



VAT: Consideration of the case to extend the education exemption to for-profit providers of Higher Education.

Summary of Responses

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1. Introduction

1.1 The Purpose of the Consultation.

The Government wishes to facilitate a more diverse and competitive Higher Education (HE) sector that offers greater student choice and is responsive to student demand. Currently, the majority of for-profit providers of HE do not qualify as eligible bodies for VAT purposes and cannot therefore exempt their HE courses in the way that universities and not-for-profit HE providers that are eligible bodies can. At Budget 2012 the Government announced that they would review the VAT treatment of higher education, particularly at university degree level, to ensure that commercial bodies supplying courses similar to those supplied by universities are treated fairly.

HMRC launched a consultation on 12 September 2012 outlining two options and seeking views on:

- whether the proposals would help to contribute to competition and benefit students within the HE sector;
- whether commercial bodies considered the options to be workable; and
- whether there were any alternative ways of defining for-profit providers of HE for VAT exemption purposes.

The consultation closed on 5 December 2012.

1.2 Respondents to consultation

28 responses were received, broken down as follows:

Representative bodies.....	9
Profit making entities.....	6
Non profit making entities.....	4
Professional advisors.....	9

2. Responses

This chapter provides details of the responses to the questions asked in the consultation document.

Question 1

Do you agree that such a change will help to contribute to competition and benefit students within the HE sector? If so, why? If not, why not?

2.1 Twenty respondents answered 'yes' to this question although many of these responses were qualified. Six respondents answered 'no'. Commercial entities welcomed the proposal but thought that the two options put forward did not go far enough. Existing eligible bodies and trade unions representing workers in the education sector considered that any widening of the exemption must protect students' interests.

2.2 The concerns raised covered:

- There was no evidence to support the assertion that the proposals would increase competition
- The impact of the changes had not been fully costed and little assessment had been made of the consequences for universities and colleges which currently have VAT exemption.
- Fees charged to students may not necessarily be reduced.
- Current for-profit entities are already able to benefit from the exemption if they choose to set up separate not-for-profit entities
- The proposed changes were not compatible with EU Law principles.

Question 2

Do you think that the proposed list covers all those courses that lead to a degree or count towards part of a degree course or post graduate diploma? If not, what other courses should we include?

2.3 Five respondents gave an unqualified 'yes' to this question.

2.4 A further fifteen respondents suggested possible amendments and additions to the list of eligible courses:

- The list should include further education courses including foundation courses that facilitate entry onto degree courses, short term courses and modules as well as courses that are validated by overseas universities and similar bodies.
- The list should include professional and vocational training.
- The list of courses should be defined according to the Framework for Higher Education Qualifications (FHEQ)¹ framework.

¹ The Quality Assurance Agency's frameworks for higher education qualifications describe the achievement represented by higher education qualifications.

- The list of courses should not be a definitive criterion for exemption since it could become outdated and does not encompass all providers of HE.
- The list should correspond exactly with courses eligible for central authority funding.

Question 3

Do you think that the proposed list includes courses that do not lead to, count towards, or form part of a degree course or post graduate diploma? If so, which courses should not be included?

2.5 Nine respondents gave an unqualified 'no' in answer to this question.

2.6 Ten respondents qualified their answers and considered questions 2 and 3 together and their comments are reflected in paragraph 2.4 above.

Question 4 relating to Option one "A body providing wholly HE courses and which has Recognised or Listed Body status."

a) We would welcome views on this option.

b) Do you think that this option will correctly identify all those for-profit providers who are providing or may decide to provide HE? Does it miss out any such providers and if so, who?

c) If you are a for-profit provider would you seek an exemption under this option if it was available? If so, why? If not, why not?

d) What problems, if any, do you foresee for-profit providers encountering in setting up a separate entity? How easy would it be to overcome any problems identified?

2.7 Twenty-three respondents answered these questions; five considered this to be the better option because of the tighter parameters and quality control that would exist, but all replies were in some way qualified. In general, for-profit providers and professional bodies considered that the proposal was too restrictive.

2.8 The concerns raised covered:

- That the option is not available for part courses and modules.
- Fiscal neutrality - discrimination on the basis of nationality and distortion of competition issues as similar bodies will be treated differently under the legislation.
- The fact that the option does not include any courses below degree level such as foundation programmes.
- The position of Higher National Diploma and Certificate courses as the awarding bodies do not currently have degree awarding status.
- The potential setting up of separate entities and the associated additional costs relating to professional charges, staff costs, shared services and accommodation charges. Having to set up a separate entity is seen as a false and self imposed limitation.

- The position of overseas companies and their exclusion from the option.
- The fact that the option does not recognise collaborative partnerships with separate entities delivering different part/s of a course.
- The issue of business splitting which in certain areas of education HMRC sees as an unacceptable working practice.

Question 5 relating to Option two "A body providing wholly HE courses that are designated for HE student support, whether or not students choose to take advantage of that support."

a) We would welcome views on this option.

b) Do you think that this option will correctly identify all those for-profit providers who are providing or may decide to provide HE? Does it miss out any such providers and if so, who?

c) If you are a for-profit provider would you seek an exemption under this option if it was available? If so why? If not, why not?

d) What problems, if any, do you foresee for-profit providers encountering in setting up a separate entity? How easy would it be to overcome any problems identified?

2.9 Twenty-two respondents answered these questions but the majority answered questions 4 and 5 together as the concerns that were expressed at paragraph 2.8 applied to both options. Whilst most for-profit providers considered that this option was the better of the two options they still considered it too restrictive.

2.10 In addition to the concerns reported at paragraph 2.8 the following points were made:

- Both options had the same effect of limiting the exemption.
- The qualifications themselves should be designated as eligible for exemption rather than the provider of the education.
- Many providers would not be able to access this option as not all courses are eligible for student support.
- The option excludes niche courses.
- The distinction between vocational training and Higher Education is untenable.

Question 6

Do you think there are any alternative ways of defining for-profit providers of HE other than the options that we have included in this consultation document?

2.11 Fifteen respondents answered this question: five for-profit providers and the rest professional advisors and representative bodies.

2.12 The following were suggested as alternative ways of identifying those for-profit providers of education who would benefit from the exemption:

- Any body that teaches at least one undergraduate level course should be allowed to exempt all its HE courses.
- Any for-profit provider that comes under and is recognised by the Quality Assurance Agency's quality assurance framework.
- Any an institution that provides education, training or examinations leading to professional or vocational qualifications. A list of qualifications could be defined in secondary or tertiary legislation.
- Any provider of HE delivered in collaboration with UK universities, to include all FHEQ levels 4-8 education provided under the quality assurance arrangements of the QAA or recognised equivalent.
- Any provider of foundation education at level 3.
- Any provider of education at level 4 and above.
- Providers of HE should be designated and controlled by BIS.
- The rules that are applied to universities should be applied to the whole sector.
- Include non-UK providers including those recognised by other member states and bodies providing distance learning by internet medium.

Question 7

As a for-profit provider of HE courses,

What percentage of the total courses you provide are HE level courses?

How many HE degree courses do you currently run? Is this expected to increase over time?

What type of degree courses do you run i.e. level and subject area?

Do you have degree awarding powers?

If not, which awarding body approves or validates your HE courses?

On average, how many students are enrolled per HE level course?

What are your average fees, excluding VAT, for a HE degree course per year? Will this be increasing over time?

What proportion of your total input tax do you currently reclaim?

How many of your HE courses are currently designated for student support purposes?

What percentage of the charges for your HE course fees are made to businesses instead of to individual students?

2.13 Five respondents answered these questions and the businesses concerned provided between five and fifty programmes ranging in price from £5,000-£20,000. Only one of the respondents had degree awarding powers. Due to the limited number of responses it is not possible to draw any meaningful conclusion from the information provided as this is not a representative sample of the for-profit sector.

Question 8

As a for-profit provider of HE courses if you were to choose to become an eligible body and exempt your courses:

How much time would you need to arrange your affairs to meet the proposed criteria?

Is it likely that you would continue to operate the eligible body from the same premises as your current entity?

Would there be any financial costs that you would incur as part of the restructuring?

Would there be any additional administrative burdens you would face?

(e) Would you use the saving from the proposed VAT exemption to:

Charge less on your tuition fees?

Improve the student experience in other ways?

Increase your income?

Other (please detail)?

2.14 Three respondents answered these questions to the effect that

- They would need between one month and a year to rearrange their affairs to meet the proposed criteria although any new entities would be run from existing premises.
- Restructuring would impose financial costs, such as business formation fees, professional fees and promotional costs as well as ongoing staff costs, accountancy fees and banking charges etc.
- There would be no reduction in tuition fees but there should be capacity to increase in the market and expand into other areas by investing savings.
- The student experience would be enhanced by further development of on line resources and the recruitment of more academic and support staff.

- Income would increase in the longer term but there would also be a loss to be offset in respect of VAT on purchases and expenses that could not be reclaimed.

Question 9

If you are already an eligible body do you think the Government should extend the exemption to for-profit providers and why? If not, why not?

2.15 Seven respondents including professional advisors and representative bodies answered the question; two were opposed to extending the exemption because they considered that there is no evidence to suggest that any revenue saved would benefit students and that profit-making entities are not subject to the same controls as other public bodies.

2.16 The five respondents that supported the measure made the following observations:

- Full implementation for Listed Bodies is logical and desirable.
- All supplies including part courses made directly to universities should be exempt regardless of whether made by an eligible body.
- Exemption should be available on the basis of the education provided rather than the status of the body delivering the education and it should not be limited to HE.
- Extending the exemption should encourage competition.

Question 10

Do you have any comments on the impacts set out above on for-profit providers if, following the review, a change to the VAT legislation is necessary? Are there any additional impacts, either benefits or costs, that you think will result from either of the proposed options?

2.17 Ten respondents answered this question and expressed the following views:

- There is a negligible cost to extending the exemption.
- The proposals are detrimental to UK taxpayers and students and further research is needed to quantify the benefits.
- Allowing profit making bodies to benefit from the exemption could set a precedent in that commercial providers of activities covered by other areas of VAT exemption may lobby for changes.
- The proposals undermine the Government agenda of encouraging the publicly funded sector to take advantage of new freedoms and flexibilities.
- The costs involved are likely to be greater than envisaged.
- The two tier structure will be difficult to operate.
- Under the current arrangements, entities can set up separate not-for-profit bodies to benefit from the exemption so the proposal is unnecessary.
- The proposal should help increase the UK's competitiveness on price in the international market.
- The changes will raise issues of fiscal neutrality.

Summary

We are grateful to everyone who responded to the consultation and those that attended meetings with us.

2.18 Commercial organisations favour widening the scope of the exemption but it is felt that the proposals do not go far enough.

2.19 There was a general concern that whilst efforts were being made to widen the choices for students at Higher Education level the proposals did not actively address other equally important areas of education such as vocational training and Further Education.

2.20. There were concerns about the administrative burdens that would be created especially for organisations delivering both Higher and Further Education if they had to create separate entities to deliver different types of education. Respondents argued that they should be able to adopt structures that are currently available to certain providers of Further Education.

2.21. Many respondents considered that the proposals would create fiscal neutrality issues since it would be feasible for identical supplies delivered by for-profit entities to be either taxable or exempt depending on how the organisation set itself up.

3. Next steps

The purpose of this consultation was to seek views on the case for extending the exemption for supplies of HE services to put commercial providers on a similar footing to universities. The responses to the consultation indicate that there was no overwhelming support for either of the options put forward and that consideration needs to be given to alternative options to address the concerns raised. It is clear that further work is needed before any changes can be made to VAT legislation.

HMRC will work with BIS to consider the issues raised by the consultation. It is clear that businesses would prefer a solution that addresses both Higher and Further Education issues and that the basis of recognition of a commercial body as an eligible body should, if at all possible, be uniform for HE and FE.

No decision has yet been made on whether to extend the exemption to cover for-profit providers, but there may be a further consultation later this year seeking further views on the case for change and how this might be implemented.

Annexe A: List of stakeholders responding to the consultation

Association of Colleges
Academy of Contemporary Music
Association of School and College Leaders
Association Teachers and Lecturers
BPP University College
British Universities Finance Directors Group
Chartered Institute of Taxation
Clarke & Co
Centre for Nutrition Education & Lifestyle Management
College of Naturopathic Medicine Ltd
Constable VAT Consultancy LLP
Deloitte LLP
Eversheds LLP
Institute of Chartered Accountants in England and Wales
Institute of Chartered Accountants of Scotland
Inchbald
Laureate Education Inc
Manchester College
Million+
National Union of Students
Navitas
Pearson
PricewaterhouseCoopers LLP
QA Business School Ltd
Saffery Champness
Study UK
University and College Union
UNISON