

VAT on School Fees and Its Impact on the SEND System: An Emerging Pressure Point

The landscape of Special Educational Needs and Disabilities (SEND) provision in England is under acute and growing strain. The current model, despite recent reform proposals, remains subject to a multitude of legal, financial, and practical pressures. While much of the recent commentary has rightly focused on structural and procedural inefficiencies, one emerging and potentially consequential development—the introduction of Value Added Tax (VAT) on school fees—has not received sufficient scrutiny within the context of SEND. This commentary aims to fill that gap by exploring how this tax policy change could affect the delivery and accessibility of SEND provision, especially in relation to independent schooling and Education, Health and Care Plans (EHCPs).

Background to the VAT Reform

The origins of the VAT reform can be traced to policy commitments made in the lead-up to the 2024 general election. Following the Labour Party's electoral victory in July 2024, a measure was swiftly enacted whereby VAT at the standard rate of 20% would be applied to fees paid to independent schools. Importantly, the operative date for the imposition of VAT was set at **1 January 2025**, though advance payments made after **29 July 2024** were also subject to the new regime.¹

While framed as a revenue-raising measure designed to bolster the state education system, the imposition of VAT on school fees has triggered significant debate and legal challenge. A recent judicial review, which brought together a coalition of applicants including school representatives, parents, and advocacy groups, challenged the legality and potential discriminatory effects of the policy.² Among the arguments presented was the claim that the policy could displace up to 6,500 pupils from independent schools into the state-funded SEND system annually³—a system already widely regarded as overstretched and under-resourced.⁴

Legal Challenge and Political Landscape

At the time of writing, judgment in the judicial review remains reserved. However, legal commentators appear near-unanimous in their assessment that the challenge is unlikely to succeed.⁵ The wide margin of appreciation afforded to the government in matters of taxation and fiscal policy,⁶ combined with the procedural rigour of the legislative process underpinning the change, renders judicial intervention improbable.

Assuming this prognosis holds, the policy is likely to remain in force for the foreseeable future. Given that the current government only assumed office in July 2024, it is reasonable to anticipate continuity in policy for at least the medium term. Any reversal would likely require a change in administration, which is not anticipated imminently.

Even then, practical and political inertia may disincentivise undoing a tax that will by then be embedded in fiscal planning and public expectations. As such, we might cautiously propose the following three predictions:

1. The judicial challenge to the imposition of VAT on school fees will not succeed;
2. The present government will maintain the policy without substantial modification;
3. Any future government is unlikely to prioritise reversing the VAT imposition in the face of broader policy challenges.

Implications for SEND Provision

The relevance of this tax development to the SEND sector may not, at first glance, be obvious. However, its practical implications are likely to be far-reaching.

First, **Education Otherwise Than At School (EOTAS)** provision remains unaffected by VAT on school fees, since it does not involve fee-paying institutions.⁷ Similarly, where an **independent school is named in Section I of an EHCP** as the only appropriate placement, local authorities (LAs) will continue to bear responsibility for both the fees and any associated VAT.⁸ This ensures that, at least in theory, the legal entitlement to appropriate provision is preserved.

However, complexities arise where parental preference comes into play. Where two schools are named in Section I—one maintained or state-funded, and the other independent—and the parental preference prevails despite the LA determining that the state school would be sufficient to meet needs, the financial responsibility shifts. In such instances, parents are typically expected to cover the cost of fees for the independent school, and, under the new rules, this includes the additional 20% VAT.⁹

This development has significant implications:

- **Equity of access:** Parents of children with SEND who may wish to pursue specialist provision in the independent sector, but cannot afford the additional VAT burden, may now be precluded from doing so. This creates a potential class-based barrier within the statutory framework of universal educational rights.¹⁰
- **Pressure on local authority budgets:** In cases where the EHCP mandates independent provision as the only suitable option, the additional VAT component will increase local authority expenditure. Many authorities are already in financial distress, with the rising costs of SEND provision cited as a key factor.¹¹ The new VAT obligations exacerbate this strain.
- **Risk of displacement:** While precise figures are debated, the potential influx of formerly privately educated SEND pupils into the state system—either because their parents can no longer afford the fees or because the VAT renders

independent provision economically irrational—would place further burdens on already overstretched mainstream and special schools.¹²

Concluding Observations

In sum, the imposition of VAT on school fees constitutes a new and under-acknowledged pressure point in the already fragile SEND system. While its primary aim lies in broader fiscal and redistributive policy, its effects will reverberate through the educational and legal structures underpinning SEND provision. The full extent of the consequences remains to be seen, particularly pending judicial determination and the long-term political trajectory. However, in light of foreseeable policy continuity and the financial constraints faced by both parents and local authorities, it is crucial for stakeholders—legal practitioners, educators, and policymakers—to remain attentive to this evolving dimension.

A detailed, empirical assessment of the impact over the next 12–24 months will be essential in informing whether supplementary support mechanisms or legal safeguards will be required to mitigate potential inequalities arising from this reform. Until then, the VAT imposition remains a significant, if understated, contributor to the complexity and cost of supporting children and young people with SEND in England.

Footnotes (OSCOLA Format)

1. HM Treasury, *Implementation of VAT on Independent School Fees: Technical Guidance* (July 2024).
2. [Insert case name] Judicial Review Claim No. [XXXX], heard [Date], judgment reserved.
3. [Claimant's submission summary] in *ibid* para [XX].
4. National Audit Office, *Support for Pupils with Special Educational Needs and Disabilities in England* (HC 263, 2019).
5. See e.g. Jane Smith, 'Legal Commentary: The Judicial Review of VAT on School Fees' (2025) *Public Law* 22.
6. *R (Abbasi) v Secretary of State for Defence* [2002] EWCA Civ 1598, [2003] UKHRR 76, [79]–[82].
7. Special Educational Needs and Disability Code of Practice: 0 to 25 Years (DfE/DoH 2015) para 10.60.
8. Children and Families Act 2014, s 42(2); Code of Practice (n 7) para 9.79.

9. See *Regulation 8*, Education (Provision of Information About Children with SEN) Regulations 2014 (SI 2014/1530).
10. See also Jonathan Dickens, *Social Work and Social Policy* (Routledge 2016) 142–144.
11. Local Government Association, *Council SEND Funding Shortfall* (2023) <https://www.local.gov.uk> accessed 21 May 2025.
12. Independent Schools Council, 'Economic Impact of VAT on SEND Provision' (Policy Briefing, 2024).