

Academies – common tax pitfalls, risks and opportunities



In spite of their publicly funded position, academies are largely subject to the same tax requirements and issues as any incorporated charity. In our experience working with over 100 academies and multi-academy trusts we have identified a number of regular tax pitfalls, risks and opportunities in the sector.

Non-educational activities

If an academy generates income from trading activities that are not strictly in line with its educational objects (e.g. hire of facilities, secondment of staff, consultancy, sales), this income could potentially be subject to corporation tax. There are various other exemptions available, including a small scale trading threshold of £50,000, but many academies could be subject to corporation tax. Setting up a trading subsidiary company to carry out non-educational activities can protect the academy from commercial risk but also help to mitigate tax exposure.

Facilities hire

'Pure' lettings of indoor or outdoor space are usually exempt from corporation tax for academies. However, facilities hire (e.g. astro pitches, gyms, conference facilities, catering facilities) may be subject to tax. Lettings that fall in between, such as hire of classrooms with peripheral use of equipment, may also be at risk of exposure to tax. Suitable amendments to letting forms which restrict or separate the use of facilities can help to reduce this exposure.

Government grants

Most grants from local authorities to academies are for strictly educational purposes. However, sometimes grants

are made for other services such as family support or childcare facilities which, although intended for charitable purposes, could still fall outside of an academy's exemption from tax. It is worth reviewing grant agreements carefully against the academy's objects and taking action where the two are not clearly aligned.

Trading subsidiaries

With a trading subsidiary, profits chargeable to tax can be reduced by donating profits up to the academy trust or another charitable entity. Academies with trading subsidiaries should be aware that the subsidiary cannot legally make a donation to the academy without available accounting reserves to do so, as it is deemed to be a distribution under company law.

Mismatches between accounting and taxable profit in the subsidiary can therefore expose the subsidiary to corporation tax. Ensuring where possible that tax-disallowable costs are not incurred by the subsidiary (e.g. capital costs, penalties, entertaining) can help to keep the accounting and taxable profits in line.

Self-employed contractors

Academies often use contractors to provide teaching support, teaching of extracurricular subjects (e.g. peripatetic music teachers) and office support

amongst other services. The academy is always responsible for reviewing each arrangement to determine whether tax needs to be deducted under PAYE – it is not sufficient to have the contractor simply sign a declaration stating that they are responsible for their own taxes.

HMRC regularly carry out payroll inspections and may seek to recover unpaid PAYE plus penalties and interest from the academy if they believe a worker has incorrectly been treated as self-employed. A careful review of each new contractor's working arrangements can help to keep the academy's employment tax position secure.

Off-payroll workers

From 6 April 2017, academies are responsible for assessing the employment status not only of individual contractors but also those using intermediary companies (a 'deemed' employment status known as IR35).

Before 6 April 2017, IR35 was solely the responsibility of the intermediary company itself but that position has changed for all public authorities (a definition which includes academies). Academies should therefore review the employment status of all new and existing off payroll workers.

VAT registration

An academy may make various business supplies that could be taxable supplies for VAT purposes (e.g. facilities hire, catering for staff, advertising, staff secondments, sale of school uniforms). Should taxable supplies exceed the VAT registration threshold (currently £85,000) the trust may be required to register for VAT or be liable for penalties and unpaid output tax if it registers late.

Monitoring total taxable supplies regularly can help to make sure that VAT registration can be actioned as soon as it falls due. A Multi-Academy Trust (MAT) with just a few schools may well find they have breached the threshold for VAT with what could appear to be a small amount of business supplied in each school.

VAT 126 claims

Academies can recover VAT relating to their non-business supplies on form VAT 126. However this form cannot be used to recover VAT on business supplies. If an academy or MAT enters 100% of its input VAT on form VAT 126 without carrying out an apportionment, it may be over-claiming VAT and liable to return the over-claimed amount plus potential interest and penalties. VAT 126 claims should therefore be reviewed carefully.

Apprenticeship levy

Academies or MATs with payroll costs above £3 million are generally required to pay a 0.5% levy on their payroll from 6 April 2017. This levy can be used to

fund apprenticeship training for the academy's staff by setting up a levy account.

Gift Aid

Academies are charities for tax purposes and are eligible to claim gift aid on qualifying donations from individuals, increasing their value by 25%. In order to make a claim, the academy will need to register with HMRC Charities and obtain a gift aid declaration from the donor.



How we can help

We can advise on your academy's exposure to the risks of various forms of tax and provide guidance on suitable ways to mitigate risks and explore opportunities. Our services include:

- A complete health check review of activities for corporation tax and VAT risks
- Advice on setting up and operating a trading subsidiary
- Support with VAT recovery and registration
- Advice on setting up and operating Gift Aid claims

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