

Case Alert

Appellant is not a college of a University!

Supplies of degree level education not exempt from VAT

Summary

The taxpayer in this appeal is a commercial provider of education. It entered into an agreement with the University of Middlesex to provide degree level tuition which led to the award by the University of a recognised degree.

The First-tier Tribunal agreed with the company that it was, or was to be regarded as, a college of the University and, as such, it was entitled to exempt its supply of education.

The Upper Tribunal overturned that decision and the taxpayer appealed to the Court of Appeal.

In a unanimous judgment, the Court of Appeal has dismissed the taxpayer's appeal. The company is not a college of the University and its supplies are subject to VAT.

Court of Appeal – SAE Education Ltd v HMRC

Under UK VAT law, the provision of education is exempt from VAT if it is provided by an eligible body. An eligible body is defined in the law as, amongst other things, “a United Kingdom university, and any college, institution, school or hall of such a university. The taxpayer in this case operates on a commercial basis and aims to make a profit. Nonetheless, it argued that, through its association with the University of Middlesex (The University) and its accreditation, it ought to be treated as a college of the University and be entitled to exempt its supplies. The First-tier Tax Tribunal agreed with the company and allowed its appeal but the Upper Tribunal overturned that decision. This was the company's appeal to the Court of Appeal.

In a unanimous judgment, the Court of Appeal has dismissed the company's appeal. The company is not a college of the University. In order to succeed, the company had to demonstrate that it was a constituent part of the University with all the rights and privileges for its students and other members which that entails. This should be evidenced by the legal relationship that exists between it and the university whether by a formal foundation or constitutional document. From the evidence in the case, the company merely provided services to the University under the terms of a commercial contract. Whilst it was clearly independent of the University and self-governing, this is only one of the factors but they do not in themselves make the body in question a college of the University where they are simply terms of an otherwise arm's length contractual relationship designed to provide students with an external route to a university degree. The correct test is whether the taxpayer is or was part of the University in the constitutional or structural sense. According to the Court of Appeal, that was not the case here.

Comment – It is not clear yet whether the taxpayer in this case will seek leave to further appeal to the Supreme Court. If it does not, then it seems reasonably clear that, to claim ‘college of a university’ status, a commercial supplier of education will need to demonstrate that it is constitutionally or structurally part of the University. Without being part of a University, a commercial provider of degree level education will be unable to exempt its supplies from VAT.

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