



TC02569

Appeal number: TC/2010/06886

**Value Added Tax – Group 6 Schedule 9 VATA 1994 – Supply of Education –
Whether catering and entertainment closely related supplies – Whether exempt
supplies - Yes – Appeal Allowed.**

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

BROCKENHURST COLLEGE

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY'S
REVENUE & CUSTOMS**

Respondents

**TRIBUNAL: JUDGE DR K KHAN
PETER DAVIES FIA**

Sitting in public at London, Bedford Square on 13, 14 September 2012

Mr Noel Tyler, VAT Consultant for the Appellant

Mr Philip Shepherd, Senior Officer for the Respondents

DECISION

Introduction

The disputed Decision of the Commissioners for HM Revenue & Customs (hereinafter called “the Respondents”) is contained in a letter dated 27/07/10 upholding a Review Decision to reject a Voluntary Disclosure for the recovery of VAT in the sum of £183,470 in relation to £79,900 of output tax and £103,570 of input tax said to have been overpaid or under claimed for the periods 01/06 to 10/09. The input tax claimed to have been overpaid was mainly in respect of supplies made by the College Restaurant, Refectory, and Skills Centre (“College Restaurant”) and some supplies of entertainment services made by the Department of Dramatic Arts.

In respect of catering, the argument is that the suppliers were properly suppliers of education. The input tax claimed related to the College Restaurant, overheads and Capital Goods Scheme. The Appellant says that the supplies were an exempt supply of education and/or vocational training as opposed to a taxable supply of catering. The exemption arose from the provisions of Item (1) (a) (Education) or (c) (vocational training) of Group 6 of Schedule 9 of the Value Added Tax Act 1994 (“VATA 1994”).

The Tribunal was provided with 2 ring binders of documents, the first a joint bundle of exhibits including correspondence, the second, and a joint bundle of authorities. There were two witnesses for the Appellant, John McArthur and Catherine McArthur, both employees of the Appellant. The Tribunal had the benefit of Witness Statements from Douglas Jones and Peter McBride, Officers of HMRC.

Background

1. Brockenhurst College (hereinafter called “the Appellant”) carries on business providing educational services from premises at Lyndhurst Road, Brockenhurst, Hampshire, SO42 7ZE.
2. The Appellant was registered for VAT with effect from 01/01/94 under Registration No. 619704038.
3. The Appellant’s representative, TAX Angles made a voluntary disclosure on 5 January 2010 for £183,470 (£79,900 output tax and £103,570 input tax), for the periods 01/06 to 10/09.
4. By letter of 1st March 2010 they stated that supplies from the restaurant, used in training chefs, restaurant managers and hospitality students, were exempt supplies of education and/or vocational training and not a taxable supply of catering. The provision of concerts or performances given by students as part of their educational course was also said to be an exempt supply under the provisions of item 1 (a) or (c) of Group 6 of Schedule 9 VATA 1994.
5. The Appellant stated that the restaurant was a training restaurant for students. The catering courses was supervised and observed by teachers while students prepared and served members of the public, who paid £10 per head for a meal. They said that this training was required as part of the NVQ or other qualifications which the students were undertaking.

6. The Respondents say the supply was one of catering and taxable at the standard rate of VAT. The core issue was whether the supply of catering in the restaurant was a supply in the course of the provision for education or vocational training.

7. The Appellant pointed out that the College Restaurant operated only during term time when the students were at the college and the pricing of meals was designed to recover costs (80%) and not to make profit.

8. The Respondents discounted the profit element on both the supply of food and provision of concerts and performances.

9. By a letter dated 23/03/10 the Respondents advised the Appellant's representative that "notwithstanding the point that the students are receiving education through their activities in the restaurant, the fact remains that a person being charged by the College to eat in the restaurant receives a supply of catering. There is a direct and immediate link between the consideration paid and the provision of a meal". Further "the College's website promotes the restaurant to outside users, and says that it can be booked for private functions. It also suggests that students could support outside events. All this implies that the College is providing standard rated catering services to non-students."

10. A similar point was made with regards concerts/performances and the tickets were held to be standard rated supplies of entertainment.

11. By a letter on 1 April 2010, the Appellant outlined their position. They contended that there were only supplies of education.

10. By a letter on 24 April 2010, the Appellant's representative applied for the decisions on restaurant and concert performances to be subject to a statutory review.

11. By a letter dated 27 July 2010, the Appellant was notified of the review result. The Decision taken was to uphold the Decision of the visiting officer. The training restaurant made supplies of catering. The review letter said that the making of profit was not a relevant consideration nor was the intention "of the provider" in making the supply. The commercial reality and the way the goods or services are held out for sale meant that the supply to persons who came in to consume food for which a payment is made was standard rated catering. They only received the meal on the condition that payment was received. The person making the payment receives a supply of catering and not education. The recipient of education is a student and the recipient of the catering is a person paying for the food.

In relation to supplies made by the Department of Dramatic Arts, the review stated that the supplies were made of entertainment and did not qualify as "closely related to education" and would not fall to be exempt under the VATA 1994. The person walking in off the street pays for and receives a supply of entertainment. The student receives an additional separate supply of education which is paid for through the Appellant's funding. The review officer upheld the Decision of the enquiring officer.

Finding of Facts

12. The Tribunal finds the following facts.

i) The Appellant is an eligible body for the purposes of domestic law which meant that it was a school, university, sixth form college, or further education college or centrally funded higher education institution.

ii) The college provides tertiary education to a large number of students, qualifications offered range from AS/A Level, BTEC, NVQ, GSCE and OCN. It trains chefs, restaurant managers and hospitality managers and offers various diploma and A level courses.

iii) The college provides vocations to students in Dramatic Arts for which they studied for A Level or NVQ qualifications.

iv) For the Food, Beverage and Professional Chefs Diplomas, it was a requirement of the examining body that the College provide a “realistic working environment” for examinees.

v) Students studying for qualifications in Dramatic Arts were required to put on performances as part of the examination process.

vi) The college has a training restaurant, where all catering functions are undertaken by students, under the supervision and tutelage of catering professionals. The restaurant area has a kitchen, pastry area and restaurant area. Members of the public attend the restaurant and are provided with meals which a payment towards is made. The college seeks to recover 80% of the cost of the meal.

vii) The restaurant is required to meet the educational needs of students.

viii) The Department of Hospitality has approximately sixty full time students studying for NVQ levels 1, 2 and 3 examined by the City & Guilds of London Institute. This qualification has been replaced by the Food, Beverage and Professional Chefs Diploma Levels 1 and 2 which cover the same ground. There is a Level 3 BTEC Extended Diploma in Hospitality. In the course syllabus for the Diploma Level 1 and Level 2 it is stated that;

“The majority of your time at college will be spent in the college’s training kitchens and restaurant as well as the traditional training kitchen where you will develop essential basic skills”

The Level 3 BTEC qualification states the following;

“You will be encouraged to undertake a variety of projects and tasks to develop individual and team working skills within a practical and classroom based environment.

viii) Chefs, restaurant managers and hospitality managers are required by the examining body to achieve practical experience.

x) Students who prepare a meal in the restaurant for paying customers or arrange an event or participate in an event or prepare a meal outside of the college are seeking practical experience.

The tasks undertaken includes the arranging and budgeting of the meal, planning the menu, the preparation and sending out of invitations, the booking

of a speaker (if required), arranging the setting of the restaurant, the preparation of the food and waiting and clearing of tables. They must do all this within the budget provided by the College.

The students are given guidance and observed by the tutors. They draft feedback forms and are given feedback from customers or those participating in the event. The student would analyse the feedback forms with their tutors.

xi) The restaurant does not make a profit.

13. The College in its document “Welcome to MJ Fine Dining Restaurant” invites members of the public who are registered on their database or who receive the college newsletter to come and have a meal. It states:

“Why not help the training of the culinary stars of the future while enjoying a delicious meal accompanied by a glass of wine suggested by our trainee sommeliers”

14. The AS/A Level performance studies qualification in Dramatic Arts states the course details to include a performance project which is defined as follows:

“You will create and perform two performances, one of which is a realisation of a work studied on the course in your chosen discipline and the second is a student-devised work based on a commission sent from the exam board”

The course is defined as essentially a practical course.

15. The college operates a database of local groups and individuals who may wish to attend the training restaurant. They are informed of events at the college through a newsletter created by the Department hospitality.

16. The college has a website for the restaurant called The MJ Training Restaurant. It states that students often prepare meals as part of their training, with celebrity chefs such as Raymond Blanc. The restaurant itself is designed as “a facility for equipping the chef’s hospitality staff and managers of the future”.

Witness Statements

John McArthur

i) Mr McArthur is the head of Hospitality Studies at the College. He provided a Statement dated 20th February 2012.

ii) He confirms that the role of the Department of Hospitality is to “train chefs, restaurant managers and hospitality managers to equip them with the skills to find subsequent employment in the major hotels....”

iii) He confirmed that the college has two working kitchens together with the restaurant and a small bar area which serves approximately 42 people.

iv) He confirms the various qualifications (previously outlined) which students undertake and states that training is both practical and theoretical with

students spending four days a week in the training restaurant and kitchen and the final day in the classroom on academic study.

vi) He states that he did not believe it is possible to provide the training required without practical experience.

vii) He confirms that in undertaking events for groups of people “the budgeting of the events is based upon a return of approximately 80% of the fixed cost and the approximate element of the variable cost, incurred by the College in putting it on”.

viii) In terms of the preparation of the meals by students he explains that;

“The meals to be prepared by the students for these events are from a list on which they will be examined at the end of the academic year concerned. The dishes prepared by the students start off as simple in year 1 and become more complex as the studies develop”

viii) A major part of the student evaluation concerns the preparation and planning for events-based activities which can include the preparation of a meal for the Army or local groups. He explains that the groups work with the students to organise and plan the event “in the full knowledge that it is the students who will be putting on the functions in the course of furtherance of their studies.”

x) The restaurant is not open to members of the public but rather is booked from the captive group of people on a list.

xi) He states that the purpose of the restaurant and the kitchen is to provide “a realistic working environment for students so that, upon qualification, they can attain useful employment in the hospitality industry”.

Catherine Mary McArthur

i) Mrs McArthur is a Lecturer in the Department of Hospitality Studies. She provided a Statement dated 25 May 2012.

ii) She states that she created and maintained a database of local groups and individuals who from time to time attend the training restaurant. They also receive a newsletter which she has created, a copy of which was provided to the Tribunal.

iii) Those people on the database are able to make bookings at the training restaurant to have a meal or to attend when a celebrity chef is hosting an event at the college. Only those people on the database are able to book tables at the restaurant.

iv) The purpose of the training meals is to help students experience real life restaurant training and it is therefore required that there be 40 covers at any time in order for students to fully benefit from the training. If the numbers are lower then the Department may cancel the service. The reason the service was cancelled was because the reduced headcount would be of limited value to the trainees.

v) She described the restaurant as a controlled environment, a teaching setting where teachers are present, assessments conducted and feedback provided to students.

Douglas Alfred Jones

i) Mr Jones is a Revenue Officer, provided a Statement dated 5 January 2012.

ii) Mr Jones confirmed the correspondence history as outlined above.

iii) He paid a visit to the College when they were preparing for an event where students, as part of their course work, were “to organise an event and prepare the food and drink and to serve this to, on this occasion, veterans of HM Forces. “

Peter McBride

i) Mr McBride is part of the education team at HMRC. His witness statement is dated 11 January 2012.

ii) The officer chronicles the exchanges between HMRC and the Appellant. This follows facts as presented above.

iii) The officer confirmed the reply from his Policy Team on 16 March 2010. He explained that the position of HMRC was that there was a separate supply of catering or of a concert to non-students as there was a direct and immediate link between what they paid for and what they received in return. In a reply to Officer Jones dated 17 March 2010 he emphasised the point that there was a direct and immediate link between the consideration paid and the supply received which was the meal and/or the concert performance.

Points at Issue

i) Whether the supply made by the Appellant’s College Restaurant, in accordance with the requirements of the appropriate examination bodies, are supplies made by an eligible body in the course of education or vocational training. Any such associated income is properly exempted from VAT by Item 1(a) (c) of Group 6 of Schedule 9 to VATA 1994 and by Article 132.1(i) of the Principal VAT Directive (EC Directive 2006/112 hereinafter referred to as (“Principal VAT Directive”).

ii) Alternatively, the supplies are closely related to supplies of education or vocational training and are properly exempt from VAT under the Provision of Article 132.1(i) of the principle VAT Directive.

iii) Whether the supplies of concerts and performances by students of the Department of Dramatic Arts are supplies of education or vocational training (as above) or alternatively, whether such supplies should be treated as closely related to supplies of education or vocational training.

The Law –European Directive

1. Article 132 1(i) of the Principal VAT Directive provides for the exemption of education. It states -;

“Children’s or young people’s education, school or university education, vocational training or retraining, including the supply of services and of goods closely related thereto, by bodies governed by public law having such as their aim or by other organisations recognised by the Member State concerned as having similar objects”.

Article 133 allows Member States to impose the following conditions on bodies providing services that would otherwise be exempt from VAT under the provisions of Article 132A 1(i)-

- (a) the bodies in question must not systematically aim to make a profit and any surpluses nevertheless arising must not be distributed, but must be assigned to the continuance or improvement of the services supplied;
- b) those bodies must be managed and administered on an essentially voluntary basis by persons who have no direct or indirect interest, either themselves or through intermediaries, in the results of the activities concerned;
- c) those bodies must charge prices which are approved by the public authorities or which do not exceed such approved prices or, in respect of those activities not subject to approval, prices lower than those charged for similar services by commercial enterprises subject to VAT;
- d) The exemptions must not be likely to cause distortion of competition to the disadvantage of commercial enterprises subject to VAT.

2. Article 134 provides that, in respect of supplies that would otherwise have been exempted from VAT under Article 132A 1(i), the supply of goods and services shall not be granted exemption:

- (a) Where the supply is not essential to the transactions exempted;
- (b) Where the basic purpose of the supply is to obtain additional income of the body in question through transactions which are in direct competition with those of commercial enterprises subject to VAT.

UK Law

The exemption in the Principal Vat Directive for educational services is conferred in the UK by Schedule 9 Group 6 Items 1-6 VATA 1994.

Item 1 of the Group exempts from VAT *the provision of an eligible body of:*

- (a) *education; or*
- (b) *vocational training*

1. Item 4 of the Group exempts from VAT *the supply of any goods or services (other than examination services) which are closely related to a supply*

falling within Item 1 (the principal supply) by or to the eligible body making the principal supply provided-

- (a) the goods or services are for the direct use of the pupil, student or trainee (as the case may be) receiving the principal supply: and*
- (b) where the supply is to the eligible body making the principal supply, it is made by another eligible body.*

Eligible Body

The eligibility for the exemption for educational services is dependent on the type of body providing the services and the body must be an “eligible body” which includes a university, college, institution, school or further or higher education institution. Once classified as an eligible body the institution has exempt status for supplies of education.

The Appellant is an eligible body.

Relevant Case Law

1. Card Protection Plan Ltd v Commissioners of Her Majesty’s Customs & Excise c – 349/96 [1999] STC 270
2. Canterbury Hockey Club and Canterbury Ladies Hockey Club v Commissioners for HM Revenue & Customs [2008] STC 3351
3. EC Commission v Spain ECJ C – 124/96: [1998] STC 1237
4. Ursula Becker Finanzamt Munster –Innenstadt ECJ 8/81: [1982] ECR53

Appellant’s Submissions

1. The Appellant says that their activities constitute supplies by an eligible body of education and/or vocational training which are properly exempted from VAT under the provisions of Article 132 (1) (i) of the Principal VAT Directive as found in UK Law under Item 1 (a) and/or (c) of Group 6 to Schedule 9 VAT 1994.

In the alternative the supplies may be closely related to supplies of education by an eligible body of education and/or vocational training properly exempted from VAT under the provisions of the said Article 132 (1).

2. There is a small element of the net output tax, claimed by the Appellant to be wrongly accounted for and disallowed in respect of admission charges to concerts and plays by students in the Department of Dramatic Arts. These are contended by the Respondents to be taxable supplies of entertainment.

The Appellant says these are not supplies of entertainment but an integral and important part of the curriculum which is properly treated as a supply of education. Alternatively, the supplies maybe closely associated with supplies by an eligible body of education properly exempted from VAT under the provision of the same Article 132 (i) of the Principal VAT Directive.

3. The Appellant had originally made an argument based on a cultural exemption applicable to the supply of the concerts and performances but this has been withdrawn.

4. The Appellant makes the point that there was an absence of a profit element to the supplies made which indicated an intention to make a supply of education as opposed to commercial catering. There was no profit motive with regard to the provision of concerts and performances.

5. The Appellant submits that the true or effective beneficiary of the supplies in question are the students for whom the restaurant has been established and the performances and concerts undertaken.

6. The Appellant submits that UK domestic law places further restrictions on the education exemption than contemplated by Article 132 of the Principal VAT Directive and contend that they are entitled to exemption under the provisions of Article 132 (1) regardless of what item 4(a) of the domestic legislation may state.

The Respondents' Submissions

1. The Respondents submit that there is no supply of education or vocational training from the college to the diners. It is simply a supply of a meal and drinks for a consideration as would be the case in a commercial restaurant. The price charged for the meal and drinks is irrelevant. There is no significance to limiting the opening time to the restaurant and it is irrelevant whether the restaurant intends to make a profit or not.

The supply of meals is a supply of catering to customers who pay a consideration for taxable supplies. These supplies do not fall within the exemption for education. Similarly the intention of concerts and performances is to make a supply of admission for a consideration as would be the case in a commercial theatre or concert hall.

There is no supply of education or vocational training from the college to the attendees of the concerts or performances. The price paid for admission is irrelevant and the times and frequency of the production are not of significance. It is not relevant whether there is an intention to make a profit.

2. The Respondents say that Group 6 of the VAT Act 1994 is consistent in its provision in provision in properly reflecting Article 131 and 132(1)(i) of the Principal VAT Directive.

3. They refute the Appellant's submission that there is an underlying restriction contained in item 4(a) Group 6 Schedule 9 VATA which states that goods and services are "for the direct use of the pupils, students or trainees (as the case maybe) receiving the principal supply" which goes further than contemplated by Article 132 (1) Principal VAT Directive.

Discussion

1. Article 132 of the Principal VAT Directive allows EU Member States to exempt from VAT certain activities in the public interest. Article 132 is qualified by Article 131 in that the exemption shall be applied domestically "for the purpose of ensuring

the correct and straightforward application of those exemptions and of preventing any possible evasion, avoidance or abuse”

Article 132 (1) (i) provides exemption for;

“The provision of children’s or young person’s education, school or university education, vocational training or retraining, including the supply of services and of goods closely related thereto, by bodies governed by public law having such as their aim or by organisations organised by Member States concerned as having similar objects.”

2. The supplies by an eligible body of education or vocational training are properly exempt from VAT under the provisions of the Principal VAT Directive, which is reflected in UK law by item 1 (a) and/or (c) of Group 6 to Schedule 9 VATA 1994. Suppliers which are closely related to those supplies are also exempted.

3. Article 133 of the Principal VAT Directive allows Member States to apply the exemption with conditions. The conditions seek, inter alia, to remove commercial transactions or those likely to cause distortions in the market.

4. Article 134 of the Principal VAT Directive states that suppliers would not receive exemption “where the supply is not essential to the transaction exempted” or where the basic purpose of the supply is to obtain additional income for the body in question.

5. Under UK domestic law Group 6 to Schedule 9 VATA exempts from VAT the provision by an eligible body of education or vocational training. Item 4 of the Group also exempts from VAT “the supply of any goods or services.... which are closely related”, to the principal supply of education. However to be eligible for exemption it is required that” goods or services are for the direct use of the pupil, student or trainee”.

6. The Appellant contends that the requirement for the goods and services to be applied for the “direct use of the pupils” (Item 4 1 (a)) goes further than permitted by Article 132 (1) of the Principal VAT Directive, to that extent, HMRC have issued guidelines on the meaning of “closely related” (VAT EDU 51200) and stated that closely related refers only to goods and services that are for the direct use of the pupil, student or trainee and necessary for delivering the education to that person. This latter requirement (delivering education), which is found in the Notice does not appear in the wording of Item 4 and does not represent the law.

7. It would seem that the imposition of these two conditions by HMRC defines education as teaching and closely related supply as supply concerned with teaching. Education is not defined in the Principal VAT Directive and therefore should be given its ordinary meaning and not limited to formal classroom instruction. The HMRC guideline is intended to be helpful to customers and does not have the force of law. The exemption should not be limited in its application other than originally intended and the delivering of education requirement appears, if anything, to create another hurdle which is both restrictive and not in the legislation.

8. For the purposes of this Decision, the Tribunal does not agree with the Appellant’s submission that the requirement in the UK law, to make a supply for the direct use of the student, is onerous and not in keeping with the Principal VAT Directive. It finds this for the following reasons. Firstly, education can only, in the

circumstances, be provided to a pupil or student, which is to say, a natural person. They must stand to benefit from the education provided. Secondly, the college would have received tuition fees from the student or from the local authority and therefore would be responsible for providing education directly to that student as part of a legal and contractual obligation to do so. Thirdly, the domestic implementation by Member States of the EU Directive allows exclusion from exemption for goods and services closely related to education, but in situations when it is necessary to ensure the correct and straightforward application of the exemption and to prevent any possible evasion or avoidance. Considering these obligations, the introduction of Item 4 implementing Article 132 of the Principal VAT Directive is simply seeking to help the student and to give effect to the aim of the Directive and not to limit the application of the exemption. We do not agree with the Appellant's first point.

9. Secondly, the Appellant contends that the correct approach to be taken by the Tribunal is that of the ECJ in the matter of *Canterbury Hockey Club and Canterbury Ladies Hockey Club v the Commissioners for Her Majesty's Revenue & Customs* [2008] ("Canterbury Hockey Club case").

In this case, Hockey clubs paid affiliation fees to England Hockey, a non-profit making association for the encouragement and development of hockey playing in England, which, in consideration for affiliation fees, supplied various services including courses for coaches, umpires and young players, advice on marketing and sponsorship, facilities for accessing government lottery funding, club management services and insurance among others.

The question arose as to whether the affiliation fees were exempt from VAT as being services which were "closely linked with and essential to sport". The services were supplied by England Hockey to the club and not directly to the club members. The submission was made by the UK Government that only natural persons are capable of "participating in sport" and therefore only services supplied directly to such persons would be exempt.

The ECJ decided that for the purpose of determining whether supplies of services are exempt, the identity of the material recipients and the legal form under they benefit from them are irrelevant; what matters is that the true beneficiaries of those services are the persons taking part in sport. The Court said that in order to determine whether supplies are exempt, "the identity of the material recipients of the services" must be identified.

10. This case would suggest that in establishing the true beneficiaries or material recipients of services one has to look beyond the legal reciprocal relationship between the service supplier and the person receiving the supply.

11. The Appellant contends that the true beneficiary of the supply from the College Restaurant can only be the student or trainee since the Appellant's sole purpose in making the supply is for the education or training of those parties. Similarly, in respect of the concerts and performances put on by the Department of Dramatic Arts, the Appellant contends that they are supplies integral to the Appellant's supply of education or closely associated to such supplies.

12. The Respondents recognise that the restaurant is a facility whereby the college provides practical training to its catering students to test their skills at preparing and serving meals. However, they say that there is no supply of education or vocational training from the college to the diners and the supply of the meal is no different from

that of the commercial restaurant. The same argument applies to those attending concerts and performances and to the supply of entertainment which is similar to that in a commercial theatre or concert hall. They say that it is not relevant whether the college is in competition with commercial theatres or restaurants or whether there is an intention to make a profit.

13. The Tribunal takes the view that the supply cannot be viewed in the abstract; it is not enough merely to point to a supply of services in return for a money payment. The question for the Tribunal is whether the activities at the restaurant and the concert performances are integral to the provision of educational course or closely associated with the supply of education such that it is dissociable from the exempt supply for education. The simple question is whether it is necessary for the delivering the education to the student. Let us look at this point;

14. The curriculum for the courses offered by the college in training chefs, restaurant managers and hospitality managers, as well as those studying performing arts, places significant emphasis on practical work and assessment or, in simple terms, work experience or vocational training. Students not only learn at the College Restaurant but also work with celebrity chefs in preparing meals and in undertaking work placements at well-known restaurants in the area. The assessment of the student looks to work undertaken at both at the college and externally and prides itself on creating “realistic workplaces situations, activities and demands”.

15. In the oral evidence given by John McArthur, Head of Hospitality Studies and Catherine McArthur, Lecturer in Hospitality Studies and in their witness statements they emphasized the need for students to practise their skills in a “realistic working environment”.

In the case of the College Restaurant this will include the serving of meals, the removal of plates, dealing with members of the public as customers, getting independent feedback, addressing customer concerns, as well as attendant skills of listening, communications, leadership and working in a team. Aside from making customers feel welcome and enjoying the restaurant experience the students must actually prepare, plan and serve the meals. They are required to make all important decisions regarding the meal including, the purchase of the food, the menu, wine, dessert, cutlery and crockery. The students are in charge. In dealing with outside groups or with celebrity chefs the students are actively involved in delivering the complete meal. The events are planned to further the students’ studies.

16. The students get feedback from the customers and their teachers who would sit and observe how they perform in the restaurant setting. This is the same with concerts and performances.

17. The members of the public who attend the restaurant are drawn from an established list created by the College. They are part of the database of the College and those customers know that they are paying for a student meal but also are participating in the training and teaching of students. The College Restaurant brochure invites customers to “help train the chefs of the future.” The College requires that there must be a full restaurant (approx. 30-40 people) for two sittings on the same day and two different groups of students to obtain maximum benefit for the students. If not, the meal is cancelled.

In planning the particular menu there would be a consultation between those studying to be chefs, restaurant managers and hospitality managers. The work

between the parties would be divided according to their skills. The students know they are being observed both by the customers in providing feedback and by the teachers who are sitting in the restaurant. There are usually two or three teachers in attendance at each meal. While the student is given autonomy in making decisions on preparation and serving of the meal guidance and help is offered by the teachers.

The cost of the meal is funded by the College. Since all food has to be prepared fresh and students may make several efforts to get the food to the highest standard one can imagine this can be an expensive meal for the college to fund. Several false starts on a confit of duck can be costly.

The College expects to recover only 80% of the costs of the meal from the customer. All monies made from the customers is ploughed back into the College and used to fund the restaurant. Given the price of the foodstuffs used in preparing the meal, we heard evidence that the restaurant's funding is a substantial part of the College's budget.

18. The College Restaurant itself is physically within the College and is not independent. It is financially dependent on the College for its running and the staff at the College are actively involved in teaching at the restaurant. It is not autonomous nor commercially run and is used by students at the College. Similarly with the Department of Dramatic Arts, performances are at the College, concerts are put on by students who get feedback from members of public and from their teachers as well as guidance in making important decisions on the performance itself.

19. What emerges is that the College Restaurant is a teaching environment. It is a controlled environment where students are able to "test run" their skills and what they have been taught in the classroom. There are both academic and practical aspects of their curriculum. The restaurant is tantamount to a classroom for students in the hospitality department and the performance of concerts and plays performed a similar function for those students in the dramatic arts. The audience is captive. They are usually friends and family or come from an established database of people who have registered with the College knowing that they are paying a reduced fee for a performance or a meal which is to be prepared and served as part of the training for the students.

The student meal may be good or bad, the soup may be spilled on the customer. The sommeliers may have made a proper choice of the wine or not, the quality of the food and drink may vary but the customers are aware that they are not in a commercial environment. The play or concert may be of a good or bad quality, the sound system may or may not work and there may be rough edges to the performance.

The important point is that this is part of the students' learning and education and satisfies the vocational aspects required in their curriculum. The kitchen is tantamount to a classroom, laboratory or workshop and the course cannot be taught without the restaurant. Without the College Restaurant the student will not benefit from the vocational side of the studies. It is the same with students taking qualifications in the performing arts who put on performances in order to get requisite practical experience required. The argument that there is a supply of education is very persuasive.

Proper construction and application of VATA 1994

20. The Appellant is an eligible body and this is agreed between the parties. It is accepted that a supply of education or vocational training is an exempt supply as well as any supplies which are closely related to those supplies.

21. It is important that we give a construction of the law which is in accordance with the intention of the Principal VAT Directive, by not excluding any supplies which are meant to be exempted. It is understandable the Respondents would think that the supply of food, performances and concerts, when looked at in isolation, is a supply of catering or entertainment which is standard rated. The more interesting question is whether those supplies are either supplies of education, vocational training or whether they are so integral to the supply of education that they are closely related supplies and exempt.

22. The Tribunal has to look beyond the money transaction. In the Canterbury Hockey Club case the court suggested that one has to look at the true beneficiaries of the service. That approach does appear to run counter to the conventional thinking that one simply looks at the relationship between the parties and the reciprocity between the paying and the provision of the service. It is well established that exemptions under the Principal VAT Directive should be narrowly construed (EC Commission v Spain and Ursula Becker v Finanzamt Munster-Innenstadt) but the ECJ seem to have taken a more expansive view in looking at supplies in order to give effect to the true purpose of the exemption.

23. The Tribunal believes that while the supplies (food, concerts and performances) are not principal supplies of education they are supplies are closely related to a supply of education.

24. In deciding whether the supplies of food, performances and concerts are closely related to education the Tribunal looked at certain points. The first is whether there is a primary supply which is exempt. There is no dispute that the supplies made by the College, as an eligible body, are exempt supplies of education.

25. The second is that the closely related activity has to be essential to the main supply of education. This means that without the related supply the principal supply would not be of the required standard for the students. The Tribunal heard evidence from the teachers at the college that the restaurant and performances gave students vital practical experience and skills which are required in vocational training. This evidence was not contradicted or challenged by the Respondents. The curriculum required practical training and the students had to provide potential employers with evidence of having undertaken actual restaurant work.

26. Thirdly, the related supplies were integral to the main supply of education. They were integral since they were not an end in itself but a means of providing the students with a better education. It was designed as part of the course and was in the contemplation of students at the time they registered for the respective qualifications. If the practical training, including the serving of food and performances at concerts, were not offered then the students would not fully benefit from the course. The training of chefs and hospitality managers without the College Restaurant would be a very different training.

27. Lastly, the Tribunal believes that if the related activities were designed with the intention of creating another source of income for the College then it would be in the course or furtherance of a business and commercial in nature. The related supplies

were not intended to make profit, in fact, the meals were subsidised by the school (20%), were not in competition to commercial enterprises and customers knew and expected a student meal with all its flaws.

28. The inclusion of supplies in the exemption which are closely related to the main supply suggests that there was contemplated a bundle of supplies within the exemption, supplies which were sufficiently close and directly related can be included in the exemption. The exemption therefore allows the inclusion of supplies which are integral to the main supply. We believe that the supplies of food, concerts and performances provided by students as part of their practical training and curriculum were closely related supplies for the purposes of the exemption.

29. We should address another of the Appellant's points. The Appellant drew reference to the Card Protection case to show supplies which were composite. A composite supply is a different type of supply. A composite supply is a single supply comprising several elements and the VAT treatment follows the principal element of the supply.

30. A related supply, as in our case, is a separate supply in its own right but which may be exempt if closely related to the principal supply of education and required for the better enjoyment of the main supply. The Appellant's submission on this point was not entirely clear.

31. A second submission of the Appellant asked the Tribunal to look at the true beneficiary or material recipient of the supply, as discussed in the Canterbury Hockey Club decision. This case is more helpful since it allows the Tribunal to look beyond the legal relationship where the supply is made to find the true beneficiaries of the supply. In cases where an exemption is being examined, this approach allows a more practical application of an exemption.

32. The Tribunal must also look to see if the student receives a direct benefit. It would seem obvious but the related supply must be beneficial to the student. The students at this college would certainly expect practical training and would feel disadvantaged, when compared with other graduates, if they had not had the restaurant experience of preparing and serving meals and undertaking live performances at concerts.

33. The exemption seems to contemplate that the College's own students must benefit. There is no challenge by the Respondents to this position. The physical location for the supply is within the college with teachers and conducted in accordance with the College regulations. It is clear from the documentary and witness evidence that the students benefit directly from these related supplies.

34. The Respondents say that the students are already receiving education as part of their course and the supplies in the restaurant and the performances do not relate to the students. That is correct if one looks only at the money transaction. There is a direct link between the meal or entertainment and the customer. However, one has to take a broader view in order to give effect to the Directive and the exemption contemplated.

35. By including related supplies in the exemption, the Principal VAT Directive seeks to include those supplies which are sufficiently close to the principal supply. These supplies must be included, even if ordinarily they would be separate supplies paid for by a third party. If the supplies are viewed in the abstract, which is to say that

one looks to who pays as the recipient of the supply, then the spirit and intendment of the Directive would be defeated. The exemption is intended to allow publicly funded bodies which supply education to members of the public not to be regarded as taxable persons. The Tribunal finds that the students directly benefit even though the supplies in question are to third parties.

Conclusion

1. The Tribunal allows the appeal and finds that the Appellant has discharged their burden of proof on the balance of probabilities.
2. The operation of the College Restaurant is an integral part of the provision of educational and vocational training. It is required as part of the examination body requirement and as part of the course and curriculum. It is a closely related supply to the supply of education and therefore exempt.
3. The performances conducted by the Department of Dramatic Arts are also treated as supplies which are closely related to a supply of education and/or vocational training.
4. The supplies of catering and entertainment are therefore closely related supplies to the principal supply of education for the purposes of the exemption provided under Article 132 of the Principal VAT Directive and its implementing provisions in the VATA 1994.
5. The Appeal is accordingly allowed. No issues of costs were raised at the hearing.
6. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

**DR K KHAN
TRIBUNAL JUDGE**

RELEASE DATE: 5 November 2012

