



ECJ limits VAT exemption of commercial educational services

1 VAT-exemption for commercial educational services

National VAT-exemptions for the supply of commercial educational services, in accordance with sec 4 no 21 of the German VAT Act, are not in line with Union law. In most cases, private teachers and private schools fail to obtain the necessary recognition required by German law as a "replacement school" or the official certificate of the state authority. The latter must confirm that the services supplied "properly prepare for a profession or an examination to be taken before a public law legal person". Both the recognition as a replacement school and certification are substantive requirements for exemption according to national law. However, in recent years, the ECJ has extended VAT-exemptions to cover the supply of commercial educational services. In doing so, supplies of services, which merely have a vocational character, were also exempted. In addition, practically any form of teaching that did not serve purely recreational purposes could be exempted. According to national understanding, these supplies of services are, however, often subject to VAT. The German providers of commercial educational services affected have, in these cases, often directly invoked the less stringent exemptions in accordance with Art. 132 para 1 (i) and (j) of the VAT Directive. No government recognition or official certificate is required for the application of these rules. In this context, the Federal Fiscal Court referred the issue to the ECJ for a preliminary ruling on the question of whether the exemptions provided for by Union law also cover driving lessons (see KMLZ Newsletter 26 | 2017).

2 ECJ judgment

In the legal case *A & G Fahrschul-Akademie* (C-449/17), the ECJ denied VAT-exemption for driving lessons. Here, the court interpreted the requirements for exempted commercial educational services much more strictly than before.



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The judgment is therefore important for the entire field of vocational education and training. The previous, quite broadly interpreted concept of "school and university education", within the meaning of Art. 132 para 1 (i) and (j) of the VAT Directive, is now reduced to the actual core teaching in public schools. In the ECJ's view, the Union legislator intended the term "school and university education" to refer to a certain type of teaching system which is commonly in effect in all Member States, irrespective of the particular specificities of the national systems. Thus, only the lowest common denominator of the Member States' school systems remains within the scope of Art. 132 para 1 (i) and (j) of the VAT Directive. So as not to have to analyse all national education systems in order to determine the scope of the VAT-exemption, the ECJ, itself, defines the "school and university education" which is covered. Consequently, for the purposes of VAT exemption, "school and university education" is based on the following:

1. An integrated system for the provision of knowledge and skills relating to a wide and varied range of matters, and
2. the deepening and development of such knowledge and skills by pupils and students according to their progress and their specialisation at the various levels constituting the system.

For further definitions, the ECJ refers to the statements of the Advocate General in the Opinion. Therefore, the exemption standards apply only to the supply of general educational services, i.e. those accessible to all – even compulsory at lower levels – and covering a very broad range of knowledge, provided within the framework of a school and higher education system, which exists in each Member State. On the basis of these considerations, it must be examined whether the respective supply of educational services is to be recognised as "school and university education" within the meaning of Art. 132 para 1 (i) and (j) of the VAT Directive.

Based on this, the ECJ comes to the conclusion that driving lessons in a driving school do not fall within the scope of the "new" definition of lessons. Driving lessons were deemed to be specialised lessons and therefore not the same as the teaching, deepening and development of knowledge and skills relating to a broad and varied spectrum of matters, which characterizes school and university teaching. The ECJ rejected *A & G Fahrschul-Akademie's* argument that driving lessons were not pursued merely for recreational purposes, given that possessing a driving licence is sometimes a professional requirement for a job. According to the court, it is of primary importance whether or not the teaching concept is fulfilled. Only in a further step would the court then examine, in accordance with additional case law, whether mere recreational purposes are being pursued.

3 Conclusion and recommendation for action

The tightening of the VAT exemption for educational services by the ECJ affects all providers of commercial educational services. In particular, taxable persons, who previously directly invoked the VAT exemptions provided for by Union law, as a result of the fact that sec 4 no 21 of the German VAT Act does not comply with Union law, must now expect their services to be subject to VAT after all. Relevant providers should review and, if necessary, reassess their services. All German providers should check whether they can be recognised as an institution and whether their services can be approved by the state authority. If so, they could benefit from the national VAT exemption.

It can be eagerly awaited how the German Federal Fiscal Court will assess the ECJ's definition of "school and university education". Proceedings are currently pending before the German Federal Fiscal Court to determine whether a dancing instructor's lesson fees are exempt from VAT (German Federal Fiscal Court: V R 66/17). It is also questionable whether the German Federal Fiscal Court will maintain its opinions concerning e.g. swimming lessons and martial arts schools.