

VAT treatment of chain transactions

The ECJ case of *EMAG Handel Oder* considers the question of chain transactions - an increasingly common occurrence in intra-Community trade. The Court arrived at the logical conclusion that the transactions must be regarded as following each other. Thus, if the first of two transactions is regarded as an intra-Community supply, the second transaction must take place in the country where the first was acquired. The principle avoids a number of potential problems but does little to clarify exactly what makes the first transaction an exempt acquisition where there is a single transport of the goods for both transactions.

Supplies of education

In the recent VAT Tribunal case of *Creating Careers*, the Tribunal held that a supply of software for on-line courses is an exempt supply of education, because the on-line course was an education in itself, which required no input from tutors.

The case centred on the nature of 'education'. HMRC submitted five reasons why the provision of the materials by the appellant should be regarded not as a supply of education but simply as a supply of goods or services used in the provision of education i.e. –

1. The legislation distinguished goods or services essential to the provision of education from the education itself;
2. The taxpayer's marketing of the supplies made no mention of the provision of education;
3. The material contained in the programme was based on repetition and reinforcement and objectivism - the provision of standard answers to students. In essence, this material differed little from a textbook;
4. The students were not being educated - rather they were educating themselves using the materials provided;
5. It was not credible to describe what was being done as education - if one did, it would open the floodgates to a variety of similar claims.

The Tribunal rejected all these claims, regarding the second as irrelevant. With regard to the other arguments, it is clear that the Tribunal took the view that the essence of the supply was education. The students interacted with the programme to carry out a substantial (120 hour) course of study. The students were tested on the material and had access to tutors. The Tribunal noted that the fact that the courses dealt with fairly basic material was irrelevant - education was still education even if it was at nursery level. The editors would add that the 'floodgates' argument that is raised from time to time by HMRC overstates the potential impact of this case. The legislation on which the claim was based requires the education to be funded by the LSC - a government body that can only apply funds to its own objectives. It does not allow a commercial provider to create say a book and interactive CD to provide nursery education at home and claim exemption.

HMRC's arguments imply that the taxpayer is not the actual provider of education because all that it does is supply the materials via a website to further education colleges, who then provide the courses together with tutor support to the students. The editors note that the EU legislation (article 13A.1(i) leaves the definition of what bodies' education can be exempted to member states. The Tribunal has concluded that the conditions laid down in the UK legislation have been met.

The case should be compared with that of *College of Estate Management* which also dealt with distance learning. There the College argued that material provided was a separate supply of zero-rated printed materials. The College's supply included digitised learning material, traditional books, but also tutoring and marking services. The services were also provided by the College itself, and there was at least an element of face-to-face teaching. The Appellant's case here was that 'education' could take place without the need for face to face teaching and that therefore its software packages were supplies of education.

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The difficulty that arose in this case is partly due to the change in the means of delivery of 'education', from text book based teaching to on-line delivery. The question arises as to whether the Tribunal could have reached this decision if the content of the courses had been delivered via printed matter. The test applied by the Tribunal appears to be largely functional in nature. *The term education is in fact very broad - it implies the communication of ideas to students. The exemption is restricted not so much by what is education but by the definition of the bodies whose education is exempt.*