

Research services carried out by third level educational bodies

This document should be read in conjunction with paragraph 4(3) of schedule 1 to the VAT Consolidation Act 2010 (VATCA 2010)

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Introduction

This guidance sets out the VAT treatment of research carried out by educational bodies.

Academic research is carried out in educational establishments by students and lecturers to enhance or expand learning and is in many cases an integral part of education. The supply of research services by educational bodies is subject to VAT only in certain circumstances. This guidance aims to assist educational bodies in determining what constitutes the supply of taxable research.

If an organisation has any doubt in relation to the taxable status of any particular case or activity, they should contact their local Revenue branch for advice.

1. Is there a supply for consideration

A supply of services is only within the scope of VAT if there are certain elements including a supply for consideration. The Court of Justice of the European Union (CJEU) has provided guidance in relation to what constitutes a supply for consideration.

- There must be **consumption of a service** in order for the consideration to be subject to VAT. Therefore, there must be a supply of a research service for consumption by identifiable customers or the research must provide a benefit capable of being regarded as a cost component of the activity of another person in the commercial chain (**Mohr Case 215/94 and Landboden-Agrardienste GmbH Case 384/95**).
- There must be a **'legal relationship'** between the provider of the research and the recipient pursuant to which there is reciprocal performance, the remuneration received by the provider constituting the value actually given in return for the research service supplied to the recipient. (**Tolsma Case 16/93**).
- There must be a **direct link** between the research services supplied and the consideration received. Any benefits arising from the supply must be conferred directly onto the person providing the consideration. It is not a supply for consideration if the person providing the consideration only indirectly receives the benefit, e.g. if the benefits actually accrue to an industry or a wide group as a whole. (**Apple and Pear Development Council Case 102/86**). The link between the goods or services supplied and the fee paid must be such that a relationship can be established between the level of the benefits which the recipient obtains from the services provided and the amount of consideration. (**Tolsma Case 16/93**).

2. Activities not regarded as exempt educational activities

The following activities, when carried out for consideration by an educational establishment, are not covered by the exemption under paragraph 4(3) of Schedule 1 to the VAT Consolidation Act 2010, as amended (VAT Act):

- management and IT consultancy and business process advice
- collection, recording, collation, analysis and interpretation of statistics
- market research and opinion polling
- writing computer software
- testing and analysis of materials, components and processes.

The CJEU held in Case C-287/00 (**Commission v Germany**) that the undertaking by state universities of research projects for consideration cannot be regarded as an activity closely related to university education for the purposes of Article 132(1)(i) of the EU VAT Directive (Directive 112/2006/EC).

3. VAT treatment of research services

The starting point in looking at whether research services are taxable is to exclude general academic research and research for consideration that is outside the scope of VAT because there is no direct link between the consideration and the supply or there is no reciprocal performance.

A taxable supply of research services takes place where the consideration or funding for the research entitles the funder to conditional or privileged or exclusive access to results, or to any patents or copyrights arising from the research, or any similar contractual obligation, or where the research provides promotional/advertising exposure to the funder. However, the following stipulations in a contract do not of themselves constitute a taxable supply;

- Early access to results, which would subsequently be published universally, provided that the publication was within a reasonable period (normally six months);
- Control over exploitation of intellectual property rights, in default of the educational body exploiting such rights, provided that this control does not extend to beneficial ownership.

Where a third level educational body carries out a research activity which is not subject to VAT, it is required to consider the VAT treatment of all subsequent commercial exploitation which would be regarded as a separate taxable activity.

4. VAT treatment of funding from the European Commission under their framework programmes

Most questions on the VAT treatment of research relate to grants given under EU Framework Programmes. Their VAT treatment depends on the features of each programme. Over the years, those features have changed and that has had an impact on how the grants have had to be treated.

(i) FP7 - the recently concluded Framework Programme

The Seventh EU Framework Programme for Research and Technological Development* ("FP 7") provides funding from the Commission to recipients in EU Member States and associated countries for a wide range of research activities.

Since the transfer of proprietorial rights to the funder (the Commission) is only envisaged under exceptional circumstances, payments under this programme are not regarded as a supply for consideration and are therefore outside the scope of VAT. Since the payments are regarded as being outside the scope of VAT, the funding recipients have no right to deduct VAT incurred on purchases made in relation to research activities that are wholly funded under this Framework.

To the extent that educational bodies wrongly recovered VAT on inputs related to FP7 research, Revenue do not intend to impose a reversal of the inputs credits in circumstances where the body was not specifically advised by Revenue that such supplies were outside the scope of VAT.

The VAT treatment of previous Framework Programmes was different since the research was regarded as a supply for consideration and the researcher had an entitlement to input credits. For example, in relation to Framework 4, the Commission advised Member States that the research performed by funding recipients constituted a supply. This was to be treated in accordance with Article 169 of the EU VAT Directive, with recovery for VAT in relation to Article 151 transactions. Researchers were therefore in a position to reclaim the VAT incurred in relation to their supply of research upon presentation of a valid certificate from the Commission.

(ii) The current Framework Programme: Horizon 2020

Horizon 2020, which replaces FP7, provides a single common strategic framework for programmes in the fields of research, innovation and technology**. It has been operational since 1 January 2014 and runs until 31 December 2020. The conditions under which grants are given are similar to those set out under FP7.

Article 41 of the Regulation of Establishment makes it clear that **results "shall be owned by the participant generating them"**. The Commission may in certain circumstances **"assume ownership of those results and take the necessary steps for their adequate protection"** although the participant **"may refuse consent (but) only if it demonstrates that its legitimate interests would suffer significant harm"**.

Payments made under Horizon 2020 are outside the scope of VAT and the researcher has no right to deduct input credits. Since there is no entitlement to deduct VAT incurred on those research activities research bodies should take into account the irrecoverable VAT element when they make their initial bids for funding.

*Regulation (EC) No 1906/2006

**All reference documents can be found at the [Research & Innovation Participant Portal](#).

5. Pointers to help determine the VAT status of research carried out by educational institutions

The following questions may assist third level educational bodies in deciding whether a research activity constitutes a supply for consideration:

- Is there a direct link between the service provided and the consideration received? An indicator of a direct link could be the use of a contract rather than grant of a subsidy, a donation or a letter of agreement for funding.
- Is there a legal relationship between the supplier and the recipient pursuant to which there is reciprocal performance and consideration passes from the funder to the researcher? Such a relationship is a strong indicator that a supply for consideration has taken place.
- What type of research is being carried out? If the research is applied research as opposed to basic research carried out for the general purpose of creating, improving or enhancing knowledge, then its results are more likely to have a commercial value to the person who commissions and funds the research. Applied research is more likely than basic research to be a supply for consideration. Applied research that is taxable may result from the exploitation of previous research which was not a supply for consideration.
- Is the objective of the educational body carrying out the research to improve its standing in the research world or improve knowledge in a particular field? The research results of the latter are more likely to be delivered to the funder.
- Is the objective of the funder the production of specific results or deliverables, which could be commercially exploited, or the generation of knowledge in a general area of study or in the public interest?
- Who gets ownership rights of the research outputs? If they remain with the third level educational body which carried out the research, there is no supply to funder.

6. Apportionment of input tax

Educational bodies will be entitled to reclaim VAT on any inputs relating to their taxable research. However, as many of the inputs, for example, capital equipment, premises, and information technology, will be used both for their taxable supplies and their exempt educational activities, VAT on inputs fall to be apportioned between deductible and non-deductible VAT, under Section 59(2) of the VAT Act.

Educational bodies should have appropriate accounting classification systems to allow them to apply the correct apportionment method of input allocation between exempt and taxable supplies.

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