

## Business/Non-business

How do you tell whether your supplies are within the scope of VAT.



This week's article is about whether your activities which your charity undertakes are either business or non-business. This is a fundamental principle of how VAT affects the charity sector. Some recent HMRC guidance on the subject has added a layer of consideration into whether a particular activity is considered business or non-business.

# Supply and Consideration

VAT is a transaction tax and in order for a transaction to be within the scope of VAT, there needs to be two parts of an equation.

The first is a tangible supply of goods or services; and secondly consideration ie payment in the form of money - however VAT also applies to transactions where non-monetary consideration is paid such as exchange of services between parties for free.

## Non-business activities

Input VAT in relation to carrying out non-business activities is restricted. This is a major cost to the charity and not for profit sector estimated at £2bn per annum and rising.

Common non-business activities include free provision of services and activities which are funded by grants.

# What is a Business Transaction

HMRC issued [Revenue and Customs Brief 10 \(2022\): VAT – business and non-business activities - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/briefings/2022/06/10/revenue-and-customs-brief-10-2022-vat-business-and-non-business-activities) in June 2022. The brief explained HMRC's approach to considering whether an activity is business or non-business.

The brief outlined HMRC's revised position on its business tests to a two stage test replacing the historic "*Lord Fisher*" tests.

The two stage tests are as follow:

1. There must be a supply for a consideration. This is the standing test for a transaction to be within the scope of VAT.
2. The second test is the supply is made for the purpose of obtaining income therefrom. (remuneration)

The second test derives from case law and the brief refers to the "Wakefield College" case from 2018. This change means that a payment - however minimal it is no longer meets the consideration test. In order for an activity to be regarded as economic, it must be carried out for the purpose of obtaining or earning income.

This is a distinct change to HMRC's long-standing policy that a business activity is possible even in the absence of a profit motive.

## Impact on the charity sector

Although the R&CB refers to nursery and creche facilities, it is anticipated that HMRC will use this across the sector to attack supplies which do not meet the new tests for a business transaction.

Examples which are not exhaustive include peppercorn rents and grazing licences, £1 licence fees for logos and minimum recharges between related parties.

We would encourage Charity's to review their income and activities to consider whether there are any areas of concern in terms of transactions which do not meet the new tests.

### Guidance

**The information in this article is for guidance only and should not be used as advice to any individual organisations VAT position. Should you require professional advice please do not hesitate to contact our Director on the details below.**

## Contact Details

Name	Phone	Email
Alison Hone	07740 626919	alison@alisonhone.com

