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The end of business rates relief for fee-paying schools

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The Labour Party plans to end the VAT exemption and business rates relief for fee-paying schools. This article will address the implications of private schools becoming liable for business rates. Presently, while state schools (including academies) are liable for business rates^[1], independent schools receive a relief. The change in this policy is likely to have significant financial implications for independent schools. At this stage no firm date for implementation has been shared but it is likely to either coincide with a financial year (i.e., April 2025) or academic year (September 2025).

A consultation has recently been launched around the introduction of VAT and Business Rates for independent schools. The consultation documents include draft legislations and accompanying technical notes and explanatory note.^[2] Though it seems likely that private schools will continue to be charities (where the current requirements are met) but have restricted tax privileges (thus creating a two-tier system of benefits for charities).

The current regime:

For independent schools which are charities, charitable rate relief gives up to 80% of a business rates bill. The local authority has the discretionary power to top this up (up to 100% relief). This is known as discretionary relief. To benefit from charitable rates relief two requirements must be satisfied as under sections 43(5) and 43(6)(a) of the Local Government Finance Act 1988. This requires that:

- the ratepayer is a charity or trustees for a charity; and
- the property in question is used wholly or mainly for charitable purposes (whether for that charity or that and other charities).

If multiple sites are operated, what is relevant is the charity's activities across all sites rather than viewing the sites as discrete entities.^[3] This means that if the charity operated a sports facility which is physically separate from the school site and charged fees for members of the public to use that facility, that does not inherently mean that the property is ineligible for charitable rates relief. What would be relevant is if across all the school sites the activity is wholly or mainly charitable.

What is proposed?

Independent schools who are charities would no longer be able to claim charitable rates relief (80% with a potential discretionary top-up to 100%). This would apply to settings offering full-time education to pupils of compulsory school age and charge fees for such services.

The proposals for addressing schools which provide education for children with an Education Health Care Plan (EHCP) have not yet been finalised,

but we expect to see some relief for such schools in line with the approach which has been taken in Scotland already

Business rates are a devolved matter, so this legislation would only apply to England. Though it is worth noting that Scotland has already implemented a similar policy in 2022.

Parliament intends that the changes will come into effect in April 2025 through a Local Government Finance Bill which will amend the Local Government Finance Act 1988. Although draft legislation was provided in the consultation this only related to the changes to VAT for independent schools and therefore it is difficult to know at this stage the full details of the proposals relating to Business Rates.

Planning for the future

Independent schools which are charities would be wise to budget for a 100% rates bill. It is envisaged that many school sites may not know their current rateable value and it would be advantageous to seek the assistance of a Chartered Surveyor in determining this information. This will allow schools to challenge their assigned rateable value where appropriate.

For charities that have within their school sites public places of worship, such places are wholly exempt from business rates as per schedule 5 of the Local Government Finance Act 1988. Additionally, church halls, chapel halls or similar buildings used in connection with the place of worship can fall within the exemption. It is unlikely that the whole school site could be caught by these provisions, but it is possible that some of a school site may be within the scope of the exemption. It is important to note that the

place of worship must be public to benefit from the exemption^[4] (such that a private chapel or oratory would not benefit from the exemption).

Schools should consider the impact of business rates in light of other policy changes such as the introduction of VAT on school fees. These changes if implemented are likely to have a profound impact on independent schools especially smaller schools with small margins. This policy change is likely to result in the sector seeing more mergers and acquisitions as well as the closure of some schools. It may even see some independent schools join the state-sector and become academies through the free-school route.

LBMW has a specialist Education team which can provide practical guidance and assistance for schools (both independent and state-sector), multi-academy trusts and dioceses. Please contact us for more information on how we can help.

For more information, please contact Howard Dellar (howard.dellar@lbmw.com), Ian Blaney (Ian.Blaney@lbmw.com) or Rebecca Martin (Rebecca.Martin@lbmw.com)

^[1] Thought they can receive specific funding and relief to support payment. For example all educational settings under the 'academy programme' are entitled to tax relief from the billing authority on a significant portion, currently 80%, of the business rates. We allow these educational settings to claim funding for the remaining business rates amount.

[2] <https://www.gov.uk/government/publications/vat-on-private-school-fees-removing-the-charitable-rates-relief-for-private-schools>

[3] *Nuffield Health v London Borough of Merton Council* [2023] UKSC 18).

[4] *Church of Jesus Christ of Latter-Day Saints v United Kingdom* [2014] ECHR 227

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