UNIVERSITY COLLEGE CORK
FINANCE OFFICE
Office of Research Grants & Contracts
VAT Guidelines for Universities – Research Contracts

University College Cork, Ireland
Coláiste na hOllscoile Corcaigh

Finance Act 2001 changed the long-standing position with respect to VAT and Universities specifically with regards to their research function. Formerly, almost all of the activities, carried on as part of the normal functioning of a University were "exempt" from VAT. As a result, VAT was not chargeable on the fees/grant received in respect of research works but VAT incurred on the related input costs was not recoverable either (input VAT incurred on costs can only be recovered if the costs are linked to the making of taxable activities, i.e. supplies liable to VAT).

As of 1 September 2001, research activities were brought into the VAT net and the general viewpoint of the Revenue was to consider all research activities carried out by third-level institutions as taxable. This meant that VAT at either 23% or 0% (depending on the nature and/or the location of the Sponsor) was to be charged on all income received in connection with such activities. At the same time VAT on input costs arising from this taxable work could be reclaimed as part of the University's VAT return.

However, some research grants are not considered taxable, and still remained outside the scope of VAT. In an effort to clarify the scope of the legislative amendments, Revenue issued an information leaflet in August 2001, in which they gave some pointers to the Universities in order to sort out the taxable from the non-taxable research contracts.

Ten years have now passed since the introduction of the new VAT treatment and with the experience most universities and professionals have gained in dealing with the various issues on a regular basis it is now possible to identify the main contractual points, which render a research agreement subject to VAT or not. Outlined below are some of the issues which must be considered in determining if a research contract is liable to VAT or not. Cognizance must also be taken of the wider consequences of determining whether or not a particular contract is subject to VAT or not.

1. Supply for consideration

Research activities are subject to VAT if it is clear that a supply for consideration has taken place. In order words, the Sponsor must receive something in return for his financing of the project. Where there is any benefit to the funder, either actual or contingent, there is a high probability that Revenue will view the contract as being taxable.

As outlined in the Information leaflet, the main principles, which help determine when a supply for consideration takes place, are derived from European Court of Justice Decisions:

- There must be a direct link between the goods and/or services supplied by the University and the consideration received from the Sponsor;

- There must be a legal relationship between the provider of the service, the University, and the recipient, the Sponsor;

- The supplier, the University, must supply a service capable of being "consumed" by the recipient, the Sponsor.

2. How to identify a supply for VAT purposes

To assist in distinguishing between taxable and non-taxable supplies, Revenue had initially broken down research work into two categories: basic research and applied research. Basic research was deemed to be work carried out in the interest of the broader public, essentially non-commercial in nature, hence outside the scope of VAT, whilst applied research would have been seen as having a commercial purpose, even if it did not produce a specific commercially viable end product, and would have been considered taxable.

This distinction which Revenue had made in their information leaflet between "basic" and "applied" research is no longer supported by Revenue's practice. The application of the new rules is considerably less flexible than Revenue's guidelines might suggest. Although it might appear from the leaflet that a large variety of factors are taken into account when deciding if a given contract is taxable, in fact, it actually comes down to a few criteria:

2.1 Nature of the agreement

If all the findings derived from the research carried out by the University are delivered to the Sponsor at the end of the project, this would be seen as a consultancy agreement between the parties hence fulfilling all the conditions of a VAT-able contract (i.e. supply for consideration). However, research agreements are not always that patently clear and the additional points may assist in bringing further clarification.

2.2 Intellectual property rights (IP)

IP rights and the body they vest into is usually a strong indicator of a taxable contract. Indeed, a contract which would purport to give the Sponsor any element of the intellectual

property arising from the work would be regarded as being subject to VAT as it would indicate a clear deliverable to the Sponsor.

2.3 Publications – Reporting

In a non-taxable contract, the Sponsor should have no power over the publication of the final report and may not dictate its terms to the University. Any publication would have to be freely accessible to the public.

If the final report or any intermediate reports were to be exclusively or initially published by the Sponsor, Revenue would see it again as a clear deliverable from the University to the Sponsor.

In some cases it may happen that Sponsors wish to publish the final report without necessarily retaining the IP rights. In that case, the research body should oblige the Sponsor to publish the report (and therefore bear the publication costs) on their behalf with the provision that the latter makes it freely accessible to the public. Where the Sponsor failed to publish within an agreed time frame publication would be undertaken by the University. This would ensure that publication was an obligation on the Sponsor and not a supply by the University. This approach would ensure that publication rights were not supplied to the Sponsor and would retain the non-taxable status of the research activity in so far as publication was concerned.

A mere reference to the financial contribution of a Sponsor in a report published by the University would not be considered a serious enough factor to deem the contract subject to VAT. This is standard practice.

2.4 Research partners

When the University works in conjunction with partners, e.g. other Universities, to which part of the research would be "sub-contracted" then the lead University must be identified in the main contract as the "lead partner" for the purpose of disbursing payments to its partners. Where possible the "sub-contracted" partners should also be identified in the contract.
Otherwise, the "sub-contracted" partners could be deemed to be supplying taxable services to the University, on which they would have to account for VAT, notwithstanding that the main contract between the University and the Sponsor would not be liable to VAT. This VAT charged by the "sub-contracted" partner would be a cost to the lead University.

3. "Public" funding v Industry funding

Although the same principles are used to determine the VAT treatment of research contracts which are publicly funded or industry funded, in practice research contracts funded by State agencies and large "charitable" funding bodies are more likely to remain outside the VAT net than industry funded research contracts.

However, all research contracts will remain to be decided on a case by case basis, using the principles described above. It is expected that most industry funded contracts will be VAT-able, as funding of this kind will more usually involve the delivery of an end product or a focussed reporting of results/outcome for the Sponsor's benefit. However, this will not necessarily be true in all cases and there will be instances where industry funding falls outside the VAT net. In the case of industry funded research contracts it may be more appropriate to ensure that there is a supply to the Sponsor as in most cases the Sponsor will be able to recover the VAT charged by the university and this fact will not diminish the funds available to the University for the research project.

4. EU Commission Projects and Foreign Businesses

VAT is charged at 0% on research contracts carried out for the European Commission under the Sixth/Seventh Framework Programmes. In the case of taxable contracts carried out for foreign businesses Irish VAT is not chargeable. However, in both cases, although no VAT is chargeable on the income, the University is entitled to reclaim VAT in the normal way on costs incurred in performing this work. For these contracts, therefore, the rules will be of considerable benefit to all concerned.

It is essential that the EU VAT registration number of foreign businesses who are established in EU Member States other than Ireland is quoted on your invoices when zero rating research work to them.

In the case of taxable research work carried out for businesses outside the EU VAT is not applicable nor is there a requirement to ascertain the VAT status of the recipient.

5. How will the changes affect the University's research work?

5.1 Income

Pure funding (i.e. where there is no benefit for the sponsor) is unaffected by the revised rules and remains exempt.

These revised rules are particularly important for those who are involved in agreeing the price at which **taxable research, research liable to VAT,** is to be carried out. VAT at 23% is chargeable on any payment referable to taxable research work carried out for sponsors established in Ireland and for any sponsor established in another EU Member State who is not registered for VAT. This means that if taxable research work is contracted for €10,000 with any such sponsors the University must either treat this contract price as VAT inclusive (i.e. retain only €8,333 and pay over €1,666 VAT to the Revenue, less any input VAT recoverable) or treat the sum as VAT exclusive (i.e. retain the full €10,000 and charge the sponsor an additional €2,000 VAT).

While the latter option is preferable from the University's point of view, the sponsor may be understandably reluctant to pay the additional €2,000 – perhaps arguing that the contract price was inclusive of VAT. The financing clause in the contract is of particular relevance. In the final analysis, the degree to which this VAT charge will be accepted will depend largely on the VAT status of the customer. As we noted above, persons who charge VAT on their sales are usually entitled to reclaim VAT on their costs. For such sponsors the 23% VAT charge is not a real cost, as it can be reclaimed by them. Much of private industry would fall within this category and the research income from such sources should not be significantly affected by this VAT charge (certain financial institutions such as banks and insurance companies are the main exception to this rule). However, in general government departments and state agencies are not taxable persons and VAT is effectively a 23% increase in price for such persons.

5.2 Expenditure

Again, "basic research" is unaffected by the revised rules and remains VAT exempt i.e. no VAT may be reclaimed in respect of such work, subject to the contract being outside the scope of VAT (see section 2 above).

Where contract work is taxable, VAT may be reclaimed on most VAT costs incurred directly in connection with the work (materials, consumables, hardware etc.). Therefore, certain cost components of your research work may be reduced by up to 23% - depending on whether the costs are subject to VAT and the rate at which they are chargeable. To recover this VAT, proper VAT invoices must be received, addressed to the University. There are some specific items on which VAT can never be reclaimed, irrespective of the kind of research for which it is used. A full list of such items is contained in **Appendix II**.

In addition to the above, the University should be able to reclaim a proportion of its overhead costs (electricity, cleaning etc.) based on the level of taxable research activity being carried out at the University. The level of this "overhead" reclaim should not directly affect research staff or impact on their budgets have been and will be agreed with the Revenue authorities for the University as a whole.

5.3 VAT incurred in the EU

Occasionally, the University may incur non-Irish VAT on goods or services purchased in other EU Member States. Where this VAT is incurred for the specific purpose of taxable research and is invoiced to the University (rather than the individual researcher) it may be reclaimed using what is known as "an Eighth Directive" refund procedure. As this process is quite time consuming and administratively demanding, it may only be worthwhile where the amount of VAT incurred in a particular country is significant. You should also be aware that most EU countries apply strict time limits for the making of Eighth Directive claims and will not refund VAT unless the claim is made within six months of the end of the calendar year in which the VAT was incurred (e.g. 30 June 2005 is the latest submission date for VAT incurred in 2004).

6. What is the role of the "researcher" with respect to VAT?

Many of the changes necessitated by the revised rules will be implemented by the Research Office or Administration. However, the following may be within the remit of the respective Departments and will demand their particular attention:

When quoting a price for a given piece of work, the researcher should establish first whether the work is going to be "taxable". If in doubt Ms Caitriona O'Leary, Office of Research Grants and Contracts should be contacted. If it is taxable, it should be agreed with the client whether

or not the price quoted includes VAT (the client will be more willing to pay an additional VAT charge if they are a taxable person and are entitled to deduct VAT charged to them).

When pricing goods/services with a view to purchase, the researcher should obtain both the VAT inclusive and VAT exclusive price for the product. This VAT information should be included on any purchase order/purchase requisition form.

When making decisions concerning budgets/resources researchers should bear in mind that the real costs may be less than expected if the pricing of cost inputs has been VAT inclusive, owing to the fact that much of this VAT should be reclaimable for *taxable* research projects.

7. Summary

Rate	Which Applies To	When supplied to
23%	Taxable research	Irish sponsors or EU "non- businesses".

Please note if a research project is categorised as VAT-able/taxable at 21.5% then [R] will be included in the project title on Agresso.

0%	Taxable research	EU Commission, EU businesses, all persons established outside the EU and Irish businesses with a valid 13A authorization

Please note if a research project is categorised as VAT-able/taxable at 0% then [R] will be included in the project title on Agresso.

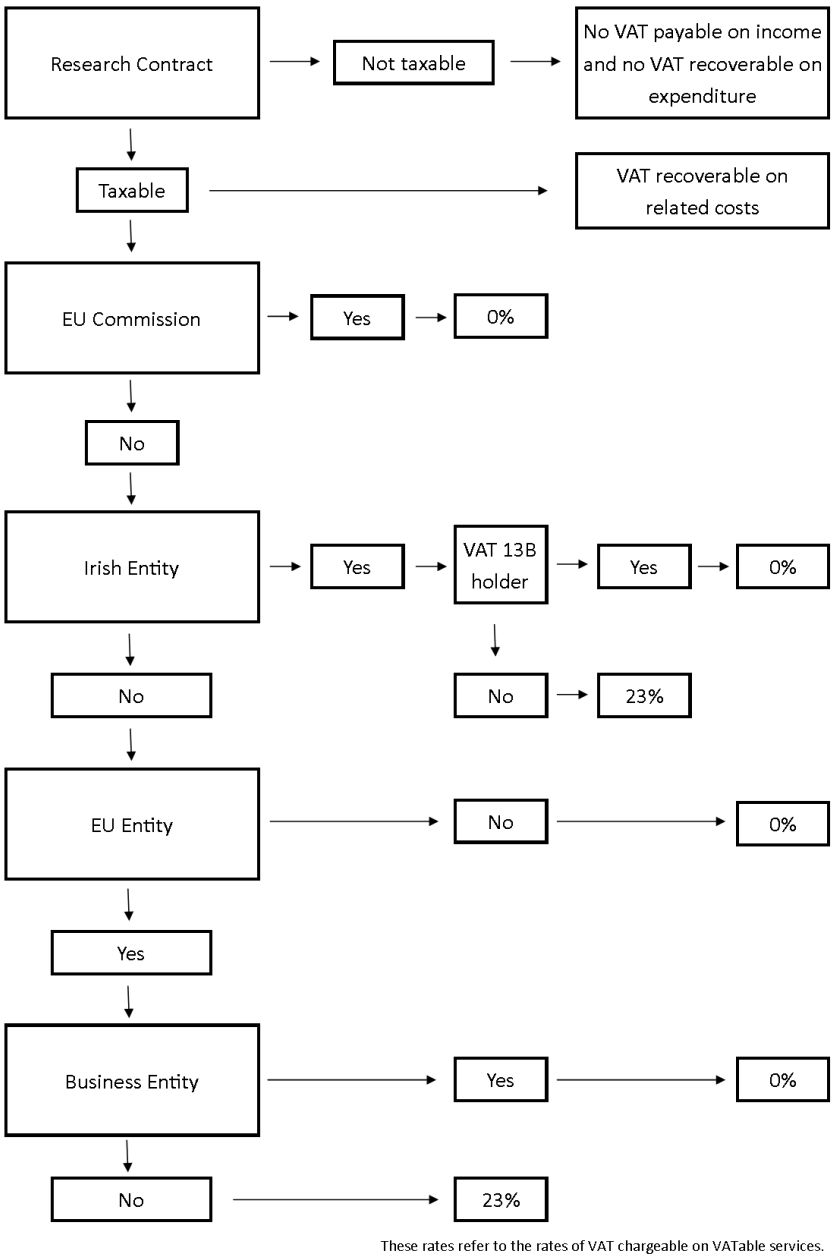
Exempt	Non-taxable research	Any sponsors

Please note if a research project is categorised as non-VAT-able/non-taxable/exempt then [X] will be included in the project title on Agresso

This summary is available in chart format in **Appendix I**.

Appendix I

Summary of VAT Rules



These rates refer to the rates of VAT chargeable on VATable services.

Appendix II

NON-DEDUCTIBLE VAT:

VAT is not deductible from the following items:

- VAT incurred on the purchase of food or drink, accommodation or other personal services for the University, or the agents or employees of the University. An exception to this rule is where the VAT is incurred for a supply of services for which the University is taxable e.g. the canteen.

- Entertainment expenses incurred by the University or its employees.

- The purchase, hiring, or importation of passenger road motor vehicles.

- Petrol.

- The purchase of services which in effect consist of the handing over of any of the above items.