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FAO. THE HEADTEACHER & SCHOOL BURSAR/FINANCE OFFICER

VA Schools & VAT

Over the last few years there have been a great number of discussions regarding Voluntary Aided Schools and VAT.

In simple terms when a school makes a purchase and passes the payment through its delegated budget either in the traditionally way by sending it to the LA, or for cheque book school, by writing a cheque, the LA is allowed to recover the VAT. That is because under Section 33 of the VAT Act 1994, specified bodies, including Local Authorities, are entitled to recover VAT incurred on supplies made to them which relate to their non business activities. Their provision of free education in state maintained schools is one such non business activity. In essence the provision of education within a state school (which includes Voluntary Aided Schools) is a requirement of the Local Authority.

The Section 33 Exemption does not apply to goods and services purchased by another legal entity i.e. the Governors of a Voluntary Aided School. That is why when Governors do works on their school they are required to pay VAT.

In 1996 it became possible for Governors to use the delegated budget to meet their liabilities. This was generally seen to mean that the Governors could use the delegated budget to pay their 15%, now 10%, contribution to capital works. There were however schools that interpreted this as meaning that if the delegated budget were used for purchases which were the responsibility of the Governing Body then the VAT could be recovered. In actual fact the VAT was probably recovered by default because the LA simply recovered the VAT on any invoices that were passed through its system without question who the purchase was for.

Up until 2002 it was fairly clear not least because we had a diagram, what was governor liability and what was LA liability. The changes on the 1st April 2002 completely muddled the water and to all intents and purposes made everything governor liability.

Over the last few years there have been several major discussions with Local Authorities regarding what was capital and revenue work and therefore what was or was not the liability of the governors and what work was included under Section 33 and therefore the VAT was recoverable. It became increasingly clear that Revenue & Customs had not caught up with the 2002 changes and inevitably one day the guidance would need to be updated. That has now happened and is contained in Revenue & Customs Brief 53/09 VAT – Recovery by Local Authorities under Section 33 VAT Act 1994 in respect of Voluntary Aided Schools.

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Chester, Liverpool, Manchester & York**

This notice which takes effect from 1st September 2009 makes it very clear that capital expenditure for which the Governing Body of a Voluntary Aided School is responsible is not covered by Section 33. Revenue & Customs state that the DCSF identify such expenditure as relating to:

- ❖ The existing buildings (internal and external)
- ❖ Those buildings previously known as “excepted” (kitchens, dining areas, medical/dental rooms, swimming pools, caretakers’ dwelling houses etc.)
- ❖ Perimeter walls and fences even if around the playing field
- ❖ Playgrounds
- ❖ Furniture, fixtures and fittings – including ICT infrastructure and equipment
- ❖ Other capital items (which can include capital work to boilers or other services)

This makes it clear that capital monies provided by the Secretary of State to the Governors of Voluntary Aided Schools through Devolved Formula Capital, LCVAP or other routes, can be used for those items with of course the approval of the relevant DBE; the Notice is, like everyone before it, silent on the definition of capital.

Attempts to clarify with the DCSF the definition of capital simply brings us back to the old nutmeg that anything under the *de minimus* level of £2,000 is revenue. Now at one level you could imply that anything over £2,000 is capital but clearly under any definition of capital works that is not true. Capital expenditure is normally defined as that which improves or restores beyond the normal life an item or fixture or fitting.

Attempts to try and clarify this issue have as far as I know, proved fruitless. The Treasury however does issue guidance to government departments regarding routine maintenance versus capital expenditure and this may help us. This guidance reads:

Subsequent expenditure to ensure that a tangible fixed asset maintains its previously assessed standard of performance should be recorded as current expenditure (i.e. revenue). Subsequent expenditure on a tangible fixed asset should be recorded as capital expenditure in any of these four circumstances:

- ❖ *Where it provides an enhancement to the economic benefits of the asset in excess of the previously assessed standard of performance*
- ❖ *Where a component of the asset having been treated separately for depreciation purposes and depreciated over its individual useful life is replaced or restored*
- ❖ *Where it relates to a major inspection or overhaul of the asset that restores the economic benefits of the asset that have been consumed by the entity and have already been reflected*
- ❖ *Where it substantially lengthens its useful life beyond that conferred by repairs and maintenance*

While this may seem like Treasury gobbledegook it actually is quite helpful. It provides us with government guidance on the difference between capital and revenue.

The first criterion is the £2,000 *de minimus* level. Anything costing less than £2,000 is revenue. If you replace one item and that is less than £2,000, it is revenue because it is below the *de minimus*. If however you purchase 20 of the same items to replace worn out items, and the total cost is over £2,000, this is a capital purchase.

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If on a Saturday night all the windows in the school are broken and you simply replaced the broken glass, quite clearly that is revenue no matter what the cost – there is no improvement. If however one window is broken and you decide that it's an opportunity to replace the whole window, (assuming that's over £2,000) then that is capital.

VAT is one of those very difficult areas and it is clear that Revenue & Customs is now tightening up and as well as disallowing claims which don't fit the rules, it is inevitable that there will be occasions when legitimate claims are challenged. The fact that it's been common practice to make such claims will not be a defence if Revenue & Customs challenge claims.

Schools are advised to take professional advice from their consultants and the Board of Education before submitted claims to the Local Authorities to recover VAT.

I hope this helps to clarify matters as they currently stand. However if you should have any queries please do not hesitate to contact me.

Kind regards,

A handwritten signature in black ink, appearing to read 'S Quartermaine', written in a cursive style.

Simon Quartermaine