

# Refunding Irrecoverable VAT Costs Incurred by Academies

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## Who is likely to be affected?

This measure affects the following types of academy schools:

- any school that is an existing academy;
- any school currently maintained by the local authority that elects to become an academy;
- any newly formed academy school which is not under local authority control; or
- any independent school that elects to become an academy.

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.

## General description of the measure

Legislation will be introduced in Finance Bill 2011. It will allow academies to recover VAT incurred on purchases made to support their non-business activities (principally the provision of free education) which would have ordinarily been recovered by the local authority.

## Policy objective

This proposal supports the Government's objective of a fairer tax system by ensuring that academies can recover the VAT paid on purchases made to support their non-business activities, just as schools run by local authorities can.

## Background to this measure

- The Government announced in the June Budget that it wanted to encourage the expansion of academies.
- The draft legislation has been discussed with the Department for Education.
- This proposal was announced by the Minister for Schools on 22 November 2010.

## Detailed proposal

### Operative date

The measure will have effect for supplies made, and acquisitions and importations taking place, on or after 1 April 2011.

## Current law

Local authorities can recover VAT on their non-business activities such as running schools through the special refund scheme in section 33 of the VAT Act 1994 (VATA).

Under VAT law there is no entitlement to recover, through the normal VAT system, VAT incurred on purchases made to support non-business activities. VAT is only recoverable on purchases made to support taxable business activities. But the section 33 special refund scheme, which is a public expenditure mechanism, was introduced to ensure that VAT costs are not an additional burden on local taxpayers.

Academies are not local authority controlled schools and consequently they do not fall within the special refund scheme.

## Proposed revisions

Finance Bill 2011 will change the law by creating a new section 33B of VATA. Section 33B will provide for a new, self-contained VAT refund scheme for academies.

## Summary of impacts

<b>Exchequer impact (£m)</b>	The Exchequer impact of this measure will be confirmed at the Budget and is expected to be fiscally neutral.
<b>Economic impact</b>	This measure is not expected to have significant economic impacts.
<b>Impact on individuals and households</b>	The beneficiaries of the measure are academies and consequently it will not have any direct impact on individuals or households.
<b>Equalities impacts</b>	The measure is available for all academies and as such it does not impact on any equality group. The extent to which any one school over another might become an academy is not something that will be influenced by the measure.
<b>Impact on business including third sector</b>	The proposal is designed to be tax neutral, putting academies in the same position as schools under local authority control. Most academies will be VAT registered and will submit VAT returns, through which the refund will be claimed. This should have a minimal impact on the current record-keeping requirements imposed on maintained schools if they chose to convert to academies. A claims mechanism for academies that are not VAT registered will be introduced along the lines of the existing scheme for parish councils.
<b>Impact on public sector</b>	<p>The cost to HM Revenue &amp; Customs (HMRC) will be minimal. The majority of VAT refunds will be made via the normal VAT return procedures.</p> <p>Both the initial VAT registration of academies and the subsequent processing of their VAT returns will be carried out in HMRC's usual centres which are already in place.</p>

**Other impacts**

Academies are unlikely to employ less than 20 people and are not categorised as small firms. The measure is designed to put academies on a broadly equal funding basis as maintained schools and so they will not incur any material disadvantage from becoming academies.

The introduction of this measure should not limit the number or range of suppliers to academies and so the ability of suppliers to compete should not be affected, and will allow academies and other schools to continue to compete with each other on equal terms.

**Monitoring and evaluation**

Once in place, the refund scheme will be monitored through routine checks on VAT return information.

**Further advice**

If you have any questions about this change, please contact the VAT Helpline on 0845 010 9000. For queries on policy please contact Graham Spencer on 020 7147 0578 (email: [graham.spencer@hmrc.gsi.gov.uk](mailto:graham.spencer@hmrc.gsi.gov.uk)).

## 1 Value added tax: Academies

- (1) In Part 2 of VATA 1994 (reliefs, exemptions and repayments), after section 33A insert –

### “33B Refunds of VAT to Academies

- (1) This section applies where –
- (a) VAT is chargeable on –
    - (i) the supply of goods or services to the proprietor of an Academy,
    - (ii) the acquisition of any goods from another member State by the proprietor of an Academy, or
    - (iii) the importation of any goods from a place outside the member States by the proprietor of an Academy, and
  - (b) the supply, acquisition or importation is not for the purposes of any business carried on by the proprietor of the Academy.
- (2) The Commissioners shall, on a claim made by the proprietor of the Academy at such time and in such form and manner as the Commissioners may determine, refund to that proprietor the amount of VAT so chargeable.
- (3) Subject to subsection (4), the claim must be made before the end of the period of 4 years beginning with the day on which the supply is made or the acquisition or importation takes place.
- (4) If the Commissioners so determine, the claim period is such shorter period beginning with that day as the Commissioners may determine.
- (5) Subsection (6) applies where goods or services supplied to, or acquired or imported by, the proprietor of the Academy cannot be conveniently distinguished from goods or services supplied to, or acquired or imported by, it for the purpose of a business carried on by that proprietor.
- (6) The amount to be refunded under this section is such amount as remains after deducting from the whole of the VAT chargeable on any supply to, or acquisition or importation by, the proprietor of the Academy such proportion of that VAT as appears to the Commissioners to be attributable to the carrying on of the business.
- (7) References in this section to VAT do not include any VAT which, by virtue of an order under section 25(7), is excluded from credit under section 25.
- (8) In this section –
- (a) references to the proprietor of an Academy are to the proprietor of the Academy acting in that capacity, and

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- (b) “Academy” and “proprietor” have the same meaning as in the Education Act 1996 (see section 579 of that Act).”
- (2) In section 79 of that Act (repayment supplement in respect of certain delayed payments or refunds) –
- (a) in subsection (1), after paragraph (c) insert “, or
    - (d) the proprietor of an Academy who is registered is entitled to a refund under section 33B,”,
  - (b) in subsection (5), after paragraph (c) insert “, and
    - (d) a supplement paid to the proprietor of an Academy under subsection (1)(d) shall be treated as an amount due to that proprietor by way of refund under section 33B.”, and
  - (c) in subsection (6)(b) after “33A” insert “or 33B”.
- (3) In section 90 of that Act (failure of resolution under the Provisional Collection of Taxes Act 1968), in subsection (3) after “33A,” insert “33B,”.
- (4) In Schedule 9 to that Act (exemptions), in Group 14 (supplies of goods where input tax cannot be recovered), in Note (9) after “33A,” insert “33B,”.
- (5) The amendments made by this section have effect in relation to supplies made, and acquisitions and importations taking place, on or after 1 April 2011.

**DRAFT EXPLANATORY NOTE**

**VALUE ADDED TAX: ACADEMIES**

**SUMMARY**

1. This clause creates a new refund scheme to enable academies to recover the VAT incurred on goods and services used in the provision of free education. Academies are schools in England that enter into Academy arrangements with the Secretary of State under section 1 of the Academies Act 2010 or has entered into an agreement with the Secretary of State under section 482 of the Education Act 1996

**DETAILS OF THE CLAUSE**

2. Subsection (1) establishes the special refund scheme for academies by inserting new section 33B in Part 2 of the VAT Act 1994 (VATA).
3. New section 33B(1) defines the scope of the special refund scheme.
4. New section 33B(1)(a) provides that the special refund scheme applies to VAT incurred by the proprietor of the academy on any supply, acquisition or import of goods or services.
5. New section 33B(1)(b) provides that the special refund scheme does not cover VAT incurred in relation to any business activity undertaken by the academy. Therefore, the special refund scheme only covers VAT incurred on non-business activities, primarily the provision of free education.
6. New section 33B(2) enables the Commissioners for HM Revenue and Customs (HMRC) to make provision as to how and when a claim is made.
7. New section 33B(3) allows four years for claiming a refund from the date of incurring the VAT. This puts this special refund scheme for non-business VAT in line with the rules for reclaiming VAT incurred against business activities.
8. New section 33B(4) allows HMRC to shorten the period in which a VAT refund for non-business activities may be claimed.
9. New sections 33B(5) and (6) refer to VAT on goods and services incurred by the academy that are used for both business and non-business activities. The VAT incurred relating to business activities can be reclaimed through the normal VAT rules. These subsections

allow the element of the VAT relating to non-business activities to be reclaimed.

10. New section 33B(7) puts this special refund scheme in line with normal VAT rules by excluding any VAT specified in a Treasury Order made under section 25(7) of VATA from a refund claim.
11. New section 33B(8) defines the terms “Academy” and “proprietor” for the purposes of the special refund scheme.
12. Subsections (2) to (5) of the clause make consequential amendments to VATA:
  - allowing the repayment supplement to be paid to an academy if HMRC is late in making a refund (subsection (2));
  - excluding any VAT that has already been repaid under section 90 of VATA where a resolution under the Provisional Collection of Taxes Act 1968 has failed (subsection (3));
  - allowing non-business VAT to be reclaimed by excluding VAT claimed under the special refund regime from the VAT exemption in Group 14 of Schedule 9 to VATA, which exempts supplies of goods in respect of which input VAT cannot be recovered (subsection (4)).
13. Subsection (5) provides that the clause will have effect in relation to supplies, acquisitions or imports on and after 1 April 2011.

#### **BACKGROUND NOTE**

14. VAT can ordinarily only be recovered on expenditure relating to taxable business activities. The provision of free education is a non-business activity. Schools under local authority control have their non-business VAT refunded through the special refund scheme for local authorities found in section 33 of VATA. Academies cannot access this scheme because they are not under local authority control.
15. Section 33B is being created to enable academies to recover VAT incurred in the provision of free education. This is in order to maintain the level of funding for a school leaving local authority control to become an academy and to ensure newly created academies are treated in the same way.
16. The majority of academies will be VAT registered and so any refund will be made via the normal VAT return system. Any academies not VAT registered will make a separate claim along the lines of the procedure currently used by non-VAT registered parish councils.

## **FINANCE (No.3) BILL**

17. If you have any questions about this change or comments on the legislation, please contact Graham Spencer on 020 7147 0578 (email: [graham.spencer@hmrc.gsi.gov.uk](mailto:graham.spencer@hmrc.gsi.gov.uk)).