

VAT Information Sheet 09/11

1. Introduction

1.1 What is this Information Sheet about?

This Information Sheet provides guidance for academies, free schools, 16 to 19 academies, alternative provision academies and university technology colleges for 14 to 19 year olds following the introduction of section 33B VAT Act 1994.

Clause 75 of the Finance Bill 2011 inserted a new section 33B (section 33B) into the VAT Act 1994, which will (from the date of Royal Assent to the Bill) refund the VAT incurred by proprietors of academies in certain circumstances.

This Information Sheet explains how the scheme will operate and which bodies will benefit from it.

2. Academies and VAT

2.1 What is the VAT treatment of education taught in academies?

Education is taught to pupils of academies for no consideration. Consequently no supply takes place for VAT purposes and the activity is outside the scope of VAT. For further information on the VAT treatment of the activities of academies, including the goods and services they supply to their pupils, please see [Notice 701/30](#) Education and vocational training.

2.2 Can academies recover the VAT paid on the goods and services they purchase in relation to their provision of free education?

Ordinarily VAT cannot be recovered on purchases, acquisitions or imports made in relation to non-business activities, such as the provision of free education. However, from the date of Royal Assent to the Finance Bill (probably in July) a VAT Refund Scheme was enacted which allows academies to recover the VAT incurred on those goods and services that they purchase, and on those goods that they acquire from another Member State or import, which are used in connection with the education they teach

for no consideration. They can also recover the VAT incurred on purchases, acquisitions and imports which are used for any other non-business activities. The legal basis is in section 33B of the VAT Act 1994.

2.3 When does this refund mechanism apply from?

From the date of Royal Assent to the Finance Bill academies can recover the VAT referred to in paragraph 3 above retrospectively from 1 April 2011. Adjustments for VAT not claimed from 1 April 2011 are, of course, subject to the normal time limits for claiming (as of the date of this Information Sheet, four years). The refund scheme does not extend to VAT incurred by academies on goods and services purchased before 1 April 2011.

Academies that received a VAT grant previously will continue to do so as an interim measure until the new scheme is in place.

HM Revenue & Customs (HMRC) are unable to accept claims from academies until after Royal Assent. New academies that incur expenditure before Royal Assent, and cannot manage this within their wider budgets, should contact the Young People's Learning Agency (YPLA).

2.4 What is not covered by the VAT refund mechanism?

The refund scheme does not cover (and therefore does not refund):

- Any VAT that cannot be recovered because of the block in [section 25\(7\)](#) of the VAT Act 1994. This is presently the case for cars and certain business entertainment (please see [Notice 700](#) The VAT Guide).
- Any VAT incurred on purchases, acquisitions or imports relating to an Academy's business activities. This VAT is only recoverable subject to the normal rules relating to recovering VAT.
- Any VAT incurred on purchases made outside the UK (for example, French TVA). In certain circumstances this can be

reclaimed from the authorities in the EU Member State in which the VAT was incurred (please see [Notice 723A: Refunds of VAT in the EC](#)).

2.5 What are the normal rules relating to VAT recovery?

If you are VAT registered you can recover VAT incurred on your purchases made to support the supplies you make which are either subject to VAT (currently 20 per cent or 5 per cent) or are zero-rated. This is referred to as 'input tax'. So, for example, a business selling stationery (subject to VAT at 20 per cent) can recover the VAT (input tax) paid on the purchase of these goods for sale.

In principle VAT cannot be claimed on purchases made to support the making of VAT exempt supplies unless the amount is small, referred to in VAT guidance as 'de minimis'.

This is a complex area of VAT which requires careful consideration and you may wish to seek professional help.

Further guidance can be found in [Notice 706](#) Partial exemption.

2.6 What happens where a purchase, acquisition or importation relates to both the business and non-business activities of an academy?

Where goods or services are purchased (or goods are acquired or imported) for both the business and non-business use of an academy, a fair and reasonable apportionment should be made so as to only recover:

- the proportion that can be recovered under the VAT refund mechanism
- the proportion that can be recovered under the normal VAT rules for recovering input tax

If an academy does not do this, the law gives HMRC the power to make a suitable apportionment.

2.7 What is meant by an academy for the purposes of

the VAT refund mechanism?

The scheme is confined to England because its rationale is to ensure the same VAT treatment for academies as applies to local authority maintained schools which can recover VAT under [section 33](#) of the VAT Act 1994. The same need does not apply elsewhere in the UK.

An academy is one which is defined in section 579 of the Education Act 1996 (as amended). These are academies which teach pupils up to the age of 19, 16 to 19 academies and alternative provision academies. It could be a new academy, an existing academy or a school which becomes an academy (but only from the time where this formally happens).

The 'free schools' which parents, teachers and others are encouraged to establish are academies.

2.8 Who can make the VAT claim?

The claim must be made by the proprietor of an academy acting in that capacity. If the academy is registered for VAT, the VAT claimed under the VAT refund mechanism should be included with the input tax to be reclaimed.

If the academy is not registered for VAT, it should write to the following address in order to make claims under a simplified arrangement using a form that will be issued individually:

HM Revenue & Customs Banking/GABS 7th Floor
SW Alexander House 21 Victoria
Avenue Southend-on-Sea SS99 1AU

An academy that is not registered for VAT can only claim VAT incurred on purchases acquisitions and imports made in relation to their non-business activities. Other VAT is irrecoverable.

If you have any questions about this change, please contact the VAT Helpline on Tel 0845 010 9000.

In complex circumstances, including where large sums are at issue, an academy may wish to seek independent advice from an appropriately qualified

specialist.

2.9 How can I claim refunds I am entitled to?

- Apply in writing, please see paragraph 2.8 above.
- Make sure your claim relates to a period of at least one month.
- Make sure the period you choose ends on the last day of the calendar month.
- Keep invoices and other records to support your claims for six years, unless HMRC agrees in writing to a shorter period.
- If you obtain refunds by Bankers' Automated Clearing Services (Bacs), inform us of any changes to the details of your bank account.

Please note these are the current rules and may be subject to change.

2.10 What is the time limit for making a claim?

VAT should be claimed by VAT-registered academies in the VAT accounting period in which it has been incurred. However, this is subject to a four year time period for claiming, after which the VAT cannot be claimed at all. Neither can VAT be claimed on VAT incurred on purchases, acquisitions or imports before 1 April 2011.

Academies which are not registered for VAT will normally claim annually, or more frequently as agreed by HMRC. Again, the four year time period for making a claim applies.

3. Frequently asked questions

3.1 How do schools currently reclaim VAT costs?

The majority of public sector education is provided by schools which are under local authority control. Schools incur VAT costs on the goods and services they buy but Local Authorities (LAs) are able to recover the schools' input VAT under the public bodies VAT refund regime

found in [section 33](#) of the VAT Act 1994.

The fact that schools are not generally engaged in business activity for VAT purposes means that they cannot recover this input VAT by setting it off against output VAT charged on the supplies which they make. This input VAT is therefore borne by the schools.

3.2 How do academies currently reclaim VAT costs?

Academies are outside local authority control and are therefore unable to access the section 33 refund regime. To date the Treasury has provided funding to the Department for Education (DfE) to enable DfE to provide grants to academies to cover the irrecoverable VAT which they incur. However as the number of academies is increasing rapidly, it is preferable for the academies to obtain direct refunds of irrecoverable VAT, rather than indirectly via DfE.

3.3 What will academies be able to reclaim under the VAT Refund Scheme?

Academies that are not VAT registered will be able to reclaim their non-business VAT costs, subject to certain exceptions directly from HMRC – see paragraph 2.5 above.

3.4 What is defined as 'non-business' income?

There are a number of guiding principles that an academy can use to help in deciding whether something is a business activity or a non-business activity. Examples of non-business activities that are generally outside the scope of VAT include:

- receiving income from purely voluntary donations where nothing is given in return
- receiving grant funding where nothing is supplied to the funding body in return
- activities where an organisation doesn't make a charge

Therefore, grant income from DfE provided to academies for the provision of free (non-fee paying)

education and closely related supplies will still qualify to be treated as non-business income.

Academies will be providing free educational activities and services without a charge. This is defined as a non-business activity and under the VAT Refund Scheme the VAT incurred on goods and services, and on those goods acquired from another member state or imported, which are used in connection with that activity will be refunded.

3.5 What is 'business activity'?

Business has a very wide meaning for VAT purposes. The underlying reason for an activity, and the question of whether or not it is undertaken in order to make profit, do not of themselves determine whether it is undertaken by way of business. The courts have given guidelines which apply the following six criteria:

Number	Question
1.	Is the activity a serious undertaking earnestly pursued?
2.	Is the activity an occupation or function, which is actively pursued with reason?
3.	Does the activity have a certain measure of substance in terms of the quantity of goods or services supplied (that exempt supplies can also be business)
4.	Is the activity conducted in a regular manner and on sound and recognised principles?
5.	Is the activity predominately concerned with the making of taxable supplies for business purposes?
6.	Are the taxable supplies that are being made of a kind which, subject to difficulties, can be expected to yield a profit from them?

From this it follows that the community use of an academy's premises, for example, an academy may be charging an external organisation to use a sports facility during out-of-school hours, is very likely to be regarded as a business activity.

Academies will want to check HMRC guidance carefully in determining what their business and non-business activity is. For example, 'Business activity' is defined in paragraph 4.1 of the [VAT Notice 701/1](#) Charities.

3.6 What happens where a purchase, acquisition or importation relates to both business and non-business activities of an academy?

Where an academy is VAT registered a fair and reasonable apportionment should be made to ensure only the proportion that can be recovered under the refund scheme is claimed and the proportion that can

be recovered under the normal VAT rules is identified and claimed.

Where an academy is **not** VAT registered a fair and reasonable apportionment should be made to ensure only the proportion that can be recovered under the refund scheme is claimed.

3.7 Which types of school will be included in the measure?

Any existing school in England that becomes an academy, or a new academy. The measure will also apply to any free schools in England, which are legally new academies. It will also apply to all existing English academies. Such academies do not exist elsewhere in the UK, so the scheme only applies in England. Non-state funded independent schools are not covered by the scheme.

An academy school is one which has entered into an agreement with the Secretary of State under Section 482 of the Education Act 1996 or into academy arrangements with the Secretary of State under Section 1 of the Academies Act 2010.

Academies are defined in section 579 of the Education Act 1996 (as amended) and are:

- academy schools which teach pupils up to the age of 16 years
- 16 to 19 years academies
- alternative provision academies
- free schools which parents, teachers and others are encouraged to establish fall within the description of an academy school

3.8 Who can make the claim?

The **Proprietor** of an academy, acting in that capacity, can make a claim.

A 'proprietor' is defined in section 33B Para 8 a) and b) and has the same meaning as in the Education Act

1996 section 579.

In relation to a school, 'Proprietor' means the person or body of persons responsible for the management of the school so that, in relation to academies and free schools it may be the Head Teacher or Governing Body.

3.9 Why won't independent sixth form or further education colleges be included?

This measure is to ensure continuity of funding for schools leaving local authority control to become academies, to ensure academies are not put at a disadvantage and to fund existing academies' VAT costs in a more efficient way. This measure will mean that schools leaving local authority control can continue to recover VAT on their non-business activities, which was previously recovered by the local authority. The refund scheme will not provide any additional funding through the VAT system.

3.10 But what if an academy school has its own sixth form?

If an academy school catering to GCSE level also has its own sixth form (which is an integral part of the school) then the non-business VAT incurred in providing free education to the sixth form will be recoverable through the new refund scheme.

3.11 Why are voluntary aided schools not included?

The refund scheme is being introduced to address an issue that is specific to academies. Voluntary Aided (VA) schools have always had the VAT element of their revenue costs refunded via the local authority. But VA schools remain responsible in law for their own buildings and land and have not previously had the VAT element of their capital costs refunded. This is taken into account by adding an allowance for VAT in capital funding to VA schools. These institutions will be no better or worse off than before.

3.12 In broad terms, what will this mean for an academy?

From the date of Royal Assent, an academy will be able to claim back input VAT (in this instance VAT on

revenue and capital expenditure) incurred to support their non-business activity from HMRC. This non-business activity includes the supplies that an academy receives to deliver free education services. Once the law has effect, the ability to reclaim this VAT will be backdated to include VAT incurred on goods and services supplied to an academy on or after 1 April 2011.

3.13 What will happen to the VAT grant that an academy currently receives from the YPLA?

The VAT grant to academies ceased as of 31 March 2011. However academies that were established before this date, and so received the VAT grant, will continue to receive a VAT grant loan from YPLA to cover the period April - September 2011, after which academies will be able to reclaim their VAT costs directly from HMRC. The VAT grant loan will be recovered in full by YPLA by March 2012.

3.14 What if an academy's cash flow depends on being able to recover any VAT paid monthly? Will this still be possible?

A VAT-registered academy may request to submit their VAT Returns monthly (so they would send to HMRC 12 returns in a year). Normally returns are completed on a quarterly basis and in the absence of anything else this is the default position. The return shows the VAT accounting period and the date by which that return is due to be with HMRC; this is normally one month after the end of the accounting period. Returns can be submitted online and that will become the only way to submit a Return.

Academies that are not required to register for VAT can submit their section 33B claim in accordance with paragraphs 2.8 and 2.9 above.

There are some special points to note concerning submission of returns:

- The first return may be for an irregular period and thereafter returns will either be required on a quarterly, or if allowed monthly, basis. You should check the accounting period shown

on the return and the date by which the return is due.

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HMRC reserves the right to check a return before paying the amount claimed, and this is likely to be the position with the first returns.

3.15 If an academy is already registered for VAT, will this scheme mean that any changes are required to these arrangements?

No changes are required if the legal entity remains the same. VAT claimed under the scheme will be included in box 4 on the return. It is possible that HMRC may check to see why there has been an increase in VAT being claimed.

3.16 Will an academy need to be VAT registered to be eligible for the new refund scheme?

No, an academy does not need to be VAT registered unless its taxable turnover exceeds the registration threshold (£73,000 per annum from 1 April 2011). However, the easiest way to recover non-business VAT is on the return so an academy may wish to register voluntarily. To do so, an academy must make some taxable supplies of goods or services by way of business, such as the sale of school uniform. If an academy does not make any business supplies it cannot be registered for VAT. Each academy will want to consider its own position and individual circumstances.

3.17 How much time will an academy need in order to register for VAT? What is the process that they will have to follow?

To register for VAT, an academy will need to complete HMRC's registration process. The registration form (VAT 1) and guidance notes are available from HMRC's website.

You may also wish to register for online VAT services. Further information on how to register and available services can be found on the Register for HMRC Online Services webpage.

It can often take some time for an application for

registration to be considered, so academies should do this as soon as possible.

3.18 What if an academy is not required to be VAT registered or is ineligible to do so?

If an academy is not required to register for VAT, separate arrangements will be made by HMRC for an academy to provide the required information and receive a VAT refund. This will likely include an academy submitting a list of their expenditure on goods and services relating to non-business activities to HMRC using a simplified claim form. Such claims should be made no more than once a month.

This procedure does not, however, facilitate the recovery of any other VAT that an academy may pay. This measure will be to facilitate the recovery of VAT incurred against non-business activities only. Any VAT incurred against business activities will not be recoverable by an academy that is not VAT registered.

Also, non-registered academies will still need to maintain records as they may be required to submit evidence to HMRC at any stage.

An academy that does not submit returns and makes a claim to recover VAT relating to non-business activities may have to wait longer because the procedure is different and the claim may need to be checked by HMRC.

3.19 What extra work will this create for an academy?

Returns, including simplified claims, are furnished to HMRC without any supporting documentation. However HMRC may from time to time need to check them.

This means that an academy will need to maintain relevant accounting records to isolate VAT costs to support any VAT reclaims and make them available to HMRC on request. However, these records will not necessarily be additional to the records already kept in the day-to-day running of an academy other than the inclusion of a VAT account, which summarises the build-up of the figures on the return form.

3.20 But what about the exact record keeping

requirements?

Any academy must keep proper accounting records for its own benefit. These can be used to calculate the return, meaning there should be few additional accounting burdens. The record keeping requirements should be no more extensive than currently required by the YPLA and the return process itself is largely automated. Any school that is VAT registered will have to follow the rules for VAT, such as producing VAT invoices and keeping a VAT account.

3.21 What about breakfast clubs or after-school activities for children?

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.

3.22 Can academies still access the Assisted Instruments Purchase Scheme (AIPS)?

This is a scheme run by local authorities using approved musical instrument suppliers.

3.23 What is defined as 'taxable business supplies' and 'taxable turnover'?

Taxable supplies of goods and services are those which are subject to the standard rate (currently 20 per cent), a reduced rate (currently 5 per cent) or a zero rate. Supplies which are exempt from VAT are not classed as 'taxable supplies'. Some very general examples, which are not necessarily authoritative since different situations may produce a different outcome:

- Sales of printed books are zero-rated
- Sales of school uniforms are zero-rated irrespective of size for certain garments which are items of official uniform for schools whose pupils are all under 14 years old. However, beyond this there is no general relief for school uniforms, and the usual size criteria apply.

- Sales of sports equipment are standard rated (20 per cent).
- Sales of CDs are standard rated (20 per cent).
- Sports tuition by an academy in return for payment (for example to the wider community) is exempt from VAT.
- Letting out classrooms after school hours to an adult education provider is likely to be exempt from VAT.
- The structure of VAT is that generally goods and services supplied for consideration by a VAT-registered person are taxed at the standard rate unless they are specifically relieved through a reduced rate, a zero rate or an exemption.

Taxable turnover is the turnover in an expected (or actual) 12 month period from supplies of goods and services which would be taxable supplies. When these reach the VAT registration threshold (£73,000 from 1 April 2011) in a 12 month period or less, a person must register for VAT.

3.24 Will an academy be able to recover VAT incurred on the construction or refurbishment of buildings?

Yes, to the extent that the building relates to non-business activity – but only in relation to supplies of goods and services received on or after 1 April 2011.

Recovery of VAT depends on the use to which the building is put. This measure only allows recovery relating to expenditure on non-business activities, which will include the building work and normal maintenance of an academy being used for the provision of free education.

3.25 Will a refund of VAT costs be possible where a capital project is funded by other sources (e.g. sponsor contributions or private contributions raised in other ways) or where public funds from other sources are applied to a project?

Unfortunately there is no single answer to this question as different models may produce different outcomes.

The general expectation is that VAT incurred on purchases made from grant funding and donated funds freely given will be recoverable to the extent that the asset is used for a non-business purpose. However it is necessary to exercise caution because the VAT implications of arrangements may not always be obvious.

3.26 Will newly converted academies be able to claim for VAT on ongoing capital work?

This depends on who holds the contract from the date of conversion. If the contract for the building works remains with the local authority, then the authority can claim VAT back in the usual way. Where the contract has been formally transferred to the academy or academy trust, then a refund will only be possible after the new scheme is in place, and only for expenditure incurred after 1 April 2011 subject to qualifying use, each case must be considered based on the specific contractual arrangements in place and how the building will be used.

Where a qualifying building is transferred to an academy and a zero rating certificate has been issued by the transferor the transferee must also issue a certificate provided the conditions for issuing such a certificate are met. You may wish to take advice to ensure the certificate is correctly issued because there are penalties for incorrectly issued certificates.

3.27 Will an academy that is undergoing capital works and is buying services from the local authority to complete this be able to reclaim VAT, or obtain zero rating for the project?

This will depend on the nature of the project. Zero rating only applies where the project is a new build, and will involve less than five per cent community use once it is completed and the appropriate certificate is correctly issued. If an academy is charged VAT it can be claimed from HMRC provided it relates to non-business activities.

3.28 Can an academy obtain zero rating on a project where the build will have significant community use?

If the amount of use for a non-business purpose is less than 95 per cent, the construction of the building would not qualify for the zero rate. However, if the use for a business purpose is restricted to a particular part of the building and the rest of the building is intended to be used solely for a non-business purpose, the construction of the latter part would qualify for the zero rate.

3.29 Will schools that have ongoing capital works under the Building Schools for the Future Scheme have to pay VAT if they convert to become academies?

HMRC is looking at this issue in conjunction with the Department for Education, and will update this document once an answer is confirmed.

3.30 What about academies with boarding provision? Are the related goods and services treated as non-business activity?

Provided boarders receive non business education, at the academy where they board and any charge for boarding is at or below cost the provision of boarding is also non-business.

3.31 Can academies reclaim the VAT charged on buying in catering services?

The provision of catering charged at or below cost to the pupils of an academy is related to the non-business education provided to them; therefore, VAT will be recoverable.

3.32 Is there a minimum level beneath which business and non-business VAT refund claims need not be split?

HMRC is unable to agree to a minimum level, as legislation only allows for recovery of non-business VAT, regardless of the amount. If there is some VAT on business activities then there are separate rules for this, and academies may or may not be able to reclaim it - but academies are required to keep records to show the division between the two, and to show which claims relate to which activities. What HMRC will be looking for is an apportionment calculation that produces a fair and reasonable result, accurately reflects

business/non-business use and that can be carried out and checked without undue difficulty or cost.

3.33 Can an academy submit a monthly return before September 2011?

Once these proposals become law, claims can be backdated to take into account supplies received on or after 1 April 2011 and this should form a part of the total VAT claimed on the next available return or simplified claim.

So, assuming the law takes effect in July and the next return an academy has to complete is for a period ending on 31 August – the academy would calculate all of the non-business VAT costs to be claimed from 1 April 2011 to 31 August 2011 and include the whole amount on the August return. There is no need to split the figure into months or quarters on the return itself, even though this will probably have been completed as part of an academy's internal records.

4. Who can I contact for further information?

If you have a query for which you have been unable to find the answer within this VAT Information Sheet please contact the VAT Helpline on Tel 0845 010 9000.

The Helpline is available from 8.00 am to 6.00 pm, Monday to Friday.

If you have hearing difficulties, please ring the Textphone service on 0845 000 0200.

HMRC – 29 June 2011.