

# VAT on research between eligible bodies: Briefing note.

September 2013



Business research carried out between 'eligible bodies' – that is, central and local government, universities, schools, non-profit making charities, and other public bodies – has previously been exempt from VAT. Last December HMRC announced that this exemption would have to be withdrawn on 1 August 2013, to conform with EU rules. HMRC held a 6 month consultation to gather information, in particular about whether there should be transitional arrangements for existing contracts. The outcome of the consultation was announced in August.

HMRC's conclusions from this exercise can be found online in [VAT Information Sheet 11/13](#).

## MAIN OUTCOMES OF THE CONSULTATION

The Social Research Association encouraged its members who work in eligible bodies to respond to the consultation. We and others argued to HMRC that:

1. *Existing business research contracts between eligible bodies should be allowed to run to termination without VAT being introduced. **HMRC have agreed to this:*** contracts that began before 1 August will not be affected by the change. It's necessary to read the small print as some changes to existing contracts may render them VAT-able. But in essence, existing contracts are in the clear.
2. *Eligible bodies who collaborate to carry out research funded by an eligible body should not be treated differently for VAT. **HMRC have confirmed this.*** Where there is a genuine collaboration between several eligible bodies to jointly provide research for the public benefit then, even though one party may be the lead body receiving funding on behalf of all of the others and passing funds on to them, all of those parties can use the same non-business VAT treatment and need not be deemed to be sub-contractors supplying their services by way of business and therefore on a taxable basis. Ideally all the parties should be named in the grant application, but other evidence of a collaboration agreement will be accepted.
3. *VAT definitions of 'research' and 'business research' should be tightened up, and examples provided, to make it clear to eligible bodies which types of research are affected by the VAT change, and which will remain outside the scope of VAT. We consider that this is still less than clear – see below.*

## WILL YOUR FUTURE RESEARCH CONTRACT BE AFFECTED?

These two key questions will determine the VAT status of future research contracts between eligible bodies:

1. **Is it research?** (See section 3 of HMRC's Information Sheet)

For VAT purposes, HMRC defines research as 'original investigation undertaken in order to enhance knowledge and understanding'. Their new Information Sheet 11/13 continues:

It is the intention of the parties at the beginning of a project that will determine whether the services supplied qualify as research for VAT purposes. If the intention is to advance knowledge and understanding, the supply is one of research.

Research does not include supplies such as merely confirming existing knowledge or understanding, consultancy, business efficiency advice, market research or opinion polling.

And because 'merely confirming existing knowledge' is not considered to be research, it is subject to VAT.

One can spot possible flaws in HMRC's distinction; it's arguable that all the 'non-research' activities they cite could be used to advance knowledge and understanding. Therefore, to reduce the risk of confusion about the VAT status of new research contracts, eligible bodies may want to consider carefully at the outset whether a project intends to advance knowledge and understanding – and if it does, to make statements that justify this claim, for example in an invitation to tender (ITT), in a response to an ITT, and in a contract.

## **2. Is it 'business research', or 'non-business' research?** (See section 5 of the Information Sheet)

In the consultation HMRC explained that the new VAT ruling applied only to 'business research' between eligible bodies, which from 1 August 2013 has become standard rated rather than exempt for VAT purposes. Another class of research, called 'non-business', remains outside the scope of VAT. They describe this as research between eligible bodies that is 'for the public good' and where the funding of the research does not result in 'a supply' to the funder for VAT purposes.

We and others asked HMRC to clarify this definition of 'non-business' research, to give eligible bodies some certainty about what remains outside the scope of VAT. However in a briefing note in March, and now in their Information Note, their definition of non-business research is largely unchanged:

Generally research is outside the scope of VAT when it is funded, either by the public sector or by the charitable sector, for the wider public benefit. However, this is only a general rule of thumb and each case must be considered on its own merits.

The Advocate General in 'Keeping Newcastle Warm (C353/00)' said that if the funding is provided by the public sector (eg, government departments and research councils) 'for the public good' then this is an indicator that the funding is not consideration for any supply by the person who receives the funding.

The main question to ascertain whether the research is outside the scope of VAT is whether the funding is part of the consideration for any specific supply: does the funder receive anything for the consideration that is paid? If not, then service is outside the scope of VAT.

Since the main question is whether there is any specific supply to the funder, it would be helpful to know if a research report, or an electronic dataset – two very typical results of a research project – are considered a ‘supply’. The SRA asked HMRC this during the consultation, offering examples of research projects to find out if these were ‘for the public good’, but got no definitive response.

Elsewhere in VAT guidance, HMRC define ‘supply’ very broadly, incorporating any kind of service provided in return for a consideration (eg. funding).

The Charity Tax group, an independent advocacy and advisory organisation, notes on these points that if the funder *makes publicly available* a ‘supply’ such as a research report, this may help to define the research as being non-business, since the project has resulted in no benefit to the funder for their exclusive use. (And in a similar way if an electronic dataset is submitted to a resource that makes such data publicly available, eg. the Data Archive at Essex University, this also may indicate a non-business arrangement for VAT purposes.) By the same token, if the results of the research, including any intellectual property produced, remain exclusively reserved to the funder and are not made publicly available, this is likely to be seen by HMRC as evidence of ‘business’ status.

In the absence of complete clarity, eligible bodies may wish to consider carefully at the outset whether the research is for the public benefit and for the general public good – and if it is, to make statements justifying this claim, for example in preparing an invitation to tender, a response to an ITT, and a contract.

In addition it would be advisable to say if the research findings will be made publicly available. This could be considered both an indication of public benefit, and the lack of a direct and exclusive benefit to the funder.

**IMPORTANT:** We must emphasise that none of the above constitutes legal advice. Eligible bodies must make their own decisions on these matters and are advised to read [HMRC's Information Note](#) in full, as interpretations may vary. And because HMRC say that each case must be considered on its own merits, you may want to consider seeking their advice if you are planning a research project whose VAT status seems uncertain.

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If you have VAT experiences that you're willing to share which may be helpful for other eligible bodies, please do get in touch with the Social Research Association: [admin@the-sra.org.uk](mailto:admin@the-sra.org.uk)