

VAT: Supplies of Goods or Services by Public Bodies

Who is likely to be affected?

Central and local government bodies in the UK, which for these purposes includes the Scottish Administration and the Welsh Assembly Government. However, in practice the measure will not change the way in which VAT applies to them.

General description of the measure

This clarifies the UK VAT position of public bodies who make supplies of goods or services.

Policy objective

This provision puts the effective implementation of Article 13 of the Principal VAT Directive (PVD) beyond doubt.

Background to the measure

There is no explicit transposition of Article 13(1) into UK legislation. HM Revenue & Customs (HMRC) has given effect to the Article by interpreting existing legislation in a way that achieves the correct result for the Article's purposes. However recent statements by the Courts have cast doubt on whether this approach amounts to an effective implementation of Article 13(1).

This measure was announced as part of Budget 2011. Since the measure simply involves the technical implementation of EU law, which is already implemented in practice, there has not been a consultation period.

In practice public bodies should see no change to their existing tax treatment as a result of the legislative changes.

Detailed proposal

Operative date

The measure will have effect on and after the date that Finance Bill 2012 receives Royal Assent.

Current law

Under section 4(1) of Value Added Tax Act (VATA), tax becomes chargeable on any supply of goods or services made in the United Kingdom by a taxable person in the course or furtherance of any business carried on by him. The meaning of the word 'business' is defined in section 94 in a broad and non-exclusive way.

Any individual or body might be engaged in both business and non-business activities and this is particularly true of public bodies that have statutory functions.

HMRC interprets 'business' in accordance with the flexibility afforded by section 94 and European jurisprudence to encompass activities that are economic in nature and this would include (but is not confined to) the supply of goods and services by public authorities operating within their statutory framework where they compete with private sector providers.

Section 41 VATA applies the provisions of VATA to the Crown (the legal presumption otherwise would be that the Crown is not subject to the statute). Section 41(2) makes particular provision for treating supplies made by the Government departments and other central government bodies, which are not made in the course of furtherance of a business, as taxable where there are competing providers in the private sector.

There is no equivalent to this provision in VATA for other public bodies such as local authorities nor is there any general exemption for public bodies (including the Crown) when engaged in making taxable supplies within an exclusive statutory legal framework.

Proposed revisions

Legislation will be introduced in Finance Bill 2012 to enact article 13 of PVD. Section 41(2) will be repealed.

The new section, 41A, of the VAT Act 1994 will be enacted. Where public bodies supply goods or services pursuant to public statute which is unique to them, they are not regarded as doing so in the course or furtherance of a business carried on by them unless:

- the exemption would cause distortion of competition; or,
- the supplies arise from activities described in Annex 1 of the PVD which are engaged in to a degree which is more than merely negligible

'Public body' is defined by reference to Article 13(1). European case law has clarified what falls within this definition. A public body must be "part of the public administration" or to put it another way 'it must be identified as part of the public administration of the state.'

Summary of impacts

Exchequer impact (£m)	2011-12	2012-13	2013-14	2014-15	2015-16
	-	nil	nil	nil	nil
	This measure is not expected to have an Exchequer impact.				
Economic impact	This measure has no significant economic impact.				
Impact on individuals and households	There is no direct impact on individuals and households as the measure is purely for public bodies.				
Equalities impacts	The measure applies equally to all public bodies and does not impact on people with protected characteristics.				
Impact on business including civil society organisations	The Government does not anticipate any specific impact on business or civil society organisations.				
Operational impact (£m) (HMRC or other)	The impact on HMRC will be negligible.				
Other impacts	This will benefit public bodies by putting existing treatment on a statutory basis.				

Monitoring and evaluation

The Government does not expect there to be any change in how public bodies operate, but this will be monitored on an on-going basis by HMRC.

Further advice

Any public body with a Customer Relationship Manager should contact them for guidance. All other queries should be addressed to the VAT Helpline on 0845 010 9000.

1 Supply of goods or services by public bodies

- (1) VATA 1994 is amended as follows.
- (2) In section 41 (application to the Crown) –
 - (a) omit subsection (2), and
 - (b) in subsection (3)(b) for “a direction under subsection (2) above,” substitute “section 41A,”.
- (3) After that section insert –

“41A Supply of goods or services by public bodies

- (1) This section applies where goods or services are supplied by a body mentioned in Article 13(1) of the VAT Directive (status of public bodies as taxable persons) in the course of activities or transactions in which it is engaged as a public authority.
- (2) If the supply is in respect of an activity listed in Annex I to the VAT Directive (activities in respect of which public bodies are to be taxable persons), it is to be treated for the purposes of this Act as a supply in the course or furtherance of a business unless it is on such a small scale as to be negligible.
- (3) If the supply is not in respect of such an activity, it is to be treated for the purposes of this Act as a supply in the course or furtherance of a business if (and only if) not charging VAT on the supply would lead to a significant distortion of competition.
- (4) In this section “the VAT Directive” means Council Directive 2006/112/EC on the common system of value added tax.”

EXPLANATORY NOTE

VAT: SUPPLIES OF GOODS OR SERVICES BY PUBLIC BODIES

SUMMARY

1. This clause implements Article 13(1) of the Principal VAT Directive (2006/112/EC) ("the PVD") by inserting a new section, 41A, into the Value Added Tax Act 1994 (VATA).
2. It applies to Government departments, local authorities and analogous public bodies who supply goods and services when acting within a legal framework, such as a statute, which applies only to them and not to private individuals.
3. Such bodies are not to be treated as taxable persons unless their exemption would lead to distortion of competition.
4. The exemption does not however apply to their engagement in activities described in Annex 1 of the PVD ("Annex 1") unless those activities are carried out on such a small scale as to be negligible.

DETAILS OF THE CLAUSE

5. Section (2) amends section 41 VATA ("section 41"). Section 41 applies VATA to the Crown. Section 41(2)(2) provides for the taxation of goods and services supplied by Government departments in certain circumstances where such supplies are not taxed under general VATA provisions. Sub section (2)(a) deletes section 41(2) and makes a consequential amendment to section 41(3)(b) so that reference is made to the new section 41A of VATA which will determine when supplies by Government departments are taxed.
6. Section (3) inserts a new section 41A which provides as follows:
 - New section 41A(1) provides that the section will apply to supplies of goods and services made by a public body (being a body within the ambit of Article 13(1) PVD) which is acting in its capacity as a public authority;
 - New section 41A(2) provides that (where the new section 41 applies) a supply in respect of an activity listed in Annex 1 of the PVD is to be treated as a supply in the course or furtherance of business (and therefore taxable in accordance with section 4 of VATA) unless the activity is on such a small scale as to be negligible;

- New section 41A(4) provides that (where the new section 41 applies) a supply which is not in respect of an Annex 1 activity is only to be treated as a supply in the course or furtherance of a business if relieving it from VAT would lead to a significant distortion of competition

BACKGROUND NOTE

7. Article 13(1) provides that public bodies (Government departments, local authorities and analogous institutions) should not be taxed when making supplies of goods and services unless those supplies arise out of Annex 1 activities (which are not negligible) or relief from VAT would cause significant distortions of competition.
8. There is no explicit transposition of Article 13(1) into UK legislation. HMRC has given effect to the Article by interpreting existing legislation in a way that achieves the correct result for the Article's purposes. However recent litigation has cast significant doubt on whether this approach amounts to an effective implementation of Article 13(1).
9. This provision puts the effective implementation of the article beyond doubt and therefore precludes the possibility of infraction proceedings being taken against the UK. In practice public bodies should see no change to their existing tax treatment as a result of the legislative changes. It also provides a clear legislative base for applying the appropriate test to determine whether a particular supply is taxable in an environment where public and private sector provision is constantly evolving.
10. If you have any questions about this change, or comments on the legislation, please contact Alec Tasker on 020 7147 0651 (email alec.tasker@hmrc.gsi.gov.uk).