



FINANCE BILL 2024-25 CLAUSE 47 VALUE ADDED TAX: REMOVAL OF EXEMPTION FOR PRIVATE SCHOOL FEES

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Briefing for MPs on the **Finance Bill** by ICAEW Tax Faculty.

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EXECUTIVE SUMMARY

1. ICAEW is concerned that the draft legislation does not provide sufficient certainty to private schools affected by the removal of the value added tax (VAT) exemption for private school fees, particularly in relation to nursery classes.

THE MEASURE

2. Clause 47 excepts the provision of education by a private school from the VAT exemption, thus making fees for such education taxable at the standard rate (20%), other than:
 - a) the provision of the teaching English as a foreign language;
 - b) the provision of education in a nursery class; or
 - c) the provision of a higher education course.
3. For the purposes of this legislation, a nursery class means a class that is composed wholly (or almost wholly) of children who are under compulsory school age or, in Scotland, school age, and would not be expected to attain that age while in that class.
4. Therefore, fees received by a private school in respect of a class that is at least 'almost wholly' made up of children under compulsory school age will remain exempt from VAT. VAT will not need to be charged and accounted for on these fees.

OUR CONCERN AND OUR RECOMMENDATIONS

5. 'Almost wholly' is not defined in the legislation, which leaves open to interpretation how many children of compulsory school age (or expected to attain compulsory school age) can be in a nursery class before it is no longer treated as such.
6. The **policy document** prepared by the Treasury states (on page 17) that a majority of children must be under compulsory school age for the class to qualify as a nursery class and remain exempt from VAT. We think that a majority would mean that more than 50% of children in the class are under compulsory school age.
7. However, HMRC's **guidance** states that, "For example, where 90% of the children in the class are below compulsory school age the class will be exempt from VAT".
8. Given the above differences in interpretation of 'almost wholly', it is not clear at what point a class would become 'almost wholly' composed of children under compulsory school age.
9. As a result, this is causing much uncertainty in the private school sector and could lead to larger schools challenging the definition of 'almost wholly' through the courts. Smaller schools will be required to accept HMRC's interpretation of the law, despite HMRC not currently providing a clear definitive threshold for 'almost wholly'.
10. This uncertainty is contrary to the second of our ten tenets (see Appendix 1). ICAEW therefore recommends that 'almost wholly' is defined in the legislation.

FURTHER INFORMATION

11. As part of ICAEW's Royal Charter, we have a duty to inform policy in the public interest.

APPENDIX 1

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.
4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see <https://goo.gl/x6UjJ5>).