



Construction of New School Buildings & Letting of School Buildings – VAT Advice

June 2022

Introduction

The purpose of this guidance is intended to provide an understanding of the VAT issues surrounding the construction of new school buildings and the ability of Governing Bodies to let the completed accommodation, or part thereof. The guidance does not apply to Academies for which separate arrangements apply.

Construction of new school buildings

The Governing Body of a VA school, when commissioning the construction of a school building, can take advantage of the zero rate of VAT that is available to a charity¹ when it constructs a building that it intends to use solely for a non-business purpose. Prior to construction, a Certificate making that declaration will be issued to the contractor and passed to HMRC² and will apply for a period of 10 years from completion³ of the building(s).

A “non-business purpose” in the context of a VA School?

VA schools receive their Revenue funding from central government via the Local Authority and do not charge fees to pupils for their education. As a result, school buildings that are intended for the provision of education on this basis are deemed to be used for a non-business purpose.

Other uses deemed to fall within the definition of “non-business”:

- Breakfast and after-school clubs, even if fees are charged,
- the provision of tuition to “community classes” the tuition is free of charge,
- facilities used by crèches and external pre-school nurseries if they are run by charities at less than the commercial rate and the facilities are made available to those charities at a less than commercial rate.

¹ VA Schools within the meaning of the Education Acts are charities. They are not registered under the Charities Act 1993 as they are excepted from the requirement to be registered by virtue of The Charities (Exception of Voluntary Schools from Registration) Regulations 1960.

² HM Revenue & Customs

³ The term “completion” refers to the date of Practical Completion, as stated in the Architect’s or Contract Administrator’s Certificate and issued to the Contractor under the terms of the building contract.

These uses are deemed NOT to fall within the definition of “non-business” and are thus, usual business use:

- additional tuition provided for a fee, or charge, to pupils
- facilities used by “community classes” where tuition is provided for a charge
- facilities used by the wider community for a charge, even if not for profit

What is meant by “solely”?

If a building is intended to be used for a non-business purpose and no other, the “solely” requirement of the law will be met and the construction cost will qualify for zero rating.

HMRC do consider, however, that the “solely” requirement of the law is met if a building is intended to be used for more than 95% for a non-business use and, as a result, the zero rating of the construction cost will not be affected.

There are 4 methods of calculating the $\geq 95\%$ use:

- Floor space
- Time
- Headcount
- Hybrid

Any of these methods can be applied to calculate a qualifying use provided it is considered to be fair, i.e. that it accurately reflects the extent to which a building, or part thereof, is intended to be used and that its efficacy and application can be examined, on demand, without undue difficulty or cost.

The prior approval of EFA⁴ and/or HMRC as to which method is adopted is not required. Examples of calculations for each of the methods are described on pages 37-39 of the DFE’s guidance available at:
www.education.gov.uk/publications/standard/SchoolsSO/Page1/DFE-00027-2011

What happens if circumstances change during the 10-year period?

The zero rating of the construction cost of a building(s) is conditional upon the intended use of the building(s) satisfying the “solely for a non-business use” requirement, as described above.

⁴ Education Funding Agency.

If a school's circumstances change, for whatever reason, there are 3 possible scenarios that exist to explain a Governing Body's liability, or not, for repayment of VAT, as follows:

- where the, original, intended use did not rely upon the wider interpretation by HMRC and the application of the 95% rule, any subsequent change to the use that satisfies the 95% rule test will be allowable provided that it is considered fair and reasonable and, accordingly, there will be no VAT liability.
- where the, original, intended use relied upon the 95% rule, using one method of calculation, and circumstances require the application of a different method some years later, the change will be allowable provided that it is deemed fair and reasonable and, accordingly, there will be no VAT liability.
- where the, original, intended use was "solely for a non-business use", including HMRC's wider interpretation, is changed such that the qualifying use will be < 95%, the Governing Body will be liable for repayment to HMRC of an amount of VAT equivalent to that payable on the construction cost, reduced by the elapsed proportion of the 10 year qualifying period.

Existing Buildings

For a school building(s) over 10 years old, a Governing Body has no liability in respect of VAT on the construction costs, nor are there any constraints in relation to the building(s) use.

For further advice or clarification, please contact:

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