A NASS BRIEFING

NASS
National Association of Special Schools

MP BRIEFING: VAT ON 'PRIVATE SCHOOLS'
11th October 2024

Issues and concerns VAT on 'private schools' raises for special schools funded by local authority-made placements

Background

In July 2024, the new Labour Government announced plans to amend VAT legislation in order to make education in 'private schools' eligible for VAT. This is due to come into force from 1st January 2025. The stated intent of the policy is to raise funds for the public purse, which can be used on state-funded education programmes.

Prior to the election, the then Shadow Minister for Children, Helen Hayes MP announced the intent to exempt placements for children with Education, Health and Care Plans (EHCPs) which are funded through the public purse via local authorities making placements. In July, the Government announced the plan to charge VAT on all independent school placements, including those funded by local authorities. This is badged as a cost-neutral policy, since local authorities will be able to reclaim the VAT that pay out on placements.

NASS has significant concerns about the speed of implementation, the inclusion of special schools and the plans to exempt Non-Maintained Special Schools from the policy, thus rendering them the only category of non-local authority run special schools with no recourse to VAT recovery. **Recent Treasury guidance for schools is inadequate and makes no reference to special schools. We believe our member schools are at considerable risk of non-compliance due to the complexity of operating as a partially exempt service.**

About NASS and the independent special school sector

NASS – the National Association of Special Schools – is a membership body for special schools which are not maintained by local authorities. We have around 430 schools in membership across England and Wales. The majority of our members are independent special schools but we also represent 51 of the 53 Non-Maintained Special Schools and Special Academies (including those created via the Free School route). We represent our members with central government and key stakeholders, such as Ofsted, and provide support, training and advice to schools.

The independent special school sector is diverse, including small, standalone schools run by charities and large groups of commercial providers. Schools are registered with the Department for Education and inspected by Ofsted against the Independent School Standards. Almost 99% of placements are funded through the public purse via local authorities making placements. Schools tend to have specific specialisms and focus on children with the most complex needs.

Non-Maintained Special Schools (NMSS) are a specific type of independent special school, approved under s342 of the 1996 Education Act. In many ways, they were the forerunners of academies – set up to mirror state provision with requirements to operate on a not-for-profit basis, to offer the National Curriculum and to mirror teachers' pay and conditions. They are inspected by Ofsted, using the same framework used for local authority special schools. There are only 53 NMSS and the status only exists in England.

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NASS's concerns and questions

What is the policy intent for the decision to add VAT to local authority placements?

The stated intent of the wider policy is to raise funds for the public purse. **Including EHCP driven placements in the policy will result in a net cost to the public purse. Local authorities will reclaim any VAT levied on placements and schools will be able to reclaim VAT on their purchases.**

There is no benefit to children and families and outcomes for children with Special Educational Needs and Disabilities (SEND) as a result of their schools charging VAT.

NASS believes that special schools have been included purely as a matter of expediency as a result of the wish to implement this policy by January 1st 2025. It would have been possible to identify schools with a majority of placements funded via local authorities and exempt them – the Department for Education holds this data. Indeed, this is what is being considered to avoid special schools being caught in the intent to remove charitable business rate relief.

Which elements of a placement in a special school will attract VAT?

For mainstream schools, the policy intent is that parents will pay VAT on education and boarding but that extra-curricular activities such as school trips and meals will be exempt.

Independent special schools generally offer placements that contain elements of education, social care and health, which have been identified as necessary within a child's EHCP. They generally set a single fee, which is invoiced to the placing local authority.

Early indications from the Treasury were that schools will continue to be able to charge a single fee and will levy VAT on all elements, even though some of the services offered would not attract VAT if delivered in isolation. Fees would be treated as a 'single supply' for VAT purposes.

Later guidance has muddied the waters on this and it now appears likely that some elements of special school provision will be exempt from VAT. Whilst boarding in mainstream independent schools will be treated as education for VAT purposes, residential provision in special schools is far more likely to reach HMRC's definition of 'welfare', which would render it exempt from VAT. There are significant consequences for schools in terms of administration and compliance. Schools now face the probability of having to split invoices to local authorities into exempt and non-exempt services. **This additional bureaucracy has a cost, which will ultimately be borne by the public purse. More worrying for schools is the risk of getting this wrong and either over-claiming or under-claiming VAT.** Partial exemption is a complex subject and there is currently no case law or practice to guide schools. Schools will be self-assessing and risk fines for making mistakes. **This is a significant risk for a policy which brings no clear benefit to children, families or the state.**

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The lack of detailed communications to special schools and local authorities

The local authority reclaim route for placements for children with an EHCP has been badged as if it is a very simple option. **We believe that significant planning will be required, which we believe is now impossible given that there is likely to be a window of approximately 7 working weeks between the budget and the policy going live.** Within this time, schools will have to register and will prepare the first VAT invoices for local authorities for fees from 1st January 2025. Local authorities need to have early notice to expect this and to start preparations to amend purchase orders. They need to be given clear instructions not to delay payments to special schools as a result of these changes and reminders given about schools' ability to levy late payment interest where fees are unreasonably delayed for more than 30 days. The reclaim route for local authorities needs to be clear so that it cannot be said that schools are raising fees by 20%. Additionally, it needs to be noted that the end of December is the point at which most schools notify local authorities of inflationary uplifts coming into effect on 1st April 2025. These two areas are not connected but we fear that local authorities will conflate them if not instructed to do otherwise. Care needs to be taken not to interfere with schools' cash flow as this can be highly destabilising.

Guidance from HMT to date has been inadequate and largely silent on placements driven by Education, Health and Care Plans. **In the absence of good support for schools, we believe that policy implementation should be delayed until at least September 2025.**

Why was the decision taken to exclude Non-Maintained Special Schools from any VAT-reclaim route?

The stated intent is to explicitly exempt NMSS from this policy. Whilst this group of 53 schools might be glad to avoid some of the bureaucratic impacts we have listed here, it does create a situation where they become the only category of special school which has no right to VAT recovery. We estimate that this is worth on average c£150k per year for an average sized NMSS. **A policy which enables large commercial groups of schools to recover VAT but prevents charitable schools, set up to mirror state provision, from doing so appears perverse.**

In 2016, NASS lobbied HMT and HMRC to give NMSS the same rights of VAT recovery as academies. We were told that this was not possible as NMSS did not deliver a service that was VAT-able. **Given the changes which are being made more widely, we ask for the position of NMSS to be revisited so that they are not disadvantaged by being unable to recover VAT.** Our preference would be for NMSS to be treated in the same way as academies but we believe that removing the planned exemption for NMSS is also an option for consideration.

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What impact analysis has been undertaken of parents of children with SEND who currently choose to fund placements in independent schools?

Whilst almost all placements in NASS member schools are funded by local authorities, in a few cases, parents make a contribution to the placement. From January 1st 2025, parents face paying 20% VAT on these contributions.

More widely, there are children with special needs in independent schools, currently without EHCPs and funded by parents. Some of these children might feasibly qualify for an EHCP. **We would like to know what analysis was undertaken of the possible number of new requests for EHCP assessments as a result of this policy.**

We have seen no analysis of the expected additional administrative costs to schools and local authorities as a result of implementing this policy. These will be costs to the public purse and include:

- Registration costs to schools, e.g. professional advice
- Costs to local authorities of revising existing purchase orders to include VAT
- Late payment interest charges where local authorities delay payment as a result of changing purchase orders
- Additional administrative costs if schools have to split invoices several ways to ensure that only VAT-able services have VAT levied against them. We anticipate some schools having to send 2-3 invoices instead of amalgamating all services into a single invoice

We would like to see due consideration given to these issues in the forthcoming New Burdens assessment.

Please stay in touch with NASS

If you would like further information on the issues and concerns we have raised above, please contact NASS CEO, Claire Dorer OBE, at cdorer@nasschools.org.uk

If you would be open to meeting with us to further discuss how you might support our work with special schools, please contact NASS Senior Policy and Public Affairs Officer, Mari Davis, at mdavis@nasschools.org.uk

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