

[2019] UKFTT 321 (TC)



TC07149

Appeal number: TC/2017/01854

VALUE ADDED TAX – private tuition exemption – whether teaching Ceroc dancing is the teaching of a subject ordinarily taught in schools or universities – held yes – whether Ceroc dancing is a purely recreational activity – held not – whether dance as ordinarily taught in schools is a purely recreational activity – held not – appeal allowed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

ANNA COOK

Appellant

- and -

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

**TRIBUNAL: JUDGE PHILIP GILLETT
CHARLES BAKER**

Sitting in public at Taylor House, London on 3 to 10 May 2019

Dario Garcia, of Mishcon de Reya LLP, for the Appellant

**John Brinsmead-Stockham, counsel, instructed by the General Counsel and
Solicitor to HM Revenue and Customs, for the Respondents**

DECISION

INTRODUCTION

1. These three consolidated appeals are principally concerned with the liability of the Appellant (“Ms Cook”) to account for value added tax (“VAT”) in respect of supplies of services that she made in the period 1 October 2010 to 16 September 2012 (“the relevant period”), namely supplies of Ceroc dancing classes taught personally by Ms Cook (“the relevant supplies”). More particularly, the first two appeals are concerned with whether those supplies of services were exempt under the exemption in Principal VAT Directive (2006/112/EC) (“PVD”) Article 132(1)(j), and s31 and Sch 9 Group 6 Item 2 of the Value Added Tax Act (“VATA”) 1994 (“the private tuition exemption”).

2. The third appeal concerned a penalty issued to Ms Cook for failing to notify the Respondents (“HMRC”) of her liability to register for VAT in respect of the relevant period. That penalty has now been withdrawn by HMRC and so that appeal is no longer before the Tribunal.

THE FACTS

3. We received witness statements and oral evidence from Ms Cook, Michael Ellard, owner of Ceroc Enterprises Ltd, the company which owns the rights to the Ceroc brand and intellectual property, Tim Sant, Head of Dance at Ceroc Enterprises Ltd, Claire Jiggins, a schoolteacher and Ceroc enthusiast, and Joanna Hastie, a solicitor who works for HMRC. We found all witnesses to be very open and honest and also received a very substantial bundle of documents. On the basis of this evidence we make findings of fact as set out below.

Summary of Facts

4. There is no real dispute between the parties as to the facts.

5. Ms Cook makes supplies of Ceroc dancing classes to the general public under the terms of a franchise agreement with Ceroc Enterprises Limited (“the franchisor”).

6. Ms Cook has carried on a business of supplying Ceroc dancing classes to the general public in the following ways:

(1) Ms Cook traded as Ceroc Fusion Limited (“CFL”) between 25 September 2006 and 30 September 2010,

(2) Ms Cook then operated as a sole trader, trading as “Ceroc Fusion”, between 1 October 2010 and 16 September 2012 (ie the relevant period), and

(3) Ms Cook incorporated and began to trade as Ceroc Fusion (East Anglia) Limited (“CFEA”) on 17 September 2012.

7. Ms Cook did not register for VAT in the relevant period, and did not account to HMRC for any VAT in respect of that period.

The relevant supplies

8. The teaching of Ceroc uses a form of pairs dancing that incorporates moves from many other styles of dance (eg Ballroom, Salsa, Jive, Hip Hop and Tango), and involves a particular methodology for learning those moves. Ceroc teachers are only allowed to teach moves which are set out on the Ceroc intranet, which illustrates approximately 900 different moves.

9. All Ceroc dancing classes follow a set format that involves:

(1) A five minute warm-up session.

(2) A Beginners' Class for 45 minutes where participants learn three or four basic moves out of a fixed set of 12.

(3) A 15 minute Beginners practice session.

(4) An Intermediate Class for 30 minutes (subject to demand) where participants learn four or five more advanced moves. The Intermediate syllabus is twelve "classic" moves and a number of advanced moves to make a total of 36 at the relevant time. The total has varied slightly from time to time.

(5) During this time Beginners dance separately with experienced volunteers known as "taxi-dancers".

(6) A Freestyle session for 90 minutes where all participants dance to music played by a disc-jockey ("DJ"). During this time the instructor will observe the class and effectively give one-to-one tuition as required.

10. Customers may attend for all or only part of the class and do not need to attend every class on a sequential basis but Beginners are only allowed to progress to the Intermediate Class when they have attended six Beginners Classes, by which time they should have learnt all of the 12 basic moves which are taught to Beginners.

11. When they progress to the Intermediate level, students are taught a much wider range of moves, including 24 Classic Moves and a large number of more advanced moves. After attending six Beginner Classes and two "courses" of Intermediate Classes of 12 sessions each, most students will have learnt approximately 84 moves.

12. During the relevant period when Ms Cook was carrying on the business of supplying Ceroc dancing classes as a sole trader:

(1) Ms Cook supplied the classes at 11 venues throughout Norfolk.

(2) There was no set course of classes for customers to enrol into, instead customers were able to turn up to classes whenever, and wherever, they wished to.

(3) In order to supply the classes Ms Cook hired other self-employed individuals (“staff hire”) including a DJ for each class, someone to work on the door, and in some cases an instructor to teach the class.

(4) In order to participate in a Ceroc dancing class, customers were required to purchase Ceroc life membership for a small nominal fee (between £1-£3), and then to pay a fixed fee (between £5-£8) for each class (“the class fee”). In practice Ms Cook included the membership fee in the fee for the first class.

(5) Ms Cook received all of the class fees and was required to pay a percentage of her takings (usually between 9-13%) to the franchisor.

(6) The class fee was charged in respect of the evening as a whole (ie including all of the elements set out above).

(7) Ms Cook paid all of the expenses of the business (e.g. venue hire, staff hire).

13. Ms Cook also organised what were termed Freestyle or Party Evenings approximately once a month in each area in which she taught. We were not provided with any substantial evidence as to what happened at these events. There was no formal tuition at these events but HMRC did not seek to separate out the treatment of these supplies from that of the normal evening classes and neither will we.

14. Although, as set out above, Ms Cook engaged instructors to teach some of the Ceroc dancing classes that she supplied, these appeals are concerned only with the classes that were personally taught by Ms Cook.

More Detailed Findings

15. Most venues provided a licensed bar but the drinking of alcohol was not a feature of the evenings. The provision of a licensed bar was advertised on Ms Cook’s flyers, but most customers drank soft drinks rather than alcohol.

16. A number of suggestions were put forward as to why the existence of a licensed bar was advertised, including:

(1) It was an added attraction for customers.

(2) The venue asked for it to be advertised.

(3) It was a warning to parents of any under-age children attending that there would be a licensed bar at the premises.

(4) It was a warning to customers of a religious faith which prohibited the consumption of alcohol.

17. Ceroc evenings were advertised as being a fun-night out and a way of meeting members of the opposite sex. This was very much a part of the brand image and was clearly designed to maximise attendance.

What is Ceroc?

18. Ceroc is a commercial enterprise earning income from dance and trading on the franchise model. First and foremost we find that Ceroc is a brand, promoting and

selling an evening of entertainment, socialising and dance tuition. Ms Cook was not concerned with the higher levels of dance tuition or competition also run by Ceroc.

19. Secondly, both Ms Cook and Mr Ellard described Ceroc as an approach or methodology of teaching dance and we accept this as factually correct. In his witness statement, Mr Ellard explained that the twelve basic Ceroc moves were designed to cover many core competencies and techniques. He then set out a table listing the application of those moves to a wide range of dance forms. The main distinguishing feature of the Ceroc approach was avoiding the use of traditional technical jargon. The aim of this down-to-earth approach to terminology was to make the teaching more acceptable to men who might otherwise be reluctant to engage.

20. The more difficult question is whether or not the dancing which is taught is a particular dance, such as waltz or tango or salsa or jive, a broader style, such as Ballroom or Latin American or Jazz or Contemporary or Street, or merely a generic dance technique of broad application.

21. Key to this assessment in our view is that the Ceroc moves which a teacher such as Ms Cook is allowed to teach are set out on the Ceroc intranet, which illustrates approximately 900 different moves. Many of these are minor variations of others and there are approximately 500 moves if these minor variations are removed.

22. These 500 moves have been borrowed/adopted from a number of different dance styles, predominantly of a Latin American origin, but they also incorporate moves from other styles, including ballet. This compares with perhaps only 12 moves which are within the prescribed moves for a waltz. Ceroc is clearly therefore not comparable in its scope to a single dance such as a waltz or tango.

23. Given the number of moves which Ceroc teachers are allowed to teach we cannot regard what is being taught as a sub-set of Modern Jive, which was suggested by HMRC. In our view Ceroc dancing incorporates a wide range of moves and techniques from different dance genres and is therefore a generic dance technique of broad application.

The Ceroc Syllabus

24. Ceroc Enterprises Ltd has developed an extensive syllabus for its dance methods, which was prepared by Mr Sant after he joined the company in 2009. This syllabus mirrors very closely the national curriculum syllabus for dance in the Key Stage 3 and Key Stage 4 modules published by the Department of Education. It is also very comparable to the detailed syllabus prepared by AQA, an examination setting business, for their GCSE in dance.

25. The syllabus prepared by Mr Sant is very extensive and covers various workshops and opportunities to gain medals/awards for achievement at Ceroc, as well as more advanced studies, including academic study. However, Ms Cook did not provide any workshops or more advanced teaching and we are not therefore concerned with the more extensive syllabus.

26. Mr Ellard explained that he asked Mr Sant to develop this syllabus in order to give more credibility to his organisation as a serious teacher of dance. In addition he hoped to take Ceroc into schools but this has thus far been unsuccessful.

27. The Key Stage which most closely reflects the level at which Ms Cook was teaching is Key Stage 3. Mr Sant explained that there is considerable overlap between the various Key Stage levels since much of this is doing the same things but to a higher level of skill.

28. The Department of Education publication sets out the requirements of Key Stage 3 teaching of Physical Education in schools as follows:

“Key stage 3

Pupils should build on and embed the physical development and skills learned in key stages 1 and 2, become more competent, confident and expert in their techniques, and apply them across different sports and physical activities. They should understand what makes a performance effective and how to apply these principles to their own and others’ work. They should develop the confidence and interest to get involved in exercise, sports and activities out of school and in later life, and understand and apply the long-term health benefits of physical activity.

Pupils should be taught to:

- use a range of tactics and strategies to overcome opponents in direct competition through team and individual games [for example, badminton, basketball, cricket, football, hockey, netball, rounders, rugby and tennis]
- develop their technique and improve their performance in other competitive sports [for example, athletics and gymnastics]
- **perform dances using advanced dance techniques within a range of dance styles and forms**
- take part in outdoor and adventurous activities which present intellectual and physical challenges and be encouraged to work in a team, building on trust and developing skills to solve problems, either individually or as a group
- analyse their performances compared to previous ones and demonstrate improvement to achieve their personal best
- take part in competitive sports and activities outside school through community links or sports clubs.”

29. By way of illustration of the extent and nature of this syllabus we set out below the syllabus for the Ceroc Beginner Classes and a comparison of its objectives with those for Key Stage 3 which was prepared by Mr Sant.

Activity	Skills	Key Stage 3 targets
Dance the essentials Basic Step demonstrating the three core connection skills – hand at waist level, full weight transfer, pivoting grip.	Alignment, Balance, Stamina, Team Work, Rhythm, Timing, Mobility	I can make corrections from verbal cues. I can recognise changes of speed in music and respond with good timing.
Learn and perform the 12 core movements at Beginner level. Dance them with consistent technical accuracy.	Alignment, Balance, Flexibility, Strength, Frame, Core, Control, Coordination, Posture, Compression, Tension, Extension, Partner Work, Mobility	I can make corrections from verbal cues. I can demonstrate a variety of actions. I can perform different dances to a good standard with confidence, control and fluency.
Learn and perform the 8 core routine compositions	Alignment, Balance, Flexibility, Strength, Frame, Core, Control, Coordination, Posture, Compression, Tension, Extension, Partner Work, Complex Sequences, Travelling, Stamina, Transition, Rhythm, Timing	I can demonstrate a variety of actions. I can remember and repeat short phrases of movement. I can talk about dance using relevant vocabulary.
Dance to a wide range of different music genres and demonstrate dynamic variation through styling and expression.	Characterisation, Timing, Rhythm, Sharing Ideas, Musicality, Recalling Complex Sequences, Dynamics, Expression, Improvisation, Accents, Tempo	I can recognise changes of speed in music and respond with good timing. I can choose and develop movement material with imagination, making important decisions.
Freestyle dance, creating own movement based on taught material.	Characterisation, Decision Making, Timing, Rhythm, Musicality, Dynamics, Expression, Improvisation, Composition, Choreography	I can choose and develop movement material with imagination, making important decisions.
Choreograph your own sequences of movement and dance them.	Characterisation, Decision Making, Timing, Rhythm, Musicality, Dynamics, Expression, Improvisation, Composition, Choreography	I can work alone and in a group to choreograph sequences of movement.
Dance with the Taxi group and discuss targets for development. Communication, Decision Making, Target	Setting, Health and Safety, Sharing Ideas, Peer Appraisal, Self-Appraisal, Group work, Listening.	I can talk about dance using relevant vocabulary. I can put suggested improvements into practice.

THE LAW

30. The legislation we are required to address is relatively limited and is set out in Art 132(1)(j) of the PVD and s31 and Schedule 9 Group 6 Item 2 of the VATA 1994. They provide as follows:

31. PVD Article 132(1)(j) provides:

“(1) Member States shall exempt the following transactions

(j) tuition given privately by teachers and covering school or university education.”

32. This exemption is given effect in UK law by s31 and Schedule 9 Group 6 Item 2 of the VATA 1994, which state:

“31 Exempt supplies and acquisitions

(1) A supply of...services is an exempt supply if it is of a description for the time being specified in Schedule 9...”

“Schedule 9 Group 6 Item 2

The supply of private tuition, in a subject ordinarily taught in a school or university, by an individual teacher acting independently of an employer.”

33. It is agreed between the parties that Article 132(1)(j) of the PVD and the UK implementation of it are identical in their effect.

34. We were also referred to a number of cases:

Haderer v Finanzamt Wilmersdorf (Case C-445/05)

Ingenieurburo Eulitz GbR v Finanzamt Dresden I (Case C-473/08)

A&G Fahrschul-Akademie GmbH v Finanzamt Wolfenbittel (Case C-449/17)

Cheruvier v HMRC [2014] UKFTT 007 (TC)

Hocking v HMRC [2014] UKFTT 1034 (TC)

Tranter v HMRC [2014] UKFTT 959 (TC)

Newell v HMRC [2015] UKFTT 535 (TC)

DISCUSSION

35. In *Haderer* a reference was made to the CJEU to determine whether, in order for the exemption to apply, the tuition services in question were required to be provided directly to the students as recipients of the services, or whether it was sufficient for the services to be carried out in a school or university.

36. This is not the question at issue in this case. It is clear, and accepted by HMRC, that Ms Cook satisfies the requirement, in Art 123(1)(j), imposed by the term “given privately by teachers”, and the corresponding requirement, in the VATA, of being “an individual teacher acting independently of an employer”, that the supplies must be made in an independent capacity. However, *Haderer* is instructive for the guidance it gives in other areas.

37. In its judgment, the CJEU referred, at [18], to the well-known principles of construction of exemptions from VAT. The terms used to specify those exemptions are to be interpreted strictly, because they constitute exceptions to the general principle that VAT is to be levied on all services supplied for consideration by a taxable person. However, the interpretation of those terms must be consistent with the objectives pursued by those exemptions and comply with the requirements of the principle of fiscal neutrality inherent in the common system of VAT. Therefore, the requirement of strict interpretation does not mean that the terms used to specify the exemptions should be construed in such a way as to deprive the exemptions of their intended effect. Those principles apply equally to the specific conditions laid down for the exemptions to apply.

38. The CJEU went on, at [22], to observe that, under the Sixth Directive (the predecessor to the PVD) there was no precise definition of the term “school or university education” for the purposes of the exemption. It did so because, although the referring court had not expressed any doubt whether the ceramics and pottery courses provided by Mr Haderer fell within that expression, the German Finanzamt had submitted that those courses did not involve the same demands as those of courses normally given in schools or universities, but were intended purely for leisure purposes.

39. In that regard, the CJEU said, at [24] – [26]:

“24. In that regard, although the terms used to specify the exemption envisaged under art 13A(1)(j) of the Sixth Directive are, admittedly, to be interpreted strictly, a particularly narrow interpretation of 'school or university education' would risk creating divergences in the application of the VAT system from one member state to another, as the member states' respective education systems are organised according to different rules. Such divergences would be incompatible with the requirements of the case law referred to in para 17 of this judgment.

25. Furthermore, in so far as the Finanzamt's arguments on that point are based on a particular interpretation of 'school' or 'university' in terms of the German education system, it should be noted that whether a specific transaction is subject to or exempt from VAT cannot depend on its classification in national law (see *Kingscrest Associates* and *Montecello* (para 25)).

26. While it is unnecessary to produce a precise definition in this judgment of the Community concept of 'school or university education' for the purposes of the VAT system, it is sufficient, in this case, to observe that that concept is not limited only to education which leads to examinations for the purpose of obtaining qualifications or which provides training for the purpose of carrying

out a professional or trade activity, but includes other activities which are taught in schools or universities in order to develop pupils' or students' knowledge and skills, provided that those activities are not purely recreational.”

40. The CJEU therefore made clear that the concept of school or university education was not limited to courses leading to examinations. In addition, it did not limit the exemption to defined programmes.

41. In her opinion to the Court in this case, Advocate General Sharpston, at [89] of her opinion, stated that there should be a “defining line between exempt tuition and purely recreational activities of no educational value”. She then went on to say “but any subject or activity in which instruction is commonly given in schools or universities must in my view fall within the scope of the exemption, regardless of whether it follows a strictly defined programme or curriculum.”

42. The CJEU did not adopt the same clear defining line between the presence and absence of instruction as had the Advocate General, but it did say that an activity which was ordinarily taught in schools or universities could be taken outside the concept of “school or university education” if it was purely recreational.

43. In *Hocking*, at [51], Judge Roger Berner said:

“An activity taking place at a school or university in respect of which there is no element of teaching cannot fall within the concept. On the other hand, the mere presence of an element of teaching, however minimal, cannot shift an activity, which is otherwise purely recreational, from one side of the line to the other. It is a question of degree. Within schools (but perhaps not universities) any activity, even one that has no educational content or value as such, will commonly be accompanied by some element of instruction. The nature of such instruction is a relevant factor, but the mere fact of it cannot be decisive. The question is whether, having regard to the nature of the instruction, and the educational content or value of the activities, those activities as performed in the school or university are purely recreational, so as to fall outside the concept of school or university education.”

44. In *Eulitz*, at [38], the Court said:

“Activities other than teaching in the strict sense can also constitute such tuition, provided that they are carried out, essentially, in the context of the transfer of knowledge and skills between a teacher and pupils or students and cover school or university education.”

45. The UK legislation on this subject is slightly different to Art 132(1)(j) of the PVD but it is agreed that it is identical in its effect, especially if interpreted as is suggested in *Haderer*, in that it provides exemption for:

“The supply of private tuition, in a subject ordinarily taught in a school or university, by an individual teacher acting independently of an employer.”

46. Putting these principles together, the requirements for an activity to qualify for this exemption are therefore:

(1) That the subject or activity should be one that is ordinarily, or commonly, taught in schools or universities.

(2) The subject or activity is not limited only to education which leads to examinations for the purpose of obtaining qualifications or which provides training for the purpose of carrying out a professional or trade activity, but includes other activities which are taught in schools or universities in order to develop pupils' or students' knowledge and skills.

(3) The subject or activity should not be one that is purely recreational.

(4) The supply must be one of tuition in that subject or activity, in the sense of a transfer of knowledge or skills. The tuition must be educational in character but, beyond that, there is no test of comparability with what actually happens in a school.

(5) The mere presence of an element of teaching cannot shift an activity which is otherwise purely recreational from one side of the line to the other.

47. This last requirement is not one of absolute clarity in our minds. In *Haderer* the CJEU used the expression “purely recreational”, which, given a strict reading, means absolutely or totally recreational. In *Hocking* however, Judge Berner declined to give it such an absolute interpretation and suggested that the question to be determined was one of degree. *Hocking* is not of course binding on us but we see no reason to depart from Judge Berner’s line of reasoning.

48. This aspect was also considered by Judge Raghavan in *Tranter* where he said, at [52]:

“On the one hand the exemption does not cover the teaching of something which is purely recreational. It must develop the pupil’s or student’s knowledge and skills. (*Haderer*). We would add that the reference to knowledge and skills in this context **must we think mean more than knowing how to do the recreational activity itself** otherwise recreational activities would probably always be educational too and the distinction would be meaningless. Also, it is not enough to show that because an activity is taught in a school or university that it is covered by school or university education as recreational activities may be undertaken in schools or universities.”

49. Unfortunately we do not find this formulation of great assistance in trying to decide where we should draw the dividing line. In many ways it is identical to Judge Berner’s observation that “the mere presence of an element of teaching, however minimal, cannot shift an activity, which is otherwise purely recreational, from one side of the line to the other.” Again we are left with the proposition that it is a matter of degree.

50. Counsel suggested that we were therefore left with two issues to consider:

(1) HMRC accept, and we think it unarguable to suggest otherwise, that dance is a subject which is commonly taught in schools. The question is whether or not teaching Ceroc can be considered as the same as teaching dance.

(2) Is Ceroc a purely recreational activity, or at least one with so little educational content that it should be treated as such.

51. We are not clear however that item (2) is a proper reflection of what was said by the CJEU in *Haderer*. In *Haderer*, at [26], the Court said:

“but includes **other activities which are taught in schools** or universities in order to develop pupils' or students' knowledge and skills, provided that **those** activities are not purely recreational.”

52. In other words, what the CJEU is saying, in our view, is that the question is not whether or not the subject being taught by the private teacher is purely recreational but whether or not the subject or activity being taught in schools is purely recreational.

53. In case we are wrong on this last point we will look at all three questions.

Is teaching Ceroc teaching Dance?

54. We were presented with no substantial evidence as to how dance is taught in schools as a generality and indeed this is not directly relevant. However, we would have found it much easier to determine whether teaching Ceroc amounted to teaching dance, as taught in schools, if we had a better idea of how dance is actually taught in school, ie what techniques and methodologies are used in order to teach dance in schools in practice.

55. We did however receive evidence from Mr Sant and Mrs Jiggins, who is a school teacher, and we found their input very useful.

56. Both were consistent in their view that dance is not taught very well in most schools, frequently because of the lack of fully qualified dance teachers. What happens in practice, in their experience, is that a teacher in another subject, often Physical Education, as is Mrs Jiggins, is “selected” to teach dance. They then teach dance based on ideas from their own experience or enthusiasms. In Mrs Jiggins’ case, she is a Ceroc enthusiast and she therefore teaches dance in her school using the Ceroc moves and methodology. Others may teach what might be termed Contemporary, Latin, Jazz, Street or Ballroom, but they would have to make use of a “style” of dancing in order to teach dance.

57. It is blindingly obvious that it is impossible to teach dance without making use of a form or style of dancing, but in order to qualify as a subject which is commonly taught in schools it is necessary that the form of dance in question is of sufficiently broad application to be regarded as the teaching of dance as a generic subject.

58. We heard evidence from Mr Sant that what might be considered correct “posture” for Ballroom would not be correct “posture” for Latin, and that there would be further variations within what would be regarded as correct “posture” if we were to look at the individual dances such as Waltz or Tango or Salsa or Paso Doble.

59. In *Cheruvier* the tribunal was considering dance, but the dance in question was belly-dancing. In *Hocking* the tribunal was considering pilates, and in *Tranter* the tribunal was considering yoga. In all cases, the conclusion of the tribunal was that although the subject in question might contribute to the physical and/or mental development of the individual, it was too narrow to be considered as something which was commonly taught in schools.

60. The simple question therefore is whether or not Ceroc is such a narrow form of dance that it cannot be regarded as commonly taught in schools.

61. Mr Brinsmead-Stockham, for HMRC, referred us to a number of documents, including the franchise agreements covering the relationship between Ceroc Enterprises Ltd and Ms Cook, which described Ceroc as a “form” or “style” of dance. This he argued meant that Ceroc was itself a style of dance, such as Salsa or Modern Jive, which meant that it was too narrow a subject to be considered as being **commonly** taught in schools.

62. It is usually problematic to consider individual words in documents which were prepared for one purpose, in this case for the purpose of protecting the intellectual property of Ceroc Enterprises Ltd, and to take them out of context and apply them for another purpose in another context. We find it totally understandable that Mr Ellard would want to protect his intellectual property and we find it very difficult to think of alternative words to “style” and “form” which might have been used in the context of a document designed to do that. We did not therefore find these arguments persuasive.

63. Mr Brinsmead-Stockham also referred us to marketing content on the Ceroc website from 2012 which described Ceroc as a fusion of jive and salsa. We also noted another, later, marketing document on the website which stated:

“Our syllabus, devised by our very own Dance Education Specialist, will help you develop a range of different skills, applicable to all partner and solo dance styles, reflecting the requirements detailed in the Dance National Curriculum.

Ceroc has developed over time with the changing demands of the National Dance Curriculum. Our syllabus has been devised by a Dance Education Specialist, built to develop a wide range of techniques and practices for anybody who is studying Dance GCSE or A-level, or those who wish to pursue a career in the field of dance. Ceroc has developed its own unique and versatile style: the skills you acquire are transferrable to other partner dance styles (Jive, Salsa, West Coast Swing, Tango, Ballroom, Latin), solo dance styles (Jazz, Ballet, Musical Theatre, Street) and National Curriculum specifications (all Contemporary disciplines, Choreography, Expression and Dance Appreciation).”

64. Mr Brinsmead-Stockham suggested that this later, broader, description of Ceroc on the company's website might have been designed to assist Ms Cook with the current appeal, but Mr Ellard rejected this. We accept Mr Ellard's denial.

65. We have found as a matter of fact that the Ceroc "vocabulary" consists of 900 different moves, or at least 500 if we ignore those which are merely minor variations of each other. We have also found that, in its essence, Ceroc is a methodology or an approach to teaching dance.

66. We therefore find that teaching Ceroc should be considered as being the same as teaching dance in a school or university and that the teaching of Ceroc is therefore to be treated as being the teaching of a subject which is commonly taught in schools.

Is Ceroc Purely Recreational?

67. We have seen that in both *Hocking* and *Tranter* the tribunals decided that the mere presence of some level of education did not necessarily prevent the activity in question being considered as purely recreational. We must therefore consider what precisely is being supplied at a Ceroc evening.

68. Both parties were agreed that we were required to look at the actual supply being made and not the motivation of the individual pupil. There was some discussion as to whether or not the supply was being made to each individual member of the class, or whether it should be considered as being a supply to the class as a whole, and, as a matter of simple legal analysis, we consider that the supply was made to each individual member of the class. We are then, however, required to carry out an objective analysis to establish the nature of that supply and, in doing so, we must consider what an average reasonable customer, was actually receiving.

69. Mr Brinsmead-Stockham argued strongly and persuasively that the advertising for Ceroc events concentrated on the social and fun aspects of the event. However, as set out above, we have found that Ceroc is first and foremost a brand, promoting and selling an evening of entertainment, socialising and dance tuition. The advertising of the events as fun and entertaining does not detract from the fact that the underlying purpose was to teach dance. There is nothing wrong in our view with the idea that people will learn more if they are enjoying themselves. In addition, Ms Cook and, perhaps more importantly, Mr Ellard were running a business and a prime purpose of both Ms Cook and Mr Ellard therefore was maximising the number of people coming through the door. The advertising was clearly designed to achieve that objective.

70. In our view, the fact that the advertising concentrated heavily on the fun and social aspects of Ceroc evenings does not mean that there was no meaningful educational content.

71. In our view educational content means the transfer of knowledge and skills from teacher to pupil and we have found, as a matter of fact, that the transfer of knowledge and skills was a very significant part of what happened at a Ceroc event.

72. We therefore find that a Ceroc dance class, and the subject being taught there, is not purely recreational.

Is Dance Purely recreational?

73. As stated above, this appeal was argued on the basis that we were required to decide if Ceroc was a purely recreational activity. We are not however clear that this is what the CJEU said in *Haderer*. In our view, the words in para [26] of *Haderer* were referring to whether or not the subject or activity being taught in schools was purely recreational.

74. We received no argument from either party on this question, possibly because HMRC conceded in an email dated 11 December 2017, and confirmed at the hearing, that they:

“accept that dance, as defined in the national curriculum, GCSE and A-level syllabuses, and degree courses at various universities is “a subject ordinarily taught in a school or university.”

75. There was no further argument from either party as to whether or not dance was a purely recreational activity.

76. We have quoted the Key Stage 3 part of the physical education section of the National Curriculum in which dance is a compulsory element. The introduction to that section says:

“Purpose of study

A high-quality physical education curriculum inspires all pupils to succeed and excel in competitive sport and other physically-demanding activities. It should provide opportunities for pupils to become physically confident in a way which supports their health and fitness. Opportunities to compete in sport and other activities build character and help to embed values such as fairness and respect.

Aims

The national curriculum for physical education aims to ensure that all pupils:

- develop competence to excel in a broad range of physical activities,
- are physically active for sustained periods of time,
- engage in competitive sports and activities,
- lead healthy, active lives.”

77. In our opinion, based on the extracts from the National Curriculum, and other documents presented to us, a dance class in which there is an intentional transfer of knowledge or skills from teacher to pupil has a serious educational purpose and is not therefore a purely recreational activity.

78. If therefore our interpretation of what was said by the CJEU in *Haderer* is correct, Ms Cook’s claim succeeds on that ground as well.

DECISION

79. For the reasons set out above therefore we decided that Ms Cook’s appeal should be ALLOWED.

80. 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.

**PHILIP GILLETT
TRIBUNAL JUDGE**

RELEASE DATE: 21 MAY 2019