

LBMW GUIDANCE

THE TREATMENT OF VAT IN ACADEMIES, ACADEMY TRADING COMPANIES, DBE/DBF/UMBRELLA TRUST TRADING COMPANIES AND MUTUAL TRADING COMPANIES

This guidance is in general terms only. Companies must take professional advice on their particular situation in setting up or reviewing their operations.

1. When an entity is trading it must register for VAT, charge VAT where required, and make VAT returns/payments if its turnover in any rolling twelve-month period exceeds the threshold – currently circa £80,000. This turnover figure includes any expenses that may be billed to clients as well as relevant personnel, services and goods costs so billed. It may be advantageous for an entity to register even below the threshold. Professional advice should be taken on this in individual circumstances.
2. This applies regardless of the nature of the entity. Charities (for example) if they are trading in their own name above the threshold must register. They are not exempt.
3. In any case, charities are only allowed to trade in their own name to a marginal extent. We are advised that any charity with trading income (that is to say, a trade which is not part of the charity's primary purposes, or is essentially non-charitable) above £50,000 pa or above 25% of all the turnover of the charity (whichever is the smaller) is exceeding the limits of marginality. Such trade will then be subject to direct tax. DBEs and academies should look with care at their existing activities in the light of this.
4. Thus charities normally create trading companies to carry out trading activities beyond the marginal concession and are strongly advised to do so.
5. Such a trading company is simply in principle a commercial company like any other. It must comply with company taxation, VAT, accounting and auditing requirements as they apply from time to time to its situation and scale.
6. If the trading company is "owned" (i.e. all the shares are owned) by one or more charities then the company may gift aid to them any profits that it does not plough back into the business. This can be duly set against corporation tax.
7. Such a company (even though owned by a charity) is not able to recover VAT (i.e. re-claim any surplus in some way from HMRC). It must pay (but also claim) it on its purchases, charge it on its sales and remit any surplus (and claim any negative balance) to HMRC in regular quarterly returns. Any surplus paid over to HMRC in this process is thus lost to the system.
8. Nor is a charity in the normal run of things able to recover VAT, since most charities tend to make exempt supplies or carry out non-business activities which do not allow recovery of VAT on costs, but note that there can be significant exceptions to this.
9. Hence the DBE (even if a corporate body and a charity) is not usually able to recover VAT. Nor is the DBF. Nor is a diocesan Umbrella Company.
10. However schools and academies are able to recover VAT as follows.
11. The revenue budget of a maintained school of any kind (VA, VC, Foundation, Community) belongs to the LA until the moment of spend. The LA may therefore recover the VAT and routinely does so.
12. The capital budgets of VC, Foundation and Community schools are treated similarly.
13. However the capital budgets of VA schools are governors' responsibility and the GB (even though a charity) may not recover the VAT. VA capital grant from the Secretary of State is enhanced accordingly.
14. Academy Trusts have power under s.33B of the VAT Act 1994 (inserted by s76 of the Finance Act 2011) to recover VAT in the same way as an LA. However this applies only to their spend in carrying on their educational operations. They may not recover VAT on any trading/business activities they undertake unless that activity is itself a taxable one. In such cases they normally set up a trading company and must do if they are trading above the margin.
15. There is an anomaly here, as LAs can recover all maintained school VAT, however incurred. Academies are not able to do that because any exempt supplies they make count against them.

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16. Hence maintained schools and academies have mechanisms to recover VAT. The other bodies under consideration in this paper do not, even if they are charities or gift-aid their profits to charities.
 17. It is consequently important (a) for all bodies to ensure that they comply with the VAT rules and (b) for as much use as possible to be made of the ability of schools and academies to recover the VAT at the end of a service or goods procurement chain. This should not normally be an issue for the schools and academies but needs to be borne in mind by the other bodies so as to make VAT as recoverable as possible.
 18. The rule of thumb is to pass on as much VAT as possible to the school/academy, which can then recover it (a) through the LA for maintained schools (b) directly for academies in respect of education spend. If this is not done surplus VAT paid will be irrecoverable and lost to the system. VAT that ends up in the trading company of an academy (i.e. where it relates to "business" rather than educational spend) will also be lost to the system unless it is outweighed by VAT charged on services the academy company is itself providing.
 19. In practice therefore all the types of trading companies in view here are likely to have to register for VAT but will then pass on a great deal of the VAT through the charges (on VATable supplies) that they make to their client schools and academies. They in turn can recover it. The amount of actual VAT lost to the system is not going to be large in companies that have their whole purpose in supplying goods and services to schools and academies or which are owned by dioceses, schools and academies in order to provide services to the community.
 20. Most services that any of these companies are likely to supply will be subject to VAT. While education is itself VAT-exempt when supplied for a consideration, the supply of staff from one body to another is subject to VAT. Hence a trading company that supplies a member of staff from school/academy A to school/academy B for a period must charge VAT on the supply. This applies even if no charge (or a notional charge) is made. The supply has a value none the less and is subject to VAT on a reasonable estimate of the real commercial value.
 21. Maintained schools are able to share staff (and budgets) via Collaboration Regulations. Such sharing does not attract VAT and is not carried out through a trading company. If extensive staff sharing is required then Collaboration Regulations provide the most efficient mechanism. However academies are not covered by Collaboration Regulations and are also bound by the requirement on their directors always to have regard to the value to their own company (and its staff and pupils) of any expenditure. Consequently, where academies are involved, there seems no alternative to commercial transactions through the trading company.
 22. As far as any of the trading companies in view here are concerned there will be some things that are VAT exempt for them. This would apply for example to insurance on any property owned by the company and rented to one or more of the schools. Each company's accountants will be able to advise on such matters in detail as they arise.
 23. Hence in summary:
 - Academies and DBEs must not themselves trade above the marginal limit and academies are advised not to trade at all in their own name.
 - DBEs, DBFs, Umbrella trusts, Academies and schools may set up individual or joint trading companies to provide and procure services and supplies to their members or to others.
 - This activity is in principle subject to VAT and companies must register for VAT if they exceed the VAT threshold.
 - These companies may not themselves recover any "surplus" VAT but must pay it to HMRC.
 - However schools can recover all their VAT (except VA capital spend) and academies can recover VAT on their educational activities (but not on their business activities).
 24. This may sound complex but is actually business routine, modified only by the special VAT recovery powers of LAs and academies.

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