

The VAT treatment of activities of public bodies and other bodies governed by public law

This document should be read in conjunction with section 14(2) and Schedule 6 to the Value-Added Tax Consolidation Act 2010.

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Introduction

This guidance sets out the Value-Added Tax (VAT) treatment of activities that are carried out by the State or a public body.

‘The State or public body’ are collectively referred to as ‘public bodies’ for the purposes of this guidance. Public bodies include a Department of State, a local authority or a body established by an enactment. In general, these bodies are not taxable persons and their activities are therefore outside the scope of VAT. While the activities of a public body are generally outside the scope of VAT, there are circumstances whereby a public body will be a taxable person in respect of some of its activities and accordingly, those activities will then come within the scope of VAT.

This guidance examines the circumstances, from a VAT perspective, that directly affect the taxable status of a public body in respect of the activities that it carries out.

1 VAT and public bodies

In order to determine the taxable status of a public body in respect of a particular activity, it is necessary to establish:

- if the particular activity is carried out by it under particular rights or powers conferred on it by any enactment (see [‘Acting as a public body’](#)), and
- whether not treating a public body as a taxable person in respect of a particular activity would lead to a significant distortion of competition (see [‘Significant distortions of competition’](#)).

Irrespective of the above points, a public body is deemed to be a taxable person, in relation to carrying out activities listed in Schedule 6 to the VAT Consolidation Act 2010 (see [Schedule 6 activities](#)).

From a VAT perspective, a public body’s recognition as a taxable person, or otherwise, determines whether its activities come within the scope of VAT.

2 Circumstances that determine if the activities of a public body are within, or outside, the scope of VAT

To determine the appropriate taxable status of a public body, it is necessary to consider whether the public body ‘acts in its capacity as a public body’ when it carries out an activity.

2.1 Acting as a public body

A public body acts in its capacity as a public body where it engages in activities under a special legal regime conferred on it by enactment. Conversely, a public body does not act as a public body in respect of activities for which it operates under the same legal conditions as private entities.

The enactment under which a public body was established should be examined to establish whether it is acting in its capacity as a public body in relation to specific activities. The provisions of the enactment itself will determine whether that enactment provides that a public body has the obligation and powers to carry out a particular activity.

A public body, acting in its capacity as a public body in respect of a carrying out a particular activity, is a non-taxable person and that activity is outside the scope of VAT, unless:

- treating the public body as a non-taxable person would lead to a significant distortion of competition, or
- that specific activity is listed in schedule 6 of the VAT Consolidation Act 2010, as amended.

2.2 Significant distortions of competition

The fact that a public body acts in its capacity as a public body when it carries out an activity does not in itself mean that the public body is regarded as a non-taxable person in respect of that activity.

To determine the public body's status as a non-taxable person, it is necessary to carry out a further assessment of the commercial circumstances in which the activity is provided. Regard must be had as to whether the public body is in competition with private operators when it carries out that activity and it will not be treated as a non-taxable person in respect of that activity where to do so would result in a significant distortion of competition. This distortion should be evaluated by reference to the particular activity in question and may be identified by reference to actual competition or potential competition. Any distortion in the context of potential competition must, however, be real and not purely hypothetical in nature.

A distortion of competition may arise in circumstances where a public body is competing with a private operator in the same market. Equally, a distortion of competition may arise where the treatment of a public body as a non-taxable person may make it difficult, if not impossible, for a private operator to enter the same market in question.

3 Activities for which public bodies are always¹ taxable persons

Irrespective of the above circumstances, public bodies shall always be regarded as taxable persons in respect of certain specific activities, where those activities are carried out on a more than negligible scale. Schedule 6 to the VAT Consolidation Act 2010 contains an exhaustive list of these activities, which reads as follows:

- Telecommunication services
- Supply of water, gas, electricity and thermal energy
- Transport of goods
- Port and airport services
- Passenger transport
- Supply of new goods manufactured for sale
- Transactions in respect of agricultural products, carried out by agricultural intervention agencies pursuant to regulations on the common organisation of the market in those products
- Organisation of trade fairs and exhibitions
- Warehousing
- Activities of commercial publicity bodies
- Activities of travel agents
- Running of staff shops, cooperatives and industrial canteens and similar institutions
- Activities carried out by radio and television bodies in so far as these are not exempt pursuant to Article 132(1)(q) of the VAT Directive².

4 VAT and state procurement

In addition, there are circumstances in which the State, a local authority or a body established by any enactment, is required to register and "self-account" for the VAT due on goods or services procured by it. Detailed information in respect of the VAT obligations of State and public bodies, regarding procurement, is available in Revenue's guidance on '[The procurement of goods and services by the State](#)'.

¹ A public body will not be regarded as a taxable person in respect of these activities if it only carries out these activities on such a small scale as to be negligible.

² Council Directive 2006/112/EC