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## VAT Treatment of Education and Vocational Training



### Brief Background

By way of background, before Finance Act 2015, para. 4(3) of Schedule 1 of the VAT Consolidation Act 2010 (VATCA 2010) provided that the following were exempt from VAT:

“The provision by educational establishments recognised by the State of children’s or young people’s education, school or university education, or

vocational training or retraining (including the supply of goods and services incidental to that provision, other than the supply of research services), and the provision by other persons of education, training or retraining of a similar kind...”

To reflect judgments of the Court of Justice of the European Union (CJEU), Finance Act 2015 amended the above VAT exemption to:

“The provision by a recognised body of children’s or young people’s education, school or university education, or vocational training or retraining (including the supply of goods and services incidental to that provision, other than the supply of research services)...”

## Impact of the Updated Legislation

The amendment provided that the VAT exemption applies to providers of children’s or young people’s education (and school or university education) where it is provided by a “recognised body”. Therefore the amendment created uncertainties for many commercial organisations offering vocational-type education, e.g. computer training or dance schools. As a result, if the provider was not regarded as a recognised body,<sup>1</sup> the training would be potentially liable to VAT at 23%.

## Purpose of Article

Revenue recently published a chapter (Part 5/Chapter 59) in its Tax and Duty Manual clarifying the VAT treatment of education, vocational training and retraining services (“the Guidelines”). As the amendments did not impact on most education providers such as primary schools and colleges, we do not intend to examine the impact of the Guidelines on same. Instead, vocational and retraining services will be the focus of this article, together with those services that do not fall within the exemption from VAT, and electronically supplied education and vocational services.

## Vocational Training and Retraining

### Criteria for exemption

As per para. 4.1 of the Guidelines, vocational training and retraining are exempt from VAT provided the following criteria are satisfied:

- It must be vocational in nature; that is, it must be directed towards an occupation and its associated skills.
- It must be provided to improve the vocational rather than the personal skills of the trainee.
- The vocational skills that the trainee acquires can be transferable from one employment to another, or to self-employment.
- The training will generally be provided by means of a structured programme, have concise aims, objectives and clear anticipated outcomes.
- There should be a clear trainee/trainer relationship between the student and the teacher or instructor.”

Helpfully, Revenue has stated that the exemption applies to vocational education where the provider **does not come** within the definition of a “recognised body”.

### Courses that are primarily of a recreational nature

Courses or training programmes that are undertaken for recreational purposes are not within the remit of the exemption from VAT. These courses are undertaken for the pleasure

<sup>1</sup> A recognised body, according to para. 2.2 of the Guidelines, is one of the following:

- a public body.
- a school recognised by the Minister for Education and Skills.
- a provider to which an Education and Training Board has outsourced the provision of education.
- a training provider to which SOLAS has outsourced the provision of education;
- a provider of training for initial or continued access to a regulated profession within the meaning of the Recognition of Professional Qualifications (Directive 2005/36/EC) regulations 2008 (S.I. No. 139 of 2008).
- a provider of a course leading to an award recognised on the National Framework of Qualifications.
- a provider of a course which is currently listed on the Interim List of Eligible Providers.
- a provider of a course leading to an award by an institution which is an approved college for the purposes of claiming tax relief for tuition fees.
- a provider of a course which is validated by Quality and Qualification Ireland.
- a body providing education to children of school going age which is equivalent to a curriculum prescribed by the Minister for Education and Skills for early childhood education, primary or post-primary schools.”

of the participants rather than to gain or improve skills that will assist them in a trade or profession.

By way of example, take a fitness and nutrition school that delivers an open course providing exercise techniques and healthy recipes to participants. As the course is not directed towards a trade or profession and is undertaken for recreational purposes, it does not come within the scope of the exemption. Therefore, the course would be subject to VAT at the appropriate rate. However, if the same fitness and nutrition school delivered a structured training course designed to enhance the skills of qualified fitness instructors, it would be exempt from VAT as the purpose would be to enhance the vocational skills of the participant.

### Personal development programmes

A programme that is structured to develop the personal skills of the participant does not qualify for the exemption and therefore is liable to VAT. For example, a DIY course open to the general public would not be considered to be directed towards a trade or profession. Therefore, it would not come into the scope of the VAT exemption as it is directed towards the personal development of the participant.

## Activities not Regarded as Exempt Education or Vocational Training

### Management consultancy services

In general, management consultancy services are provided to improve efficiencies and operations improvements in an organisation. Therefore, the services are for the benefit of the organisation rather than the employees of the organisation. As a result, these services do not generally come within the scope of the education exemption and are subject to VAT.

However, management training courses are distinct from management consultancy services, as the aim of the former is to provide managers with skills to manage other people. If a management training course is provided by a recognised body, it is exempt from VAT. Similarly, if a management training course provided by another commercial organisation meets the criteria outlined above for being vocational in nature, it is also exempt from VAT.

### Lecturing services

Lecturing services do not constitute “education” as the term is understood for VAT purposes. The reason for this is that the lecturer is providing his/her service to the educational institution and it is the educational institute that in turn provides the education service to the students (which, in most cases, will be exempt from VAT). The lecturing service supplied by the lecturer is therefore liable to VAT at the appropriate rate (generally 23%).

However, based on a decision of the CJEU, the VAT exemption can be extended to the supply made by such lecturers in very limited circumstances only. In *Horizon College v Staatssecretaris van Financiën* C-434/05 the CJEU opined that where a recognised body makes a lecturer or teacher available to another recognised body, and the lecturer or teacher temporarily carries out teaching duties under the responsibility of that establishment, such a supply may be exempt from VAT. The CJEU held that the exemption applied on the basis that the particular supply of the service was “closely related” to education.<sup>2</sup> As above, this is the sole situation in which a lecturing service provided to an educational institution is exempt from VAT.

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2 However, to qualify for the exemption in such circumstances, a number of conditions must be met:

- Both the education and the placement that is **closely related** to it are provided by recognised bodies.
  - The placement is of a nature and quality such that, without recourse to such a service, there could be no assurance that the education provided by the host establishment and, consequently, the education from which its students benefit, would have equivalent value.
  - The basic purpose of the placement is not to obtain additional income by carrying out a transaction that is in direct competition with commercial enterprises liable for VAT.
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### Other professional services provided to an educational institute

Professional services such as formulating a course for the benefit of an educational institute do not come within the scope of the exemption and are subject to VAT at the appropriate rate.

## Electronically Supplied Education and Vocational Training

### Definition

As per s2 VATCA 2010, an electronically supplied service includes:

- “
  - website supply, web-hosting, distance maintenance of programmes and equipment,
  - supply of software and updating of it,
  - supply of images, text and information, and making databases available,
  - supply of music, films and games (including games of chance and gambling games) and of political, cultural, artistic, sporting, scientific and entertainment broadcasts and events, and
  - supply of distance teaching.”

An electronically supplied service is therefore a service that is delivered over the internet<sup>3</sup> and that is heavily dependent on information technology for its supply, i.e. the service is essentially automated and involves minimal human intervention.

### Place of supply for VAT purposes

The place of supply of the service is determined by whom the service is supplied to. If an electronically supplied service is supplied to a taxable person, the general business-to-business (B2B) VAT rules as per s34(a) VATCA 2010 apply, i.e. the place of supply for VAT purposes is where the taxable customer's

business is established, where the taxable customer has a fixed establishment, or where the taxable customer has a permanent address or usual place of residence. As per s34(b) VATCA 2010, in relation to supplies of business-to-consumer services (B2C), the place of supply is the place where the supplier is established. However, since 1 January 2015, the place of supply of electronically supplied services to consumers is the place where the **consumer** resides (s34(kc) VATCA 2010).

### Examples of electronically supplied education and vocational training

Once the place of supply has been established, it can be determined whether the supply is VATable or not. Where the place of supply is Ireland, Revenue's Guidelines have provided examples of services that **are** considered to be an electronically supplied service:

- “
  - automated distance teaching dependent on the Internet or similar electronic network to function and the supply of which requires limited or no human intervention, including virtual classrooms, except where the Internet or similar electronic network is used as a tool simply for communication between the teacher and student and
  - workbooks completed by pupils online and marked automatically, without human intervention.”

Helpfully, Revenue has also included examples of what would **not** be considered to be an electronically supplied service:

- “
  - teaching services delivered by a teacher over the Internet or an electronic network (via a live webinar)... and
  - teaching services purely involving correspondence courses, such as postal courses.”

<sup>3</sup> Or an electronic network that is reliant on the internet or a similar network for its provision.

## Private Tuition

Revenue has also confirmed that private tuition given by teachers or instructors is exempt from VAT where it covers school or university education. This means that where tuition is provided by an independent instructor or teacher (a sole proprietor providing tuition), the activity is exempt from VAT, provided the subject is taught regularly in schools.

## Supplies of Goods or Services Incidental to Education

Revenue has confirmed that the supply of goods and services (excluding research services) incidental to VAT-exempt education or vocational training and retraining is exempt from VAT. Such goods or services must be **directly linked to** and necessary for the provision of education, e.g. the supply of material to accompany an educational course where it is directly linked to and necessary for the educational course. The exemption applies only where the goods or services are supplied by an educational institute to students who are enrolled in a VAT-exempt course of education.

Where goods or services are made available to a prospective student for purchase without any attached obligation such as enrolling in a VAT-exempt course, or to any other persons, the supply is treated as liable to VAT at the appropriate rate.

## VAT Recovery

Although not alluded to in the Guidelines, those providing both taxable and exempt activities should tread with particular caution, as they need to ensure that they are managing their entitlement to VAT recovery appropriately. As per s59 VATCA 2010, a business is entitled to full VAT recovery on all inputs that relate solely to its taxable activities (e.g. life coaching). VAT legislation does not provide for VAT recovery on inputs that relate solely to exempt activities (e.g. education).

The VAT on costs that are dual-use inputs (i.e. IT support, heat and light) may be recovered on an apportionment basis. Section 61 of VATCA 2010 provides for VAT recovery on costs that relate to taxable and exempt supplies. Finance Act 2016 amended s61 to provide for the turnover method as the primary apportionment method for dual-use inputs for VAT recovery purposes. The turnover method requires calculating the ratio of the tax-exclusive turnover from deductible supplies or activities against the tax-exclusive turnover from total supplies and activities for the period.

## Conclusion

It is without doubt that the exemption from VAT applies to providers of school and university education where it is provided by a recognised body. The Guidelines clarify that vocational training and retraining services are also exempt from VAT where the conditions set out above are satisfied. The crucial factor in achieving VAT exemption is that the training must be directly related to a trade or profession or aimed at updating skills for vocational purposes.

Over recent years there has been an upsurge in providers of personal development and life coaching programmes. Based on the Guidelines, as these programmes are directed towards the personal development of the individual, these courses are subject to VAT.

On the whole, the publication by Revenue of these Guidelines is a welcome development as it has dispelled many of the uncertainties that emerged after the amendments made by Finance Act 2015.

Read more on **taxfind** from Irish Tax Institute *VAT and VAT on Property, Finance Act 2016; Law of VAT, Finance Act 2016; Education and Vocational Training post 2015, Revenue Tax and Duty Manual*