



English UK VAT & Overseas Agents

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1. Introduction

This note sets out the VAT considerations for UK based education providers that engage with businesses outside the UK in the course of providing education. Specifically, UK based education providers that:

- (i) consider that their supplies of education are exempt from VAT; and
- (ii) receive services from any non-UK based persons (e.g. overseas agents).

This is a topical issue at present as many UK based providers are now realising that a VAT liability has crystallised as a result of arrangements they have entered into over recent years.

With this in mind, this paper aims to set out the background to the issues and to cover the relevant VAT rules and considerations.

2. Background

Many UK based education providers (such as independent schools and colleges) are not registered for VAT, on the basis that their supplies of education qualify for VAT exemption. Others may be VAT registered as a result of making some taxable supplies, and will also make exempt supplies of education.

Where UK based education providers receive services from outside the UK, this may trigger a UK VAT registration requirement and a UK VAT cost for those providers that are not VAT registered, as well as generating a VAT cost in the UK for those that are already VAT registered.

Examples of such services are those received from overseas agents. This is because, as the recipient of the services, the UK education provider will, in most cases, be required to self-account for UK VAT on the supplies received. This in itself can trigger a VAT registration liability and generate a VAT cost.

Against this background, it is therefore important for education providers to understand:

- (i) whether they are receiving supplies in the UK (e.g. from overseas agents); and
- (ii) whether, if as a result of receiving these supplies, there is a VAT liability in the UK.

3. VAT Analysis

The first thing to consider from a VAT perspective is whether there is a supply being made.

If there is a supply being made, and it is clear who is making the supply and who is receiving the supply, then the liability of the supply must be considered – whether the supply is a taxable supply (subject to VAT or not) and also where, if applicable, VAT is due.

Under UK and EU legislation, VAT is due based on where a supply is deemed to have taken place (this is known as the place of supply). To determine where the place of supply is, the nature of the supply must be considered as this can differ depending on what is being supplied.

We understand that, typically, there are two main ways in which UK based education providers engage with overseas businesses in making their supplies of education. These are as follows:

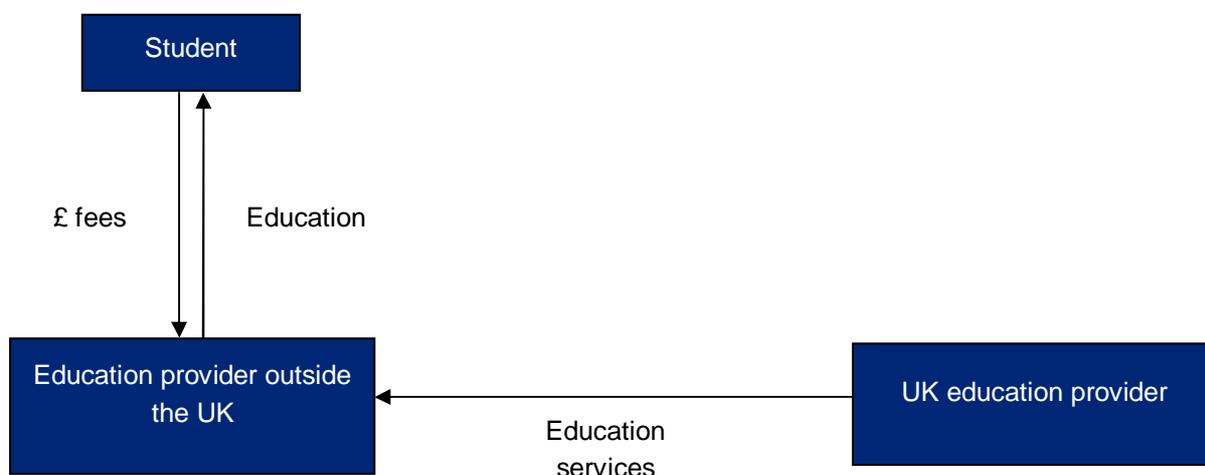
- **Scenario 1** – the UK based education provider makes its supply of education to another business, typically located outside the UK that, in turn, supplies the education on to the student.
- **Scenario 2** – the UK based education provider engages directly with the student to provide him/her with education, and separately engages with ‘overseas agents’ to receive services that facilitate this process.

The potential VAT liability arises where UK based education providers engage with overseas agents as per Scenario 2 above. We have set out more detail on both of these scenarios below, and the VAT considerations associated with each of these.

3.1 Scenario 1 – Supply of Education to Overseas Provider

The first scenario is one that may be common amongst language schools.

3.1.1 Scenario 1



In this scenario, the key features are as follows:

- The (overseas) student will contract with an overseas education provider (“overseas provider”) for the provision of an education course (e.g. an English language course).
- Typically, the overseas provider will be located in the same country as the student.
- In order to deliver the education course, the overseas provider will ‘buy in’ the education from a UK based education provider.
- In this way, the UK based education provider is making a supply of education to the overseas provider who, in turn, is making a supply to the student. Typically, the overseas provider will also arrange the transport and other arrangements for the student, such as accommodation.
- Although the UK provider may be teaching the student, the contract remains between the UK education provider and the overseas provider, with a separate contract between the overseas provider and the student.

3.1.2 VAT Treatment

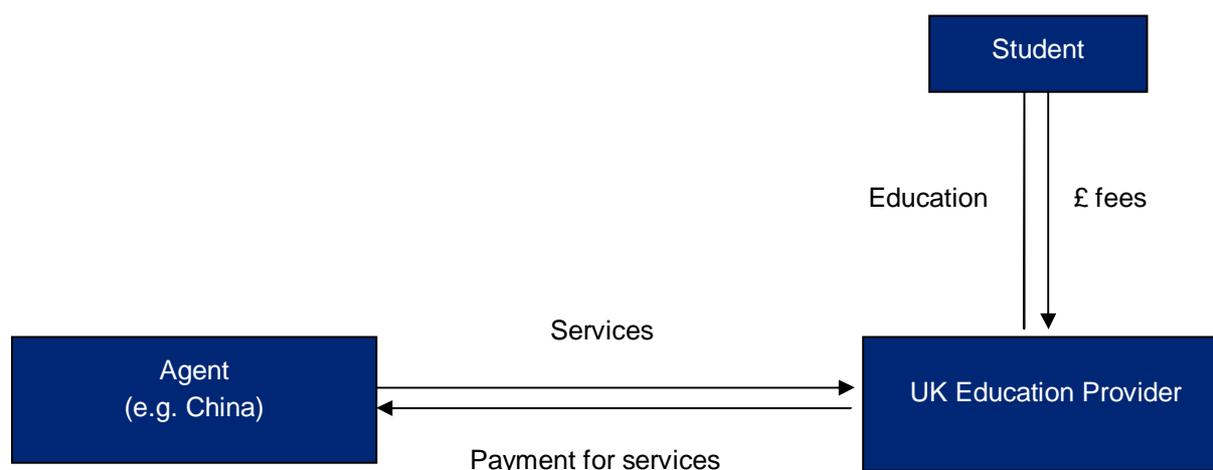
The overseas provider is making a supply of education to the student. The UK education provider’s supply is that of education to the overseas provider and therefore, provided this meets the VAT exemption requirements, there should be no potential VAT exposure in the UK for the UK based education provider as the only supply that it is involved in, in this scenario, is its own supply of education to the overseas provider.

As a result, where a UK based education provider is only involved in contractual arrangements such as in Scenario 1, we do not expect the remainder of this note to be relevant. However, it should be noted that it is not always clear who is making or receiving supplies in certain scenarios. In particular, the treatment of the suppliers described in Scenario 1 depends heavily on both the contractual position and the practical arrangements adopted by the parties. Where these are not consistent there may be instances where either Scenario 1 or Scenario 2 may apply. In such circumstances, the below sections of this paper should be considered.

3.2 Scenario 2 – Supplies Received From Overseas Agents

The second scenario is one that is more common amongst colleges and independent schools (and also universities). It is in this supply chain where the potential VAT liability arises for UK based education providers.

3.2.1 Scenario 2



In this scenario, the key features are as follows:

- The UK based education provider contracts with the student to provide education.
- In order to assist with this process, the education provider engages separately with overseas agents.
- The agents provide a range of services to the education provider that assist it with providing the education to the student. Agents will typically be located in the same country as the students that they assist in enrolling with the education provider.
- For making its supply of services to the education provider, the agent is paid an amount, usually a 'commission', by the education provider.
- This payment is typically made in one of 2 ways:
 - (i) the education provider may receive tuition fees directly from the student and then pay a percentage of these to the agent as its 'commission'; or
 - (ii) the agent may instead collect the tuition fees due to the education provider, from the student, and then remit these to the education provider, less its own 'commission'.

In both of these two scenarios, the agent is still receiving payment from the education provider under the terms of its contract with it.

- It should be clear to all parties concerned that the student is contracting with the education provider for the provision of education and that the agent is contracting with the education provider to provide services to it.

3.2.2 VAT Treatment

In order to confirm the VAT treatment of the supplies made by the agent to the education provider, as set out in Scenario 2 above, the exact nature of supplies should be determined. Specifically:

- (i) what exactly is being supplied;
- (ii) whether there is one supply or a number of distinct supplies; and
- (iii) the correct VAT treatment of the supply.

3.3 What Do Agents Do?

Exactly what services agent supply to education providers can vary from case to case. Typically, we would expect that agents would undertake to provide, amongst others, some or all of the following:

- (i) assisting students with choosing appropriate courses to apply to and providing advice and counselling to students as necessary;
- (ii) assisting students with the enrolment process;
- (iii) assisting students with obtaining the relevant paperwork (visas, etc) in order to study in the UK;
- (iv) assisting the education provider with collecting fees from students; and
- (v) representing the education provider and using its promotional materials to market and promote its courses.

3.4 Is There One Supply Being Made?

There is extensive case law that considers this issue and whether there is one supply being made or whether there are multiple supplies being made.

Whilst there may well be numerous elements to the supplies that are made by agents, in general it would appear that these are all part of one overall supply that is being made by the agents and not separate individual services.

However, we recommend that each case is considered in its own right to confirm whether this is in fact the case.

3.5 What is the VAT Treatment of the Supply?

As set out above, understanding the nature of the supply will allow the VAT treatment to be determined.

Whilst the exact nature of the supply made by agents is not clear cut, it is possible to narrow it down to a number of key service types, in order to try to understand the correct VAT position.

These services are set out in the below table. As you will see, the place of supply has changed over recent years for some of the service types. A key point to note is that, however the services are classified, the place of supply is the UK for all potential classifications from 1 January 2011 onwards.

Type of Supply	Pre 2010 Place of Supply	From 2010 Place of Supply	From 2011 Place of Supply
Intermediary	UK	UK	UK
Advertising	UK	UK	UK
Consultancy	UK	UK	UK
Ancillary to Education	Overseas	Overseas	UK
Admin	Overseas	UK	UK

What this means is:

- From 1 January 2011, where the supply of services by overseas agents is subject to VAT, there will be a VAT cost in the UK to any UK based education provider (that provides exempt education) that is receiving these supplies, irrespective of how the services are classified.
- Prior to 1 January 2011, the extent to which there will be a VAT cost will depend on the exact nature of the supplies that are being received from the agents.

It should be noted that the only time at which we would expect the above services types to not be subject to VAT would be if an education provider that is a charity could successfully argue that all, or a distinct element of the supply that it receives from an overseas agent is in fact a supply of advertising. This is because the supply of advertising to a UK charity would be subject to VAT at the zero-rate.

3.6 Type of Services

Having reviewed various correspondence on this matter, it appears that HM Revenue & Customs (“HMRC”) are generally of the opinion that supplies made by agents are supplies of intermediary services.

As set out in the table, such services have always been subject to VAT in the UK, as the place of supply for such services would always be the UK in this case. This is not necessarily the correct position for all education providers however and due consideration should be given to the other possibilities. This is important when considering the historical position as, if the services that have historically been received from agents are not intermediary services, then, depending on how these services should be classified, there may not be a VAT liability for pre 2011 periods. Some brief commentary on the types of supplies is set out below:

- **Intermediary services** – these services are essentially the ‘bringing together’ of two parties (the education provider and the student). HMRC consider that this is the correct description of agents services as agents activities are ‘intended to facilitate the making of supplies’ which they consider to be the key interpretation of what ‘intermediary’ means in this context.

- **Advertising** – it is important to consider whether there are arguments to support either all or a distinct part of the supply being one of advertising. Where there is a clear supply of advertising, and where the relevant conditions are satisfied, this could be subject to VAT at the zero-rate where supplied to a charity.
- **Consultancy** – such supplies are expected to consist of specialist advice and, in this context would have a UK place of supply irrespective of when these supplies were made.
- **Ancillary to education** – there may be arguments to support supplies of ‘organising’ education being outside the scope of VAT for periods prior to 1 January 2011. The strength of any such arguments will depend on the fact pattern in each case and the interpretation of the law supporting this stance being accepted.
- **Admin** – where pure admin services are supplied (e.g. form filling, clerical tasks), then there should not be a VAT cost for periods prior to 1 January 2010. However, it should be noted that the exact nature of the agent’s supplies should be considered and whether this is the correct classification as we would expect HMRC to challenge this interpretation in many instances.

4. Managing a UK VAT Cost

If Scenario 2 applies then there will be a VAT cost for UK education providers who receive services from overseas agents. The following will need to be considered:

- (i) VAT registration (for those entities that are not already VAT registered);
- (ii) accounting for VAT in the UK; and
- (iii) VAT recovery.

4.1 VAT Registration/Assessments

Where VAT should have been accounted for on supplies received from overseas agents, and where no VAT has actually been accounted for, the education provider will have a UK VAT liability.

Under VAT law, HMRC are able to assess VAT registered entities for any under-declared VAT for a maximum four year period. However, there is no time limit on retrospective VAT registrations.

If the cumulative value of supplies made by overseas agents to a single education provider over a 12 month period, when combined with any taxable supplies made by the education provider itself exceed the VAT registration threshold in the UK (currently £77,000 per annum), it is required to register for UK VAT. Please note that this is the value of supplies, not the amount of tax. It is also worth noting that the VAT registration threshold has increased each year, so previous supplies may have breached the threshold, even if the current threshold of £77,000 was not breached.

In light of this, HMRC may register education providers with retrospective effect depending on the volume of agents services it has historically purchased.

In addition to accounting for VAT, HMRC may also levy penalties on taxpayers relating to VAT under-declared or late VAT registration.

The penalty regime introduced in 2009 means that any penalty for under-declared VAT will start at 30% of the net tax due, although there is potential to mitigate some or all of this depending on the specific circumstances.

4.1.1 Accounting for VAT

Subject to the above analysis, supplies made by overseas agents will be liable to VAT in the UK.

The way in which VAT must be accounted for on these supplies is by using the reverse charge mechanism. The objective of the reverse charge mechanism is to simplify the VAT accounting process for businesses.

If a UK education provider buys in services from abroad then, if the place of supply is deemed to be in the UK, it will be required to account for UK VAT under the reverse charge mechanism regardless of whether the provider of the services is located within or outside of the EU.

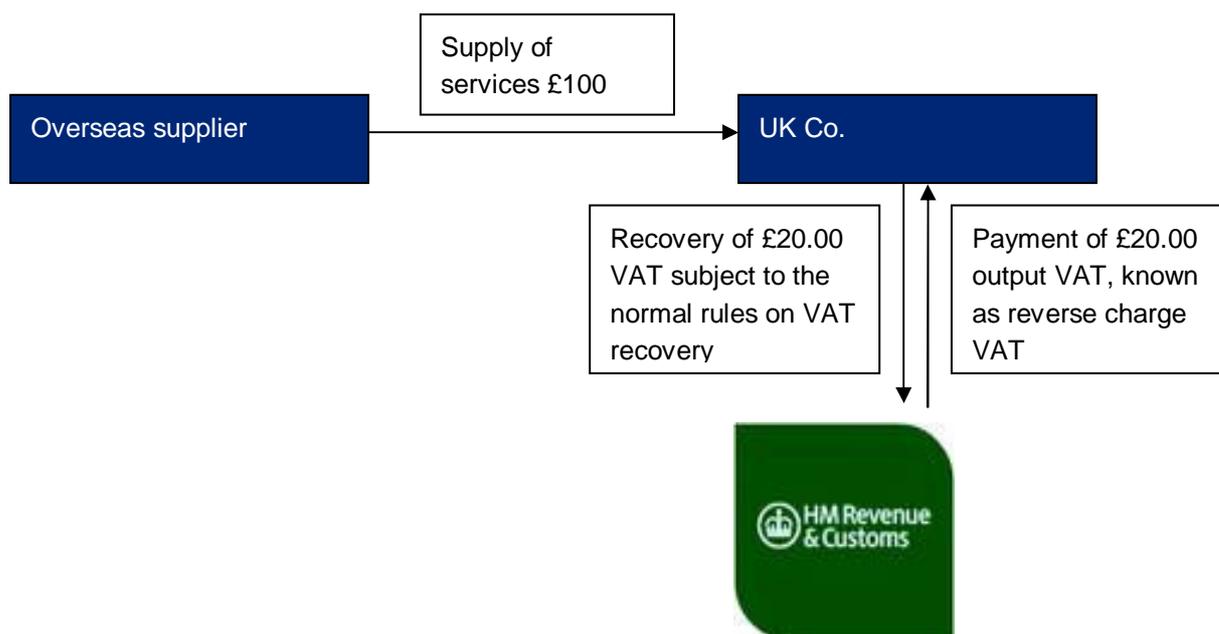
The effect of the reverse charge is that a taxable supply is deemed to be made by the recipient of the services in the UK. In order to account for VAT under the reverse charge, the recipient of the supply has to account for the VAT on its VAT return.

The recipient must credit its VAT account with an amount of output tax, calculated on the full value of the supply it has received. At the same time it may debit its VAT account with the input tax to which it is entitled to reclaim in accordance with the normal rules.

The recipient then needs to include these figures in the following boxes on its VAT return:

- Box 1: The amount of output tax (VAT due on sales)
- Box 4: The amount of input tax (VAT reclaimed on purchases)
- Box 6: The full value of the supply (total value of sales)
- Box 7: The full value of the supply (total value of purchases)

An illustration of the reverse charge mechanism is shown below:



4.2 VAT Recovery

Where VAT is accounted for in the UK under the reverse charge, VAT is only recoverable subject to the normal rules. For those education providers that make predominantly exempt supplies, accounting for VAT in this way will represent a real VAT cost to the business.

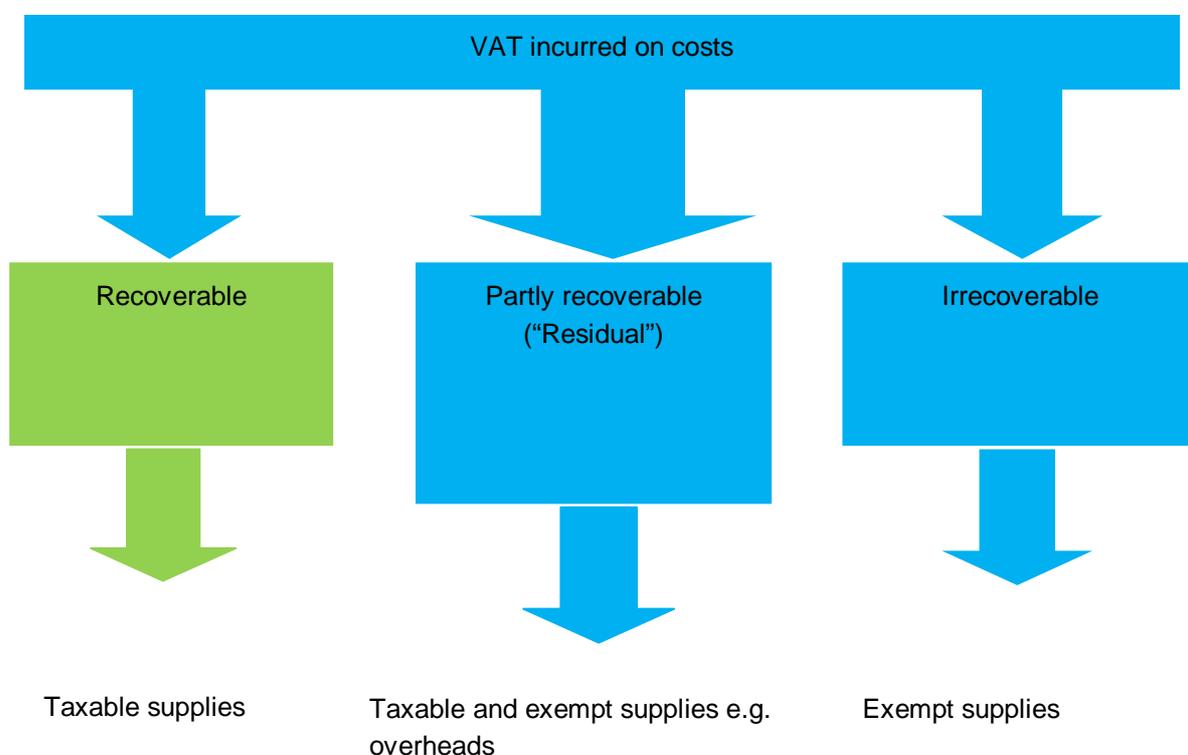
The supply of education by an eligible body is exempt from VAT and, consequently, VAT incurred on costs directly relating to that exempt activity is not recoverable. However, if an education provider is VAT registered then it may be able to recover some of the VAT it incurs if it makes supplies that are subject to VAT.

In order to calculate recoverable VAT, an attribution is required. Any input VAT incurred that is directly related to the exempt supply of education will be blocked from recovery. Any VAT incurred that is directly related to taxable supplies is fully recoverable.

VAT which is neither directly attributable to taxable or exempt activity is treated as residual and a proportion of this residual VAT is recoverable under a 'partial exemption' method. This method, which can be a standard method or a specially agreed method, enables costs that cannot be directly attributed to a particular activity (such as overhead costs) to be apportioned so that an element of the VAT incurred can be recovered.

As the provision of education is exempt from VAT, education providers tend to have low if any residual recovery. As a result, if an education provider is required to account for VAT under the reverse charge mechanism, much if not all of this VAT is likely to be irrecoverable.

The following diagram illustrates how VAT recovery should be determined:



5. Summary

To summarise the above, it can be seen that this is very much a live issue that all UK based education providers should be considering if they engage with overseas agents for the provision of services.

Some key points to consider are as follows:

- UK based education providers should, in the main, be accounting for VAT for services received from overseas agents (subject to the VAT registration thresholds being breached for those providers not already VAT registered).
- The extent to which there is a historical VAT liability in respect of this will depend on the exact nature of supplies received.
- Where the education provider is not VAT registered, this could trigger a VAT registration requirement. There is no time limit for back-dating VAT registrations.

With these points in mind, we recommend that the following action points are also considered, as necessary:

1. Review the extent to which overseas agents are engaged to provide services.
2. Understand how the supply chain works and whether Scenario 1 or Scenario 2 (which could trigger the VAT liability) is relevant.
3. If Scenario 2 is relevant, review the nature of the services with a view to establishing the correct VAT treatment both currently and historically.
4. Once the above analysis has been completed, appropriate action should be taken. This will depend on the specific circumstances and may include one or more of the following:
 - Seeking to register for VAT from a specific date.
 - Seeking to agree the position with HMRC, should this be appropriate.
 - Continuing with current practice.
5. To the extent that it is considered that there is no UK VAT liability at present, we recommend that this is monitored periodically going forward.

If you would like to discuss this further with regards to how it may affect your business then please do not hesitate to get in touch with Jack Stoakes (jstoakes@deloitte.co.uk) on +44 (0) 1293 761 249, Charlie McMillan (cmcmillan@deloitte.co.uk) on +44 (0) 1293 761 392 or your usual Deloitte contact.

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