THE BURSAR'S REVIEW

Spring 2024

£7.99 | The Official Magazine of the ISBA

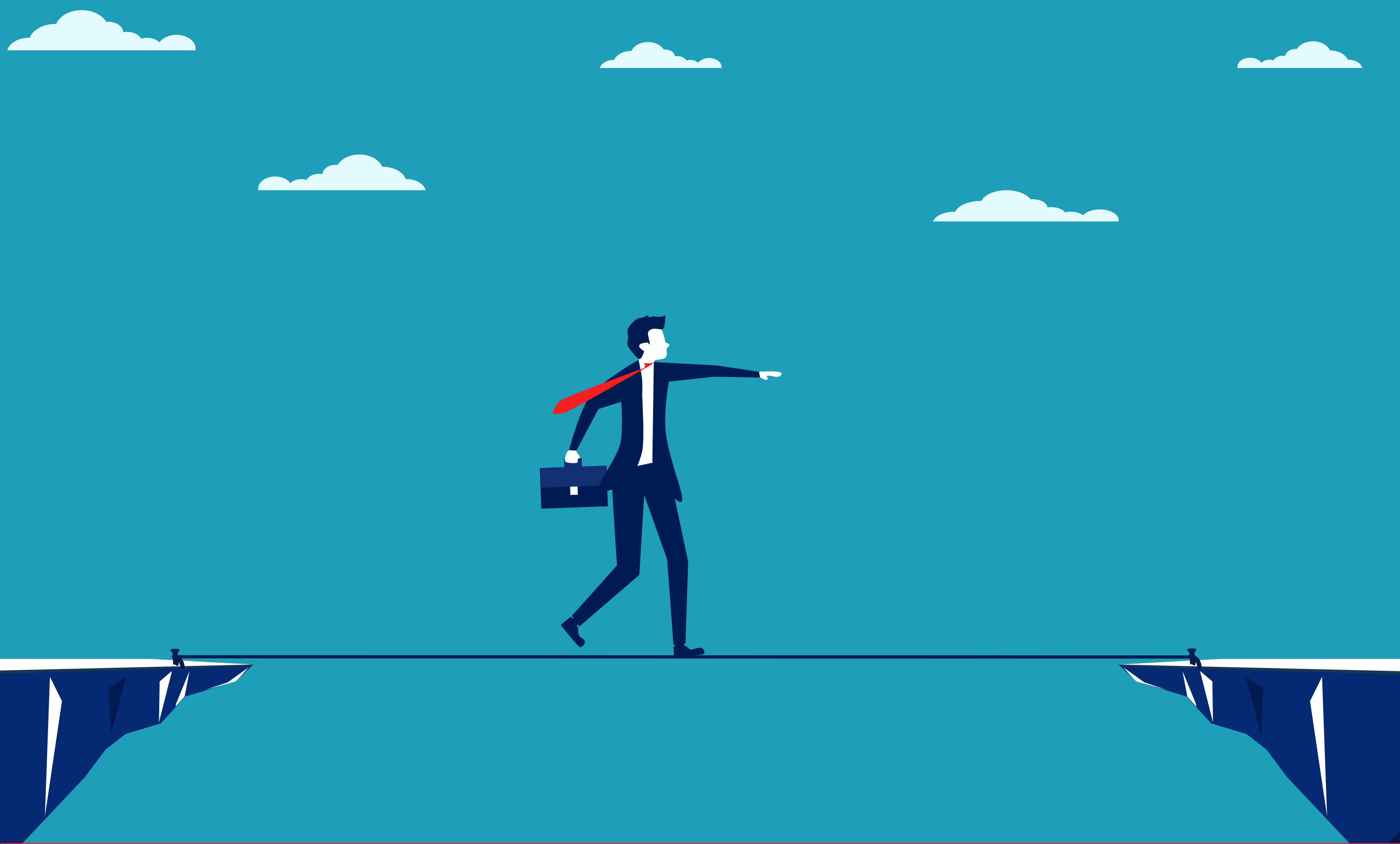
2024 AND BEYOND FOR SCHOOLS

THE IMPLICATIONS OF A LABOUR GOVERNMENT

VAT ON SCHOOL FEES

INCREASED TPS COSTS – WHAT ARE YOUR OPTIONS?

MERGERS AND ACQUISITIONS: STRATEGIC DECISION-MAKING AND TIMING



Don't miss our special catering section included with this issue AND the 2024 ISBA impact report

ISBA
INDEPENDENT SCHOOLS' BURSARS ASSOCIATION

Welcome to
the Spring issue

…from ISBA's chief executive, David Woodgate.

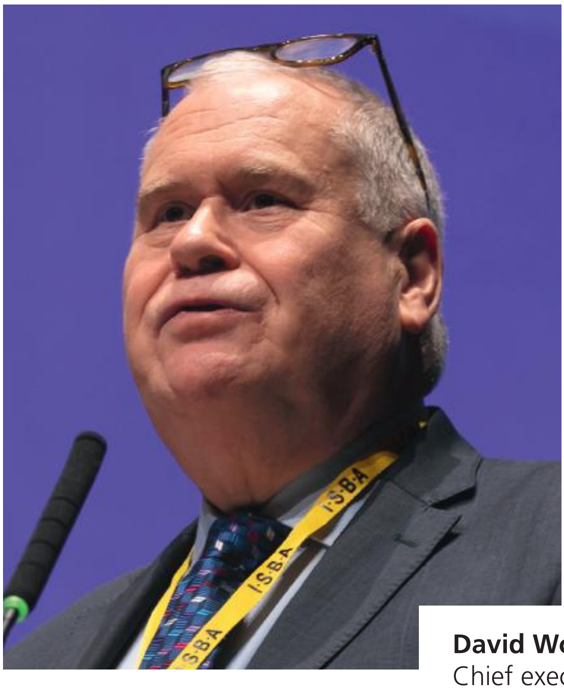
2024 promises to be another interesting year for the independent school sector. Whether we see a general election called in the first half of the year or in the autumn, there is only thing for certain: uncertainty! With this in mind, ISBA is committed to providing you – our member schools – and your teams with high quality, reliable and timely information to support your decision-making over the coming months.

On page 8, Stephen Ravenscroft of Stone King explores the implications of a Labour government on the sector and the steps schools can take to plan and mitigate potential effects, whilst, on page 16, Kieran Smith of Crowe looks specifically at the issue of VAT on fees, updating us on the proposals the Labour party has recently confirmed in relation to tax changes.

The Teachers' Pension Scheme (TPS) increase in employer contributions continues to dominate many of your thoughts and Tom Breading at Moore Kingston Smith looks at the latest options for schools on page 22. If you're considering a potential merger/acquisition then you'll want to read our article on page 30 where James Morgan and Jenny Staples of Harrison Clark Rickerbys explain the legal pitfalls to look out for.

Our annual conference this year, taking place from Monday 20 to Wednesday 22 May at the ICC, Wales, will focus on making your school fit for business in 2024. We are offering a rich programme of speakers, exhibitors and activities and the opportunity to take time away from the busy day job to focus on your personal development and meet new colleagues.

You'll have the opportunity to learn from highly regarded keynote speakers covering the latest topics affecting the sector and will be able to use free advice and knowledge from sector experts to develop, refine and test your school strategy for the year over three professionally rewarding days. It really is an event not to be missed. Make sure you book your place at: **https://members.theisba.org.uk/cpd/annual-conference-2024-icc-wales/**



David Woodgate
Chief executive
ISBA INDEPENDENT SCHOOLS' BURSARS ASSOCIATION

ISBA INDEPENDENT SCHOOLS' BURSARS ASSOCIATION

167-169 Great Portland Street, 5th Floor
London W1W 5PF
T: 01256 330369
E: office@theisba.org.uk
W: www.theisba.org.uk
www.linkedin.com/company/independent-schools'-bursars-association/

COMPANY NO: 6410037
REGISTERED CHARITY: 1121757

CHAIR:
Neil Cufley

CHIEF EXECUTIVE:
David Woodgate BSc (Hons) MBA FRSA

EDITOR:
Gillian Goode
E: bursarsreview@theisba.org.uk

PUBLISHER:
Simon Moody

PRODUCTION EDITOR:
Nicky Rogers
T: 01778 391128
E: nickyr@warnersgroup.co.uk

DESIGN:
Ryan Housden

ADVERTISING MANAGER:
Jayne Perry
T: 01778 391189
E: jayne.perry@warnersgroup.co.uk

ADVERTISING PRODUCTION:
Sue Ward
E: productionc@warnersgroup.co.uk

PRINTING:
Warners Midlands Plc

This publication is printed by Warners 01778 395111

PUBLISHING
Warners Group Publications, The Maltings,
West Street, Bourne, Lincs, PE10 9PH
T: 01778 391000

SPRING 2024

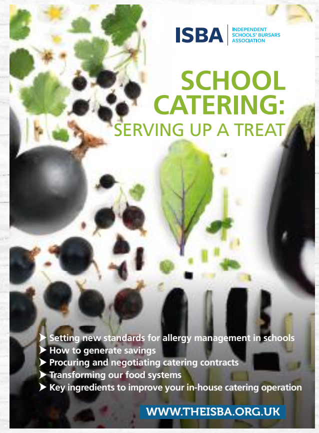
REGULAR

NEWS

FEATURES

SPECIAL SECTION ON INDEPENDENT SCHOOL CATERING:

PROVIDING HEALTHY, INTERESTING, AND SAFE FOOD WITHIN BUDGET TO HELP PUPILS LEARN AND THRIVE



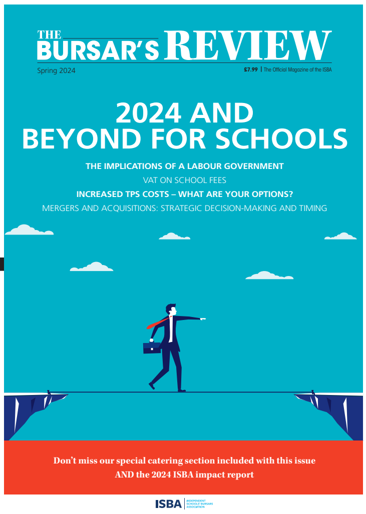
ESTATE MANAGEMENT

PROFESSIONAL DEVELOPMENT

FINANCE

ISBA

COVER STORY



Cover story: 2024 is shaping up to be another interesting year for the independent school sector, but ISBA is committed to providing you and your teams with high quality, reliable and timely information to support your decision-making over the coming months.

LEGAL

COFFEE BREAK

TOP TIPS

Out of all the articles in this issue of the Bursar's Review, we have flagged up some of the most critical topics for you to think about:

8 The impact of a Labour government on independent schools
- All charitable schools should review and reflect to ensure that they are in the best possible situation to meet the forthcoming challenges
- Make sure that governors are fully engaged in all processes so that key strategic decisions can be taken and implemented in good time

16 VAT on school fees
- Consider the timing of building projects and acquisitions, as there are potential VAT benefits in delaying projects until VAT is introduced
- There is no certainty as to how VAT will apply for independent schools until draft legislation is released

22 Increased TPS costs
- DC pension schemes can offer flexibility and control in terms of the level of both employer and employee contributions
- The only way for a school to provide the TPS at a lower cost is to pay the employer contribution on a lower salary

28 Mergers and acquisitions
- Decisions to merge should be made from a position of strength
- The board must accept when the school is underperforming and the business plan/model is not working

36 Navigating the Protect Duty in independent schools
- School leaders must actively contribute to risk assessing security in the interest of public safety
- The UK terrorism threat is classed as 'SUBSTANTIAL', meaning an attack is likely

44 Source of funds – a new source of worry?
- It is not enough to know the money for school fees came from a UK bank account
- It will be the school's responsibility to make the final decision on risk

48 Integrating AI in education and the Online Safety Act
- Ensure AI tools support educational outcomes without compromising learning integrity or pupil privacy
- Invest in regular, comprehensive training programmes for educators, administrators, and IT staff

52 Ethnicity pay reporting
- If disparities are identified, schools can formulate action plans to tackle the issue by implementing targeted measures
- Calculations should be produced annually and in a consistent, accessible format to allow comparison between years

56 Holiday pay and leave provisions
- There are two new defined categories of workers: irregular hours workers and part-year workers
- From 1 April 2024 part-year workers will only be statutorily entitled to holiday leave accrued at the rate of 12.07 percent of actual hours worked

60 Energising the risk register
- Identify ways in which the board and the leadership team can anticipate risk before it occurs
- A live risk register guides action rather than simply predicting poor outcomes

66 Air and water compliance
- Uncleaned kitchen ductwork can spread fire to the roof and upper floors
- It is essential to ensure that your legionella risk assessment is kept up-to-date

72 Performing spaces for school and community
- If your sports hall is no longer fit-for-purpose, could it be fit for a theatre conversion?
- Carefully designed school theatres will benefit the school, its pupils, and its local community

St George's College’s Kennedy Club wins BBC Make a Difference Award

The sixth form-led Kennedy Club at St George's College Weybridge has been recognised with the Together Award at the BBC Radio Surrey and Sussex Make a Difference Awards ceremony, which took place last September.

The BBC Make a Difference Awards celebrate the outstanding contributions of individuals and groups who have made a positive impact on their communities and beyond. St George's Kennedy Club won the Together Award, a category that highlights organisations that bring together different sections of society or backgrounds. Kennedy Club Presidents Luca, Freya and Oliver accepted the award on behalf of the school.

St George's Kennedy Club, run by the school’s sixth form pupils, is a weekly co-curricular club for vulnerable and displaced young people from the local community. The sixth form pupils’ unwavering commitment to fostering unity and working together has served as an inspiration to many.

Head of St George's College, Rachel Owens, said: “Our Kennedy Club exemplifies our Georgian values of hospitality, collaboration, and happiness. This award is testament to the dedication and hard work of our pupils, staff, and volunteers who have worked tirelessly to make a positive impact and a real difference in the lives of our weekly guests”.

Kennedy Club Presidents Luca, Freya, and Oliver with the High Sheriff of East Sussex, Richard Bickersteth

Concerns over the ability of some parents to pay school fees

In some new research 83 percent of those interviewed say their schools are spending more time chasing parents for payment of fees

New research* with headmasters, bursars, and finance managers at independent schools in the UK reveals that 48 percent are ‘very concerned’ about a potential rise in children leaving their schools because their parents can’t afford the fees. A further 47 percent are ‘quite concerned’ about this.

The research was commissioned by finance company Premium Credit, which, through its Schools Fee Plan (SFP), provides funding to parents enabling them to spread the cost of their children’s school fees.

The study reveals that half (52 percent) of the head teachers, bursars and finance managers at independent schools interviewed believe at least 15 percent of parents are finding it difficult to pay school fees.

Some 83 percent of those interviewed say their schools are spending more time chasing parents for payment of fees. Four out of 10 (40 percent) of those interviewed say that at least 15 percent of their school parents are on special repayment terms allowing them to spread the cost of their school fees. Nine out of 10 (89 percent) of those interviewed said they are increasingly looking for schemes run by professional firms to help parents spread the cost of their children’s school fees.

*Premium Credit commissioned market research company Pureprofile to conduct research with head teachers, bursars and finance managers at fee paying schools in the UK. The research was conducted online during May 2023.

ISBA supports UK'S first Schools Allergy Code

The UK's first code of practice, aimed at keeping pupils with allergies safer at school, launched in November 2023.

On average, food allergies affect one or two children in every class of 30, but leading doctors have warned that the UK lags behind the rest of the world when it comes to managing allergies in school, leaving pupils at risk of life-threatening allergic reactions.

Described as a "game-changer for schools" the new Schools Allergy Code is a collaboration between ISBA, the Benedict Blythe Foundation (**www.benedictblythe.com**), an organisation founded in memory of five year old Benedict Blythe who died following an allergic reaction at school, and campaigns for inclusive and safe schools for pupils with allergy, and The Allergy Team, (**www.theallergyteam.com**), which supports families living with food allergy and provides training and resources to thousands of teachers.

The Schools Allergy Code is a code of practice to help keep pupils with allergy safe. It covers awareness, emergency response protocol, training, and policies. The Code and its associated checklist are free resources, and all schools are urged to adhere to the criteria laid out in the Code.

As the second anniversary of her son's death approached, Helen Blythe, founder of Benedict Blythe Foundation said: "Too many children with allergies face unacceptable levels of risk at school, somewhere they should feel safe and protected. Since Benedict died, I have spoken to countless parents and carers whose children have suffered allergic reactions or near-misses at school. I hope this new Code will ensure schools interrogate their own processes, improve their understanding of allergies, and know how to respond in an emergency".

Watch the clip here **https://www.linkedin.com/feed/update/urn:li:activity:7135928988694114305/** to find out why schools should join the Schools Allergy Register.

Please turn to page 4 of our catering section for more details about the Schools Allergy Code.

Plan, plan and plan

All charitable schools should ***review and reflect*** to ensure that they are in the best possible situation to meet the forthcoming challenges

It is widely considered that any benefits of a ***fees in advance scheme*** would only pertain until the election

Make sure that governors are fully engaged in all processes so that key strategic decisions can be taken and ***implemented in good time***

Independent schools – survival of the fittest

Any uncertainty is worrying, but can be mitigated. *Stephen Ravenscroft*, head of charity sector at Stone King LLP, discusses the likely impact of a Labour government on independent schools and how early, efficient planning will help to ensure 'business as usual'.

▲The election could happen at any time during 2024, and the absolute latest possible date is 28 January 2025

Much has been said and written about the impact of a Labour government on independent schools and the very real likelihood that these changes could lead to a seismic shift in the shape and functioning of the independent schools' market. Over the course of the past year, we have been afforded a degree of clarity regarding Labour's likely plans with some of the slightly vaguer language around charitable status being tightened. So, what is the current position and what is this likely to mean for independent schools and the education sector more generally?

What we know

Earlier statements from Labour seemed to suggest that charitable status for independent schools would be removed. This would have marked a very significant change in the legal position for charitable independent schools – right back to the Statute of Elizabeth in 1601, education has been considered to be charitable. While the changes introduced in the Charities Act 2006, and the removal of the presumption that education was for public benefit, provided a very clear signal that government expected independent schools to be able to justify their charitable status by providing benefits outside of their full fee-paying beneficiary class, this was not driving at the removal of that charitable status. It was, rather, seeking to encourage and quite possibly cajole schools into opening their doors and facilities in a meaningful way to those who would not otherwise be able to afford the fees. And these changes were not reserved for independent schools alone but rather, the public benefit presumption was removed for a broad range of charities.

Fast forward to the early 2020s, and Labour's various statements have suggested that the charitable status of schools themselves would be removed. However, the general view is that this would be an exceptionally difficult concept to enshrine in law. Putting aside for one moment more than 400 years of history, legislation is generally drafted on the basis of the status of the organisation itself, and any change to the charitable status of independent schools would require detailed provisions effectively carving independent schools out of such legislation. And this begs the question as to how independent schools would be defined, with the need to avoid unintended collateral in terms of, say, non-maintained special schools.

Possibly recognising these difficulties, Labour now appears to be focusing more on the taxation of independent schools, and in particular the VAT and business rates reliefs which are currently enjoyed – in the case of VAT, this is where Labour reckons the bigger numbers sit, with the figure of £1.7bn widely shared, with the Institute of Fiscal Studies estimating that the change could raise between £1.3bn to £1.5bn. Changes to such reliefs are arguably simpler to introduce, being changes which apply to the service or activity rather than looking to the charitable status of the entity.

However, until the manifestos are published much nearer the election (currently estimated to be in autumn 2024, but with the possibility of happening any time during 2024, with the absolute latest possible date being 28 January 2025), there can be no certainty that it will only be VAT and business rates which will be changed and it is against this background of uncertainty that schools should be approaching their planning for 2024 and beyond.

What can schools do?

Plan, plan and plan. All independent schools, of any size, must consider carefully the likely impact of any changes to their school as a consequence of the possible removal of the VAT and business rate reliefs, as well as having a weather eye on the impact of the loss of other charitable tax breaks in the event that the government decides to remove the other tax breaks, including notably, corporation tax and gift aid. As a firm, we have undertaken several strategic reviews for clients, looking at their existing models and the range of options available to them and taking this opportunity to assess in detail the business, governance and operational models of schools is vital.

With the tax changes comes the necessary need to consider tax planning. What is clear to us is that tax planning which is too aggressive – frankly, too clever – has a much greater chance of anti-avoidance legislation being applied. As such, the advice which we have been providing to clients has been based on established and generally adopted models applied across the charity sector, rather than specific concepts which apply only to independent schools.

▼All independent schools must consider carefully the likely impact of any changes to their school because of the possible removal of the VAT and business rate reliefs

There is no certainty yet that it will only be VAT and business rates which will be changed and it is against this background of uncertainty that schools should be approaching their planning for 2024 and beyond.

Our work with clients has raised the following themes and issues:

(a) Understand the impact on your school

Each school is different and operates with a unique set of factors and drivers. Getting an understanding of those factors and drivers is key. It may be that schools are already well aware of their market, but it has been useful for schools to engage with parents, whether directly or through external research companies. By having this information, schools are in a much better position to understand the cost/price sensitivities of their markets and to be able to shape their offers accordingly.

For those where there is considered to be a greater degree of elasticity, such that the market would be less sensitive to fee increases, then the response to the likely VAT changes could possibly be more relaxed. However, we consider that now presents an ideal opportunity for all schools to review and consider their offer and their structures. Charities in particular must ensure that they are focused on the interests of their beneficiaries, both present and future, and should therefore be considering whether their offer and their operational structures are the best that can be reasonably secured to support this. As such, charitable schools of all shapes and sizes should be using this opportunity to review and reflect to ensure that they are in the best possible situation to meet the forthcoming challenges.

There are various potential ways in which the effect of the imposition of VAT on school fees could be mitigated. As a starting point, schools should model the likely impact on their school. In the vast majority of cases, there will be certain inputs in terms of VATable services purchased, which can then be used to offset the VAT charged to parents. Typically, this would appear to lead to a net increase in school fees of approximately 15 percent, with some schools potentially benefiting from capital works undertaken or planned to be undertaken and the ability to offset the VAT incurred in those works under the terms of the Capital Goods Scheme (typically over a period of 10 years).

(b) Fees in advance

This is an area which could lead to a short-term window for those parents who are in a position to fund school fees over a period of years. Much has been written about the possible use of such schemes, but it is widely considered that any such benefits would only pertain until the election. A tax point would be created upon the issue of an invoice, and that invoice could cover any number of years. Challenges for schools include setting the appropriate level of fees within that initial invoice. It may be the case that the fees charged are pitched at the level currently chargeable and that the school agrees with parents that any fee increases are invoiced separately at the start of the relevant academic year, accepting that any such further invoices will be subject to VAT at the prevailing rate. Alternatively, schools may look to issue one invoice under the scheme which will anticipate future fee increases. The risk with this approach arises from the current inflationary climate and the possibility that fees may not be pitched at the right level and may lead to a net loss to the school.

In all cases, it is important to note that the income when received is general funding, and is not ring-fenced or restricted in any way. As such, schools may want to consider carefully the offer of a fees in advance scheme in circumstances where there may be any doubt about their ability to continue to operate in the face of the various headwinds. Also, given the profile of fees in advance schemes in the media, it is not beyond the bounds of possibility that some form of anti-avoidance legislation could be introduced.

Schools should use this opportunity to consider whether to offer such a scheme and to review carefully the terms of the scheme – previously, they have not been used for tax planning purposes, so it will be important to review the terms to ensure that they are absolutely clear in terms of the position in the event of tax changes etc.

(c) Operational model

Schools should take this opportunity to review their offer – what age range, co-ed, does the nursery remain cost effective and so on. Schools should also look at their curriculum offer – are there changes which could be made which might drive cost efficiencies but which may have limited impact on the offer provided by the school?


Crowe
Smart decisions. Lasting value.
Supporting you to build a better future
Crowe is a leading advisor to independent schools
Visit our website for free insights, on-demand webinars and upcoming events for independent schools.
Start the conversation
Tina Allison
London
Head of Education
tina.allison@crowe.co.uk
+44 (0)20 7842 7276
Guy Biggin
Cheltenham
Partner
guy.biggin@crowe.co.uk
+44 (0)1242 234 421
Vicky Szulist
Manchester
Partner
vicky.szulist@crowe.co.uk
+44 (0)161 214 7500
Alastair Lyon
Thames Valley
Partner
alastair.lyon@crowe.co.uk
+44 (0)118 959 7222
Ian Weekes
Kent
Partner
ian.weekes@crowe.co.uk
+44 (0)1622 767676
@CroweUK
@Crowe_UK
Audit / Tax / Advisory / Risk
www.crowe.co.uk
Crowe U.K. LLP is a member of Crowe Global, a Swiss verein. Each member firm of Crowe Global is a separate and independent legal entity. Crowe U.K. LLP and its affiliates are not responsible or liable for any acts or omissions of Crowe Global or any other member of Crowe Global. © 2023 Crowe U.K. LLP

(d) TPS

Now that the forthcoming TPS contribution rate of 28.68 percent is known, we are finding many clients are now biting the bullet and proceeding with their withdrawal from the scheme. This is a considerable step for schools to take, and very careful planning with appropriate external support is vital with a view to mitigating the impact of the changes. There have been numerous examples of difficult consultations and staff on strike, but the overall economic and political headwinds might begin to see a greater degree of understanding from teaching staff for the need for the changes.

(e) Merger and acquisition

The consolidation of the sector is well underway. We have seen a significant increase in the level of merger activity – and, indeed, collaborations and partnerships stopping short of full merger, but often with a view to a possible merger in the future. There has been much activity at prep level, with either mergers between other prep schools or, more frequently, with senior schools. The merger process would be the subject of another article in its own right, but, for now, it is important for schools to get to know any potential merger partner – do they share your values, your ethos, are your school models compatible, will 2+2 really equal 5, or 3.5? Understanding finances, pupil numbers and the likely impact of any merger on those pupil numbers is critical. Are there historic safeguarding issues and, if so, is insurance cover in place? And is the legal position with regard to the property clear? The importance of investing time at the very outset on these issues cannot be underestimated – it will then make the subsequent legal process much more straightforward.

(f) Cross sector collaboration

We have worked for several years on various independent and state-funded collaborations, with opportunities to share facilities and teachers being identified. We are currently working on projects which are seeking to extend the extent of such collaborations, with meaningful partnerships being entered into – and, as with all successful partnerships, it is fully anticipated that both parties will gain from the arrangements. The best partnerships work where there is a flow of benefits both ways, and our independent school clients who are progressing these collaborations have a strong sense of enlightened self-interest.

(g) Foundation model

We have advised some clients on the concept of establishing a charitable foundation which could be used to drive donations and support from parents and other stakeholders but which could also have the benefit of providing a tax effective structure in the event of direct taxes being imposed on independent schools, with the ability to transfer any surpluses to the foundation; thereby removing any corporation tax liability. Careful consideration needs to be given to the relationship between the school and the charitable foundation but this model offers the potential of providing a dedicated fundraising vehicle, along with the flexibility to use it for tax effective giving should direct taxes be imposed on schools.

▲ The importance of investing time at the very outset of a possible merger cannot be underestimated

The headwinds are certainly challenging, but there is much that schools could and should be doing now to prepare for the forthcoming changes. It is vital that governors are fully engaged in these processes and that key strategic decisions can be taken and implemented in good time to ensure that schools are ready for the likely changes.

Author
Stephen Ravenscroft
Head of charity sector at Stone King LLP

https://www.stoneking.co.uk/

Taxing issues

- Be aware of any ***potential savings*** that could be made depending on how the new legislation is presented
- Consider timing of building projects and acquisitions, as there are ***potential VAT benefits*** in delaying projects until VAT is introduced
- While it is legitimate for schools to offer ***fees in advance*** schemes, care must be taken not to suggest that this is a means of tax/VAT avoidance

VAT on school fees

The topic of VAT on school fees continues to generate attention and schools are planning for what currently appears to be an inevitable increase in the tax burden on parents if the Labour party wins the election. *Kieran Smith*, partner at Crowe, updates readers on information issued since Crowe UK's last article on the subject, which was published in the Spring 2023 issue of The Bursar's Review.

There has been some good news, as the Labour party has confirmed that it will not be challenging the status of independent schools as charities. However, it has also confirmed that any 'unfair' tax rules will be examined, leaving some ambiguity in relation to direct tax and potentially gift aid receipts. The sector has also received clarity on the rate that would be imposed on school fees, with Kier Starmer unsurprisingly confirming that the 20 percent rate of VAT would be levied, rather than a reduced rate that some were hoping for.

VAT still appears to be the 'headline grabber' in terms of tax for the Labour party but they have also pledged to remove business rate relief; this second tax increase will be unwelcome and, for schools, very difficult to accommodate as an increased cost.

Press reports

There has been a couple of materially inaccurate articles published in relation to pre-registration input tax and the Capital Goods Scheme. These inaccuracies are in addition to incessant press coverage which continues to refer to the current system offering 'tax breaks' and 'loopholes', despite the current VAT legislation being explicit in its application, where it states that school tuition delivered by independent schools is exempt from VAT. This is not an area where there is ambiguity or a reliance on a favourable interpretation.

It should also be noted that comparative European Law allows member states to exempt supplies of education from VAT, as well as many other countries outside of Europe providing for exemptions from sales taxes in relation to educational services. If VAT were to be imposed on school fees, this would represent a different system to those applied in many other countries which will reduce the attractiveness of UK education to overseas parents.

Is the current system unfair?

Many articles seem to focus on independent schools achieving an unfair advantage in respect of taxes and VAT in particular. In the interest of balance, it is worth noting that under current legislation independent schools are not afforded the same benefits as the state sector. While neither the state nor the private sector account for VAT on most of their income, it should be noted that academies and state institutions recover VAT on the majority of their costs. This is contrary to independent schools, who are not in a position to recover

Enabling bursars to instantly scale their credit control teams.

We're on your side.

REDWOOD COLLECTIONS

VAT incurred on costs, as VAT cannot be recovered in relation to VAT-exempt business supplies.

Furthermore, many VAT reliefs available to charities, such as 'relevant charitable purpose' relief on new construction, are also not available to independent schools as they are deemed as being in business for VAT purposes, on the basis that fees are charged for the education provided. Such reliefs however are often available to academies building new classrooms. To summarise, the current system already affords more assistance in the way of tax relief to the state sector in relation to VAT than it does to independent schools.

What will the change be?

There is no certainty as to how VAT will apply for independent schools until draft legislation is released and, even then, there is likely to be a 'settling in period', as often legislation can be interpreted in different ways or is introduced from a future date.

Currently, we are speculating that the only change would be to remove independent schools from being 'eligible bodies' for the purposes of the education exemption – the effect will be to ensure VAT at 20 percent falls due on supplies of education. There are other exemptions that may continue to apply to some activities undertaken by schools, such as housing, which includes pupil accommodation, various letting activities, and state regulated childcare services. This is on the basis that exemption for these services can be found in different 'groups' within the VAT legislation. However, until the new legislation is published and HMRC's new guidance released, we will not know the extent to which these may be appliable, if at all.

Given this uncertainty, many schools who are looking to model/budget for these changes are covering more than one scenario. Of course, it is more prudent to proceed on a 'worst case' basis, but it is also important to be aware of any potential savings that could be made depending on how the new legislation is presented.

Unintended consequences

As schools are not the only type of organisation that benefits from the education exemption, the teams drafting the new legislation will need to ensure that the changes to the legislation do not have any unintended consequences.

▲ It is prudent to proceed on a 'worst case' basis, but it is also important to be aware of any potential savings that could be made depending on how the new legislation is presented

We are already hearing concerns from special educational schools that the changes may impact upon them, despite these establishments not appearing to be the intended target. Also, other charities providing supplies of education and training are concerned that the new law may result in their supplies attracting VAT as well.

Interestingly, special schools that provide services to their pupils through local authority contracts could potentially benefit from VAT being applied to their services. This is because local authorities are often able to recover VAT on outsourced services and so VAT could effectively be passed on in full with the school benefitting from being able to recover VAT on costs.

Recovering VAT on costs

The basic rule for recovering VAT is that VAT can be recovered on costs to the extent that these costs are used to make taxable supplies. For schools, this would mean that irrecoverable VAT on costs would be significantly reduced.

We would certainly expect VAT recovery to also extend to costs that fall within the Capital Goods Scheme (CGS). This is because CGS applies to all taxpayers and seeks to ensure that VAT is recovered on certain buildings and building works (that cost more than £250,000 plus VAT) based on the 'VAT-use' of the asset over a 10-year period. For schools, the shift from making predominantly exempt supplies to predominantly taxable supplies would mean significant amounts of VAT could be recovered in the remaining intervals.

Recovering VAT under CGS is a natural biproduct of charging VAT on services and not a planning scheme or 'loophole'. Consequently, it is important that when modelling/budgeting, any such items are included in these calculations. Equally, it is important to consider timing of building projects

> The Capital Goods Scheme rules are complex to operate so care needs to be taken in implementing systems that identify the VAT charged, ensuring that information is retained to support claims, and timings for adjustment periods are set correctly, with the correct VAT recovery rates being applied both before and after VAT is introduced.

and acquisitions, as there are potential VAT benefits in delaying projects until VAT is introduced, remembering that you could lose 1/10th of the VAT incurred each year under the current rules if you are making exempt supplies from the building. Alternatively, the school could also be in a position to recover all the VAT in full if both the building's first occupation and certificate of completion are after the date VAT is formally introduced.

The CGS rules are complex to operate initially and so care needs to be taken in implementing systems that identify the VAT charged, ensuring that information is retained to support claims, and timings for adjustment periods are set correctly, with the correct VAT recovery rates being applied both before and after VAT is introduced.

Donations and bursaries

VAT is a tax that applies to business transactions and so it cannot be applied to donations made from individuals, trusts or even companies all of which are freely given and secure nothing in return.

Most of the agreements that have been reviewed between donors and schools have constituted freely given donations, as payments are not enforced and do not constitute third party consideration (which would be a VAT bearing supply in the 'new world'). However, in some instances, we have seen other benefits being provided to donors. VAT issues can arise where a donor requests benefits such as sponsorship, room rental and/or access to facilities and so these arrangements should be reviewed as they may even create a VAT issue under current rules.

The other important point to consider is that freely given places do not constitute a business supply and this means that VAT cannot be recovered on the associated costs. This means that schools must accommodate a reduction in VAT recovery on account of this non-business activity. Therefore, when carrying out modelling/budgeting, a fair method of apportionment must be applied to overhead costs which would be to reduce VAT recovery. One method that we typically see being adopted is based on pupil numbers e.g. if five percent of pupils have free places, VAT recovery on costs will be reduced by five percent.

Where pupils are provided a discounted rate, VAT will only fall due on the amount paid by the pupil, e.g. a 40 percent discount will mean VAT is only applied to the 60 percent paid by the fee payer. This is based on the school's historic business model because an amount deemed to be in the course and furtherance of business is being charged for the education; this would still be considered a business supply and so no restriction would need to be placed on the costs incurred in providing that education.

ISBA note:

While it is legitimate for schools to offer fees in advance schemes, care must be taken not to suggest that this is a means of tax/VAT avoidance as the rules under which independent schools will have to levy VAT are not currently clear and there will inevitably be strong anti-avoidance or forestalling measures introduced.

Author
Kieran Smith
Partner, VAT, Crowe UK LLP
https://www.crowe.com/uk

ISBA reference library

ISBA's reference library has several VAT-related articles and guidance for use by its members. See the list below.

For fees in advance (FIA)

- A 'how to' guide on FIA: **https://isba-referencelibrary.org.uk/ReferenceLibrary/ViewPolicy?policyID=3099**
- Bursar's Handbook Chapter B – FIA Schemes: **https://isba-referencelibrary.org.uk/ReferenceLibrary/ViewPolicy?policyID=322**
- FIA and VAT guidance: **https://isba-referencelibrary.org.uk/ReferenceLibrary/ViewPolicy?policyID=3088**
- FIA questions from ISBA's webinar on 14 September 2023: **https://isba-referencelibrary.org.uk/ReferenceLibrary/ViewPolicy?policyID=3104**
- FIA calculator: **https://isba-referencelibrary.org.uk/ReferenceLibrary/ViewPolicy?policyID=3061**
- FIA anonymised options and calculator: **https://isba-referencelibrary.org.uk/ReferenceLibrary/ViewPolicy?policyID=3100**
- A FIA disclaimer: **https://isba-referencelibrary.org.uk/ReferenceLibrary/ViewPolicy?policyID=3121**

VAT in its widest sense:

- VAT on minibus operations: **https://isba-referencelibrary.org.uk/ReferenceLibrary/ViewPolicy?policyID=3130**
- VAT on school fees guidance: **https://isba-referencelibrary.org.uk/ReferenceLibrary/ViewPolicy?policyID=190**
- VAT and disaggregation of supplies guidance: **https://isba-referencelibrary.org.uk/ReferenceLibrary/ViewPolicy?policyID=1817**
- VAT – busting myths document: **https://isba-referencelibrary.org.uk/ReferenceLibrary/ViewPolicy?policyID=3116**
- VAT on school fees FAQ: **https://isba-referencelibrary.org.uk/ReferenceLibrary/ViewPolicy?policyID=196**