

Case Alert

CJEU overturns AG's opinion in Brockenhurst College VAT case

Summary

The issue in this case was whether supplies of restaurant and entertainment services provided by the college to third parties in return for payment should be regarded as services closely related to the principal supply of education provided to the students.

Advocate General Kokott had earlier indicated that, in her opinion, the supplies could not be treated as such. However, the full court has now issued its judgment and has stated that, provided certain conditions are met, the supplies of restaurant and entertainment services are closely related and should be exempt from VAT. Whether or not the conditions are met is a matter for the national court,

Court of Justice Judgment

It has taken well over seven years of litigation for this case to reach this stage. Essentially, Brockenhurst College is a public body providing further education to students. The college offers courses to students in many subjects including both catering services and performing arts. As part of the curriculum, and in line with many similar further education colleges, it not only provides theoretical education to students but also provides practical real-life training. In the catering courses, the students get practical hands-on experience of providing restaurant services and in the performing arts courses, students stage concerts and performances. In both situations, services are provided in return for payment to third party customers. The college argued that the services provided to the third party customers were supplies that were closely related to the main supply of education provided to the student and should, thus, also be exempt from VAT.

The Court of Justice has now given its judgment and has, unusually, disagreed with the Advocate General in this case. The Advocate General issued an opinion to the Court which argued that the supplies of catering and performance services were not closely related as they were supplied by the college to third party customers. The full court disagrees. In the circumstances, it is clear that the student benefits from the practical hands-on experience of providing the respective services in a real-life setting. Moreover, the college does not set out to obtain additional income from providing the services, the aim is merely to defray some of the costs but the main aim is to give the students practical training. The customers are generally friends and family of the students and so are entirely different to customers attending a 'commercial' restaurant. Accordingly, provided that the services are essential to the student's training experience and, they are not provided with a view to obtaining additional income, the supplies may be regarded as being 'closely related' to the supply of education made to the students by the college and are exempt from VAT.

Comment – this is an unexpected turnaround from the Advocate General's opinion. It is clearly good news for FE colleges and other similar establishments that have submitted similar claims for repayment of overpaid VAT. Any college that has not made such a claim should consider doing so.

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