

The Complete **Charity VAT** Handbook

4th edition

Alastair Hardman
and Kate Sayer



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About the Directory of Social Change

The Directory of Social Change (DSC) has a vision of an independent voluntary sector at the heart of social change. The activities of independent charities, voluntary organisations and community groups are fundamental to achieve social change. We exist to help these organisations and the people who support them to achieve their goals.

We do this by:

- providing practical tools that organisations and activists need, including online and printed publications, training courses, and conferences on a huge range of topics;
- acting as a ‘concerned citizen’ in public policy debates, often on behalf of smaller charities, voluntary organisations and community groups;
- leading campaigns and stimulating debate on key policy issues that affect those groups;
- carrying out research and providing information to influence policymakers.

DSC is the leading provider of information and training for the voluntary sector and publishes an extensive range of guides and handbooks covering subjects such as fundraising, management, communication, finance and law. We have a range of subscription-based websites containing a wealth of information on funding from trusts, companies and government sources. We run more than 300 training courses each year, including bespoke in-house training provided at the client’s location. DSC conferences, many of which run on an annual basis, include the Charity Management Conference, the Charity Accountants’ Conference and the Charity Law Conference. DSC’s major annual event is Charityfair, which provides low-cost training on a wide variety of subjects.

For details of all our activities, and to order publications and book courses, go to www.dsc.org.uk, call 08450 777707 or email publications@dsc.org.uk.

About the authors



Alastair Hardman is an author and advisor on charity taxation and accounting. After many years at the coalface of the voluntary sector running an organisation in North London, Alastair trained and qualified as a chartered accountant with Sayer Vincent. He helps charities to structure their affairs effectively for tax so that they can maximise their impact but also pay the right amount of tax.



Kate Sayer has specialised in charities since 1984. As a chartered accountant and partner in Sayer Vincent, she advises charities and social enterprises on a wide range of finance, tax, governance and management issues. Kate particularly enjoys training trustees and staff in charities to make finance and risk subjects more accessible. Kate teaches charity finance at Cass Business School and contributes to the leadership development programme for finance professionals.

Acknowledgements

The genesis of this book goes back a long way – to simple one-day courses at the Directory of Social Change that sought to explain VAT to charity staff and trustees. Based on those courses, Kate wrote the first edition of *A Practical Guide to VAT for Charities* in response to a huge demand for something that would simplify VAT for charities. Now re-named, this is a new edition but we have also substantially re-written the book and expanded the contents considerably to reflect the wide variety of activities undertaken by charities.

The authors would like to acknowledge the huge contribution made by Helen Elliott, partner in Sayer Vincent. Not only does Helen carefully check lots of draft chapters, but she also contributes practical points, ideas on how charities can manage their affairs better to cope with VAT and take advantage of the rules where possible. Her practical knowledge of doing this day to day helped both authors a great deal.

We are grateful to the Directory of Social Change for its support and patience, needed more than ever for this edition, as trying to make sure this was as up to date as possible was more difficult than ever.

Preface

Value Added Tax (VAT) was introduced in the UK in 1973. It is a transaction tax levied on sales of goods and services and operates throughout the European Union, although the rules vary from state to state. It is particularly the international aspects of VAT that have been changing in recent years as the EU seeks to harmonise taxation across the member states. This volume also updates earlier editions for all the case law and legislative changes that have been introduced. The book covers the relevant law and known cases up to July 2015.

We have attempted to bring together all the relevant aspects of VAT law to help charities and voluntary organisations as they grapple with this complex subject. However, we have to make choices about the aspects to cover and we have omitted some topics which are less commonly relevant to charities so that we can focus on areas such as fundraising. Charities undertaking commercial activities should remember to check the relevant law and VAT guidance before committing themselves irrevocably.

You also need to consider the interaction of VAT with other taxes and reliefs such as Gift Aid, business rates relief, corporation tax, stamp duty land tax and income tax. Case law is littered with examples of organisations that thought they had achieved a positive outcome for their VAT position only to discover that it had negative consequences for other taxes.

At Sayer Vincent, we believe that it is right to pay the correct amount of tax. We do not provide information to help people avoid paying the correct taxes. However, charities should maximise the value of their assets and apply their income for public benefit. And charities should not pay taxes unnecessarily. The purpose of our guidance is to provide information so that good decisions can be made to act both legally and in the best interests of the charity's beneficiaries.

Kate Sayer, Sayer Vincent

Foreword

The publication is a timely reference work for charities that navigates the diverse and often complex world of charity VAT.

Many people often mistakenly believe that charities do not pay VAT. They could not be more wrong – in particular, charities bear huge amounts of ‘sticking’ VAT on their essential expenditure, which have increased over the years as the standard rate has doubled. As Chairman of the Charity Tax Group (CTG), I spend countless hours navigating the legislation and guidance which appears to grow by the year.

It is important to note that charities do benefit from some very generous reliefs and these are laid out in great detail in the handbook. However, irrecoverable VAT is now estimated to cost the sector up to £1.5 billion each year. So, what is the solution? A full refund to charities of this irrecoverable VAT remains a long-term goal, although we recognise that in times of fiscal austerity a more incremental approach may be more successful. In recent times, the government has demonstrated willingness to look at VAT refunds afresh, prompted in part by confirmation by the European Commission that there is no European law obstacle (having used this excuse for many years previously). In addition to national museums and galleries, other charities including hospices, air ambulance providers and search and rescue organisations can all now claim VAT refunds.

In the 2015 Autumn Statement, two announcements really stood out: 1) that the government will be actively seeking a zero rate on sanitary products; and 2) that the government will allow sixth form colleges to convert to academies to avoid paying irrecoverable VAT. The former indicates that there may be room for negotiation on new zero rates (including possibly charity zero rates) in the ongoing European negotiations which presents both opportunities and threats. The latter demonstrates the distortions caused by the VAT system for organisations unable to recover their VAT and strengthens the case for VAT refunds for charities providing essential public services in competition with private and governmental suppliers. We will be pushing the government for serious consideration of further VAT refunds for charities to try and tackle these distortions and complexity.

In the meantime, core reference documents such as *The Complete Charity VAT Handbook* and CTG’s forthcoming Charity Tax Map website are essential when it comes to policymaking. Knowing the law and how it must be implemented is crucial if we are to continue to prevent unintended consequences of VAT legislation and to seek proactive change to simplify the tax system for charities.

John Hemming, Chairman, Charity Tax Group

How to use this book

VAT REGISTRATION

For charities that are not registered for VAT, the need to be registered for VAT is usually an important consideration, especially if you know you already make or are about to make taxable sales. The need to register for VAT is explained in Chapter 2 ‘Registration and deregistration’.

VAT TYPES OF TRANSACTION

For all charities (registered and unregistered) determining the VAT status of its income streams can be challenging:

- The distinction between business and non-business income is covered in Chapter 4 ‘Business and non-business activities’.
- The key VAT exemptions are covered in Chapter 5 ‘Exempt activities’ and Chapter 8 ‘Property’ for the property-related exemptions.
- The key zero-ratings and reduced-ratings are covered in Chapter 6 ‘Zero and reduced rates’ and Chapter 8 ‘Property’ for the property-related zero-rating and reduced-rating reliefs.

ISSUES FOR VAT-REGISTERED ORGANISATIONS

For VAT-registered organisations there are some specific issues to deal with:

- Determining how much of the VAT incurred on purchases can be recovered. This is covered in Chapter 3 ‘Recovering VAT’.
- Special schemes, such as the Capital Goods Scheme and the non-business VAT refund schemes (for academy schools, hospices, etc.) are covered in Chapter 10 ‘VAT special schemes’.
- Handling the VAT returns and payment practicalities. This is covered in Chapter 12 ‘Operational aspects’.

FUNDRAISING ACTIVITIES

Chapter 7 ‘Fundraising’ provides guidance on the VAT treatment of over 20 common types of fundraising activity including sales of advertising, fundraising events, corporate sponsorship, challenge events, charity shops, London Marathon and similar, merchandising, gifts in kind from businesses, and renting property.

CROSS-BORDER TRANSACTIONS

Chapter 9 ‘International aspects of VAT’ covers the special VAT rules that apply if you sell goods or services to a foreign customer or purchase goods or services from a foreign supplier.

TECHNICAL ISSUES

The catch-all Chapter 11 ‘Other topics’ deals with miscellaneous VAT issues including: transfer of a business as a going concern, membership subscriptions, single and multiple supplies, agency supplies, supplies of staff, supplies between connected parties, and the scope of the registrable entity.

CONTACTING HMRC, SOURCES OF FURTHER INFORMATION, ETC.

Chapter 14 ‘Further information’ provides HMRC contact details, other useful links, how to check VAT numbers, territories of the EU, their VAT number formats, etc.

Table of cases

This list comprises more information than is in the main body of the book to assist any searches for additional details online. Information on VAT Tribunal cases is difficult to source and in some instances you will have more success searching for the LON/00/000-style reference rather than the VTD number.

UK

Court of Appeal (England and Wales)

Bournemouth Symphony Orchestra v. Revenue & Customs [2006] EWCA Civ 1281 133
Customs & Excise v. St Dunstan's Educational Foundation [1999] STC 381 313
Customs & Excise v. Jacobs [2005] EWCA Civ 930 275
Customs & Excise v. Jubilee Hall Recreation Centre [1999] STC 381 314
Expert Witness Institute v. Customs & Excise [2001] EWCA Civ 1882 151
R v. North and East Devon Health Authority [1999] EWCA Civ 1871 522
Revenue & Customs v. Insurancewide.com [2010] EWCA Civ 422 168
Vehicle Control Services v. Revenue & Customs [2013] EWCA 186 463

Court of Session (Scotland)

Customs & Excise v. Morrison's Academy Boarding Houses Association [1978] STC 1 553
Customs & Excise v. Tron Theatre [1994] STC 177 98
Revenue & Customs v. Robert Gordon University [2008] ScotCS CSIH 22 111

First-tier Tribunal (Tax)

Alexandra Countryside Investments Ltd v. Revenue & Customs [2013] UKFTT 348 (TC) 275
AN Checker & Service Engineers v. Revenue & Customs [2013] UKFTT 506 (TC) 470
Best Images v. Revenue & Customs [2010] UKFTT 175 (TC) 296
Bluu Solutions Ltd v. Revenue & Customs [2015] UKFTT 95 (TC) 528
Bouhey v. Revenue & Customs [2012] UKFTT 398 (TC) 529
British Association of Leisure Parks Piers & Attractions Ltd v. Revenue & Customs [2011] UKFTT 662 (TC) 149
British Dental Association v. Revenue & Customs [2010] UKFTT 176 (TC) 72
British Film Institute v. Revenue & Customs [2013] UKFTT 72 (TC) 134
Caithness Rugby Club v. Revenue & Customs [2015] UKFTT 378 (TC) 316
Capernwray Missionary Fellowship of Torchbearers v. Revenue & Customs [2014] UKFTT 626 (TC) 319
Cophthorn Holdings v. Revenue & Customs [2015] UKFTT 405 24
English Bridge Union Ltd v. Revenue & Customs [2014] UKFTT 181 (TC) 137
European Tour Operators' Association v. Revenue & Customs [2011] UKFTT 88 (TC) 149
Fane v. Revenue & Customs [2011] UKFTT 210 (TC) 529
Fanfield Ltd & Thexton Training Ltd v. Revenue & Customs [2011] UKFTT 42 (TC) 100, 548
Institute of Information Security Professionals v. Revenue & Customs [2009] UKFTT 365 (TC) 148
Longridge on the Thames v. Revenue & Customs [2013] UKFTT 158 (TC) 551
Loughborough Students' Union v. Revenue & Customs [2012] UKFTT 331 (TC) 134, 162
Munster Inns v. Revenue & Customs [2014] UKFTT 563 (TC) 369

New Deer Community Association v. Revenue & Customs [2014] UKFTT 1028 (TC) 316
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 Robinson Family Ltd v. Revenue & Customs [2012] UKFTT 360 (TC) 480
 Royal National Lifeboat Institution v. Revenue & Customs [2009] UKFTT 39 (TC) 191
 Serpentine Trust Ltd v. Revenue & Customs [2014] UKFTT 876 (TC) 98
 Southport Flower Show v. Revenue & Customs [2012] UKFTT 244 (TC) 160
 United Grand Lodge of England v. Revenue & Customs [2014] UKFTT 164 (TC) 149, 150
 Wallis Ltd v. Customs & Excise [2002] UKFTT V18012 318
 West of Scotland Colleges Partnership v. Revenue & Customs [2014] UKFTT 622 (TC) 154, 155
 Wildfowl & Wetlands Trust v. Revenue & Customs [2013] UKFTT 423 (TC) 134

High Court of Justice (England and Wales)

Cantrell (t/a Foxearth Lodge Nursing Home) v. Customs & Excise Commissioners [2000] EWHC (Admin) 283—322
 Church of England Children's Society v. Revenue & Customs [2005] EWHC 1692 (Ch) 37, 46–7, 62, 63–4, 250
 Committee of Directors of Polytechnics v. Customs & Excise [1992] HC/CO/755/91 STC 873 146
 Community Housing Association (CHA) v. Revenue & Customs [2009] EWHC 455 (Ch) 284
 Customs & Excise v. David Lewis Centre [1995] STC 485 203
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 Customs & Excise v. St Paul's Community Project Ltd [2004] EWHC 2490 (Ch) 93, 558
 Customs & Excise v. Yarburgh Children's Trust [2001] EWHC 2201 (Ch) 82, 93, 559–60
 Institute of Leisure and Amenity Management [1988] HC/CO/71/87 STC 602 146
 Longborough Festival Opera v. Revenue & Customs Commissioners [2006] EWHC 40 (Ch) 133
 Oxfam v. Revenue & Customs [2009] EWHC 3078 (Ch) 63–4, 523
 Reed Personnel Services Ltd [1995] STC 588 454
 Revenue & Customs v. Trader Media Group Ltd [2009] EWHC 999 (Ch) 168
 Riverside Housing Association v. Revenue & Customs Commissioners [2006] EWHC 2383 (Ch) 557
 Royal Midland Counties Home for Disabled People [2002] STC 395 206
 University of Southampton v. Revenue & Customs Commissioners [2006] EWHC 528 (Ch) 558

Supreme Court

R. (Hodkin) v. Registrar-General of Births Deaths and Marriages [2013] UKSC 77 150

Upper Tribunal (Tax and Chancery Chamber)

Loughborough Students' Union v. Revenue & Customs [2013] UKUT 517 (TCC) 105, 133, 163
 Revenue & Customs v. Astral Construction Ltd [2015] UKUT 21 (TCC) 271
 Revenue & Customs v. Bridport & West Dorset Golf Club Ltd (C-495/12) [2013] UKUT (TCC) 104
 Revenue & Customs v. British Film Institute [2014] UKUT 370 (TCC) 104
 Revenue & Customs v. Brockenhurst College [2014] UKUT 46 (TCC) 114, 116
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 Revenue & Customs v. The British Disabled Flying Association [2013] UKUT 162 (TCC) **187, 201**
 Revenue & Customs v. The Open University [2015] UKUT 263 (TCC) **110**
 Revenue & Customs v. University of Cambridge [2015] UKUT 305 (TCC) **47, 63**

VAT Tribunals

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 Afro Caribbean Housing Association [2006] LON/05/382 VTD 19450 **267**
 Anglodent [2000] LON/2000/271 VTD 16891 **204**
 Association of Payroll and Superannuation Administrators [1990] MAN/90/1015 VTD 7009 **146**
 Association of Reflexologists [1994] LON/94/403A VTD 13078 **146**
 Basingstoke & District Sports Trust Ltd [1995] VTD 13347 **139**
 Bath Festivals Trust [2008] VTD 20840 **545**
 Bookmaker's Protection Association (Southern Area) Ltd [1979] LON/79/129 VATTR 215 **147**
 Bristol City Council [2004] LON/99/261 VATTR 1766 **101**
 British Association for Counselling [1993] LON/93/1494 VTD 11855 **147**
 British Institute of Cleaning Science [1985] VTD 1981 **147**
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 Church of England Children's Society [2004] VTD 18633 **86, 97–8**
 Clinical Computing Ltd [1983] LON/82/265 VTD 121 **205**
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 Friends of the Elderly [2008] VTD 20597 **181**
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 Pasante Healthcare [2006] VTD 19724 **194**
 Permanent Way Institution [2001] LON/01/585 VTD 17746 **147**
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European Court of Justice

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 Apple and Pear Development Council v. Customs & Excise (C-102/86) [1988] UKHL ECR 1443 78, 543
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1 Overview of VAT

This chapter provides an overview of how Value Added Tax (VAT) works and the differences between non-business, exempt and taxable activities. It is divided into the following sections:

- 1.1 How VAT works
- 1.2 VAT types of transaction
- 1.3 Zero-rated activities

1.1 HOW VAT WORKS

VAT is a tax charged on certain **taxable supplies** (defined in 1.2.2). It is calculated as a percentage of the transaction price and added to the price charged to the customer. The added VAT is called **output VAT** (or **output tax**).

The price before VAT is added is called the **net price** and the price after output VAT is added is called the **gross price**. At the time of writing the standard rate of VAT in the UK is 20%. Businesses do not get to keep the output VAT they charge to their customers. It must be paid to HM Revenue & Customs (HMRC).

Example 1: Woodwork Ltd

Woodwork Ltd manufactures and sells chairs. It sells a chair for £100 plus VAT. The price charged to the customer is:

Net selling price	£100.00
Plus output VAT: 20% × £100	£20.00
Gross selling price	<u>£120.00</u>

Woodwork Ltd must pay the £20.00 output VAT to HMRC.

Businesses also incur VAT on the purchases they make. This is called **input VAT** (or **input tax**). Businesses are allowed to **recover** any input VAT they incur on purchases that are used in making their taxable supplies. They do this by **deducting** the input VAT incurred on the purchases from the output VAT due on the sales and paying only the balance over to HMRC.

Example 2: Woodwork Ltd

To make a chair, Woodwork Ltd purchases goods for £60 net. The gross cost to Woodwork Ltd is:

Net purchase price	£60.00
Plus input VAT: £60 × 20%	£12.00
Gross purchase price	<u>£72.00</u>

Woodwork Ltd can recover this input VAT by deducting it from the output VAT. It must pay to HMRC:

Output VAT	£20.00
Less input VAT	<u>(£12.00)</u>
VAT payable to HMRC	<u>£8.00</u>

If the input VAT is more than the output VAT, the balance is paid to the business by HMRC.

We can now see why the tax is called ‘value added’ tax. The amount of VAT payable to HMRC is the tax due on the value added.

The value added to the goods purchased for a chair by Woodwork Ltd is:

Selling price (net)	£100.00
Less purchase price (net)	<u>(£60.00)</u>
Value added	£40.00
VAT on value added: £40 × 20%	<u>£8.00</u>

For Woodwork Ltd, VAT simply passes through the business. The VAT it incurs on purchases can be recovered from HMRC, so it is not expenditure for Woodwork Ltd. The VAT it charges must be paid to HMRC, so it is not income for Woodwork Ltd. Woodwork Ltd is simply collecting tax on the value it adds and passing this to the government.

However, if the person purchasing the chair cannot recover the VAT they incur on purchases, the VAT charged on the chair is a cost to them. Individuals acting in a private capacity and businesses that are not registered for VAT with HMRC cannot recover the VAT they incur on purchases.

The cost of each chair to a private individual is £120 whereas the effective cost to a VAT-registered business is £100, if it can recover the £20 VAT charged by Woodwork Ltd.

1.2 VAT TYPES OF TRANSACTION

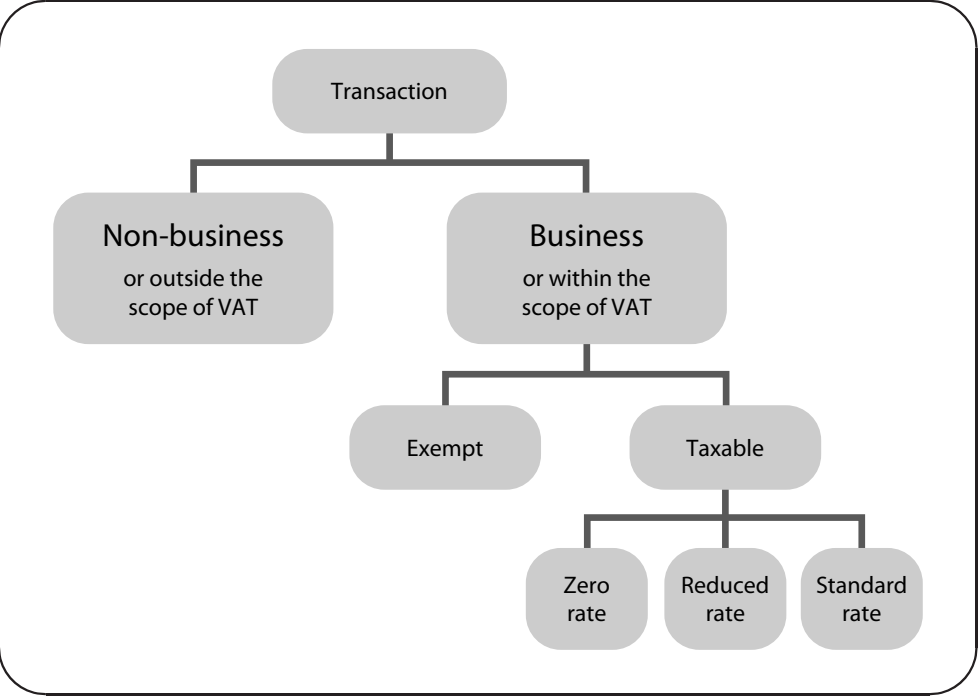


Fig. 1.1 VAT categories of transaction

1.2.1 Business and non-business

VAT is a tax that applies at the transaction level. However, not all transactions are subject to VAT. For a transaction to be subject to output VAT:

1. The transaction must be a **supply**. Supply means the provision of goods or services in return for **consideration**. Consideration is everything that is paid to the supplier in return for making the supply of goods or services.
2. The supply of goods or of services must be a **business supply**. This means that the supply is made in the course or furtherance of a business of the supplier's. Transactions for non-business purposes are **outside the scope** of VAT.

A transaction which meets these conditions is said to be **within the scope of VAT** or a **business supply**. A transaction which does not meet these conditions is referred to as **outside the scope of VAT** or **non-business**.

Examples of non-business transactions are:

- **Grants and donations** are not seen as consideration for a supply of goods or services provided the recipient does not provide goods or services in return for the grant or donation.
- **Giving away goods** for free or providing services for free is not normally seen as a supply on the basis that there is no consideration (though giving away goods or services for free can be *deemed* to be a supply, see 4.2 ‘Exceptions’).
- **Supplies undertaken by individuals in a personal capacity** are not business supplies, for example an individual selling their home.

The distinction between **business** and **non-business activities** is considered in more depth in Chapter 4 ‘Business and non-business activities’.

1.2.2 Exempt and taxable supplies

Exempt supplies

By default all business supplies are taxable and output VAT must be charged to the customer at the appropriate rate of VAT. However, certain types of business supply are specifically exempted from VAT. These are referred to as **exempt supplies** and the activities that generate them as **exempt activities**.

Numerous activities of voluntary organisations are exempt and include business supplies of:

- education and vocational training;
- health and welfare services;
- cultural services;
- sports facilities;
- sales in connection with a qualifying fundraising event.

VAT is not charged on exempt supplies and generally VAT incurred in making exempt supplies cannot be recovered. In the UK, the exempt supplies are listed in Schedule 9 VAT Act 1994.

Exempt supplies are considered in Chapter 5 ‘Exempt activities’. Selling or renting real property (**land, buildings** and **civil engineering works** – see 8.6 ‘Property terms’) is also normally an exempt supply though there are many exceptions. The land-related exemptions are considered in Chapter 8 ‘Property’.

Taxable supplies

If a business supply is not specifically exempted, then it is referred to as a **taxable supply**. An activity that generates taxable supplies is referred to as a **taxable activity**. If the total turnover from all taxable supplies exceeds a certain level (the **VAT Registration Threshold**), then an organisation must register for VAT with HMRC and start charging VAT on its taxable supplies. However, it can also recover the VAT incurred on purchases used in making the taxable supplies.

Common taxable supplies in the voluntary sector include:

- sales of donated goods;
- sales of bought-in goods/merchandising;
- supplies of food and catering;
- consultancy services;
- sales of advertising, use of logos and intellectual property rights, royalties, etc.;
- management/administration charges to subsidiaries;
- vehicle and equipment hire;
- some property rentals.

The requirement to register for VAT is explained in Chapter 2 ‘Registration and deregistration’. The rules for recovering VAT are explained in Chapter 3 ‘Recovering VAT’.

1.2.3 Rates of VAT

Three different rates of VAT are currently used in the UK:

- the standard rate (currently 20%): the default rate for taxable supplies;
- the reduced rate (currently 5%): applies to certain specific types of supply listed in schedule 7A VAT Act 1995;
- the zero rate (0%): applies to certain specific types of supply listed in schedule 8 VAT Act 1995.

The rate of VAT is multiplied by the net (VAT-exclusive) selling price to determine the amount of VAT to charge.

Reduced-rated and zero-rated supplies are considered in Chapter 6 ‘Zero and reduced rates’.

Examples: calculating the VAT due and gross price			
Net price	Rate of VAT	VAT chargeable	Gross price
100.00	20%	$£100 \times 20\% = £20$	$£100 + £20 = £120$
100.00	5%	$£100 \times 5\% = £5$	$£100 + £5 = £105$
100.00	0%	$£100 \times 0\% = £0$	£100

VAT fractions

The VAT fraction is the number you must multiply the gross price by to get the amount of VAT included. There are different VAT fractions for different rates of VAT.

Examples: VAT fractions				
Rate of VAT	VAT fraction	Gross amount	VAT included	Net amount
20%	1/6	£120	$£120 \times (1/6) = £20$	$£120 - £20 = £100$
5%	1/21	£105	$£1005 \times (1/21) = £5$	$£105 - £5 = £100$

See 12.1 VAT fractions and VAT rounding for more.

1.2.4 Recovering VAT

If a VAT-registered organisation has a mix of non-business, exempt and taxable activities, then all VAT incurred on purchases must be **attributed** to the different types of activity (the types being taxable, exempt and non-business) to determine if it is recoverable or not.

Attribution involves **directly allocating** VAT to one of the activity types wherever possible, then **apportioning** the remaining VAT between the different types of activity.

- **Direct allocation:** if a purchase is wholly used in (or for use in) a particular type of activity, then the VAT on that purchase is directly allocated to that activity type. For example, if a minibus is purchased wholly for hire (a taxable business activity), the VAT on the minibus purchase and running costs is allocated wholly to taxable activities.