

Applying VAT on Private School Fees & Removing the Business Rates Charitable Rates Relief for Private Schools: Technical Note

Response of the Association of School and College Leaders

A. Introduction

1. The Association of School and College Leaders (ASCL) is a trade union and professional association representing around 25,000 education system leaders, heads, principals, deputies, vice-principals, assistant heads, business leaders and other senior staff of state-funded and independent schools and colleges throughout the UK. ASCL members are responsible for the education of more than four million children and young people across primary, secondary, post-16 and specialist education. This places the association in a strong position to consider this issue from the viewpoint of the leaders of schools and colleges of all types.
2. ASCL welcomes the opportunity to contribute to this consultation. Our response is based on the views of our members, obtained through discussions at ASCL Council, with relevant advisory groups, affiliated associations and prompted and unprompted emails and messages from members.
3. When considering the impact of any proposals on different groups, it is ASCL's policy to consider not only the nine protected characteristics included in the Equality Act 2010, but also other groups which might be disproportionately affected, particularly those who are socio-economically disadvantaged. We answer any equality impact questions on this basis.
4. We encourage the government to ensure that a full, thorough and transparent impact assessment is carried out on these proposals, including an equalities impact assessment (as part of the Public Sector Equality Duty). This should fully consider the impact on pupil movement out of the independent sector on revenue raised, state places, resulting school closures and the potential for disproportionate impact on pupils with protected characteristics, particularly disability, sex and religion or belief.

B. Key points

5. Our response to this consultation primarily focuses on three key questions: whether the proposals will achieve the government's policy aims, whether a sufficient impact assessment has been undertaken, and whether the timescale is achievable. We have concerns about all three of these issues.
6. Considering each of the principles set out in paragraph 1.14, we highlight the following (see our answer to Question 5 for more detail):

Principle 1: Raise revenue to support the public finances and help deliver the government's commitments relating to education and young people.

7. It is essential that we have a well-funded state education system, with excellent provision and equal opportunity for every child. We would, however, question the government's decision to seek to raise much-needed additional revenue for state education from elsewhere in the education system, rather than using other mechanisms which would not directly impact other children and young people.

Principle 2: Ensure high quality education is available for every child.

8. We wholeheartedly support this principle, but have concerns that this policy may lead to unplanned pupil transfers, school closures and the loss of bursaries and state/independent school partnerships, which would be detrimental to ensuring high-quality education for every child, wherever they live or attend school. Without a transparent impact assessment, it is difficult to ascertain how likely these concerns are to materialise.

Principle 3: Be fair, with all users of private schools paying their fair share, whilst ensuring that pupils with the most acute needs are not adversely affected

9. The needs of particular groups across the independent sector need to be considered here. Consideration should be given to the diverse size, foundation and capacity of independent schools to manage this change without adversely impacting local employment and pupil outcomes.

Principle 4: Minimise administrative burdens for taxpayers and HMRC, whilst ensuring these policies are not open to abuse

10. The timetable for introducing VAT in January 2025 will place significant additional administrative burdens on both schools and HMRC. VAT-registering around 2,500 schools by January 1 will be logistically extremely challenging.
11. Our view is that there has not been an effective impact assessment prior to the formal announcement of these proposals, nor sufficient sector consultation. An impact assessment is needed in order to consider the following:
 - a. The timing of the policy, particularly the impact of a mid-school year January implementation
 - b. The variable impact on schools of different sizes and characteristics
 - c. The impact on teachers, leaders and other staff in independent schools
 - d. The potential for the policy to reduce state/independent partnerships
 - e. The potential unintended consequence of the policy reducing access to independent schools for less advantaged children and young people, including through the reduction in bursary programmes
 - f. Concerns about pupils with SEND, and the potential pressure on state school places as a result of increased EHCP applications
12. ASCL's view is that the government should delay the introduction of VAT until September 2025. This would be more practical for schools when budgets have been set for the academic year. It would also be better for parents and children, who may find it difficult to secure a local school place mid-year. This would also allow for a fuller consideration of consequences the policy may have across different parts of the education sector. In particular, there are issues regarding implications for local authority SEND services, already under significant pressure.
13. Schools were fully aware that the incoming government was committed to the VAT policy, but there was no clarity on timing. The announcement on 29 July, when schools

were on their summer break, has truncated helpful dialogue and increased anxiety amongst school leaders, staff and families. Many of these concerns are exacerbated by a mid-school year implementation, as outlined in more detail below.

14. There has never been an opportunity to have a meaningful discussion on the principle of the policy, the detail or the timing of implementation. The proposals represent a wholesale change in the administration of education and a full impact assessment for schools, families and communities across all parts of the sector has not been carried out.
15. The proposed January implementation means that the consultation process is very short. There is great diversity within the independent sector and the impact of the policy will be different in different schools. The sector includes small schools, faith schools, single-sex schools, all-through schools, day pupils, boarding pupils, and pupils with a variety of special educational needs and disabilities. There are also huge geographical variations across rural and urban regions. More time is needed for the government to fully understand the nature of the sector and the unintended consequences the policy may create.
16. Paragraph E of the Cabinet Office consultation principles makes it clear that consultations should last for a proportionate amount of time, stating that “Consulting too quickly will not give enough time for consideration and will reduce the quality of responses”. This policy is a very significant change that will have a real impact on schools and families. The consultation period of seven weeks (five of which were over the school summer break) is shorter than the normal best practice of twelve weeks.

C. Answers to specific questions

Question 1: Does the above definition of private schools capture all private schools across the UK?

17. No. The consultation treats all independent schools as a homogenous group, when in fact the sector is diverse with different types of schools providing education across a range of areas. This means that the impact of tax measures will not be felt uniformly. The ISC census shows that, contrary to public perception, the typical independent school is small. It will be these smaller schools – operating on tight margins with limited annual turnover – which will be most impacted by tax changes.

Question 2: Does this definition inadvertently capture any organisations that this policy does not intend to capture

18. There is a lack of clarity around the position of independent special schools and alternative provision (AP). The DfE’s 6 September blog, ‘VAT on private schools: everything you need to know’, states the following:

How VAT affects private school fees for children with special educational needs and disabilities (SEND) depends on whether they have a local authority funded Education, Health and Care Plan (EHCP) and what it advises.

Fees for pupils with an EHCP that states they need a local authority funded place in a private school for specialist support, that can't be provided by mainstream state-funded education, will not be impacted by VAT.

However, where parents and guardians choose to send their child with SEND to a private school, VAT will be applied to their fees. This applies where they have an EHCP, but the local authority has decided that a private school place is not necessary to meet their needs.'

19. The draft legislation contains an important exception, which is not mentioned in the Technical Note. In the notes to the new Part 3 of Schedule 9, VATA, note 3 says "but a school is not a private school, and provision by a school is not to be treated as provision by a private school, if ... it is approved under section 342 of the Education Act 1996 (approval of non-maintained special schools)".
20. It appears, therefore, that if the special school is approved under that particular provision of the Education Act 1996 as a "non-maintained special school", then it will not be classified as a "private school", and education at this school will remain VAT exempt (as it is, currently). It is important that the government clarifies whether or not this interpretation is correct.
21. It is not clear how the legislation will apply to AP settings. ASCL has received advice suggesting that this may depend on how they are approved. If they qualify under education law as falling within section 342, then they won't be a "private school" and the fees charged for their education should remain VAT exempt. However, if they fall outside section 342, then it seems likely that they would be considered a "private school", and so their fees would be taxable.
22. The position of independent special schools and AP is clearly a complex area, which could lead to legal challenges to local authorities. It is important that this issue is fully considered and appropriately resolved.
23. ASCL members have also raised questions about the position regarding charity-funded bursaries (e.g. those provided by Springboard), and for forces families. Again, it is essential that the position of pupils and families in these situations is appropriately clarified.

Question 3: Does the above connected persons test capture the relationships that exist between private schools and third parties?

24. ASCL does not have the expertise to answer this question.

Question 4: Does this "connected persons" test inadvertently capture any relationships that it is not intended to capture?

25. As above.

Question 5: Does this approach achieve the intended policy aims across all Four Nations?

26. In responding to this question we consider below whether the measures set out in the consultation meet the principles set out in paragraph 1.14. We do not fully believe that is the case. Nor do they adequately take into account the distinct nature of all four UK nations.

Policy aim 1: Raise revenue to support the public finances and help deliver the government's commitments relating to education and young people and

Policy aim 2: Ensure high-quality education is available for every child.

27. We fully support the ambition that a high-quality education should be an entitlement for every child. Teacher recruitment and retention, SEND pressures, growth in pupil mental health concerns and crumbling school estates need investment and require sustainable strategy to resolve. However, we are concerned about the impact of these policies and unintended negative consequences on pupils and staff in both state and independent schools. It is unclear whether or not they will raise the sums projected, and they may create unhelpful division across the education sector.
28. The technical consultation does not provide a figure on how much revenue the government expects to raise from the VAT and business rates measures, or any detailed workings to support revenue projections. There have been a number of studies and reports circulated on this matter, all of which proposed different sums. Some suggest that the revenue raised, measured against the costs incurred, may be minimal.
29. There is no research-based study or example of a one-off 20% tax increase on school fees in Europe except in Greece, where outcomes were counterproductive. Above-inflation annual increases in independent school fees have been cited as evidence to show that a 20% VAT levy can be afforded from within current school budgets. However, increases in fees in recent years have reflected school responses to the pandemic, the cost-of-living crisis, high inflation (particularly on food and energy), wage comparability and increased overheads on other daily business costs.
30. Potential pupil movement from independent to state schools as a result of these policies would both reduce VAT revenue and increase costs to the state of educating more pupils.
31. The technical consultation states that the government expects schools to take steps to minimise the additional costs of VAT, including “reducing their surpluses or reserves, cutting back on non-essential expenditure, and increasing fees”. As all schools in all sectors must do annually, independent school leaders and governors will scrutinise budgets to reduce and manage costs whilst maintaining affordability for parents. However, there are constraints, with salaries comprising almost 3/4 of school costs. Reduction in these costs may lead to redundancies or a reduction in teachers’ pay and conditions. Many schools have, regrettably, already exited the Teachers’ Pension Scheme on the grounds of sustainable long-term affordability following successive increases in employer contribution over the last seven years. Feedback from school leaders and associations suggest that they expect to pass on between 15-20% of VAT to parents over the next few years.
32. Introducing the VAT change mid-academic year makes the challenge for schools to adjust budgets and support parents accordingly extremely difficult. Budgets are planned a term ahead for the 2024-2025 academic year. With staffing occupying the greatest cost, changing staffing levels mid-year may not only lead to redundancies, but also impact pupils’ education mid-curriculum. Delaying implementation until September 2025 would give schools and parents more time to plan effectively.
33. In the last year, 36 independent schools have closed, and this number is likely to increase by the end of the next academic year with the resultant impact upon local communities – pupils, families and employees. An ISBA survey found that 11% of independent schools said they may have to contemplate closing as a result of the tax changes.
34. VAT will also have an impact on other tax revenues if schools close or they need to cut back on employment or other services. Locally, schools are economic hubs that provide

employment and work with local companies, supporting them and their supply chains. In rural areas they are often the major employer (teaching and support staff), and support local businesses such as those involved in catering, cleaning or transport.

35. Overseas and boarding pupils are another consideration, with more than 60,000 non-British pupils at independent schools. If these families to choose to leave the UK then that VAT income will be spent elsewhere

Policy aim 3: Be fair, with all users of private schools paying their fair share, whilst ensuring that pupils with the most acute needs are not impacted.

36. Independent schooling can be an option for pupils who have acute or particular needs and for whom suitable provision may not always be available in the state sector, such as:

- Pupils with SEND
- Military families
- Bursary pupils and those on means-tested free places
- Boarding pupils
- Families seeking faith or single-sex provision
- Specialist music and dance schemes

37. It is important that a comprehensive impact assessment is conducted in regard to these groups before these policies are implemented.

Policy aim 4: Minimise administrative burdens for taxpayers and HMRC, whilst ensuring these policies are not open to abuse.

38. The accelerated timetable to introduce VAT from January 2025 will cause significant additional administrative burdens for taxpayers, schools and HMRC from the perspective of preparedness, technical administration and effective process. We draw attention to the following:

VAT registration and systems

39. VAT registration applications have a lead time of three to six months, and group registration applications (for schools which already have trading companies VAT-registered, for example) have a lead time of around four months. Ensuring that approximately 2,500 schools are registered by 1 January seems extremely unlikely, especially given the Christmas and New Year break. This will require additional resources from HMRC, and clear contact points for school support through the process. We would seek clarity on the position of schools which are unable to VAT register by 1 January as a result of the short timeframe.
40. Schools will need have procured and have in place relevant IT and accounting software, overseen by appropriately trained staff, in order to operate VAT systems. There will be complex queries to resolve, such as how to make partial exemption calculations. While it is understood guidance is to be made available, the timeframe is very short for HMRC to draw up and publish guidance relevant to the needs of the sector, and for school staff to understand how to operate these issues in practice.
41. VAT is planned to take effect from January 2025, and invoices to parents for the spring term fees are routinely sent in December. In order to issue VAT invoices schools may actually need to be registered and operational earlier, therefore further shortening the timeframe for schools and HMRC.

HMRC guidance

42. We understand that HMRC is currently working on guidance and communications on registration and general operations of VAT systems for schools. However, sector-specific guidance addressing the multitude of questions that have arisen since the 29 July announcement puts further pressure on a tight timeframe.
43. There will be questions and variations between institutions regarding detailed aspects of a school's operations, such as the VAT position on support received from an external charity supporting a pupil's fees, or services closely related to boarding accommodation and the Capital Goods Scheme. Paragraph 2.13 of the Technical Note suggests services related to boarding accommodation will not remain exempt, which creates complications for schools, especially with a January deadline.

Pupil transfers

44. Implementation of VAT partway through the academic school year complicates the situation if parents need to move their children into the state sector. A term's notice for withdrawal is a standard contractual requirement in independent schools. This could create significant challenges for parents trying to find a school place for their child over the Christmas holidays.
45. January is outside of the normal state school admissions process. In-year transfers can be difficult for local authorities and families, especially for pupils in key examination years. Availability of state school places is highly variable across local authorities, which may lead to some children being out of education until a place becomes available, or having to be found places outside of their local area.

Impact on devolved nations

46. The consultation asks whether the proposal achieves its intended aims "across all four UK nations". Independent schools in the devolved nations will have different circumstances and these need to be properly reflected in the government's impact assessment. Education policy is devolved in Scotland, Wales and Northern Ireland while taxation policy is not, creating additional complexities to implement the policy fairly across all four UK nations.
47. We draw the government's attention to the following points:

Scotland

48. Independent schools in Scotland are clustered in particular areas – the largest in Edinburgh. VAT could have a particularly damaging impact on education in Edinburgh and put pressure on state education services. A number of schools are specialist settings for children with complex needs.
49. Business rates relief has already been withdrawn for independent schools in Scotland since 2022. Approximately 80% of schools retain their charitable status but are required by the regulator to comply with distinct and robust charity tests, focused on charitable purpose and provision of public benefit. This ensures that these schools actively promote key values of access and educational charitable mission.

Wales

50. There are 73 independent schools in Wales, including a proportion of special needs schools with an average size of 130 pupils compared to 250 in England. Many are established in rural areas with small catchment areas, making them more susceptible to a decline in pupil roll and impact on local employment in that area.
51. In urban areas there are individual challenges. For example, there are seven independent schools in Cardiff, and a shortage of pupil places within maintained schools in the area. The implementation of the policy from 1 January will create additional challenges for displaced pupils seeking school places in local state schools mid-year at secondary and primary stages. A delay until September would allow local authorities to undertake the necessary adjustments to accommodate additional pupil numbers.
52. It is unclear how much of the increased funding raised from the VAT levy will be allocated to Wales. There is no information outlining how consequential funding will be calculated or allocated to the devolved area of education. Delaying the policy implementation and publishing the necessary information would enable the Welsh Government and local authorities to plan accordingly, thus ensuring access to high-quality education for every child in Wales.

Northern Ireland

53. In Northern Ireland, education is under the control of the devolved government. The definition of private schools is problematic for the twelve prep schools in Northern Ireland, as they are established as a 'department' within 'voluntary grammar schools' and are non-profit making. The voluntary grammar schools are funded centrally by the Department of Education in the same way as state schools; the prep department is the only aspect of the school that is funded privately. The Northern Ireland education minister has proposed that independent schools in Northern Ireland should be exempt from the VAT levy, but there has been no information outlining how the policy in Northern Ireland will be assessed and managed.

D. Conclusion

54. To summarise, our response to this consultation has primarily focused on three key questions: whether the proposals will achieve the government's policy aims, whether a sufficient impact assessment has been undertaken and published, and whether the timescale is achievable. We have concerns about all three of these issues, as set out in detail above.
55. We would strongly recommend that the government undertakes and publishes a comprehensive impact assessment and a full consultation on these proposals before they are formalised in legislation, and that it delays their implementation until September 2025 at the earliest.
56. We hope that this response is of value to your consultation. ASCL is willing to be further consulted and to assist in any way that it can.

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