[2022] UKFTT 00028 (TC)

TC 08380

VAT - private tuition exemption – whether Appellant has demonstrated that dog grooming is taught at a wide number of schools or universities in the EU – no – appeal dismissed.

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appeal number: TC/2019/09585

BETWEEN

JULIE LALOU T/A DOGS DELIGHT **Appellant**

-and-

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

TRIBUNAL: JUDGE DAVID BEDENHAM
SONIA GABLE

The hearing took place on 7 October 2021. With the consent of the parties, the form of the hearing was video with the parties attending through the Tribunal video platform. A face to face hearing was not held because of the ongoing Covid 19 pandemic and social distancing guidance. The documents to which we were referred were contained in a hearing bundle running to 500 pages (including some legislation and case law) and an authorities bundle running to 191 pages.

Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.

Jane Deeks, Deeks VAT Consultancy Ltd, for the Appellant

Lee Dando, litigator of HM Revenue and Customs' Solicitor's Office, for the Respondents

DECISION

INTRODUCTION

1. Ms Lalou teaches dog grooming. She submits that the supplies she makes in that respect are exempt for VAT purposes. Accordingly, Ms Lalou submits that she should be repaid VAT that she has wrongly accounted for (at the standard rate) and should not be liable to be compulsorily registered for VAT.

2. The key issue in dispute in this appeal is whether the supplies made by Ms Lalou fall within the private tuition exemption as for provided by Article 132 of the Principal VAT Directive ("PVD") as implemented into domestic law by section 31 of, and Item 2, Group 6 of Schedule 9 to, the Value Added Tax Act 1994 ("VATA 1994").

BUNDLES

3. This was yet another case in which the pagination in the electronic bundle did not match the PDF page number. This was because the index and cover sheets at the beginning of each section of the bundle had not been paginated. It is much easier to navigate and cross reference the bundle during the hearing if the pagination matches the PDF page number. We ask those responsible for preparation of electronic bundles to bear this in mind.

BACKGROUND

4. The following background was not in dispute:

5. The Appellant operates a business providing dog grooming and dog grooming courses. This appeal is concerned only with the supplies of dog grooming courses made by the Appellant.

6. The Appellant was registered for VAT from 1 July 2006.

7. The Appellant came to understand that her supplies of dog grooming courses were exempt from VAT.

8. In December 2017, the Appellant submitted to HMRC a VAT de-registration application stating:

> "…the business offers courses that fall within VAT notice 701/30. In particular 701/30.6 Private Tuition 6.1 – the treatment of Private Tuition, when a sole proprietor or member of a partnership teaches a subject, which is one taught regularly in a number of schools or Universities then the supply of Private Tuition is exempt. [The Appellant's] courses of Dog Grooming is taught in a number of colleges and therefore we believe the supply to be exempt of VAT.
>
> We have taken guidance from HMRC (as a similar business of Dog Grooming has obtained relief from having to charge VAT) and a ruling given [by HMRC] we believe [the Appellant] fits the criteria and therefore is VAT exempt on the supply of training side of the business.
>
> [The Appellant] also provides other grooming services, which is not exempt from VAT, but [the Appellant] confirms that the turnover from the activity will be below the VAT registration level…and as a consequence wishes to apply now for deregistration."

9. On 6 June 2018, HMRC visited the Appellant. During that visit the Appellant explained to HMRC that the supplies of dog grooming courses formed a major part of the business turnover and the standard rated supplies (of dog grooming) were below the VAT threshold.

10. As recorded in HMRC's Statement of Case: "On 4 September 2018, [HMRC], having carried out a number of checks on the available records deemed the Appellant could deregister from 18 December 2017."

11. On 11 October 2018, the Appellant submitted an Error Correction Notice by which she sought repayment of £102,301 which was said to have been overpaid as a result of her incorrectly treating the exempt supplies of dog grooming courses as standard rated supplies.

12. On 31 July 2019, HMRC wrote to the Appellant stating that, despite previously agreeing that the Appellant could deregister, the supplies of dog grooming courses were not exempt and therefore the Appellant's VAT number would be reinstated and the VAT ledger updated. In that correspondence, HMRC stated "to be eligible for exemption dog grooming would need to be a course that is 'ordinarily' taught in schools and Universities which it is not…"

13. On 2 August 2019, the Appellant wrote to HMRC giving a list (with hyperlinks) to seven "local Colleges and Universities where the Level 3 Dog Grooming Diploma is ordinarily taught". The Appellant went on to state "There are many more within the UK".

14. On 22 August 2019, HMRC wrote to the Appellant stating that her VAT number had been reinstated and the next VAT return due was for the period 1 July 2019 to 30 December 2019. The letter went on to state "we are missing a return for the period 1 April 2019 to 30 June 2019. Please send us the figures for this period…"

15. On 2 September 2019, HMRC wrote to the Appellant (in response to an email from the Appellant asking why there had been no reply to the 2 August 2019 correspondence) stating:

> "Our policy teams had ruled that your supply of dog grooming training was not education and thus not exempt…they asked me to reinstate your VAT registration and which is why you have received the letter from the registration unit…"

16. On 4 September 2019, the Appellant wrote to HMRC stating that her business was a City & Guilds approved centre and that the courses offered were Level 2 and Level 3 which were equivalent to GCSE and AS/A level respectively. The Appellant included supporting documentation including extracts from and links to websites demonstrating that dog grooming courses were offered at some 34 colleges, many of which led to the City & Guilds or OCN Level 2 and/or Level 3 qualification . This letter was treated as a request for a review.

17. On 4 October 2019, HMRC notified the Appellant of the outcome of the review which was that HMRC upheld the decision that the Appellant's supplies of dog grooming training were not exempt and therefore rejected the Appellant's error correction notice. The reviewing officer stated:

> "When an individual teacher supplies education or training in a personal capacity or as a member of a partnership, on their own account and at their own risk, the supply is exempt under item 2, Group 6, Schedule 9 of VATA94. However, this is only providing that the instruction is in a subject ordinarily taught in a school or university.
>
> There is no dispute regarding whether Ms Julie Lalou is the only trainer, and therefore, whether condition '(a)' above has been met. The issue is instead whether the subject is one taught regularly in a number of schools or universities.
>
> …

> The evidence provided does support that other universities do supply the course however, this alone does not support that they are 'ordinarily' taught in schools and universities.
>
> …"

18. On 9 October 2019, HMRC wrote to the Appellant stating that the Error Correction notice was also being rejected because "it only refers to years and not to prescribed accounting periods."

19. On 18 October 2019, the Appellant wrote to HMRC providing further information, and asking for reconsideration of the decision. This information included hyperlinks to colleges offering level 2 and/or level 3 City and Guilds Dog Grooming Courses, and a page from the City Guilds website which stated:

> "Level 3 Diploma in Dog Grooming (7863)
>
> If you are looking to start a career within the dog grooming industry, then this qualification is aimed at you.
>
> …
>
> This qualification is suitable if you are 16 years old, or over.
>
> You need to hold the City & Guilds Level 2 Certificate for Dog Grooming Assistants to start this qualification.
>
> You will gain the practical skills and knowledge that are important for working as a professional Dog Groomer. You could be a self-employer, work for a business or franchise, it could be based in a salon or a mobile unit. You could also progress to further learning and training in this area."

20. On 15 November 2019, HMRC assessed the Appellant to VAT in the sum of £12,203 in relation to quarterly VAT period 09/19 on the basis that no return had been submitted. The letter stated that no surcharge was payable on this occasion but warned that further defaults may result in a surcharge being levied.

21. On 25 November 2019, HMRC replied to the Appellant's 18 October 2019 correspondence as follows:

> "Dog Grooming courses are not a subject already taught in schools or universities, even where it is being taught in a Further Education college.
>
> …
>
> …as Dog Grooming is not on the National Curriculum, HMRC considers it not to be a subject that is ordinarily taught in schools and universities.
>
> Additionally…the students fund the course and cannot meet the vocational training exemption conditions…"

22. On 3 December 2019, the Appellant wrote to HMRC in relation to the assessment issued on 15 November 2019. The Appellant stated that there was an ongoing dispute as to whether the relevant supplies were exempt.

23. On 24 December 2019, the Appellant appealed to the Tribunal. This appeal therefore appears to have been filed late. However, taking into account all the circumstances (including that HMRC not having objected), we grant permission for a late appeal to be notified.

24. Attached to the Notice of Appeal was a letter dated 29 September 2019 from HMRC. The addressee was another taxpayer and the substance of the letter was that "all of the [dog] training…has taken place under the City and Guilds Scheme. I am satisfied that based on your representations this would be categorised as an exempt supply under the guidance in VAT

Public Notice 701/30." This would appear to be the "ruling" referred to in the Appellant's deregistration application.

SCOPE OF THE APPEAL

25. The Notice and Grounds of Appeal refer to an appeal against the following:

(1) The 4 October 2019 decision that the dog grooming courses were standard rated, rather than exempt supplies.

(2) The reinstatement of the Appellant's VAT number.

(3) The rejection of the Appellant's Error Correction Notice.

(4) The assessment for £12,203 for period 09/19.

(5) The surcharge warning.

26. At the outset of the hearing we queried the statutory basis for appealing against a "surcharge warning". The parties agreed that there is no right of appeal against such a warning.

27. The parties were agreed that, if the Tribunal found that the relevant supplies (or some of them) were exempt, the Tribunal should issue a decision in principle following which the parties would seek to agree an appropriate disposal of the appeal.

RELEVANT LEGISLATION

28. Article 132(1)(j) of the PVD provides:

> "Member States shall exempt the following transactions:
>
> …
>
> (j) tuition given privately by teachers and covering school or university education.
>
> …"

29. Section 31 VATA 1994 provides in relevant part:

> "(1) A supply of goods or services is an exempt supply if it is of a description for the time being specified in Schedule 9…"

30. Item 2 of Group 6 to Schedule 9 to VATA 1994 provides:

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

RELEVANT CASE LAW

31. In *HMRC v Anna Cook* [2021] UKUT 15 (TCC), the Upper Tribunal stated at paragraph 7:

> "The parties agreed, correctly in our view, that Article 132(1)(j) and the UK provisions were identical in their effect, with 'ordinarily' in the UK legislation to be read as meaning 'commonly'. It was also agreed that Ms Cook is entitled to rely on the direct effect in UK law of Article 132 (1)(j)."

32. In Case C-445/05 *Haderer*, the CJEU considered the private tuition exemption and held:

(1) Exemptions are to be interpreted strictly since they constitute exceptions to the general principle that VAT is to be levied on all services supplied for consideration by a taxable person.

(2) Nonetheless, the interpretation of the terms used to specify the exemptions must be consistent with the objectives pursued by those exemptions and comply with the principle of fiscal neutrality. Accordingly, the requirement of strict interpretation does not mean that the terms used to specify the exemptions should be constructed in such a way as to deprive the exemptions of their intended effect.

(3) 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.

(4) "Whilst 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 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."

(5) It is not sufficient for the tuition to cover school or university education; it must also be "given privately by teachers" – meaning provided by teachers "on their own account and at their own risk".

33. In Case C-473/08 *Eulitz*, the CJEU emphasised, at paragraph 32, that "tuition":

> "must be understood as encompassing, essentially, the transfer of knowledge and skills between a teacher and pupils or students."

34. The CJEU also stated in that case as follows:

> "no distinction should be made for VAT purposes between education provided to pupils or students who are receiving initial school or university training and that provided to those already holding school or university qualifications who, on the basis of those qualification, continue their professional training. The same applies to tuition covering that education."

35. In Case C-449/17 *A&G Fahrschul -Akademie GmbH*, the CJEU stated at paragraphs 25-26:

> "…as the Advocate General observes…the EU legislature intended to refer to a certain type of education system which is common to all Member States, irrespective of the characteristics particular to each national system.
>
> Consequently, the concept of 'school or university education' for the purposes of the VAT system refers generally to an integrated system for the transfer of knowledge and skills covering a wider and diversified set of subjects, and to the furthering and development of that knowledge and those skills by the pupils and students in the course of their progress and their specialisation in the various constituent stages of that system."

36. In *Anna Cook*, the Upper Tribunal:

(1) reviewed the CJEU case law and stated:

"The CJEU decisions…refer more often to the tuition of 'activities' that the tuition of 'subjects'. However, it is apparent that the CJEU is using the two terms synonymously. It was also common ground in this appeal that in order to fall within the exemption the subject or activity in question must be commonly taught in schools and universities."

(2) Cited with approval the following passage from *Hocking v HMRC* [2014] UKFTT 1034 (TC):

"It is not necessary that the tuition should mirror the way in which the subject or activity is taught in schools or university, or for it to be analogous to what is taught there. Mr Shepherd accepted that the two need not be identical. But he argued that the purpose of the exemption was to provide a level playing field between education provided at schools and universities and that provided privately by mirroring mainstream education, and that consequently the tuition had to be of a comparable standard, or of a similar nature and level. We do not agree. To impose such a test would, in our view, be to place a gloss on the legal test which is unwarranted. It would introduce a restrictive interpretation. The requirement is, first, that the subject or activity should be one that is commonly taught in schools or universities, and not one that is purely recreational; it must be part of school or university education. Secondly, 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."

(3) Made the following observations:

"(1) It is conceptually possible for a subject to be 'taught' in schools but nevertheless to be purely recreational. After school chess clubs or teacher led games at playtime, for example, might involve some element of tuition, but not as part of the relevant curriculum.

(2) It is also conceptually possible for a subject which is commonly taught in schools on a basis which is not purely recreational to be the subject of private tuition in a way which is purely recreational. An example would be a history quiz in which a quizmaster imparts knowledge to participants but purely for recreational purposes.

(3) Accordingly, we agree with HMRC that the 'purely recreational' qualification applies both to the subject taught in schools and to the particular supply under consideration.

(4) A determination of whether or not an actual supply is purely recreational must be answered by reference to all the circumstances of that supply. The extent to which a supply comprises tuition (namely the transfer of skills or knowledge) is relevant but not determinative."

37. In *Hocking*, the FTT stated at paragraphs 55-56:

"…the intended scope of the exemption does not depend on a particular activity being taught universally in schools or universities or…regularly so taught. However, the mere fact that an activity might be included, exceptionally, as part of a school curriculum would not be sufficient to enable it to be regarded as part of 'school or university education'. We consider the most helpful test is that referred to by the Advocate General in *Haderer*, namely that the activity must be one in which "instruction is *commonly* given" (our emphasis). It is a matter of judgment whether that test is satisfied in any particular case, but we find it helpful to approach the question from the opposite end, namely to ask whether the activity is only taught uncommonly.

> As a matter of ordinary language, it is clear that 'ordinarily' within Item 2 can be construed to mean 'commonly'. We consider that, to the extent that the ordinary language permits any other construction, it should be limited to the construction consistent with *Haderer*. The expression 'ordinarily taught' means commonly, or not uncommonly, taught."

38. We agree with the observations and approach of the FTT in *Hocking*.

39. We were also referred to *Premier Family Martial Arts LLP v HMRC* [2020] UKFTT 1 (TC. In that case the FTT considered the phrase "ordinarily taught in a school or university" and stated at paragraph 109:

> "…we think that the phrase as a whole is more naturally construed as requiring the relevant activity to be taught at a wide number of schools or universities in the EU…"

We agree with that approach.

40. We were also referred to a number of other FTT judgments. However, these appeals largely turned on their facts and do not materially assist us.

THE APPELLANT'S SUBMISSIONS

41. The Appellant submitted as follows:

(1) The Appellant offers the following dog grooming courses:

(a) A single session "learn to groom" course.

(b) A level 2 City and Guilds Dog Grooming Assistant course.

(c) A 25 day Open College Network professional dog grooming course.

(d) An "all inclusive" City and Guilds Professional Dog Grooming course.

(2) The dog grooming courses offered by her are not recreational and dog grooming is a subject that is ordinarily or commonly taught in schools and universities – which include Further Education colleges.

(3) The private tuition was provided by the Appellant alone.

(4) In VAT manual VATEDU40200 HMRC accept that "School or university education includes education ordinarily provided by further education colleges".

(5) The Appellant's research "found 88 colleges out of 293, equating to 30%, offer dog grooming courses either in their own right or as part of an Animal Care and Welfare or Animal Management Courses. Of the 88 colleges…57 appeared to provide the course in its own right…the fact that 30% of colleges provide dog grooming tuition is sufficient to evidence that dog grooming is a subject that is commonly taught in college."

(6) Dog grooming is a new industry that is growing at a huge rate. For there to already be 30% of the colleges researched teaching the subject supports that it is commonly taught.

(7) As part of the dog grooming courses, the Appellant teaches animal welfare, first aid and business management which are all commonly taught in schools and universities.

(8) The National Careers Service website shows "dog grooming" as a career and refers to attending a college course in dog grooming which tends to suggest that such courses are commonly taught.

(9) To the extent that HMRC rely on the fact that dog grooming is not on the national curriculum, this is irrelevant in circumstances where the courses are aimed at students above school age.

(10) To the extent that HMRC rely on the fact that dog grooming courses are not shown on the UCAS website, this is not surprising given the courses are not degree level.

(11) Other providers of similar dog grooming courses have been told by HMRC that their supplies are exempt. To treat the Appellant's supplies differently is a breach of the principle of fiscal neutrality.

(12) The Appellant also submitted that, even if the supplies were standard rated, it was unfair to reinstate the Appellant's VAT number. Having agreed that the Appellant could de-register for VAT, HMRC should not be permitted to change their mind.

42. During the hearing no submissions were made by the Appellant as to why the assessment was wrong (in principle or amount). In the Notice of Appeal, the Appellant simply stated that the assessment should be withdrawn because it "relates to a period when Ms Lalou should not be VAT registered".

HMRC'S SUBMISSIONS

43. HMRC submitted as follows:

(1) HMRC accept that "Schools and Universities" include Further Education Colleges.

(2) HMRC accept that the Appellant was teaching the courses "in her own capacity" as an individual teacher acting independently of an employer. However, the Appellant's website indicate that others may also be teaching the courses.

(3) The Appellant's "learn to groom" course is purely recreational. Therefore, the private tuition exemption cannot apply to supplies of that course.

(4) The other courses offered by the Appellant are not recreational and "probably amount to the transfer of knowledge and skills". However, dog grooming is not a subject that is ordinarily taught in schools or universities. Therefore, the private tuition exemption cannot apply to supplies of those courses.

(5) That dog grooming is not commonly taught is shown by the Appellant's own research which reveals only 88 out of the 293 colleges researched offered a course with a dog grooming element and only 57 of those appeared to provide such a course in its own right.

(6) HMRC found no dog grooming courses on the UCAS website.

(7) The National Careers Service website shows 87 dog grooming courses but 251 Pilates courses. Pilates has been held not to be a subject that is ordinarily taught.

(8) The test is not whether the subject is ordinarily taught in the UK but also in other member states.

(9) The Appellant has not established a breach of the principal of fiscal neutrality in circumstances where she has failed to demonstrate the precise similarities between her situation and that of the other taxpayer.

EVIDENCE AND FINDINGS OF FACT

44. During her opening submissions, Ms Deeks took us to the following documents:

(1) A list headed Association of Colleges which she had obtained from the internet and which listed "the formal names of the Corporations which operate as colleges in England as at 3 February 2020". There were 244 colleges listed. An updated version of this list listed 237 colleges as at 3 February 2021.

(2) A screen print from the National Careers Service website which referred to a career as a "dog groomer" and, under the sub-hearing "how to become a dog groomer" stated:

> "you can get into this job through:
>
> - a college course
> - an apprenticeship
> - working toward this role
> - specialist courses run by private training organisations.
>
> College
>
> You could take a course in dog training like:
>
> - Level 2 Certificate for Dog Grooming Assistants
> - Level 3 Certificate in Introductory Dog Grooming
> - Level 3 Diploma for Dog Grooming
>
> These are offered by colleges and some private training centres.

(3) A screen print from a search conducted on the "courses" section of the National Careers Service website for "dog grooming courses" which generated 28,445 results. The first 20 course "returns" were included on the screen prints. These 20 returns/results related to dog grooming courses that appeared to be offered by 6 different providers (4 of which were colleges included on the Association of Colleges and 2 of which appeared to be private training centres).

45. Ms Deeks stated that she had gone onto the website of each of the colleges listed on the Association of Colleges list and checked whether they offered a dog grooming course and had compiled a list setting out which colleges offered which courses. She said that 88 Further Education Colleges offered courses that had an element of dog grooming to them and 57 of these offered dog grooming as a free standing course. However, that list had not been included in the hearing bundle, nor had any other documents showing the fruits of the research conducted by Ms Deeks.

46. We asked Mr Dando whether HMRC accepted that 88 Further Education Colleges offered dog grooming courses. Mr Dando replied that he would like to ask Ms Deeks some questions about the internet research she had conducted. We therefore treated what Ms Deeks had said (as to the factual position) as evidence and allowed Mr Dando to cross examine her. Ms Deeks consented to this course of action but, in any event, it was in our view necessary in the interests of fairness. An advocate who, during submissions, makes statements of fact that are uniquely within his/her/their knowledge (and not otherwise evidenced) gives evidence. If that account is challenged by the other side, the interests of fairness and justice may require that the advocate be cross examined.

47. Mr Dando asked Ms Deeks whether some of the 88 colleges taught courses that were purely recreational. Ms Deeks replied "no" stating that all of those courses led to a qualification – mainly City & Guilds.

48. Mr Dando then put to Ms Deeks that there were many more than 237 colleges in England. Ms Deeks replied that she believes the list from the Association of Colleges to be an accurate list of the Further Education Colleges in England.

49. We accept Ms Deeks evidence that she reviewed the websites of the Further Education Colleges and found 88 that offered courses that had an element of dog grooming to them and 57 of these offered dog grooming as a free standing course that led to a qualification of some sort (albeit the date(s) on which the searches were conducted was not made clear to us). Of course, it would have been much preferable if the Appellant had provided us with documentation (such as print outs from the websites of the relevant colleges) generated by the search conducted by Ms Deeks but, in circumstances where the evidence given by Ms Deeks in that regard was not challenged, we accept it.

50. We also note that attached to a letter sent by the Appellant to HMRC in October 2019 was a list (with a hyperlink to the relevant page) of 34 colleges which appeared to offer the level 2 and/or level 3 courses offered by the Appellant. Of these, 21 appear to be included on the Association of Colleges list of Further Education Colleges provided to us by the Appellant. This provides further support for the fact that there are a number of Further Education Colleges that offer dog grooming courses similar to those offered by the Appellant (at least as at October 2019).

51. The Appellant provided a witness statement and gave evidence before us.

52. The Appellant's witness statement did little more than set out a basic chronology of events.

53. Before us, the Appellant confirmed the accuracy of her witness statement. No supplementary questions were asked of the Appellant by Ms Deeks. Cross examination by Mr Dando was also extremely limited; he only asked questions relating to whether the Appellant was the only person teaching the dog grooming courses. The Appellant's clear answer, which we accept, was that she was the only person that taught the courses and, to the extent her website suggested otherwise, this was because she was trying to make her business seem more substantial than it really was.

54. We asked the Appellant to provide us with some further detail in relation to her business. She told us:

(1) she became a dog groomer approximately 20 years ago.

(2) she wanted to teach dog grooming and so, approximately 15 years ago, gained an adult teaching qualification.

(3) Approximately 13 years ago she gained an assessor's qualification allowing her to issue City and Guilds qualification certificates.

(4) Shortly after gaining her assessor's qualification she became a City and Guilds "school" meaning that she is regularly audited by City and Guilds.

(5) Initially, the only taught course that she offered was the level 2 City and Guilds course.

(6) However, in 2017 the level 3 City and Guilds qualification became more onerous because it now required 200 hours of guided learning study. It was at this point that the Appellant started to offer the level 3 taught course. Around the same time more Further Education Colleges started offering the course as well.

(7) In 2018 the Appellant also started to offer the level 3 Open College Network course which was an equivalent qualification to the level 3 City and Guilds course.

(8) Both City and Guilds and Open College Network are regulated by Ofqual.

(9) Under the City and Guilds route, a student must complete level 2 before progressing to level 3. Under the Open College Network route a student can go straight into a level 3 course.

(10) It takes 28 days (in total) to complete the level 2 and level 3 qualifications on the City and Guilds route.

(11) It takes 25 days to complete the level 3 qualifications on the Open College Network route.

(12) The City and Guilds route is an assessment based qualification. She assesses the students at the end of the course.

(13) The Open College Network route is portfolio based so, whilst there is no formal assessment, she has to assess the students' portfolios.

(14) Her students are all aged over 18. She is not insured to offer the course to 16/17 year olds but understands that 16/17 year olds can study these courses at college.

(15) Her typical students are school leavers (18 years old) and individuals who have had children and now want a skill so as to set up their own business.

(16) She also offers a short learn to groom course which is a single session taster/introductory course. In fact, only two students have taken that course.

(17) Other businesses that operate in a materially identical way have told her that HMRC are treating their supplies as exempt. However, none of these businesses were willing to provide evidence to support this appeal because they did not want to rock the boat with HMRC.

(18) The Appellant's students are also offered "free" online courses in business management but this is not part of the City and Guilds or Open College Network. This online course is taught by someone else and is offered as an enticement to students.

55. We found the Appellant to be a straightforward witness. Her evidence was not challenged in any meaningful way and we accept it.

56. The documents we were provided with included a summary of the City and Guilds Level 3 Diploma in Dog Grooming which stated:

> "This qualification covers the skills you will need to progress to work as a Professional Dog Groomer. Mandatory content covers:
>
> Health and safety, legislation and codes of practice for the dog grooming industry
>
> Preparing, styling and finishing a dog
>
> Health checking and handling a dog in a dog grooming environment
>
> Customer service and record keeping in a dog grooming environment."

DISCUSSION AND DECISION

57. The burden of proof is on the Appellant. We are satisfied that the Appellant has established:

(1) Each of the courses that she taught involved her making supplies of tuition in that she transferred to her students skills and knowledge. This was clear from the Appellant's evidence and was not challenged by HMRC.

(2) The supplies of tuition she made were made on her own account and at her own risk. As much was accepted by HMRC. Accordingly, the tuition was "given privately".

(3) She was the only person supplying the tuition. This was the Appellant's evidence and, to the extent HMRC asserted that her website suggested otherwise, we accept the Appellant's explanation.

(4) The coursed offered by the Appellant were educational and not purely (or even predominantly) recreational. The level 2 and level 3 courses followed the requirements of the relevant awarding body (City and Guilds or Open College Network) and led to recognised qualifications. The Learn to Groom course was a taster course aimed at introducing students to the basics of dog grooming in the hope they would go on to the level 2 and level 3 courses. All of these courses involved the transfer of knowledge and skills in an educational way.

58. However, the Appellant also needed to establish that the teaching of the subject of dog grooming was commonly or ordinarily provided in schools or universities. We have not found this aspect of the case easy to resolve. We were provided with relatively limited information, and the information we were provided was not as clear and detailed as it could have been. Nonetheless, as set out above, we have accepted that 88 Further Education Colleges in England offered course that had a dog grooming element to them, and 57 of these colleges offered dog grooming as a free standing course that led to a qualification of some sort. We can certainly see the force in the argument that dog grooming is commonly taught in further education colleges in England. However, that is not the test. The test is whether dog grooming is ordinarily taught in a school or university which, in agreement with the Tribunal in *Premier Family Martial Arts*, we take to mean that the relevant activity must be taught at a wide number of schools or universities in the EU. We were provided with no evidence that dog grooming is taught in the United Kingdom anywhere other than certain Further Education Colleges in England, and we were provided with no evidence at all about the position in other member states. In those circumstances, we are not satisfied that the Appellant has met the burden of proving that dog grooming is taught in a wide number of schools or universities in the EU. We would not have expected the Appellant to conduct exhaustive searches of every school and university in every member state but we consider that *some* evidence of the position in other member states (and other parts of the UK) is necessary.

59. As to the Appellant's submission based on fiscal neutrality: we were simply not provided with enough information to assess whether the other businesses referred to by the Appellant operate in a materially similar way to the Appellant's business. The Appellant has not, then, established that HMRC's actions breached the principle of fiscal neutrality.

60. The Appellant's appeal against the assessment to VAT and the refusal by HMRC to accept the error correction notice were premised upon the supplies of dog grooming courses being exempt from VAT. These aspects of the appeal therefore also fail.

61. The Appellant also challenged HMRC's decision to reinstate her VAT registration. However, in circumstances where we have found that the Appellant's supplies were not exempt and it was not in dispute that the level of those supplies exceeded the registration threshold, HMRC were correct to reinstate the Appellant's VAT registration. We recognise that the shift in position by HMRC (allowing the Appellant to de-register on the basis that the supplies were exempt but then performing a *volte-face*) may appear unfair but the Tribunal has no general "fairness" jurisdiction (see *HMRC v HOK* [2021] UKUT 363 (TCC)). This aspect of the appeal also fails.

62. For the reasons explained above, this appeal is dismissed.

63. This document contains a summary of the findings of fact and reasons for the decision. A party wishing to appeal against this decision must apply within 28 days of the date of release of this decision to the Tribunal for full written findings and reasons. When these have been prepared, the Tribunal will send them to the parties and may publish them on its website and either party will have 56 days in which to appeal. 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.

DAVID BEDENHAM

TRIBUNAL JUDGE

Release date: 19 JANUARY 2022