

Tax issues for arts organisations

made simple



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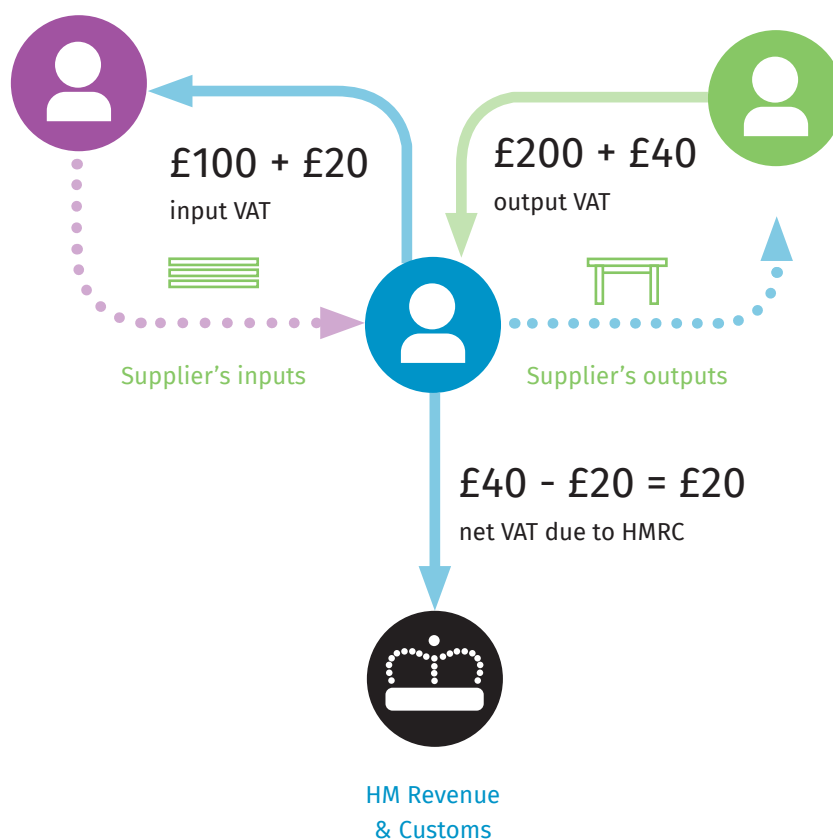
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VAT background

VAT is a type of sales tax that applies at a transaction level. When a transaction is subject to VAT:

- The supplier adds VAT (at the appropriate percentage rate) to the selling prices of his taxable supplies (or outputs) and charges this VAT to the customer. This is referred to as the supplier's output VAT. The supplier collects this output VAT from the customer and pays it over to HMRC.
- The supplier can recover from HMRC the VAT charged by its own suppliers on the purchases (or inputs) that it uses to make its taxable supplies. The VAT charged on inputs is referred to as the supplier's input VAT.
- The supplier has to pay HMRC the net amount, output VAT less input VAT. If input VAT exceeds output VAT, the supplier receives a VAT refund from HMRC.

Example for a table manufacturer



Scope of VAT

However, not all transactions are subject to VAT. For a transaction to be subject to VAT three conditions must all be met:

- 1 The transaction must be a **supply**.
- 2 The supply must be made in the course or furtherance of a **business activity**.
- 3 It must not be an **exempt supply**.

Meaning of supply

A person makes a supply when they provide goods or services in return for consideration. Consideration is usually monetary but can also be by way of barter. For example, if a theatre sells a ticket to a performance for £10, the theatre is providing a service (a right of admission to the performance) in return for consideration of £10. The theatre is therefore making a supply.

Grants and donations are not usually supplies as there is usually no obligation to provide goods or services in return for their gift.

Similarly, if goods or services are provided for free, this is not usually seen as a supply.

However, transactions between connected parties are subject to closer scrutiny and there may be a deemed supply at open market value.

Business and non-business

To be a business supply, a supply must be made in the course or furtherance of a business activity.

Business activities are defined to include:

Exempt supplies

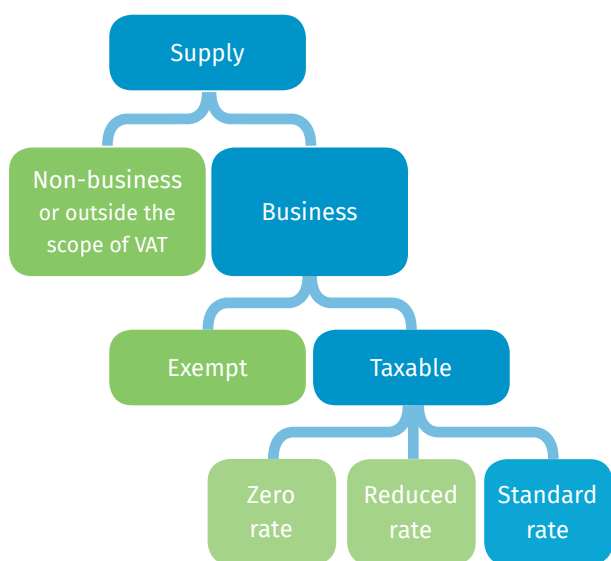
Some types of business supply are exempted from VAT. If a supplier makes an exempt supply they do not charge their customers any output VAT and they cannot recover any input VAT incurred in making those supplies (unless the overall level of exempt activity is very small – the de-minimis rule). Exempt supplies of potential relevance to arts organisations include:

- Cultural admissions: the supply of admission rights to a museum, gallery, art exhibition, zoo or a theatrical, musical or choreographic performance of a cultural nature.
- Education and training: supplies of education, vocational training, research and examination services.
- Fundraising event: supplies in connection with qualifying fundraising events.
- Land transactions: the sale, lease or letting of land and buildings.

Each of these exemptions is subject to conditions and is considered in more detail below.

Taxable supplies

If a business supply is not an exempt supply, then it is a taxable supply and is subject to



VAT if the supplier is or should be registered for VAT. The supplier must add VAT at the appropriate rate to their selling prices and can recover any input VAT incurred in making the taxable supplies. The UK has three rates of VAT: the zero rate (0%); the reduced rate (5%); and the standard rate (20%).

Zero-rated supplies

If a supply is zero-rated, no output VAT is added to the selling price but input VAT incurred in making the zero-rated supply can be recovered. This is usually considered to be the most favourable VAT treatment of all. Potential zero-rated supplies by arts organisations include:

- Printed matter: sales of printed publications such as programmes, catalogues, books, booklets, newsletters, journals, printed music, maps, charts and topographic plans. However the following do not qualify for zero-rating: electronic publications, posters, stationery, address books, diaries and calendars.
- Children's clothing and footwear, for example children's t-shirts. Under 14 years sizes are generally regarded as children's and 14 years or over as adult sizes.
- The sale of donated goods by a charity, for example personal goods donated for sale in a charity shop or at a charity fundraising auction.

Standard-rated supplies

Taxable supplies that are not covered by any of the zero or reduced-ratings are subject to VAT at the standard-rate. Potential standard-rated supplies by arts organisations include:

- Catering in restaurants and bars.
Catering is any food or drink supplied for consumption on the premises on which

it is supplied, or any supply of hot food or drink (for consumption on or off the premises).

- Most sales of goods: unless the goods are covered by one of the zero-ratings or donated then they are likely to be VAT standard-rated e.g. DVDs, CDs, commemorative mugs, pens, diaries, calendars, posters, toys etc.
- Electronic publications: products delivered electronically such as pay access websites or databases, downloaded images, software, videos, music, software, and electronic publications are all VAT standard-rated.
- Royalties and commissions, management charges to a trading subsidiary and consultancy fees will normally be VAT standard-rated

VAT registration

A business must register for VAT if either:

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

The current VAT registration threshold is £85,000 (2018/19).

The value of taxable supplies is the total of standard rate, reduced rate and zero rated supplies. A business can also register for VAT voluntarily if it has or will make taxable supplies below the registration threshold.

Avoiding VAT registration

HMRC can exempt a business from VAT registration if the value of taxable supplies in the last 12 calendar months has exceeded the VAT registration threshold but the business can persuade HMRC that value of taxable supplies will not go over the VAT deregistration threshold in the next 12 months. The VAT de-registration threshold is £83,000 (2018/19).

HMRC can also exempt a business from VAT registration if most taxable supplies would be zero-rated and/or the business's recoverable input VAT would normally be more than its output VAT.

VAT returns

By default a VAT registered business must submit VAT returns to HMRC every quarter (three calendar months). The VAT return details the output VAT payable to HMRC and the input VAT reclaimable from HMRC on transactions occurring in the quarter. A business can request (or HMRC may direct) monthly VAT returns. This can give a cash flow advantage if the business usually receives VAT refunds from HMRC, but it is more administration.

The VAT year is the period of four consecutive VAT quarters usually ending on 31 March, 30 April or 31 May, though the year end can be changed on request.

VAT recovery

VAT recovery means the ability to claim back from HMRC the VAT incurred on purchases. To recover VAT a business must be VAT registered (unregistered national museums and galleries are an exception, these may be eligible for a special VAT refund scheme – see

the Cultural admissions section below).

The recovery of VAT incurred on a purchase depends on how the purchase will be used:

- **Blocked VAT:** VAT incurred on certain types of purchase is blocked and can never be recovered. Examples are entertaining of UK business customers and the purchase of business cars that will be available for some private use.
- **Taxable activities:** if the purchase will be used wholly to make taxable supplies, the VAT can be recovered in full. For example, catering supplies for a theatre bar or restaurant, goods for sale in a museum shop.
- **Non-business activities:** if the purchase will be used wholly for non-business activities, the VAT cannot normally be recovered, though see the special VAT refund scheme ('s33A') for museums and galleries below for an exception to this. For example, purchases used in activities that are wholly funded from grants or donations.
- **Exempt activities:** if the purchase will be used wholly to make exempt supplies, the VAT cannot be recovered unless the level of exempt activity is very small ("de-minimis"). Examples include purchases used for exempt cultural or educational activities, and purchases for qualifying fundraising events.
- **Mixed activities:** if a purchase will be used for a mix of taxable, non-business and/or exempt activities the VAT on that purchase is apportioned between the activities. There are special rules for how this apportionment works. For organisations with a mix of different types of activity,

overheads such as gas and electricity bills are usually mixed purchases.

Mixed activities

VAT on purchases used for a mix of taxable, non-business and/or exempt activities is referred to as residual VAT. This must be apportioned between taxable, exempt and non-business activities, with only the part apportioned to taxable activities being recoverable (the part apportioned to exempt activities will also be recoverable if exempt activity is overall de-minimis).

The apportionment is a two-step process:

1 Business / non-business apportionment

The non-attributable VAT is first apportioned between business and non-business activities. Any apportionment method can be used without prior approval from HMRC as long as the method is a fair and reasonable reflection of actual use. The VAT apportioned to non-business use is irrecoverable. The VAT apportioned to business use goes into the next step.

2 Taxable / exempt apportionment

The non-attributable VAT apportioned to business activities is apportioned between taxable and exempt activities. This must be done on a turnover basis (the *standard partial exemption method*) unless a different method (a *special partial exemption method*) is agreed with HMRC.

Since 1 January 2011 a combined method can be used with HMRC approval. This avoids the need to distinguish between non-business and exempt activities. If you use the combined method, you cannot apply the de-minimis test to exempt activity.

De-minimis test

If the total input VAT directly attributed and apportioned to exempt activities in a VAT quarter is not more than £1,875 and not more than the total input VAT directly attributed and apportioned to taxable activities, then the exempt activity is said to be *de-minimis* and the VAT attributed and apportioned to exempt activities can be recovered.

Two additional de-minimis tests were introduced on 1 April 2010. If a business meets the above test or either of the two new tests it is de-minimis for a VAT quarter:

- 1 Total input VAT directly attributed and apportioned to business activities is no more than £1,875 and the value of exempt supplies is no more than 50% of the value of all business supplies.
- 2 Total input VAT directly attributed and apportioned to exempt business activities is no more than £1,875 and the value of exempt supplies is no more than 50% of the value of all business supplies.

For VAT years commencing on or after 1 April 2010 a business can assume it is de-minimis in each VAT quarter if it was in the previous VAT year's annual adjustment (see below) and it does not expect total input VAT to exceed £1 million. This assumption is subject to correction in the *annual adjustment*.

Annual adjustment

The quarterly apportionment calculations and de-minimis tests must be repeated at the end of the VAT year using whole year figures. This is to correct for seasonal and other variations in the levels of activity. The annual adjustment de-minimis threshold for exempt activity is $4 \times £1,875 = £7,500$.

The annual adjustment is then the amount

of input VAT recoverable from HMRC as calculated by the annual figures less the amount of input VAT recovered from HMRC in each of the four VAT quarters. If this figure is positive, an extra amount of input VAT can be recovered from HMRC. If this figure is negative, some of the input VAT already reclaimed must be repaid to HMRC.

The annual adjustment is not an error, so you do not have to disclose it. The annual adjustment must be made in either the last VAT return of the VAT year or the first VAT return of the next VAT year.

VAT reliefs for charities

VAT registered and unregistered charities may be eligible for special charity VAT reliefs. The reliefs work by turning what would otherwise be a VAT standard-rated purchase into a VAT zero-rated, exempt or reduced rate purchase. This can help avoid irrecoverable VAT in the charity and so reduce the charity's costs. The charity must normally give the supplier a certificate or declaration confirming that any qualifying conditions are met. Charity VAT reliefs include:

Advertising

Charity adverts in third party media are VAT zero-rated but this excludes adverts in a charity's own publications and direct mail.

Charity non-business use buildings

Charities can zero-rate the construction or first purchase of a new building if that building is intended for use solely for non-business activities. If a part only of the building is intended for non-business use, a corresponding portion of the construction or purchase cost can be zero-rated. If actual use becomes business use within the first ten years, the charity may have to pay HMRC some of the VAT initially saved by zero-rating.

Fuel and power

Supplies of electricity, gas, fuel oil and other types of fuel are VAT reduced rate if consumption is below 1,000 kWh per month (electricity), 150 therms per month (gas) or the supply is for charity non-business or residential activities. If at least 60% of a supply is for qualifying use, the whole supply is treated as a supply for qualifying use.

Access works for disabled persons

Charities can zero-rate certain building works carried out to improve access for disabled persons. Qualifying works include: the construction of ramps; the widening of doorways and passageways; and providing, adapting or extending toilet facilities.

s33A VAT refund scheme

Under this scheme museums and galleries can claim a refund for VAT incurred in providing free rights of admission. Up to 16 April 2016 this scheme was only open to national museums and galleries however from this date it has been extended to include local museums and galleries. Museums and galleries must apply to join the scheme via the relevant government body (DCMS, the Welsh or Northern Ireland Assembly, Scottish Government or Ministry of Defence).

To be eligible to apply for admission to the scheme museums or galleries must:

- Be open to the general public for at least 30 hours per week, without exception.
- Offer free entry, without prior appointment.
- Hold collections in a purpose-built building.
- Display details of free entry and opening hours on the museum website.

Museums and galleries will also be required to complete a strategic business case as part of the application process, including:

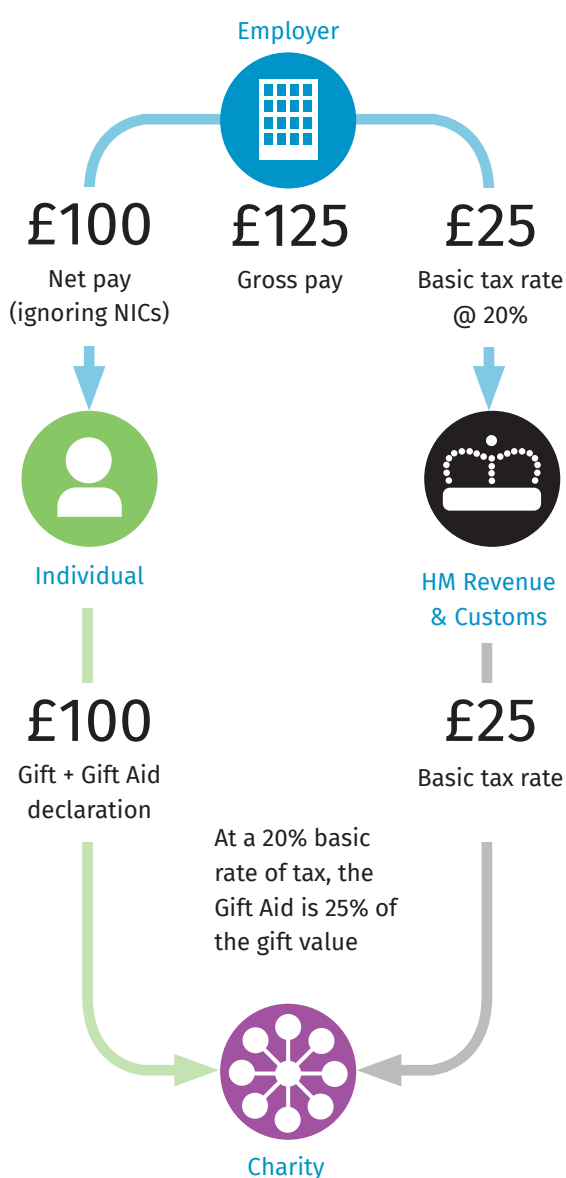
- providing proof of Arts Council England Accredited status (or equivalent)
- past and/or projected visitor figures.

Background to Gift Aid

There are two types of Gift Aid.

1 Individual Gift Aid

if an individual makes a donation to charity from income that has been subject to UK income tax or capital gains tax, then, providing the Gift Aid scheme conditions are met, the charity can reclaim from HMRC the equivalent of the basic rate income tax paid on the donation.



2 Corporate Gift Aid

A company can deduct a qualifying Gift Aid donation to charity from its pre-tax profits. The effect is that a corporate Gift Aid donation is handed over gross of tax relief and there is no tax to be reclaimed by the charity. However, corporate Gift Aid is subject to the same Gift Aid scheme conditions as apply to individual donations (except for the requirement to provide a declaration).

Individual Gift Aid scheme conditions

For a gift to be eligible for individual Gift Aid, all of the following conditions must be met:

Money

The gift must be the payment of a sum of money. Gifts in kind do not qualify.

Gift Aid declaration

The donor must give the charity a valid Gift Aid declaration to cover the gift. See below for what a valid Gift Aid declaration must contain.

Donor benefits

Any benefits provided in consequence of making the gift must be within the donor benefit limits.

Anti-avoidance conditions

The gift must not be subject to any condition as to repayment (so this excludes loans). It must not be part of any arrangement involving acquisition of property by the charity from the donor. This blocks a person giving a donation to a charity which uses that donation to purchase property from the donor. Payments under payroll giving and payments from other charities are also excluded as are tax deductible payments – for example, deductible professional subscriptions.

Donor benefit limits

To qualify for Gift Aid, there must either be no benefit associated with the gift or if there is a benefit, the value of all benefits associated with the gift must be within the following limits:

Donation	Maximum benefit value allowed for Gift Aid
Up to £100	25% of the donation
£100 - £1,000	£25
Over £1,000	5% of the donation
Overall limit	£2,500 (maximum benefits that can be provided in a tax year)

With effect from 6 April 2019 the donor benefit limits will be simplified to:

Donation	Maximum benefit value allowed for Gift Aid
Up to £100	25% of the donation
Over £100	£25 plus 5% of the donation amount over £100
Overall limit	£2,500 (maximum benefits that can be provided in a tax year)

A donor benefit is:

- Any goods, services, use of property, rights or other benefit.
- Received by the donor or a person connected to the donor.
- In consequence of making the donation.

A benefit can be provided by the charity or a third party, but this excludes situations where an unconnected third party provides benefits unsolicited by either the charity or donor.

Connected persons include spouse, children, siblings, parents, grandparents and business partners.

Ignored benefits

HMRC accept the following benefits can be ignored:

- Literature explaining the work of the charity – e.g. newsletters, bulletins, annual reports, journals, magazines, members' handbooks and programmes of events.
- Acknowledgements – but not adverts for a donor's business. Naming a building after a donor is OK but not after their business.
- Right of admission to view charity property – certain rights of admission to view charity property are ignored.
- Third party benefits provided these are unsolicited by the charity or donor.
- Priority booking rights provided these are of no commercial value to the rights holder.
- Stickers, pins, badges etc. provided the item is of negligible value.

Valuing benefits

HMRC provide the following guidance on valuing donor benefits:

- Commercially available items – the value is the commercial price the donor would otherwise have to pay (including any VAT).
- Invitations to non-public events – these can be valued on a cost per attendee basis.
- Discounts – the valuation can be based on the average take-up provided records are kept of all discounts given.
- Life membership subscriptions – value as the benefits receivable over the first ten years of membership. If benefits will not change much from year to year, calculate as benefits in first year multiplied by ten.

Split treatment

If a benefit can be purchased separately and the donor is aware of the price they could purchase the benefit for at the time the donation is made, then HMRC accept the split payment treatment can be used. This works by treating the donor's payment as being comprised of two parts:

- Part to cover the purchase price of the benefits – in effect 'buying the benefit'.
- Part as a donation – any excess over the benefit value.

The donation element can be donated under Gift Aid but the purchase element cannot.

A benefit can be purchased separately if it is otherwise sold by the charity or if it is commercially available. However, HMRC do not accept that celebrity enhanced items, such as a signed football, are available for the normal sale price of the unenhanced item.

Gift Aid declarations

These can be:

- Written – e.g. filled in paper forms, web-forms, emails.
- Oral – given in person or over the phone.

With effect from 6 April individuals can also authorise intermediaries to issue gift aid declarations on their behalf. The authorisation must be renewed every tax year.

Written declarations

Written declarations must include all of the following:

- The name of the charity. HMRC accept a charity's unique logo is sufficient.
- The name and home address of the donor (including a postcode for UK addresses). HMRC will reject addresses that are clearly business addresses.

- Identification of the gift (e.g. the enclosed gift, all gifts made in the last four years and all future gifts). If the declaration covers past and future gifts it is referred to as an enduring declaration.
- A request to treat the identified gifts as Gift Aid donations (e.g. please Gift Aid the above donations).
- A date, if the declaration applies to past or future gifts.
- A tax to cover statement. See below for the HMRC model wording.

Oral declarations

- For oral declarations the HMRC recommended procedure is:
- Obtain all the information required on a written declaration and explain the tax to cover requirement.
- Either keep a recording in a format that can be retrieved or send the donor the above details in writing, including the tax to cover statement and give the donor 30 days to cancel.
- If the donor does not cancel within 30 days, Gift Aid can be claimed on the donation.
- Keep a record of all letters sent. A database record is OK, for example, a mail merge letter with a database of names and addresses the letter was sent to with the date of sending and any follow up details.

Tax to cover statement

HMRC provide model wording for the tax to cover statement which they change from time to time. The latest version (October 2015) for an enduring declaration is:

I am a UK taxpayer and understand that if I pay less Income Tax and/or Capital Gains Tax than the amount of Gift Aid claimed on all my donations in that tax year it is my responsibility to pay any difference.

It is safest to use the current HMRC model wording on new or replacement declarations. However, older declarations with the then model wording are acceptable and do not have to be updated, though it is sensible to do so wherever possible.

HMRC audits

HMRC may decide to look into one or more Gift Aid claims by conducting a Gift Aid audit. If they find any Gift Aid has been wrongly claimed they demand repayment together with interest and penalties if applicable. The error rate can be extrapolated with HMRC seeking the error percentage for the last four years' claims. The HMRC staff usually perform a sample test of a charity's recent Gift Aid claims, tracing the sampled gifts from the Gift Aid claim to a valid declaration and also to evidence of receipt of the gift. This is now often carried out remotely by emailing the documents to HMRC. HMRC staff also review compliance with the Gift Aid benefit rules.

Gift Aid Small Donations Scheme

A charity can claim a Gift Aid-like top up payment on up to £8,000 of small cash donations of up to £20 each (coins, notes and contactless card payments but not cheques, bank transfers or other types of card payment). So the maximum extra that can be claimed is $£8,000 \times 25\% = £2,000$, though this limit can be increased under the community buildings rule (see below), but is shared if two or more charities are connected.

There is no need for a declaration. However, there must be no benefits associated with the small donation (though very minor benefits such as lapel stickers are acceptable). To make GASDS claims a charity must make a successful Gift Aid claim in the tax year of the GASDS claim.. If a charity makes no Gift Aid claims, it will be unable to make a GASDS claim.

If a charity runs charitable activities in a community building and receives small donations in the same local authority area, the charity will be able to increase its limit by £8,000 per community building. The charity must carry out charitable activities in the building on at least six occasions per year and each activity must have ten or more participants, with no changes made to participants.

Buying, selling and renting property

This section considers the VAT treatment of the sale or purchase of the freehold or leasehold of land or buildings and the renting of land or buildings under a licence to occupy. The VAT treatment of such property transactions can be complicated.

By default property transactions are VAT exempt. However, there are many exceptions to this rule. These include:

- **Option to tax** If the vendor of a property has “opted to tax” the property, or if a landlord has opted to tax rented property, the sale/rental normally becomes VAT standard-rated. However, a charity can “disapply” an option to tax if it will use the property for non-business activities (but excluding use as an office for general administration). Disapplying an option to tax means the supply remains VAT exempt. For disapplication to be effective, the charity should notify the vendor/landlord of its intention to disapply the option to tax in writing before the supply takes place. The landlord may then be unwilling to rent to the charity however or may wish to increase the rent.
- **Places of entertainment** The grant of any right to occupy a box, seat or other accommodation at a sports ground, theatre, concert hall or other place of entertainment is excluded from the land exemption, however, such rights may qualify for VAT exemption as cultural admissions (see below).
- **Parking facilities** The lease or letting of car parking facilities such as garages and parking bays is VAT standard-rated. However, the freehold sale of such facilities is VAT exempt (unless the vendor has

opted to tax and the option to tax is not disapplied or the parking facility is new).

- **Self-storage of goods** the letting of premises for the self-storage of goods is VAT standard-rated, for example, the letting of a storage warehouse. However, this does not include lettings to a charity for non-business activities, which remain VAT exempt.
- **Sports facilities** the grant of facilities for playing sport is by default VAT standard-rated, for example the hire of a tennis court. However, there are two exceptions to this rule:
 - Lettings for a continuous period of use exceeding 24 hours
 - Block bookings for a series of ten or more lets to a school, club or association provided the hires are between 1 and 14 days apart

If either of these exceptions applies, the hire fee remains VAT exempt unless the landlord has opted to tax and the option to tax is not disapplied.

- **New relevant charitable and residential purpose buildings** the first sale by its developer of the freehold or a long lease in a new building is zero-rated if the building is intended for use solely for a relevant charitable or residential purpose. Use for a relevant charitable purpose means use by a charity for non-business activities or as a village hall or similarly in providing social or recreational facilities for a local community. Use for a relevant residential purpose includes use as residential accommodation for students and school pupils. Long lease means a lease with a term of 21 years or more (20

years in Scotland). The purchaser must give the vendor a certificate confirming the intended use.

- **New commercial buildings** any freehold sale of a new or uncompleted commercial building is VAT standard-rated. A building is new until three years after completion. After three years, the freehold sale becomes VAT exempt unless the vendor has opted to tax the building. A commercial building is one that is neither designed as a dwelling or number of dwellings nor intended for use solely for a relevant charitable or residential purpose.

Active lets

To qualify for VAT exemption a letting of premises must be relatively passive. This means the hirer is given exclusive use of premises but not provided with much additional assistance in their use of the premises.

The provision of services and facilities customarily provided by landlords to tenants does not change this, for example:

- Letting rooms with inclusive gas, electricity and water.
- Letting with inclusive use of standard equipment for the premises type, such as tables and chairs with a meeting room, kitchen facilities with a hall, PA and projection equipment with a conference hall.
- If a part of a building is let, the cleaning of common areas such as lobbies.

However, the provision of substantial additional services or facilities can change the passive nature of letting with the result the letting fee becomes VAT standard-rated. This is referred to as an active let.

Examples are:

- Hiring out a theatre auditorium together with lighting and sound technicians, front of house staff, box office and security services.
- Letting rooms with substantial catering, for example supplying banquets, formal dinners and wedding receptions.
- The hire of a mixing studio. Here the granting of a licence to occupy the premises is likely to be seen as secondary to the right to use the specialist equipment.

Cultural admissions

There are special VAT and Gift Aid rules for admission charges to various cultural events and facilities.

VAT exemption

The supply of a right of admission to:

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

VAT is exempt if the supplier is an **eligible body**. The exemption excludes cinema tickets (not a performance) and excludes admissions to horticultural gardens (not a museum).

Eligible body means a body which meets all of the following conditions:

- **Non-profit making** the body must be precluded from distributing, and does not distribute, any profit it makes. Charities are precluded from distributing profits but non-charitable bodies can also be non-profit making.
- **Ring-fences cultural profits** the body must apply any profits made from cultural supplies to the continuance or improvement of the facilities made available by means of the cultural supplies.
- **Volunteer board** the body must be managed and administered on an essentially voluntary basis by persons who have no direct or indirect financial interest in its activities. This condition refers to the body's board of directors or trustees. Paid board members and board members who have a business connection with the body may prevent this condition from being met.

In the *Bournemouth Symphony Orchestra* case, the managing director and musical director were paid staff and also voting members of the board. The managing director was paid for his role as a board member. This was held to prevent the third condition from being met as the body was no longer managed and administered on an essentially voluntary basis. However, the musical director was elected as a representative by the musicians and not paid any extra for being a board member. This did not, in itself, prevent the third condition from being met.

VAT recovery on theatre production costs

There have been several court cases concerning VAT recovery by theatres that qualify for the cultural exemption.

Where such theatres buy in productions from independent companies or incur VAT in creating their own productions, the question is – is the VAT incurred attributable solely to the exempt ticket sales (and hence irrecoverable) or also attributable to taxable outputs by the theatre such as shop sales (and hence partly recoverable).

In the *Mayflower Theatre Trust* case the theatre purchased productions from independent production companies (VAT standard-rated) and sold VAT exempt tickets but also production specific programmes (VAT zero-rated). The Court of Appeal held that the production costs were attributable to both the exempt ticket sales and the taxable programme sales and hence the VAT on production was partly recoverable.

In the *Garsington Opera* case the company put on its own operatic performances, sold VAT exempt admission tickets but also sold VAT zero-rated programmes, VAT standard-rated production-specific sponsorship, VAT standard-rated music CDs of the performance and VAT standard-rated licences of the production to third parties. The Tax Tribunal held that the production costs were attributable to the VAT exempt ticket sales and also to the taxable sales. For sponsorship, the key factor was that the sponsorship was production specific. General sponsorship of the theatre would not have created the necessary link between the performance inputs and taxable outputs.

Selling admissions as agent

If an eligible body operates a theatre but sells admission tickets as agent of a profit-making production company then the cultural exemption does not apply and the tickets are VAT standard-rated if the production company is VAT registered. If the theatre hires out its building to the production company with supporting services such as the box office, technical support, security and/or front of house staff, then this is likely to be an active let, in which case the hire fee would be VAT standard-rated irrespective of whether or not the theatre has opted to tax the theatre building.

Gift Aid

Payments that grant a right of access to a charitable museum, zoo, gallery, horticultural garden etc. can be gift aided if all of the following conditions are met:

- The admission right must be a right granted by a charity for the purpose of viewing property preserved, maintained, kept or created by the charity for its charitable purposes. Property includes buildings, land, plants, animals, works of art, artefacts and scientific equipment but excludes admission to a performance.
- The right either applies for a period of 12 months or more at all times at which the public have access, or if for a shorter period, is paid for with an additional gift of at least 10% of the normal admission price. In the latter case the whole admission payment can be gift aided, not just the 10% element.
- The opportunity to donate and receive the right of admission in consequence is available to the public.

Educational activities

The following supplies are VAT exempt if the supplier is an eligible body:

- **Education.** This can cover any subject and includes lectures; educational seminars; conferences and symposia; recreational and sporting courses; and distance teaching
- **Vocational training** this means training, re-training or the provision of work experience for any trade, profession or employment; or any voluntary work connected with education, health, safety, welfare or charitable activities
- **Closely related goods or services** (other than examination services) which are for the direct use of the student receiving the above supplies e.g. student catering, student course materials, field trips
- **Examination services** the supply of examination services by or to an eligible body or to a person receiving exempt or non-business education or vocational training
- **Government funded education and training** The provision of education or vocational training (and essential goods or services), to the extent that the consideration payable is ultimately a charge to funds provided by the Education Funding Agency, Skills Funding Agency and equivalent devolved or predecessor bodies

The definition of eligible body for educational purposes is not the same as for cultural admissions. Education eligible bodies include registered community, voluntary and foundation schools, academies, free schools, recognised universities and also a body which:

- is non-profit making: the body must be precluded from distributing, and does not distribute, any profit it makes. Non-profit making bodies usually have a clause in the governing documents prohibiting any distribution of profits
- ring fences educational profits: the body must apply any profits made from educational supplies to the continuance or improvement of such supplies.

If a body is an eligible body, then all of its supplies of education and vocational training are VAT exempt. If a body is not an eligible body, then only supplies of government funded education and training are VAT exempt, the rest are VAT standard-rated.

For charities that are not recognised schools or universities, supplies of education and vocational training will only be VAT exempt if the above ring-fencing condition is met. If educational activities are overall loss making or break-even (on a full cost recovery basis) then this condition will be met.

Fundraising events

Potentially any type of supply by a charity or other qualifying body is VAT exempt if it is in connection with a qualifying fundraising event. The exemption can cover admissions, sales of goods and services at the event, and sponsorship of the event. Events can include online events. However, if a sale also qualifies for zero-rating (e.g. sales of printed programmes), that sale can be zero-rated in preference to VAT exemption.

To be a qualifying event all of the following conditions must be met:

- The event must be organised by a charity or a qualifying body (or mix of two or more of these). Qualifying bodies include cultural exemption eligible bodies. Charity includes a wholly owned trading subsidiary provided the subsidiary's profits are payable to a charity.
- If the event is organised by a charity, the event must be organised for charitable purposes. If the event is organised by a qualifying body, it must be organised exclusively for the body's own benefit.
- The primary purpose of the event must be the raising of money.
- The event must be promoted as being primarily for the raising of money.
- 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.
- 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. Challenge type events, where the participant is provided with transport and overnight accommodation, frequently fail this condition.

If the income of a qualifying fundraising event is exempt, you cannot recover VAT on the related purchases (unless de-minimis) so your budget for the event should include VAT on the costs.

Charity auctions

Charity auctions often involve:

- The sale of "celebrity enhanced" items such as donated celebrity clothes or signed footballs.
- Bidders deliberately paying over the odds for everyday items with the intention the excess is a gift to the charity.

For celebrity-enhanced items, HMRC do not accept that any element of the successful bid payment can be a gift. So Gift Aid cannot be claimed on celebrity enhanced items.

For everyday items, HMRC accept that the split treatment can be used if the item is commercially available, and the donor is aware, at the time they make their successful bid, that the item could be purchased separately and for what price. In such a situation the bid payment is split into two parts:

- A consideration part – payment for the item at its commercial value. Gift Aid cannot be claimed on this part.
- A donation element – the excess of the bid payment over the commercial value. This part is eligible for Gift Aid.

Charity auctions are often structured as the whole of or a part of a qualifying fundraising event so sales by auction at such events qualify for VAT exemption. The sale of goods donated to a charity for sale is zero-rated, so the sale of donated goods (celebrity enhanced or otherwise) at a charity fundraising event can be zero-rated in preference. However the zero-rating does not extend to donated services, such as donated holidays or restaurant meals.

Supporter schemes

Many arts organisations use patron, friends or supporter schemes to obtain financial support. Supporter schemes are often structured as different packages (e.g. “gold”, “silver”, “bronze”) that supporters can sign up to with varying benefits attached to each package. Typical benefits offered include:

- Priority booking arrangements
- Ticket discounts
- Newsletters and literature
- Invitations to first nights, parties and special events

Supporter schemes have Gift Aid and VAT implications.

Gift Aid

To assess if a supporter scheme is eligible for Gift Aid, the benefits the supporter (and persons connected with the supporter) are eligible to receive must be valued and then compared with the total supporter payment. If there are a variety of different packages, this exercise must be carried out for each package individually.

HMRC accept that literature explaining the work of the charity, priority booking rights and negligible value badges or pins can be ignored in these calculations.

If the total value of all the benefits is within the donor benefit limits, the whole supporter payment can be Gift Aided. If the total value of all the benefits exceeds the donor benefit limits, then check if the ‘split treatment’ can be used (see the section Gift Aid background). To use the split treatment all the benefits must be available for purchase separately, or as a package, so exclusive supporter only events can be a problem.

VAT

If you provide donors with benefits in return for a required minimum payment, then the minimum payment is potentially within the scope of VAT as consideration for a business supply. However:

- HMRC accept you can ignore trivial benefits such as low cost membership badges, flags or stickers, and a listing of supporter names in charity literature or on a plaque.
- HMRC accept a supporter payment can be split as part donation and part consideration for the benefits provided all the substantive benefits are available to non-supporters for less.
- HMRC do not accept that the provision of charity literature and priority booking rights can be ignored (as they do accept for Gift Aid).

Sponsorship

Arts organisations often seek business sponsorship, for example, to sponsor a specific theatre production or gallery exhibition; to sponsor a new building or wing; and to obtain general sponsorship of an organisation as a whole. Sponsorship payments usually have VAT implications. The key question is – what does the sponsor get in return for their sponsorship payment?

If there are no substantial benefits for the sponsor then the sponsorship payment is outside the scope of VAT. HMRC accept that the following benefits are insignificant and can be ignored for VAT purposes:

- Giving a low cost flag or sticker.
- Naming the donor in a list of supporters in a programme or on a notice.
- Naming a building after the donor.
- Putting the donor's name on the back of a seat in a theatre.

Substantial donor benefits include:

- Advertising the donor and their business.
- Participating in the sponsor's promotional or advertising activities.
- Allowing the sponsor to use a name or logo.
- Giving free or reduced price tickets.
- Allowing access to special events such as premieres or gala evenings.
- Providing entertainment or hospitality facilities.

Such benefits are likely to be within the scope of VAT, so if they are provided in return for a sponsorship payment, VAT must be charged and accounted for on the sponsorship payment. However, if the sponsorship is in connection with a qualifying fundraising event, then any associated sponsor benefits will be VAT exempt.

HMRC accept that sponsorship arrangements can be structured as part consideration for the benefits provided (within the scope of VAT) and part donation (outside the scope of VAT). However, in order for the donation to be outside the scope of VAT, the benefits must not be conditional on the making of the donation and the sponsor cannot be contractually obliged to make the donation.

Creative industry Corporation Tax reliefs

There are three Corporation Tax reliefs that are likely to be of interest to relevant arts charities:

- Theatrical productions tax relief
- Orchestral concerts tax relief
- Museums and galleries exhibition tax relief

All three are Corporation Tax reliefs, so charitable trusts will have to set up a trading subsidiary in order to be able to take advantage of these. They all work in the same way, by increasing or enhancing the amount of allowable expenditure ('core expenditure') so as to either reduce taxable profits or, if the enhancement creates or increases a tax loss, the enhanced loss can be surrendered for a payable tax credit. Productions, concerts and exhibitions put on by charitable companies will not normally suffer Corporation Tax on any profit, however if there is an enhanced loss, it can be surrendered for a payable tax credit.

Scheme

Additional deduction (percentage of core expenditure) payable tax credit:

Theatrical productions tax relief 80%

Touring productions 25% of surrendered loss

Fixed productions 20% of surrendered loss

Orchestral productions tax relief 80%

25% of surrendered loss

Museums and galleries exhibition tax relief 80%

Touring exhibitions 25% of surrendered loss

Fixed exhibitions 20% of surrendered loss

The corporate body claiming relief must be the producer for theatrical productions or orchestral concerts, but for exhibitions, the claimer can be the primary producer, or a secondary producer to which the exhibition is toured. Theatrical productions relief and orchestral concerts relief are available to

any corporate body however museums and galleries relief is available only to charitable companies, trading subsidiaries of charities, or subsidiary companies under the control of local authorities.

Each qualifying production or exhibition is treated as a separate trade and the normal trading tax rules are overridden, for example capital expenditure can be deductible.

Theatrical production

This means a dramatic production or a ballet. Ballet is not defined but a dictionary definition is "an artistic dance form performed to music, using precise and highly formalized set steps and gestures". Dramatic production is defined as "a production of a play, opera, musical, or other dramatic piece" in which:

- the actors, singers, dancers or other performers are to give their performances wholly or mainly through the playing of roles
- each performance in the proposed run of performances is to be live, and
- the presentation of live performances is the main object, or one of the main objects, of the company's activities in relation to the production.

Orchestral concerts

An orchestral concert is one which is performed wholly or mainly by instrumentalists in an orchestra, ensemble, group or band and the instrumentalists must be the primary focus of the concert. A qualifying orchestral concert is an orchestral concert which consisting of a minimum of 12 instrumentalists, the majority of instruments must not be electronically or directly amplified, and its primary focus is to play

before the paying public or for educational purposes.

Core expenditure is expenditure on producing the concert or concerts. This includes travel to or from a venue other than its usual place of performance. At least 25% must be incurred on goods or services from within the European Economic Area (EEA). It does not include expenditure on the actual performance, speculative expenditure not involved with putting on a concert, or expenditure not directly related such as financing; marketing; legal services or storage.

Museum and gallery exhibitions

Exhibition means a curated public display of an organised collection of objects or works (or of a single object or work) considered to be of scientific, historic, artistic or cultural interest. But a display is not an exhibition if it is organised in connection with a competition, its main purpose, or one of its main purposes, is to sell anything

Further information

HMRC VAT notices

701/1 Charities

www.gov.uk/government/publications/vat-notice-7011-charities/vat-notice-7011-charities

701/47 Culture

www.gov.uk/government/publications/vat-notice-70147-culture/vat-notice-70147-culture

701/30 Education and vocational training

www.gov.uk/government/publications/vat-notice-70130-education-and-vocational-training/vat-notice-70130-education-and-vocational-training

Fundraising events

www.gov.uk/government/publications/charity-fundraising-events-exemptions/fundraising-events-exemption-for-charities-and-other-qualifying-bodies

742 Land and property

www.gov.uk/government/publications/vat-notice-742-land-and-property/vat-notice-742-land-and-property

706 Partial exemption

www.gov.uk/government/publications/vat-notice-706-partial-exemption/vat-notice-706-partial-exemption

998 VAT Refund Scheme for national museums and galleries

www.gov.uk/government/publications/vat-notice-998-vat-refund-scheme-for-national-museums-and-galleries/vat-notices-998-vat-refund-scheme-for-national-museums-and-galleries

700/1 Should I be registered for VAT?

www.gov.uk/government/publications/vat-notice-7001-should-i-be-registered-for-vat/vat-notice-7001-should-i-be-registered-for-vat

701/41 Sponsorship

www.gov.uk/government/publications/vat-notice-70141-sponsorship/vat-notice-70141-sponsorship

HMRC Gift Aid guidance

Chapter 3 Gift Aid

www.gov.uk/government/publications/charities-detailed-guidance-notes/chapter-3-gift-aid

Gift Aid audits

www.gov.uk/government/publications/charities-detailed-guidance-notes/chapter-7-audits-by-hmrc-charities

Gift Aid claims

www.gov.uk/government/publications/charities-detailed-guidance-notes/chapter-6-claims-and-returns

HMRC model Gift Aid declarations

www.gov.uk/claim-gift-aid/gift-aid-declarations

Made simple guides

Made Simple guides are aimed at finance professionals and other managers working in charities. They cover technical areas such as tax and VAT treatments as well as information management areas and aim to provide practical guidance to busy managers and trustees in charities.



The content of guides is correct at the time of going to print (August 2018), but inevitably legal changes, case law and new financial reporting standards will change. You are therefore advised to check any particular actions you plan to take with the appropriate authority before committing yourself. No responsibility is accepted by the authors for reliance placed on the content of this guide.

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