Supplies of education by a private college – whether supplies exempt under Group 6 Schedule 9 of VATA 1994

Bell's College Ltd

At the relevant time Bell's College Ltd (Bell's) had 400 students, of which 17 were under 16 and around 60 under 19. It provided short work experience placements, vocational training including English for Speakers of Other Languages (ESOL) courses and various diplomas. It also provided some courses through agreements with universities that were made through other bodies. All international students received an English language support course (not ESOL) in their first year, lasting either 12 or 24 weeks depending on the students' needs.

The taxpayer argues it is a school within the meaning of the relevant statute. HMRC disagree and say that, while the taxpayer provided evidence of work experience, none of the records evidenced that pupils under the age of 18 were engaged in any full-time course of secondary education. The taxpayer further argued that it is a college of a university. HMRC disagreed on the basis that there was no evidence of agreements between Bell's and a UK university which shows that it has sufficiently close links to be a college of the university. In relation to Bell's argument that the support course is an English as a Foreign Language course, HMRC argue that the length of the course and the letters to students indicate that this is not the provision of teaching English as a foreign language.

Issue 1 – is Bell's a 'school' as defined in the Education Act 1996?

The first issue is actually whether Bell's was an educational institution which provides "secondary education". On that point, the FTT found that the work placement would no doubt have some educational value in the broad sense, but it is certainly not full time education. In the FTT's view, it gives school students experience of work. In relation to education of under 19s, the FTT considered that: it only counts as secondary education where it is carried out at a place where there is also education of under 16s; the fact that under 19s are taught at Bell's does not make it a school; the teaching of ESOL courses to under 19s would not in any case count as full-time secondary education since it is only one subject, consequently, Bell's is not a 'school'.

Issue 2 – is Bell's a 'college…of …a [United Kingdom] university' in Note 1(b) to Group 6 Schedule 9 VATA 1994?

Substantial arguments were put forward on this issue, with both sides citing the following cases: London College of Computing Limited [2013] 5 UKUT 04040 (TCC)("LCC"), School of Finance and Management 5 (SFM)[2001] EWHC 1175 (Ch) and SAE Education Limited [2014] UKFTT 218 (TC).

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The FTT found that the documentary evidence before it on admission letters suggests a significant number of students were not doing university-run courses but were doing courses accredited by other bodies, such as ICMA, and ACCA, which would enable them subsequently to join university courses with a further application. Similarly, there was no evidence before the FTT in relation to any of the other universities the taxpayer mentioned that sufficient numbers of students were studying a particular university's courses at Bell's (as opposed to courses which enabled the taxpayer to apply to study at the university or to get credit towards the university degree) such that the appellant then could be considered a college of a university. The FTT further found that there was, however, no constitutional or other direct link between the taxpayer and any particular university and that Bell's was, at best, approved to carry out courses leading to an award of a degree for certain students but this is a relatively small proportion of students most of whom are doing diplomas – Bell's was not integrated into the life of any particular university or vice versa. The more links there are to different universities the more difficult it might be to demonstrate the sufficiently substantial level of integration with one university that was needed for exemption to apply. The legislative provision in the Note is singular. Consequently, on this issue, the FTT found that Bell's is not a college or institution of a university. It does not have similar objects to a university.

Issue 3 – English taught as a foreign language

The FTT considered HMRC's arguments that courses designed to acclimatise speakers of English from other countries to the English used in teaching at the college could not be viewed as teaching English as a foreign language (TEFL). However, it held that the fact that the correspondence to the students suggests that students were to be assessed and if found not to be up to the required level would have to undertake a further English course seemed to envisage that there might be some students whose standard of English was so poor that they would need to be required to attend further courses in order that they could then study their main course at the College. The FTT stated that this does not suggest the further courses were simply about pronunciation / acclimatisation to English pronounced in a different way, but that they were courses designed to ensure a minimum standard of communication in English for students whose first language was not English. They could, therefore, be exempt even though they led to no qualification. The ESOL courses clearly fall within the definition of TEFL.

Comment

This is another case looking at the meaning of eligible body in the education context. This is a complex area of UK VAT law and this decision clearly illustrates the point. Bell's made supplies that could have been exempt under three separate headings – Notes 1(a), (school) 1(b) (college of a UK university), or 1(f) (TEFL supplier) to Schedule 9, Group 6. Ultimately, the FTT decided that it was not a school and not a college of a university, so neither of those exemptions applied, but it did make a supply of TEFL to international students for whom English was not their first language, even though the relevant course was described as a support/acclimatisation course and did not lead to any qualification. Such TEFL supplies are always exempt from VAT no matter who makes the supply.

The UK law can make VAT accounting for educational bodies very complicated and uncertain. Several cases around the meaning of eligible body remain ongoing.