges are set to make a profit then this will probably be a VAT exempt supply of welfare. To qualify as welfare, it has to be a supply of care or protection of children or young persons.

Building and construction services

Examples Services of builders, architects, surveyors and project managers.

VAT recovery on building and construction works depends on how the result of those works will be used, not on how the works are funded:

- If the works will be used wholly for an academy's non-business activities, any VAT charged on the works can be reclaimed under the s33b scheme.
- If the works will be used wholly for an academy's taxable activities, any VAT charged on the works can be recovered in the VAT return if the academy is VAT registered.
- If the works will be used wholly for an academy's exempt activities, any VAT charged on the works cannot be reclaimed or recovered, unless the academy is VAT registered and its exempt activity is de-minimis.
- If the works will be used for a mix of exempt and taxable or non-business activities the VAT is residual and only some can be reclaimed as above. In addition if the VAT bearing costs of the capital expenditure on the works are £250,000 or more, the Capital Goods Scheme applies. See section 4 for an explanation of the Capital Goods Scheme.

When establishing whether or not building works will be used wholly for non-business activities, HMRC accept a 5% de-minimis level of business activity. So, for example, if a new school building will be used over 95% of the time it is open for non-business activities and less than 5% for business activities, HMRC should accept that it is being used wholly for non-business activities. Apportionment of use can be based on any approach that is fair and reasonable.

By default the supply of building and construction services to an academy is VAT standard-rated. However, various specific building services are zero-rated or reduced rate.

An academy can obtain zero-rating on construction services for a new building or part of a new building that will be used for a non-business activity or as residential accommodation for pupils or students.

The zero-rating includes the supply of building materials by the contractor but excludes services of architects, surveyors or other persons acting as consultant or in a supervisory capacity. Building materials means goods ordinarily incorporated into similar buildings but excludes various categories of goods such as carpets, pre-fabricated furniture (other than fitted kitchen furniture) and lifts. In order to zero-rate the building services and associated goods, the charity must give the contractor a zero-rating certificate.

In most situations where an academy undertakes building works that will be put to non-business use, the s33b refund scheme will provide more generous relief as the services of architects, surveyors etc and of goods that do not meet the definition of building materials will qualify.

See the sections:

- **Energy saving materials** for VAT reliefs for the installation of energy saving materials

Car parking facilities

Examples Car park charges, sub-letting car parks.

The leasing or letting of facilities for parking vehicles is excluded from the VAT exemption for leases or lettings of land and buildings (see the section **Letting land and buildings**) and is VAT standard-rated. Examples are:

- The leasing or letting of a garage, parking space or bay, including parking tickets.
- The leasing or letting of land specifically for the provision of vehicle parking facilities.

However, the following are not covered by the special rules for car parking facilities:

- A lease or let of land or buildings where there is no specific reference to vehicle parking facilities.
- The freehold sale of vehicle parking facilities.
- The letting of land for car boot sales.
- The lease or let of a building or part of a building together with ancillary parking facilities. HMRC accept parking facilities are ancillary if they are reasonably near the building and are from the same landlord to the same tenant.

Catering

Examples Sales of food and drink from cafeterias, canteens and cafés, sale of hot food and drink from shops and vending machines.

Special VAT rules apply to 'supplies in the course of catering'. In academies, supplies in the course of catering will include:

- Supplies of food or drink from canteens and other food outlets intended to be consumed in the canteen or food outlet.
- Supplies from vending machines, stalls or trolleys situated in a canteen or other area designated for the consumption of food and drink.
- Supplies of hot food or drink for consumption anywhere, on or off the school premises. Hot food or drink means food or drink which is hot at the time it is provided to the customer and (a) has been heated for the purposes of enabling it to be consumed hot, (b) has been heated to order, (c) has been kept hot after being heated, (d) is provided in packaging that retains heat or in any other packaging that is specifically designed for hot food, or (e) is advertised or marketed in a way that indicates that it is supplied hot.

Supplies in the course of catering will exclude:

- Supplies from vending machines not situated in areas designated for the consumption of food and drink, unless the supplies are of hot food or drink.
- Supplies of food or drinks from school shops, unless they are supplies of hot food or drinks or the shop has an area designated for consumption of the food or drink.

Sales to pupils HMRC policy is that sales of catering by an academy to its pupils are non-business provided the supply is at or below cost. Cost means the fully overhead-inclusive cost of bringing the food and drink to the pupils, including, for example, the labour costs associated with cooking hot meals. The result is that academies need not charge VAT to pupils but can obtain a refund of VAT incurred in providing the catering under the s33b procedure.

HMRC also accept, for LEA schools, that all supplies of food and drink, including from school shops and vending machines, to pupils at or below cost are non-business. However, it is not currently clear that HMRC accept the same for academies. If you sell food and drink from non-catering outlets you should check with HMRC how they should be treated for VAT purposes.

Sales to others Catering supplies and supplies of food and drink to staff and to other non-pupils, for example to visitors and persons attending community events in the evening or at weekends, are not included and all such supplies will be VAT standard-rated unless:

- The supply of catering is ancillary to something else, for example light refreshments provided with a hired out meeting room.
- The catering is for pupils or students receiving a VAT exempt supply of education. The supply of catering is then VAT exempt.

Splitting sales Where it is impossible to split non-business, exempt or taxable sales, for example sales from vending machines, then HMRC are usually prepared to agree a fixed apportionment basis.

Catering contractors

Examples Subcontracted catering, letting food providers operate retail outlets on school premises.

If an independent contractor provides catering on academy premises, then the VAT position depends on whether the contractor is acting as principal or agent.

Principal Catering contractors usually act as principal where they sell the food in their own name, control prices and control and own the stock, so they take the commercial risk from the catering activity.

Independent commercial contractors usually pay a rental charge for use of the premises – this is often set as a fixed monthly amount or a percentage of takings or a mixture of the two. If the contractor is an independent commercial business the HMRC policy for supplies of catering at or below cost will not apply. The contractor should, if VAT registered, charge standard-rated VAT to all its customers. The charge from the academy to the contractor will usually be VAT exempt as a licence to occupy premises unless the academy has opted to tax the premises in which case it will be VAT standard-rated. See the sections **Letting land and buildings** and **Option to tax**.

If the contractor is another educational establishment, for example, schools sharing a canteen facility, then it is possible both the contractor's charges to its customer and cross charges between schools will qualify for VAT exemption or non-business treatment. It will require an analysis of the actual arrangements to determine the VAT position.

Agent Catering contractors usually act as agent where the academy controls the prices, premises and stock, the sales are in the name of the academy and takings belong to the academy with the contractor in effect just providing food preparation, food serving or cash handling services to the academy. The food may be bought by the academy or by the contractor.

- Provided sales to academy pupils are at or below cost, HMRC policy is they are non-business, though sales to non-pupils such as staff will be VAT standard-rated. The academy will be able to reclaim VAT on the contractor's charges and on food if purchased directly, under s33b in respect of sales to pupils. If the academy is VAT registered, it will be able to recover VAT on sales to non-pupils.
- Where an academy sells to pupils or students receiving exempt education then the supply of catering is VAT exempt. The academy cannot reclaim VAT on associated purchases unless it is VAT registered and its exempt activity is de-minimis.

Catering staff concession Where the contractor acts as agent and uses its own staff who are employed solely to serve the academy and clearly identifies the wages element in its invoices, then by concession the contractor does not need to charge VAT on the wages element of its invoice. This concession does not apply to any staff who work in respect of more than one client, e.g. a regional or divisional manager, or where the caterer's staff carry out separate duties for the academy, that element of the supply is VATable.

Consultancy services

Consultancy services are VAT standard-rated.

Donated goods

Examples Second hand uniform shop, jumble sales of donated clothes, charity auction of donated goods.

The sale by a charity of goods donated to it for sale is zero-rated. If the charity itself uses the goods (other than in selling the goods), the zero-rating does not apply, for example the sale of donated tables and chairs that have been used in a classroom.

Also covered by the zero-rating is the sale of donated goods by a person that has agreed to give the profits from the sales to a charity. This will include sales by a charity's trading subsidiary where the subsidiary's profits are gift aided to the charity.

In selling, the charity must make the goods available to the general public or to two or more specified persons – specified persons being persons who are disabled or in receipt of jobseeker's allowance, housing benefit, council tax benefit or various other means tested benefit.

Sales that take place as a result of a prior arrangement between the donor, charity or purchaser/hirer, are excluded from zero-rating. For example, if the donor gives goods on the condition they will be sold to a specified individual.

The goods must be sold in roughly the same condition in which they were donated though HMRC accept sorting, cleaning and minor repairs are allowed. HMRC also accept that where unsold or un-saleable goods are sold to rag merchants, that sale can also be zero-rated.

Education

Education is not defined in VAT legislation, but HMRC define it as follows:

Education means a course, class or lesson of instruction or study in any subject, regardless of when and where it takes place. Education includes: lectures; educational seminars; conferences and symposia; recreational and sporting courses; and distance teaching and associated materials. If a separate charge is made for registration, this is part of the provision of education. However, education does not include admission to events such as: plays; concerts; sports meetings; and exhibitions.

Free or wholly grant funded education The provision of free or wholly grant funded education is a non-business activity. For academies this means VAT incurred in providing such education can be reclaimed under the s33b scheme. HMRC accept that other supplies that are for the direct use of the pupils receiving the grant funded education and which are closely related to education follow the education's non-business status if they are provided at or below cost. See **Supplies to pupils** for more information. Examples include catering and accommodation.

Business supplies of education Supplies of education on a business basis are VAT exempt if the supplier is an 'eligible body' or if the funding for the education is provided by the Education Funding Agency. Eligible bodies include LEA and public schools, academies, universities and charities provided the charity ring fences any profits from its business supplies of education to the continuance or improvement of such supplies.

Where an eligible body provides VAT exempt education, then the following are also VAT exempt:

- Sales for the direct use of pupils or students receiving the exempt education provided the supply is closely related to the business supply of education. Examples include catering, accommodation and transport.
- Supplies to other eligible bodies for the direct use of their pupils or students and provided the supplies are closely related to the other eligible body's exempt supply of education.
- Supplies received from other eligible bodies that are for the direct use of its pupils or students and provided the supplies

are closely related to the customer's exempt supply of education.

See the section **Supplies of staff** for supplies of staff between educational institutions.

Grant subsidised fees Where students must pay a grant subsidised fee then, according to the recent tax tribunal case Wakefield College (2011, UKFTT 70) the VAT position depends on how the grant subsidy works:

- If the level of subsidy depends on the personal circumstances of the student, for example it is means tested, then both the fee and subsidy are non-business.
- If the level of subsidy depends on other factors, such as the area the student comes from, then both the fee and subsidy are consideration for a business supply.

The case has, however, been appealed and so this decision may be overturned.

Energy saving materials

Examples Solar panels, wind turbines, bio-mass boilers.

The supply of services of installing energy saving materials in residential accommodation is VAT reduced-rate. The reduced rate extends to the energy saving materials themselves if they are supplied by the installer, however there is no reduced-rating if they are purchased separately and given to the installer.

Residential accommodation includes residential accommodation for students, pupils and staff.

Energy saving materials include: wall, floor, roof and ceiling insulation, pipe lagging, draught stripping, central heating controls including thermostatic radiator valves, hot water system controls, solar panels, wind turbines, water turbines, ground source heat pumps, air source heat pumps, micro CHP units and bio-mass boilers.

Export of goods

Examples Goods provided to partner schools outside the EU, disaster relief goods sent outside the EU.

If a charity sends goods outside the EU then this is deemed to be a zero-rated supply, even if the goods are provided for free. This means the charity can reclaim the VAT incurred in exporting the goods, for example the VAT on purchasing, storing and sending the goods.

Fundraising events

Examples Fetes, fairs, bazaars, jumble sales, concerts, plays, performances, shows, exhibitions, competitions, sports events, contests, quizzes, fireworks displays, dinners, barbecues, website events.

Supplies by a charity at a qualifying fundraising event are VAT exempt, unless they would otherwise be VAT zero-rated, in which case they are zero-rated in preference. Included are sales by the charity at the event, e.g. admissions, catering, bar, memorabilia and sales in respect of the event, e.g. sponsorship and advertising in programmes.

HMRC define an event as an incident with an outcome or a result. Activities of a semi-regular or continuous nature, such as the frequent operation of a shop or bar, cannot be an event.

To be a qualifying fundraising event, the event must meet all of the following conditions:

- a** The event must be organised by a charity or by its wholly owned trading subsidiary.
- b** The primary purpose of the event must be the raising of money
- c** The event must be promoted as being primarily for the raising of money.
- d** There must not be more than 15 events of the same kind in the same location in the charity's financial year, though small scale events where aggregate gross takings are less than £1,000 per week can be ignored in counting the number of events.
- e** The event must not involve providing a package of both travel and accommodation, or bought-in accommodation, or more than two nights' accommodation from the charity's own resources.

Gas and electricity

By default supplies of gas and electricity and other forms of fuel or power, for example coal, coke and kerosene, are VAT standard rated. However supplies for 'qualifying use' are VAT reduced-rate. Qualifying use means:

- Supplies for domestic use, or
- Supplies to a charity for its non-business activities.

Domestic use means for use in a building or part of a building that consists of a dwelling or dwellings, or that is used for a relevant residential purpose (including use for pupil or student accommodation) or use as self-catering holiday accommodation.

In addition, supplies below certain specified de-minimis limits are always deemed to be for domestic use – whatever they are in fact used for. The limit for gas is 150 therms per month and for electricity the limit is 1,000 kilowatt hours per month.

Where a supply is used partly for a qualifying use and partly not, then the whole supply is treated as qualifying if the qualifying percentage is 60% or more. If the qualifying percentage is less than 60%, the supply must be apportioned between qualifying (reduced-rate) and non-qualifying (standard-rated).

If an academy is responsible for all gas and electricity bills and sub-lets a building or part of a building to another organisation with gas and electricity use by the tenant being metered and charged to the tenant on meter readings then that is a supply of gas or electricity by the academy to the tenant whose VAT status is determined as above. However, if the gas and electricity is not separately metered, it follows the VAT status of the main rental charge. See the section **Letting land and buildings**.

Holiday clubs and activities

If holiday clubs and activities are funded entirely by grants with no fees to users this will be a non-business activity. The business basis provision of holiday clubs and activities by an academy where users must pay fees is likely to be VAT exempt. It will be a VAT exempt activity if:

- The primary purpose of the club or activity is the care or protection of children or young persons, for example, to care for children while their parents are working.
- It comprises a course or class in any subject, for example holiday top-up classes and coaching. See the section **Education**. HMRC may accept the provision of booster or supplementary classes meets the conditions for non-business treatment (see **Supplies to pupils**).
- It is a sports club or sports activity. See the section **Sport and physical education**.
- The activity is put on for its members by a youth club. Youth clubs include clubs for primary age children. The club must have its own constitution and be capable of producing its own accounts.

If an academy allows a third party provider to put on holiday clubs and activities on academy premises in return for a fee, then see the section **Letting land and buildings**.

Letting land and buildings

See also the separate sections for: **pupil accommodation, car parking facilities, sports facilities, catering contracts** and the **option to tax**.

This section considers the leasing or letting of land, buildings or parts of buildings, for example the hiring out of a hall or the sub-letting of offices to another organisation. It is important to note that there are special rules for letting car parking facilities (see

separate section), sports facilities (see separate section) and, with effect from 1 October 2012, facilities for the storage of goods. Letting property, in the VAT sense, means essentially the conferring by a landlord on a tenant, for an agreed period and in return for payment, of the right to occupy the property as if that person were the owner and to exclude any other person from enjoyment of such a right. However, this does not preclude the landlord reserving the right to visit the property, for example to carry out inspections or repairs, and a letting contract may include parts of a property which must be used in common with other occupiers, for example entrances, lobbies and toilets.

Free or peppercorn basis Letting property for free or for a peppercorn rent is non-business.

Business basis The default position for letting out property on a business basis is that the letting fee is VAT exempt unless the person providing the property has opted to tax the property, in which case see the section **Option to tax**.

If other goods or services are provided with the use of the property then this can affect the VAT status:

- 1 Optional supplies** If the goods or services are optional and only provided for an additional fee, then they are a separate supply and follow their own VAT liability. For example if a separate optional charge is made for use of equipment such as lighting / sound equipment, then that separate charge will take on its own VAT status.
- 2 Minor supplies** If goods or services are included with the let, but are minor in comparison to the right to occupy the property, then the whole letting fee remains VAT exempt. Examples are: tables and chairs provided with a meeting hall, projection facilities for a conference hall, tea and biscuits at a break time, routine cleaning after an event.
- 3 Further consideration for the principal supply** Where separate charges are made under the terms of the lease or licence agreement and must be paid whether or not the tenant uses the services charged for, then that charge is normally seen as following the VAT status of the main lease / letting fee. Examples include:
 - Service charges for maintenance of the external fabric or the common parts of the building that are paid for by all the occupants through a common service charge.
 - Charges for shared reception, switchboard or mail room services.
 - Office services, such as typing and photocopying where one inclusive charge is made for office services and accommodation together, and the tenants are expected to

pay for the services regardless of whether they actually use them. However, if a separate charge is made depending on use, that is a separate standard-rated supply.

- 4 Unitary charge** HMRC's view is that where a PFI school transfers to academy status and the transfer agreement provides the academy must pay its share of unitary charges, this will not normally be further consideration for the principal supply, but consideration for supplies in their own right, for example of property management or IT services. Each situation must be judged on its own facts.
- 5 Gas, electricity and water** Where gas, electricity or water are provided under the terms of the letting agreement, the VAT position depends on how they are charged. If they are provided via a secondary meter, then HMRC regard that as a separate supply. See the section **Gas and electricity** for supplies of gas and electricity. Most supplies of water and sewerage services are zero-rated. If the supplies are not separately metered then HMRC policy is the supplies follow that of the main letting fee.
- 6 Active lets** If goods or services are included with the let but they are not minor in comparison to the licence to occupy / right over the property, then they may make the whole let VAT standard-rated. For example the hire of a staffed and serviced theatre for a performance with sound / lighting equipment and technicians, box office services and security is likely to be considered a wholly VAT standard-rated supply.
- 7 Vending machines** Where a commercial supplier places a vending machine on academy premises, stocks the machine and keeps the takings in return for a siting fee, then that siting fee is VAT standard-rated. It is not regarded as an exempt licence to occupy land.

Lotteries

Fees from the sale of lottery tickets are VAT exempt. However the value of the total supply is the gross ticket proceeds less the value of cash prizes given and less the VAT inclusive cost of goods or services given away as prizes.

Mentoring fees

Fees charged to universities for providing placements for trainee teachers are likely to qualify as an exempt supply of vocational training.

Musical instruments

HMRC accept that the sale or hire of musical instruments to pupils for use in school music lessons or for use in a school orchestra is non-business provided supplied at or below cost. See the section **Supplies to pupils**.

Option to tax

If a landlord 'opts to tax' land or a building then the sale, lease or letting of that property normally becomes VAT standard-rated rather than VAT exempt. However, a landlord's option to tax can be 'disapplied' for particular uses of the property:

- For a building or part of a building intended for use for a relevant charitable purpose, but excluding use as an office. Relevant charitable purpose means use by a charity for non-business or as a village hall or similarly in providing social or recreational facilities for a local community. This will include use by an academy for the provision of grant funded education. The landlord / vendor must be provided with a certificate disapplying their option. HMRC define use as an office to mean use 'as an office for general administration for example, head office functions of the charity'. This is usually taken to mean that a charity cannot disapply an option to tax in respect of offices that will be used for managing and administering the charity as a whole but offices used exclusively for administering non-business activities can be disapplied.
- For a building or part of a building that is designed or adapted and is intended for use as a dwelling or number of dwellings or for a relevant residential purpose. Relevant residential purpose includes use as residential accommodation for students or school pupils.
- For a building or part of a building that will be converted into a dwelling, number of dwellings or for a relevant residential purpose. The customer must give the landlord a certificate confirming the intended use.

Even if a landlord's option to tax can be disapplied, it may be disadvantageous for an academy to do so. Commercial lease and tenancy agreements may contain a clause specifying that the stated rent is gross of any VAT. This means that if the landlord's option to tax is disapplied, the rent actually charged remains the same. In such a situation an academy using the property for its non-business activities would be better off not disapplying the landlord's option to tax and reclaiming the VAT via the s33b procedure.

Printed matter

Examples Books, newsletters, yearbooks.

The supply of various types of printed ('paper') matter is VAT zero-rated. However the zero-rating does not extend to electronic publications. Zero-rated printed matter includes:

- Books, booklets, brochures, pamphlets and leaflets
- Newspapers, journals and periodicals
- Children's picture books and painting books
- Music (printed, duplicated or manuscript)
- Maps, charts and topographic plans but not architectural drawings.

The following are excluded from zero-rating:

- Exercise books, diaries, address books, stamp albums, accounts books, forms – items with more than 25% of the area for completion generally do not qualify for zero-rating
- Posters, framed maps etc whose primary purpose is decorative
- Photographs and albums of photographs
- Calendars, playing cards, games
- Stationery: envelopes, folders, index cards, labels etc.

Note that sales of some items to pupils may qualify for non-business treatment. See **Supplies to pupils**.

Pupil accommodation

Examples Provision of boarding accommodation to pupils.

HMRC policy is that accommodation provided to academy pupils in the course of their education and at or below cost is non-business. The academy should not charge VAT and any VAT incurred in providing the accommodation can be reclaimed under the s33b procedure.

If the at or below cost condition is not met, the provision of pupil accommodation is VAT exempt.

School photographs

The VAT position of the sale of school photographs to a parent depends on who is supplying the photographs to the parent. This in turn depends on who owns or has title to the photos.

Photographer supplies photos to parents If the school does not take title to the photos, so the sale of photos is direct from the photographer to the pupil, then the photographer is responsible for paying HMRC any VAT due on the photographs. Normally the school will collect the photo charges but deduct a commission for use of school resources, publicity, handling payments etc. This commission is a taxable supply by the school to the photographer and if the school is VAT registered it must pay over standard-

rated output VAT to HMRC on this commission. Any VAT incurred by the school in making this supply to the photographer is recoverable if the school is VAT registered but cannot be reclaimed under s33b if the school is not VAT registered.

School sells photos to parents If the photographer sells photos to the school which the school takes title to and then sells, this is a standard-rated taxable supply of photos by the school. If the school is VAT registered it must charge VAT but it can recover any VAT incurred in purchasing the photos. If the school is not VAT registered it cannot reclaim any VAT charged by the photographer under s33b.

If the photographer is VAT registered but the school is not, then in some situations HMRC may direct the photographer to account to HMRC for VAT on the retail selling price rather than the photographer's wholesale price to the school. HMRC will do this where the photographer's name, trading style or trademark are involved throughout the sales chain, for example where the school uses the photographer's catalogues, price lists, order forms and stationery. This is regarded as a quasi-sale by the photographer direct to the parent.

School proms

Ticket charges for school proms are likely to be VAT standard-rated but it will always be necessary to consider what the ticket entitles the attendee to.

School trips

Examples Field trips, skiing trips.

HMRC states in its LEA school guidance:

'in practice, regardless of the precise nature of the activity, any school trips that a school organises for the benefit of its pupils are for a broadly educational reason and further the aims of the wider curriculum of the school. An LEA can therefore treat them as part of its non-business provision of education.'

School uniforms

HMRC do not accept that the sale by a school of items of school uniform is closely related to the supply of education and hence such sales are not eligible for the non-business treatment explained in the section **Supplies to pupils**. Sales of items of school uniform therefore follow their normal VAT statuses:

- The sale of donated uniform items by an academy, for example the sale of donated second hand uniforms, is VAT zero-rated. See **Donated goods**.
- The sale of items of clothing or footwear designed for young

children and not suitable for older persons is VAT zero-rated, though certain items made wholly or partly from fur are excluded. HMRC accept that items below certain specified sizes are designed for young children, broadly under 14 year old garment sizes – see VAT Notice 714 for details.

- HMRC also accept that items of uniform, of any size, supplied to a school or club catering exclusively for under 14 year olds can be zero-rated. To qualify the items must be designed exclusively for the organisation (e.g. bear a logo), worn only by under-14s, and clearly identifiable to the organisation.

Sport and physical education

Examples Membership of sports clubs; admissions to swimming pools, gymnasiums, golf courses; charges for playing, competing, participating, refereeing, umpiring, judging, coaching or training.

The business supply by an 'eligible body' to an 'individual' of 'services closely linked with and essential to sport or physical education' is VAT exempt.

There are four conditions that must all be satisfied for a supply to be VAT exempt:

- 1 Eligible body** The supplier must be an eligible body. Eligible bodies include charities. Other non-profit making bodies can also qualify though the eligibility conditions are complicated.
- 2 Recipient** UK law, but not EU law, puts two conditions on the recipient:
 - They must be an individual (i.e. a natural person, not a legal person such as a company or partnership). However, the European Court of Justice has decided that this requirement of UK law is ultra vires. It does not matter who the material recipient of the services is, just that the true beneficiary of the services is a person taking part in sport. HMRC now accept that supplies to non-profit making clubs and associations qualify and that supplies to corporate bodies can also qualify (see Revenue & Customs Brief 15/10).
 - Where the eligible body has a membership scheme, only supplies to individuals with memberships lasting 3 months or more qualify for VAT exemption. The UK Tax Tribunal has recently decided this condition is also ultra-vires (Bridport & W Dorset Golf Club) however HMRC has refuted this decision and announced its intention to appeal (Revenue & Customs Brief 30/11). The position with day memberships and other memberships lasting less than 3 months is therefore unclear at present (September 2013).
- 3 Sport or physical education** There must be some activity taking place that is 'sport or physical education'. In VAT Notice 701/45 HMRC provides a long list of activities they accept as being sport

or physical education. This includes: angling, athletics, basketball, billiards, bowls, boxing, canoeing, caving, martial arts, cricket, cycling, dance, darts, equestrian, exercise and fitness, fencing, field sports, golf, gymnastics, ice skating, lifesaving, motor sports, mountaineering, orienteering, pool, rambling, roller skating, rowing, rugby, sailing, shooting, skateboarding, skiing, surfing, swimming, tennis and yoga. HMRC say if an activity is not included on this list you can write with full details of the activity and they will consider if it qualifies.

4 Services ‘closely linked with and essential to’ The supply must be of services that are closely linked with and essential to the sport or physical education. HMRC accept that the following qualify – fees for playing, competing, participating, refereeing, umpiring, judging, coaching or training, and fees for ancillary services such as use of showers, changing rooms, equipment, storage of equipment and use of equipment repair facilities.

HMRC now accept that charges for all inclusive leisure cards to a leisure centre run by an eligible body are VAT exempt provided the main reason for the typical customer in purchasing a leisure card is to access sporting or physical education facilities.

Sports facilities

Examples Hiring or letting out football pitches, sports halls, tennis courts.

The letting of facilities for playing sports or physical recreation is excluded from the VAT exemption for the letting of land and buildings and is VAT standard-rated with two exceptions as explained below. HMRC define sports facilities as follows:

Premises are sports facilities if they are designed or adapted for playing any sport or taking part in any physical recreation, such as swimming pools, football pitches, dance studios and skating rinks. Each court or pitch (or lane in the case of bowling alley, curling rink or swimming pool) is a separate sports facility

The two exceptions are:

- 1 Long lets** Where the letting is for a continuous period exceeding 24 hours. The person to whom the facilities are let must have exclusive control of them throughout the letting period.
- 2 Series of lets** A series of 10 or more lets where the following conditions are all satisfied:
 - Each period is in respect of the same activity carried on at the same place. However, HMRC accept that the provision of a different pitch, court or lane, or different number of

pitches, courts or lanes is acceptable where there are a number of pitches, courts or lanes available.

- The interval between each period is not less than one day nor more than 14 days. The hire periods do not all have to be of the same duration.
- The consideration is payable by reference to the whole series and is evidenced by written agreement. The payment must be made in full even if the hirer does not use some sessions though this does not preclude a refund if the facility is unavailable for some unforeseen reason.
- The hirer has exclusive use of the facilities during the letting periods.
- The hirer is a school, club, an association or an organisation representing affiliated clubs or constituent associations.

Where conditions 1 or 2 are met, then the letting fee remains VAT exempt unless the facility provider has opted to tax the facilities. If the facility provider has opted to tax the facilities the letting fee is VAT standard-rated, unless the hirer disapplies the provider's option to tax. See the section **Option to tax** for information on when an option to tax can be disapplied.

An academy school hiring third party sports facilities as part of its provision of grant funded education will be able to disapply a facility provider's option to tax. However, this may be disadvantageous for the academy. If the hirer's contract specifies that the fee is the same whether or not VAT is applied, then the academy would be better off paying the VAT and reclaiming the VAT under the s33b procedure.

Supplies of staff

Examples Supplies of staff to an academy, e.g. agency teaching staff, cleaners, cooks and staff secondments. Supplies of staff by an academy, e.g. secondment of staff to other schools.

The VAT position of supplies of staff is complex and still the subject of legal dispute. A supply of staff takes place where the supplier's staff are placed under the direction and control of a customer in return for a fee. This is in contrast to the situations where:

- The staff remain under the direction and control of the supplier. Then it is a supply of whatever services the staff are performing for the customer. For example, if a contract cleaner provides staff with equipment and retains responsibility for the quality of the work, staff discipline etc this is likely to be seen as a supply of cleaning services, not of staff.
- The supply is of introductory services – for example, fees from recruitment agencies that assist with locating and appointing permanent staff.

The basic position is that a supply of staff is VAT standard-rated, however, there are many exceptions and concessions:

- 1 Joint contract of employment** If the staff member is under a joint contract of employment between the two parties there is no supply when one party charges the other for payments made on its behalf.
- 2 Agency temps** HMRC accept that supplies of nurses by nursing agencies are VAT exempt, that includes both the nurse's salary cost and agency commission. Until 31 March 2009, HMRC accepted that, under the 'staff hire concession', suppliers of agency staff could structure arrangements so VAT was only due on the commission element, not the salary element of the agency fee. Since then, HMRC has insisted VAT is due on the full amount charged by the agency (salary plus commission), though the recent tax tribunal case *Reed Employment (2011, UKFTT 200)* suggests this may be wrong, with VAT being due only on the commission element. However, HMRC has rejected this interpretation (see Revenue & Customs Brief 32/11). For academies using agency staff in their non-business activities this should not matter too much as any VAT charged can be reclaimed under s33b.
- 3 Supplies between schools** For supplies of staff between schools, HMRC state (in their internal guidance V1-14: Government and public bodies):

The supply of teaching staff, including classroom assistants, by one eligible body to another for provision of education qualifies as an exempt supply of education ... In addition to local authorities, eligible bodies include universities, further education colleges, schools (as defined in law), health authorities, Government Departments, and non-profit making organisations that meet certain criteria.

- 4 Supplies between charities** HMRC also accepts by concession that income from the hire or loan of staff from one charity or voluntary organisation to another can be treated as non-business and outside the scope of VAT. This would include the secondment of a teacher from one academy to another. This is subject to the following conditions:

- The employee has been engaged only in the non-business activities of the lending charity/organisation and is being seconded to assist in the non-business activities of the borrowing charity/organisation; and
- The payment for the supply of the employee's services does not exceed the employee's normal remuneration.

A voluntary organisation is a body that operates otherwise than for profit, but does not include any public or local authority. Normal remuneration means the total costs incurred by the lending charity/organisation in employing the member

of staff including National Insurance and pension scheme contributions etc.

The exclusion of public and local authorities means that secondments from academies to LEA schools are not covered by the concession. However such secondments may qualify for VAT exemption under point 3 above.

- 5 Secondment concession** HMRC also accepts by concession that payments for secondments in general can be ignored for VAT purposes if the following conditions are all met:
- The recipient must exercise exclusive control over the allocation and performance of the employee's duties during the period of secondment.
 - The recipient must be responsible for paying the employee's remuneration directly to the employee; and/or discharges the employer's obligations to pay to any third party PAYE, NICs, pension contributions and similar payments relating to the employee.
 - The placing of the employee is not done with a view to financial gain. HMRC accept any secondary effects such as improved employee skills, does not count as financial gain.
- 6 Catering staff concession** Another HMRC staff related concession applies to catering staff provided by catering contractors acting as agent. This is explained in the section **Catering contractors**.

Supplies to pupils

Examples Lunches, stationery, photocopying, school shops, school trips, musical instruments.

The broad HMRC position is that sales to academy pupils that meet all of the following conditions are non-business:

- 1 The sale is by the academy and not by a trading subsidiary or another body.
- 2 The sale is at or below cost. Cost can be determined on a full cost recovery basis.
- 3 The sale is closely related to the non-business provision of free education. See below for items that HMRC consider to be closely related.
- 4 The goods or services are for the direct use of a pupil receiving free education.

Where a sale meets all of these conditions no VAT is chargeable but any VAT incurred in making the sale can be reclaimed under the s33b procedure.

HMRC accept that, for academies, the following meet the closely related condition (condition 3 above):

- Catering for pupils. See the section **Catering**.

- Charges for accommodation at boarding schools. See the section **Pupil accommodation**.
- Charges for breakfast and after school clubs. See the section **Breakfast and after school clubs**.
- The sale or hire of musical instruments for use in lessons or school orchestras. See the section **Musical instruments**.

HMRC accept that the following meet the 'closely-related' condition for local authority schools. It is not yet clear that HMRC accept the following meet the 'closely-related' condition in the context of an academy school. However, it is difficult to see why the VAT status should vary between the two:

- School trips. See the section **School trips**.
- Transport provided in connection with the provision of free education, for example charges for school buses and minibuses
- All sales of food and drink, including for example sales in school shops and vending machines. However, HMRC do not accept the non-business treatment can apply where the sale is by a catering contractor acting as principal.
- Sales of closely related goods and services supplied direct to the pupils of other schools and to the students or trainees of eligible bodies such as FE colleges and universities. For example, if the school shares a catering outlet with another educational institution, it should not charge VAT on the meals it provides direct to the pupils or students of that institution. However, if the school supplies catering to another educational institution under contract, with that institution then charging its pupils or students for the catering, this is not covered by the non-business treatment.

HMRC do not accept the following are closely related to the provision of free education:

- The sale of school photographs. See the section **School photographs**.
- Charges for holiday clubs and activities. See the section **Holiday clubs and activities**.
- Sales of school uniforms. See the section **School uniforms**.

6 Further information

This section explains where academies can obtain further information on VAT issues.

HMRC guidance

s33b scheme for academy schools: **VAT Information Sheet 09/11**

s33 scheme for local authorities: **VAT Notice 749, V1-14: Government and public bodies**

Charities: **VAT Notice 701/1, V1-9: Charities**

Land and buildings: **VAT Notice 742, V1-8: Land and property**

Education: **VAT Notice 701/30, V1-7 Chapter 21: Education**

Partial exemption: **VAT Notice 706**

Legislation

VAT Act 1994: <http://www.legislation.gov.uk/ukpga/1994/23/contents>

EC Directive 2006/112: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2006L0112:20110101:EN:HTML>

Sayer Vincent publications

Sayer Vincent **made simple guides**: http://www.sayervincent.co.uk/publications/made_simple_guides

These are all written specifically for charities and include:

- VAT made simple
- SORP made simple
- Trading issues made simple
- Reserves policies made simple
- Risk management made simple
- Information security management made simple
- IT strategy made simple

A Practical Guide to VAT for charities and voluntary organisations Kate Sayer and Alastair Hardman

3rd edition, Directory of Social Change

ISBN 978-1-903991-91-6

Appendix *Basics of VAT*

For academy staff and governors who are unfamiliar with VAT, this appendix provides a brief introduction to VAT. It explains: how VAT works, the meaning of input VAT and output VAT the concepts of supply, business and non-business, taxable and exempt and the different rates for taxable supplies – the standard-rate, the reduced rate and the zero-rate.

How VAT works

VAT is a sales tax charged by businesses on certain goods and services they provide. When a sale is subject to VAT, you must add VAT to your customer invoices ('output VAT') and pay this VAT over to HM Revenue & Customs ('HMRC').

However, you are allowed to deduct from the payment to HMRC the VAT you incur in making your VATable sales so you only have to pay over the net amount. Deducting VAT charged by suppliers is referred to as 'recovering VAT' and the VAT incurred on purchases is referred to as 'input VAT'.

Example Tables Ltd sells a table to Mr Smith for £100 + VAT of £20. To make the table, Tables Ltd spends £50 + VAT to buy the wood for the table from Wood Co:

	VAT due to HMRC
Sell table to Mr Smith for £100 + £20 output VAT	£20
Buy wood for £50 + £10 input VAT from Wood Co	(£10)
Net VAT due to HMRC	£10

Output VAT and input VAT

Output VAT is the VAT you charge to you customers. You only charge your customers output VAT if you are VAT registered and if you make particular types of sale

Input VAT is the VAT you incur on your purchases

Meaning of supply

The VAT rules only apply where a 'supply' takes place. This broadly means that one person, 'the supplier' provides another person, 'the customer', with goods or services in return for

'consideration'. To be 'in return for' there must be a direct link between the goods or services provided and the consideration received, and there must be a legal relationship between the supplier and the customer pursuant to which there is reciprocal performance.

In the above example, Wood Co supplies wood to Tables Ltd for consideration of £50 + VAT. In turn Tables Ltd supplies a completed table to Mr Smith, the consideration there being £100 + VAT.

No supply situations

As VAT only applies to transactions that are 'something given in return for something else' this means VAT does not normally apply to things that are done in return for nothing, for example:

- Goods or services are given away for free (there is no consideration)
- Consideration is paid but nothing is received in return, e.g. grants, donations and gifts

Consideration

Consideration is usually in the form of money, but it can also be by way of barter. For example, if Tables Ltd bartered the table for a supply of wood from Wood Co, the barter transaction would comprise two supplies for VAT purposes:

- A supply of wood from Wood Co to Table Ltd
- A barter supply of a table by Table Ltd to Wood Co

So both businesses would have to charge and account for output VAT.

Deemed supplies

In a few situations a supply is deemed to exist even if it does not in real life. One such situation is where a business has recovered VAT on goods but then gives those goods away. This would not normally be seen as comprising a supply as there is no consideration.

To prevent abuse of the VAT system, the business is deemed to be making a supply of the goods. This allows HMRC to get back the VAT the business recovered on the goods. For example, if Tables Ltd reclaimed the input VAT on the wood but then gave the table to Mr Smith as a gift, it would be deemed to be making a supply of the table and it would have to pay HMRC output VAT on the deemed supply.

Business and non-business

Not all supplies are subject to VAT. It is only those supplies made 'in the course or furtherance of a business' that are caught by the VAT rules. The UK courts have established various tests that are used to indicate whether or not an activity is business or non-business. These are often referred to as the Morrison's Academy or Lord Fisher tests after the cases that first expressed them:

- a** Is the activity a serious undertaking earnestly pursued?
- b** Is the activity pursued with reasonable continuity?
- c** Is the activity substantial in amount?
- d** Is the activity conducted regularly on sound and recognised business principles?
- e** Is the activity predominantly concerned with the making of taxable supplies to consumers for a consideration?
- f** Is the activity such as consists of taxable supplies of a kind commonly made by those who seek to make profit from them?

Not all tests carry equal weight and test **e**, the 'predominant concern test' is the most important. If test **e** fails then that is a strong indicator the activity is non-business.

Exempt supplies

If a supply is a business supply then it is in principle subject to VAT. However, certain types of business supply are exempted from the VAT rules – these are referred to as 'exempt supplies'. When a supply is VAT exempt, no VAT is charged, but any VAT incurred in making the supply cannot be recovered unless it is 'de-minimis'. The de-minimis rules are explained in the section **VAT recovery and refunds**.

Exempt activities fall into two broad categories:

- 1 Exemptions for activities in the public interest** These include supplies of health, welfare, education, vocational training, cultural and sporting services. Several of these are of relevance to academies and are explained in the section **Particular activities**
- 2 Other exemptions** These include supplies of financial and insurance services, betting, lotteries and other forms of gambling, the sale of interests in land and buildings and the leasing or letting of immovable property. The section **Particular activities** explains the exemption for letting property.

Taxable supplies

If a business supply is not covered by any of the VAT exemptions, then it is referred to as a 'taxable supply'. If you make taxable supplies then:

- If the total turnover on all taxable supplies exceeds the VAT registration threshold, you must normally register for VAT with HMRC. See the section **Registering for VAT**.
- Once you are registered for VAT you must charge your customers VAT at the appropriate rate and pay this VAT over to HMRC.
- You can recover from HMRC the VAT you incur in making taxable supplies. Input VAT is recovered by deducting it from the output VAT that must be paid to HMRC and only paying over the net amount. If recoverable input VAT exceeds output VAT HMRC will pay you the difference.

Standard-rated, reduced-rate and zero-rated supplies

There are currently three rates of VAT in the UK:

- **The zero-rate** Zero-rated supplies are taxable but at a rate of 0%. This means VAT is not charged to the customer but VAT incurred in making the supply can be recovered. This is in contrast to exempt supplies where no VAT is charged to the customer, but VAT incurred in making the supply can only be recovered if it is de-minimis. Zero-rated supplies include: certain printed matter such as books and booklets; children's clothing and footwear; certain foods for human consumption; and certain supplies of passenger transport. Key zero-rated supplies are explained in more detail in the section **Particular activities**.
- **The reduced rate** Currently 5%. The reduced rate applies (amongst others) to certain supplies of fuel and power; certain supplies of welfare advice and information and certain supplies of energy saving materials.
- **The standard-rate** Currently 20%. The standard rate applies to all taxable supplies that are not covered by any of the zero-rates or reduced rates.

Tax points

VAT on a supply is normally included in the VAT return that covers the supply's tax point. The tax point of a supply is determined as follows:

- The basic tax point for a supply of goods is when the customer takes possession of the goods and for a supply of services, when the services are completed.
- However, if the supplier issues an invoice within 14 days after the basic tax point, the tax point for the supply moves to the invoice date.
- If, before the basic tax point, the supplier issues a VAT invoice

or receives a payment (full or part), this creates an actual tax point when the invoice is issued or payment received.

For example, if a supplier contracts to supply services on 31 August for £500 + VAT, the basic tax point will be 31 August. If the customer pays a deposit of £100 + VAT on 21 August, this creates an actual tax point on 21 August for the £100 + VAT. If the supplier issues an invoice for the balance of £400 + VAT on 10 September, then as this is within 14 days of the basic tax point, the tax point for the £400 + VAT will be 10 September.

There are special tax point rules for particular types of supply and situation. These include continuous supplies, supplies of land and buildings and when there is a change in the rate of VAT.

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