Item 6

Policy paper

Revenue and Customs Brief 11 (2018): VAT rule changes for higher education

Published 30 November 2018

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1. Purpose of this brief

At Budget 2018, the government announced it will amend the VAT law from 1 August 2019 to ensure continuity of VAT treatment for English higher education (HE) providers under the Higher Education and Research Act 2017.

The change in legislation applies to English HE providers who register with the Office for Students (OfS) in the Approved (fee cap) category.

There are no changes to the VAT law affecting education in Scotland, Wales and Northern Ireland.

The relevant change remains subject to parliamentary approval.

2. Readership

HE providers in England and their advisers.

3. Background

VAT exemption currently applies to UK universities and their colleges, institutions conducted by higher education corporations (HECs) and other institutions that are designated as eligible to receive support from central funding.

There are changes to the way that HE providers are funded by the OfS from the start of the 2019 to 2020 academic year. These changes require an amendment to be made to the statutory definition of an eligible body in Note 1(c) of Group 6 of Schedule 9 to the VAT Act 1994.

Paragraph 4.1 of VAT Notice 701/30 (Education and Vocational training explains that an eligible body includes ‘a school, university, sixth form college, tertiary college or further education (FE) college or other centrally funded higher or FE institution’ (defined as such under the Education Acts).

4. Revised VAT treatment

Note 1(c) to Group 6 of Schedule 9 to the VAT Act 1994 is being amended in respect of HE institutions in England. Welsh HE providers are not affected by the change.

The exemptions that relate to FE will be unaffected, although some providers of FE that also provide HE may register with the OfS in the Approved (fee cap) category.

Note 1(c) currently refers to bodies that fall within subsections 91(5)(b) and (c) of the Further and Higher Education Act (FHEA) 1992, but subsection 91(5)(c) of FHEA 1992 will no longer apply to England once the Higher Education and Research Act 2017 fully commences.

Sub-section 91(5)(b) of FHEA 1992 will be amended so that this only applies to institutions in Wales.

In order to be bodies entitled to exempt their supplies, those English HE providers who are currently exempt by virtue of being HECs or designated institutions will in future need to be registered by the OfS in the Approved (fee cap) category.

All English HE providers who will become registered in the Approved (fee cap) category will also become entitled to exempt their supplies in future.

Note 1(c) and eligible status will not apply to other HE providers such as bodies that are registered by the OfS in the Approved category, or bodies that are not registered with them. However, such bodies may of course still qualify for eligible body status if, or to the extent that, they are covered by the other notes to Group 6.

The legislation will be laid in draft before Parliament and subject to parliamentary scrutiny and debate.

The overall impact of the change is to ensure that those HE providers that are currently eligible to receive central funding can continue to exempt their supplies of education.

5. Further information

You can find a more information in the guidance VAT rules for higher education providers (VAT information sheet 08/18).

Policy paper

Revenue and Customs Brief 12 (2018): refunds of VAT in the UK for non-EU businesses

Published 12 December 2019

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1. Purpose of this brief

This brief explains the changes made to HMRC's operational procedures when verifying claims for VAT refunds submitted by non-EU businesses under the Overseas Refund Scheme provided for in UK law by Part 21 of VAT Regulations 1995 (SI 1995/2518).

These operational changes will be applied to all claims for the prescribed year 2017 to 2018 and for future years.

This brief also explains what actions HMRC will take for claims for 2016 to 2017 and claims for 2017 to 2018 which have been rejected due to the new operational procedures which started on 23 May 2018.

2. Readership

You should read this brief if you are:

- a non-EU business
- an agent acting on behalf of a non-EU business
- a body or association representing the interests of businesses and advisers in relation to international VAT

3. Background

If you are registered for business purposes in a non-EU country, you may have to pay VAT on goods and services you buy and use in the UK. You may have to also pay VAT for goods imported into the UK, for example if you take part in a trade fair.

If you're not registered for VAT in the UK, you cannot reclaim this VAT as input tax. You may be able to use the Overseas Refund Scheme to reclaim VAT charged on imports into the UK or purchases of goods and services used in the UK for business purposes.

3.1 Apply to get a refund

You can apply to get a refund of the VAT incurred in the UK if you:

- are registered as a business in a non-EU country
- are not VAT registered in the UK and you are not liable or eligible to be VAT registered here
- do not have a business establishment or other residence in the UK or EU
- do not make any supplies in the UK, other than either:
  - transport services related to the international carriage of goods
  - goods and services where VAT is payable by the person you are supplying

3.2 Documents you need for a claim

You will need:

- an application for refund, this can be made on either form VAT65A or a similar form if it is produced by an official authority and contains the same information and declaration as set out in the VAT65A
- a certificate of status (CoS) proving you are registered for business in your own country, the CoS must show the nature of business and must be stamped by the official authority in your own country
- documentary evidence, for example original invoices, showing the VAT paid in the UK for business purposes

4. Acceptable certificate of status

HMRC issues form VAT66A which can be used by overseas claimants to prove that they are engaged in business activities at the time of the claim. Official authorities, for example the tax authority in the claimants' country, may issue a similar certificate as long as it has all the information on form VAT66A.

The CoS must be the original and contain the:

- name, address and official stamp of the authorising body
- claimants name and address (read more about PO Box addresses)
- nature of the claimants business
- claimants business registration number

The CoS is only valid for 12 months. Once it has expired you will need to submit a new CoS.

4.1 Electronic Certificates of Status

HMRC is aware that some countries will only produce an electronic CoS (e-CoS) which has a link which HMRC can use to verify it is valid.

Claimants should submit a copy of the e-CoS with their paper application and HMRC will use the validation system in the country of issue to verify that the claimant is in business.

4.2 PO Box address

HMRC is aware that in some regions, the address of a business establishment can include a PO Box address because not all roads and buildings are numbered.

Where HMRC receive a CoS and it's unclear whether the address given is that of the business establishment or a mailing address, we will request further clarification to establish that the claimant is carrying out business activities by requesting additional documentary evidence .

5. Operational changes

HMRC regularly reviews its operational procedures in light of new and emerging risks. On 23 May 2018 we made changes to our checks to ensure that only valid claims are paid.

One of the main changes was to ensure that the CoS submitted with the VAT refund claim complied with the legislative requirements set out in section 4.

We recognise that by not publishing these changes it has created an unintended outcome for both businesses and HMRC.

We have therefore reviewed our approach in respect of claims for the prescribed years 2016 to 2017 and 2017 to 2018 which were processed using the new procedures. Find out more information on what HMRC is doing about these claims in section 6 and section 7.

All applications for overseas refunds must satisfy the legislative requirements set out in section 6 of VAT Notice 723A in order to get the refund of VAT paid in the UK. If claims do not meet these requirements they will be rejected.

6. Claims for 2016 to 2017

If your claim for 2016 to 2017 (covering the period 1 July 2016 to 30 June 2017) was processed and rejected before to 23 May 2018, then the claim remains rejected and you would have been notified in the rejection letter of your rights to request an internal review or appeal to the Tribunal.

We will only reconsider claims for 2016 to 2017 submitted by the 31 December 2017 deadline which were processed from 23 May 2018 onwards, and have been rejected as having an invalid CoS by HMRC applying its new operational procedures.

If we find that these claims would have been valid under the old operational procedures before 23 May 2018, and we have enough information to support the claim, these will be repaid and we will write to claimants with a new decision letter in due course.

There will be claims that we may need to ask claimants to resubmit the supporting documentation, for example original invoices, before the claim can be refunded. If this applies to your claim we will send you a letter by 31 December 2018 explaining what you need to do.

Where claims are reconsidered and we find that they would have been rejected under the old operational procedures (applied before to 23 May 2018), then a new decision to reject the claim will be issued by 31 December 2018 which will explain your new review and appeal rights.

Where claims for 2016 to 2017 were rejected under the new operational procedures (from 23 May 2018) and you have asked for an internal review or appealed to the Tribunal, HMRC will reconsider these claims and will write to claimants by 31 December 2018 explaining what happens next.

7. Claims for 2017 to 2018

The new operational procedures will be applied to all claims for 2017 to 2018 (covering the period 1 July 2017 to 30 June 2018) that have either already been submitted to HMRC or we receive by the 31 December 2018 deadline.

For new claims, HMRC understands that claimants may not have time to get a valid CoS from their official authority in time to send this with their claim so we will allow claimants an additional 90 days to submit a valid CoS, which means the CoS must be submitted by the 31 March 2019.

It is important to note that new claims for 2017 to 2018 must still be received by HMRC by the 31 December deadline and the 90 day extension only applies to submission of a valid CoS. Claimants should attach a covering letter with their refund application that a valid CoS will follow.

Any new claims for 2017 to 2018 received by the 31 December 2018 deadline that are not supported by a valid CoS by the 31 March 2019 will be rejected.

Where you have already submitted a claim for 2017 to 2018 and this has been rejected under the new operational procedures (from 23 May 2018) and you have not asked for an internal review or appealed to the Tribunal, HMRC will be reconsidering these claims and will write to all claimants by 31 December 2018 asking them to submit a valid CoSand supporting documentation to verify their claim by 31 March 2019.

For 2017 to 2018 claims where you have asked for an internal review by HMRC, appealed to the Tribunal or where litigation is in progress, HMRC will be reconsidering these claims and where appropriate will be asking claimants to submit a valid CoS and supporting documentation.

8. Claims for 2018 to 2019 and future years

All applications for refunds must satisfy the legislative requirements set out in section 6 of VAT Notice 723A in order to obtain the refund of VAT paid in the UK. If claims do not meet the requirements they will be rejected – however, HMRC will as necessary, ask for clarification from applicants where validity is unclear.

9. Where can I get more information

You can read more information in VAT Notice 723A.
Contact the UK VAT Overseas Repayment Unit if you have a query about an application you have sent to them.

Policy paper

Revenue and Customs Brief 13 (2018): change to the VAT treatment of retained payments and deposits

Published 14 December 2018

1.Purpose of this brief
2.Readership
3.Background
4.New policy
5.Credit card guarantees
6.Previous VAT periods
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1. Purpose of this brief

This brief explains HMRC's new policy on VAT and payments for unfulfilled supplies which applies from 1 March 2019.

2. Readership

Businesses that retain payments and deposits for goods and services which customers do not take up.

3. Background

Following judgements of the Court of Justice of the European Union (CJEU), we have reviewed our policy on the VAT treatment of payments for unfulfilled supplies. An unfulfilled supply is where a customer does not use a service or collect goods that they have paid for.

Our current policy lets businesses treat many payments for services and part payments for goods, as outside the scope of VAT where the customer does not:

- use the service
- collect the goods

CJEU decisions given after this policy started (Air France-KLM and Firin OOD) make it clear that this treatment must be amended.

When a full or part payment is made on account for a taxable supply, a chargeable event occurs and VAT becomes due on the amount paid.

If the supply does not take place, the VAT must not be reduced, unless the payment is refunded. This is because when a customer makes or commits to make a payment, it is for a supply. It cannot be reclassified as a payment to compensate the supplier for a loss once it is known the customer will not use the goods or services.

4. New policy

From 1 March 2019 HMRC policy will be that VAT is due on all retained payments for unused services and uncollected goods. This will bring consistency of VAT treatment on all payments for goods and services where there is an unfulfilled supply.

Where suppliers become aware that a customer has decided not to take up goods or services after paying, the transaction will remain subject to VAT. No adjustments or refunds of VAT will be allowed for those retained payments.

If suppliers find out the relevant goods or services will not be used or received before 1 March 2019, they may treat the prepayments under our current policy.

4.1 Example

A hotel room is booked on 4 January 2019 for a one night stay on 17 March 2019. The price is £100 plus £20 VAT. The hotel takes payment at the time of booking. The customer has no entitlement to a refund in the event of them cancelling or not using the room.

The hotel must account for the VAT when the payment is first made.

If the customer cancels the booking before 1 March 2019, the hotel may make an adjustment and treat the £20 VAT as outside the scope of VAT.

If the customer cancels on or after 1 March 2019 or does not use the room, the hotel cannot adjust the £20 VAT as the new policy will apply.

5. Credit card guarantees

Where credit card details are taken, but no payment is taken until the service or goods are due to be used or collected, VAT is due when the payment is taken.

When a customer agrees to pay for a supply of services or goods on a future date, the payment cannot be reclassified if the supply is unfulfilled.

6. Previous VAT periods

Businesses that have not treated payments for unfulfilled supplies as outside the scope of VAT have applied the law correctly. They cannot make any adjustment to previous VAT periods to treat supplies in line with former policy, as no error has been made.

7. Guidance

HMRC will change our guidance manuals and public notices before 1 March 2019 to reflect this change.