



TC02256

Appeal number: TC/2010/08659

VAT – EXEMPT SUPPLIES – education - whether appellant school – held no – whether appellant college of institution of UK university– held no – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

WESTMINSTER COLLEGE OF COMPUTING LIMITED

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE GREG SINFIELD
CAROLINE DE ALBUQUERQUE**

Sitting in public at 45 Bedford Square, London on 10 and 11 May 2012

Dr Arasaratham Arasilango BSc (Hons) PgD PhD, Director, for the Appellant

Mr Christiaan Zwart, counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

Introduction

1. This is an appeal by Westminster College of Computing Limited (“the College”) against the decision of the Respondents (“HMRC”), dated 13 October 2010, dismissing the College’s claim, made by way of voluntary disclosure on 10 February 2010, for repayment of £62,198 VAT for periods 02/07 to 02/09.

2. The College also made an earlier voluntary disclosure which was refused by HMRC in a letter dated 8 June 2009. That decision was not the subject of any appeal by the College. At the beginning of the hearing, we heard an application by Dr Arasilango of the College for an extension of time in which to appeal against HMRC’s decision. HMRC opposed the application. We deal with the application as a preliminary matter at [3] to [10] below.

Preliminary application for extension of time to appeal

3. The College made a voluntary disclosure dated 16 March 2009 for periods 11/05 to 11/07 in which it claimed a repayment of £400,681. The basis of the claim was described as "Education and vocational training, commercial providers supplying tuition in EFL [English as a foreign language] are exempt". The amounts claimed represented all the output tax accounted for by the College in its VAT returns for the periods without any adjustment for input tax deducted in those periods.

4. In a letter dated 11 May 2009, which followed a meeting between Mr Femi Onaderu of HMRC and Dr Arasilango of the College on 7 May, HMRC rejected the claim for repayment because no books and records had been provided to substantiate the claim. The letter set out the College's right to request a review of the decision by HMRC or to appeal directly to the Tribunal which had to be done within 30 days of the date of the letter.

5. Dr Arasilango replied, in a letter dated 27 May, explaining that the records were not available because the College's previous landlord had denied the College access to the building where the records were stored for non-payment of rent and the UK Border Agency had taken all the student and financial records for inspection and had not yet returned them. Mr Onaderu replied by letter dated 8 June 2009. The letter stated that the claim for periods 11/05 and 02/06 was rejected because it was made out of time (ie the voluntary disclosure had been made more than three years from the end of the accounting period to which the claim related). The letter rejected the claim for repayments in relation to the other periods on the ground that the College had not provided any evidence that it was an eligible body or that it made supplies of teaching English as a foreign language. The letter set out the College's right to request a review of the decision by HMRC or to appeal directly to the Tribunal which had to be done within 30 days of the date of the letter as required by section 83G of the VAT Act 1994 (“VATA”).

6. Dr Arasilango wrote again to HMRC on 25 June 2009. He agreed that the claims in respect of periods 11/05 and 02/06 were outside the time limits. The letter explained that the College had bank statements and enrolment forms and mentioned that, on a previous visit, an HMRC officer had said that the College could make a claim for a refund but could not recollect the name of the officer. It also said that the College provided vocational training as defined by the International Labour Organisation. The letter ended by stating that in the absence of a favourable reply within the next 15 days, the College would have no option but to appeal to the Tribunal. Mr Onaderu replied in a letter dated 8 July 2009 which confirmed the decision made in the letter of 8 June and referred to the options available to the College if it did not agree with that decision. Dr Arasilango replied by letter dated 22 July enclosing the College's prospectus as evidence that it made supplies of teaching English as a foreign language. Mr Onaderu replied by letter dated 28 July explaining that the fact that the College made some supplies of teaching English as a foreign language did not entitle the College to exempt all of its supplies and referred again to the decision on 8 June and options available to the College.

7. On 21 December 2009, Dr Arasilango wrote to Mr Onaderu referring to previous correspondence and saying that the College still considered its supplies to be exempt and wished to take the matter to appeal if HMRC did not agree. On 1 February 2010, another HMRC officer, Mr Keith Laney, responded to Dr Arasilango's letter. The letter stated that the decision refusing the voluntary disclosure was made in the letter of 8 June 2009 which advised the College of its right to request a review of the decision by HMRC or to appeal directly to the Tribunal within 30 days. The letter stated that the College could apply for an out of time review or appeal but this would be subject to permission by HMRC for the out of time review or the Tribunal for a late appeal.

8. It appears that there was no further correspondence from the College in relation to the voluntary disclosure of 16 March 2009 but on 10 February 2010, the College made a new voluntary disclosure for a repayment of £62,198 which was later refused by HMRC and is the subject of the appeal by the College discussed below. Mr Laney wrote to Dr Arasilango in a letter dated 1 March 2010 confirming that the decision in relation to the voluntary disclosure was contained in Mr Onaderu's letter of 8 June 2009 and that the College had not asked for a review or appealed so Mr Laney considered the matter closed. A note prepared by Mr Laney of a meeting with Dr Arasilango on 24 March 2010 records that Mr Laney referred to the decision of 8 June 2009 and explained the time limits for reviews and appeals to Dr Arasilango who stated that he would not be seeking a review or appeal in relation to the 2009 claim.

9. In the College's skeleton argument, dated 28 December 2011, for the appeal against the rejection of the voluntary disclosure of 10 February 2010, Dr Arasilango asked for the amount of £62,198 to be amended to £400,681 for the claim made on 16 March 2009. At the hearing of the appeal, Dr Arasilango said that he had not appealed the decision to reject the earlier voluntary disclosure as he had been ill at the time when the appeal should have been made and he had not known that it was possible to appeal late until 7 December 2011 when he attended the Tribunal to observe another appeal which was granted an extension of time to appeal. Dr

Arasilango telephoned the Tribunal on 8 December and was told that he could make an application to appeal out of time. On 16 December, Dr Arasilango wrote a letter to the Tribunal, copied to HMRC, saying that the College would like to make an application to amend the amount in the appeal from £62,198 to £400,681 because the College did not know that it could appeal out of time but the letter did not provide details of the decision appealed against or the length of delay. In a letter dated 19 December, HMRC told the College that they would oppose any application.

10. We heard submissions from Dr Arasilango on behalf of the College and from counsel for HMRC at the hearing and, after consideration, refused the application for an extension of time in which to appeal against HMRC's decision of 8 June 2009 rejecting the claim for a repayment of £400,681. In our view, the College should not be granted an extension of time in which to appeal for the following reasons. Although we accept that Dr Arasilango was ill when the decision was made, it is clear that he was not too ill to pursue the matter in correspondence, writing detailed letters which could have formed the basis of a notice of appeal. Further, it is clear that Dr Arasilango had been told of the possibility of applying for a late appeal in the letter dated 1 February 2010 from Mr Laney and we reject his evidence that he was unaware of that possibility until 7 December 2011. We accept, on the basis of the note of the meeting on 24 March 2010, that Dr Arasilango told Mr Laney that he was not appealing the earlier claim. We conclude that Dr Arasilango had decided, at that point, to abandon the 2009 claim and concentrate on pursuing the claim made by voluntary disclosure on 10 February 2010. In the circumstances, we considered that it would not be consistent with the overriding objective in the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 to allow the College to appeal almost three years after the decision in the absence of exceptional reasons. Nothing we heard provided any good reason to account for such a delay.

Voluntary disclosure of February 2010 and appeal

11. On 10 February 2010, the College notified HMRC on Form VAT652 of errors in its VAT returns ("a voluntary disclosure") in relation to accounting periods 02/07 to 02/09. The form stated that the errors arose because the College was eligible for VAT exemption as it was a listed body with Department for Innovation, Universities and Skills and an approved body providing courses for recognised awards. The College claimed an overpayment of output tax of £71,757 in relation to periods 02/07 to 11/07 but gave credit for input tax overclaimed (if the supplies by the College were exempt, as it claimed) of £9,559 in relation to periods 05/08 to 02/09 which left a balance of £62,198 repayable to the College.

12. In a letter dated 5 August 2010, Mr Keith Laney of HMRC set out HMRC's decision in relation to the voluntary disclosure. HMRC accepted that the College had made some exempt supplies of teaching English as a foreign language and accepted the claim to that extent. HMRC did not accept that the College was a school within the Education Act or a college of a university and took the view that it was not an eligible body for the purpose of the VAT exemption. Accordingly, HMRC decided that the College's supplies were chargeable to VAT at the standard rate and rejected the claim for a repayment of VAT except to the extent that it related to supplies of

English as a foreign language tuition. The College asked for a review of the decision to reject the claim. HMRC notified the College of the outcome of the review in a letter dated 13 October which confirmed the decision of 5 August. The College appealed to the Tribunal by Notice of Appeal dated 9 November. The grounds of appeal were that the supplies made by the College were exempt because it was an eligible body.

Issue in appeal in relation to voluntary disclosure of 10 February 2010

13. The only issue in this appeal is whether the supplies made by the College during periods 02/07 to 11/07 were exempt. HMRC did not argue that the College was not providing education and, accordingly, the supplies by the College were exempt if it was an “eligible body” within Note (1) to Group 6 of Schedule 9 VATA at the relevant time. The answer to that question turns on whether the College was:

- (1) a school within the meaning of The Education Act 1996; or
- (2) a college, institution, school or hall of a United Kingdom university.

Legislation

14. Article 132(1)(i) of Directive 2006/112/EEC requires Member States to exempt certain supplies of education including the provision of children's or young people's education, school or university education by bodies governed by public law or other organisations recognised by the Member State as having similar objects.

15. The United Kingdom has implemented Article 132(1)(i) in the VATA. Section 31(1) VATA provides that supplies of a description specified in Schedule 9 VATA are exempt supplies. Group 6 of Schedule 9 is headed “Education”. Item 1 of Group 6 is as follows:

“The provision by an eligible body of

- a) education ...”

16. The relevant notes to Group 6 provide as follows:

“(1) For the purposes of this Group an “eligible body” is

- (a) a school within the meaning of The Education Act 1996 ... which is

- (i) provisionally or finally registered or deemed to be registered as a school within the meaning of the aforesaid legislation in a register of independent schools; or

- (ii) a school in respect of which grants are made by the Secretary of State to the proprietor or managers;

... ;

(b) a United Kingdom university, and any college, institution, school or hall of such a university;

...

(f) a body not falling within paragraphs (a) to (e) above which provides the teaching of English as a foreign language ...

(2) A supply by a body, which is an eligible body only by virtue of falling within Note (1)(f), shall not fall within this Group so far as it consists of the provision of anything other than the teaching of English as a foreign language.”

17. The Education Act 1996 defines school in section 4(1) as

“an educational institution which is outside the further education sector and the higher education sector and is an institution for providing—

(a) primary education,

(b) secondary education, or

(c) both primary and secondary education,

whether or not the institution also provides ... further education.”

18. Section 2 of the Education Act provides relevantly as follows:

"(2) In this Act “secondary education” means—

(a) full-time education suitable to the requirements of pupils of compulsory school age ... ; and

(b) ... full-time education suitable to the requirements of pupils who are over compulsory school age but under the age of 19 which is provided at a school at which education within paragraph (a) is also provided.

(2A) Education is also secondary education for the purposes of this Act ... if it is provided by an institution which

(a) is maintained by a local education authority or is an Academy, and

(b) is principally concerned with the provision of full-time education suitable to the requirements of pupils who are over compulsory school age but under the age of 19.

...

(4) Accordingly, unless it is education within subsection (2)(b) or (2A), full-time education suitable to the requirements of persons over compulsory school age who have not attained the age of 19 is further education for the purposes of this Act and not secondary education."

Authorities

19. We were referred to two authorities on the approach to be taken by the Tribunal when determining whether an entity is a college of a university. The first was *HMCE v School of Finance and Management (London) Limited* [2001] STC 1690. The School provided degree level education to fee-paying overseas students which led to the award of a degree by the University of Lincolnshire and Humberside. The appeal concerned whether the School was an eligible body. In that case, Burton J held that the correct approach to determining whether a particular entity is a college of a university was for the Tribunal to consider 15 factors. Burton J held at [22] that, having weighed up the 15 factors, the Tribunal in *School of Finance and Management* was entitled to be influenced in reaching its conclusion by the fact that the fundamental purpose of the School was to provide education services leading to the award of a university degree by the university.

20. The 15 factors listed in [16] and [17] of the judgment in *School of Finance and Management* were as follows:

- (1) presence of a foundation document establishing the college as part of the University, by way of constitutional link;
- (2) absence of independence;
- (3) financial dependence or interdependence;
- (4) absence of distributable profit;
- (5) entitlement to public funding;
- (6) permanent links between the college and the university;
- (7) physical proximity to the university of which it is said to be part;
- (8) obligation to offer a minimum number of university places;
- (9) having a similar purpose to that of the university;
- (10) providing courses which lead to a degree from the university;
- (11) having such courses supervised by the university, and quality standards regulated by the university.
- (12) admitting students as members of the university, with university identity cards;
- (13) submitting those students to disciplinary regulations and requirements of the university;
- (14) entitling successful students to receive a degree from the university at the university degree ceremonies; and

(15) being described as an associate/affiliated college of the university.

We consider the factors in more detail and in relation to this appeal at [] below.

21. We were also referred to *HIBT Ltd v HMRC* (2007) VAT Decision 19978 in which the same issue arose but in relation to the University of Hertfordshire. In *HIBT*, the Tribunal accepted that the University regarded HIBT as an associated college. The Tribunal considered three questions, namely

- (1) Was there a supply of education?
- (2) Was there a supply of University Education?
- (3) Was the supply by an eligible body?

The Tribunal analysed the evidence and made findings of fact by reference to the 15 factors in *School of Finance and Management* set out above and found as a fact that HIBT was a college of the University.

22. Following *School of Finance and Management* and *HIBT*, HMRC issued Information Sheet 3/10 dated March 2010 which contains HMRC's interpretation of the correct approach to deciding whether an entity is a college or an institution of a university. The Information Sheet states:

"In HMRC's view, this method of analysis does not mean that a potential eligible body takes an arithmetical 'tick box' approach such that the status is determined by the number of ticks on one side or the other. Instead one must weigh these factors, consider their cumulative effect and come to a conclusion based on the overall impression. All the factors have significance and there is inevitably a sliding scale from a totally independent company providing no university level education, to a wholly owned company which provides nothing but university education in circumstances that make the courses indistinguishable from courses provided by the university itself.

Although each case must be decided on its own facts, HMRC sees three key themes that should be present before a company can be treated as an eligible body within Note (1)(b).

- There must be a close relationship between the university and the company. In the case of a university owned/controlled company this is always likely to be present.
- The company must provide university level education leading to a qualification awarded by the parent university or a nationally recognised body. This would include so called 'closed' university level courses that are intended to lead to a qualification; that is the fact that access to the courses may be restricted, priced 'commercially' or run at a profit is not determinative of their status in this context.

- If students on the course are registered/enrolled with the parent university, are subject to its rules and regulations, and are awarded qualifications by it (with the implication that the university monitors, quality assures and validates the company's courses), it is likely that the company is acting as an institution, school or hall of a university and is therefore an eligible body.

HMRC's view is that:

- a university owned/controlled company with close academic links to its parent university that

- is delivering university-level education leading to a qualification;

is likely to be, de-facto, acting as a college or an institution of the university. The absence of formal recognition as such a body, or the fact that it may trade with a view to profit does not exclude that company from that classification for the purposes of Note (1)(b)."

Evidence

23. Witness statements were produced by Mr Femi Onaderu and Mr Keith Laney on behalf of HMRC and by Dr Arasilango on behalf of the College. The witness statements were admitted as evidence in chief. All the witnesses gave oral evidence.

24. The parties produced bundles of documents. The College produced a single bundle but also produced further documents during the hearing which had to be added to it. HMRC produced three bundles. Unfortunately, no one bundle contained all the documents but all the bundles contained documents also in another bundle and some contained multiple copies of the same document. It was unsatisfactory that the parties had not agreed a single bundle or set of bundles.

Facts

25. On the basis of the witness evidence and documents, we find the relevant facts to be as follows.

26. The College was incorporated in October 1996 and registered for VAT later that year. Initially, it provided IT training courses to individual and corporate clients. Between 2002 and 2008, the College was a course provider for the British Computer Science (BCS) Professional Graduate Diploma which was equivalent to an honours degree from a university. From 2002 until it ceased trading in July 2009, the College taught English as a foreign language.

27. In 2004, the College registered with the University of London to provide tuition for external degree courses. In June 2004, the College published a prospectus. It described the College as an independent educational institution and stated that the College had established links with British and overseas educational institutions to

enable its students to pursue higher studies at its location in London. It stated that “Degrees are awarded by affiliated universities”. It also said that:

“Westminster College offers tuition for the University of London External Programme. Obtaining degrees through this External Programme provides an attractive option for those with financial constraints who could not study in the conventional way.”

It stated that the prospective students on the External Programme should first register with the University of London. In response to a question, Dr Arasilango said that the University did not refer to the College as a course provider in relation to external degrees in any publication or on any website. It was up to the College to advertise that fact.

28. In 2004, the College became affiliated to Bridgeport and Syracuse University in the United States to offer Centre for Business Information technology courses

29. In 2006, the College developed a postgraduate diploma in business administration which was approved by the Quality Curriculum Authority. We saw documents that showed that one student of the College, Mr Rohan Rane, was accepted by the University of Wales for a top-up MBA degree. We were told by Dr Arasilango (and we accept) that there were other students who went onto study for the University of Wales MBA. The University accepted the diploma from the College as equivalent to four modules (ie the first year) of the MBA course. There was no written agreement between the College and the University of Wales. The University did not pay the College anything for the students who went on to study at the University.

30. In December 2006, the College entered into an agreement with the University of Sunderland. The agreement envisaged that the College would provide a “12 month full-time programme taught in English commencing 1st January 2007 and leading to the award of BSc (Hons) Computer Systems Engineering”. Clause 5.9 stated:

“When the Memorandum of Agreement has been signed by all parties and all conditions of approval have been met, including full legal permissions and licences obtained, the University will issue a certificate which may be displayed in the Institute’s premises. This Certificate certifies that the Institute is approved to run/moderate/support the University’s programmes and remains the property of the University. At the conclusion of the agreement, the Institute must return the Certificate to the University”.

There was another agreement, which we did not see, between the College and the University in similar terms relating to a course leading to an MSc IT Applications Development.

31. In April 2008, the University of Sunderland terminated both agreements with the College because the College had failed to recruit the minimum number of students to start a programme. We were shown a letter dated 7 April from the University to the College which stated that the agreement was terminated because the College had

failed to recruit the minimum number of students required. An email from the University to HMRC, in response to an enquiry, stated that no students from the College were ever enrolled with the University and no University programme was ever commenced with the College. Dr Arasilango said that the University had terminated the agreement in breach of contract. Dr Arasilango did not provide any evidence that any students at the College had enrolled as students of the University of Sunderland or that the College had ever taught the University programme. None of the College's students received degrees from the University. We find that the College never made any supplies of education pursuant to the agreement with the University of Sunderland.

32. From 1 October 2007, the College was listed in the Education (Listed Bodies) (England) Order 2007. Part 1 of the Schedule to the Order lists bodies that appear to the Secretary of State to provide courses in preparation for a degree. Part 2 of the Schedule lists all of the bodies that appear to the Secretary of State to be constituent colleges, schools, halls or other institutions of a university. The College is included in section 1 of Part 1 as one of the bodies providing courses in preparation for a degree. The College was not listed in Part 2 of the Schedule.

33. In July 2009, the College ceased trading and it was de-registered for VAT with effect from 1 September 2009.

Was the College a school?

34. The term school is defined in note 1(a) to group 6 of Schedule 9 VATA as a school within the meaning of The Education Act 1996. The Education Act defines a school as an institution providing primary education or secondary education or both. The College did not provide primary education. Secondary education means full-time education of pupils up to the age of 16. The definition is extended to include education of pupils over 16 and under 19 but only where it is provided by a school which also provides full-time education of pupils up to the age of 16. Dr Arasilango said in evidence that some of his pupils were under 19 years old. He did not suggest and there was no evidence that the College provided full-time education of pupils up to the age of 16. Section 2(4) of the Education Act states unambiguously that full-time education suitable to the requirements of persons over 16 who have not attained the age of 19 is not secondary education. It is, accordingly, clear that the College was not a school for the purposes of note 1(a) to group 6 of Schedule 9 VATA.

Was the College a college or institution of a UK university?

35. The College relied on its relationship with three universities (the University of Sunderland, the University of Wales and the University of London) as showing that the College was a college of a UK university.

36. The College's relationship with the University of Sunderland is irrelevant to this appeal. We have found on the evidence that the College never made any supplies of education under its agreement with the University. It follows that the College cannot

claim any repayment of VAT charged on supplies of education made as a college of the University of Sunderland because there were no such supplies.

37. The evidence was that the College supplied some education that led to students taking further courses at the University of Wales leading to a degree and taking exams for an external degree from the University of London. On the basis of the authorities, we consider that, in deciding whether the College was a college of the University of Wales and/or the University of London, the Tribunal should review the 15 factors set out in *School of Finance and Management* in the light of the evidence in this appeal and then consider what the fundamental purpose of the College was.

38. In relation to the 15 factors described in *School of Finance and Management*, our findings and conclusions are as follows:

(1) There was no foundation or other document establishing the College as part of the University of Wales or the University of London. Dr Arasilango acknowledged that the College only had a verbal agreement with the University of Wales. The College had registered as an external education provider with the University of London. We find that, in both cases, there was no document or other link that showed that the College was constitutionally part of or linked to the Universities.

(2) and (3) The College's prospectus described it as an independent educational institution and there was no evidence to show that the College was dependent on the University of Wales or the University of London. The College was also financially independent as the bulk of its income came from the fees paid by the students. Dr Arasilango's evidence was that the Universities did not pay anything to the College. We find that the College was organisationally and financially independent of the Universities.

(4) Dr Arasilango stated that the College did not make any profits in 2006 or thereafter. He acknowledged that the College was not a non-profit making organisation as such and there was no restriction on it distributing profits. We find that the absence of distributable profits was purely a consequence of the College's financial performance and not a permanent characteristic of the College.

(5) Dr Arasilango stated that the College had never had any public funding other than the tax relief on certain courses and the Individual Learning Account monies paid by the government for each student. There was no public funding of the College or its activities.

(6) The agreement, if such it was, with the University of Wales was unwritten. The College's relationship with the University of London was as a provider of courses to students who wished to take an external degree rather than being integrated into the University. We consider that the

links between the College and the Universities were both capable of being terminated without notice and were not permanent.

(7) The College was physically close to the University of London but not to the University of Wales. We find that, in the circumstances, proximity is not a useful indicator of the College's status.

(8) The College was not obliged to offer a minimum number of places on University of Wales or University of London courses.

(9) and (10) Dr Arasilango submitted that the College had a similar purpose to the Universities in providing education to its students which led to a degree. He stated that the College taught half of the University of Wales MBA course while the University taught the other half. Mr Zwart for HMRC submitted that the purpose must be to award a degree, not merely to provide education in preparation for or towards a degree. It seems to us that whether this factor is present depends on how broad an interpretation is given to 'similar'. We note that it was not suggested in *SFM* that the purpose of the university was the awarding of degrees. We think that is too restrictive. We consider that the purpose of a university is to provide university level education. We find that the College had the same purpose, at least in relation to the courses that it provided that led to the University of Wales MBA and the University of London external degrees.

(11) The acceptance by the University of Wales of the postgraduate diploma in business administration as entitling a student to exemption from part of the MBA course suggests that there was some regulation or supervision of the standards of the diploma course. There was no suggestion of any regulation or supervision of standards by the University of London.

(12) The prospectus stated that students who wished to study at the College for a University of London external degree must first register with the University of London. This shows that registration as a student of the College did not admit students as members of the University of London, with university identity cards. There was no evidence that students studying for the postgraduate diploma in business administration were regarded as being students of the University of Wales. Our understanding was that the students would only become students of the University of Wales after obtaining the diploma and on applying to (and being accepted by) the University.

(13) There was no evidence that the students were subject to disciplinary regulations and requirements of the University of Wales or the University of London while they were students of the College.

(14) Dr Arasilango stated and we accept that students who successfully completed the University of Wales MBA or the University of London external degree courses were entitled to receive a degree from the Universities at their degree ceremonies. That fact, however, does seem to us to be a very weak indicator that the College is a college of the Universities in this case as the students would have had to register separately as students of the Universities by the time they took their degrees.

(15) There was no evidence that the College was described as an associated or affiliated college of the University of Wales or the University of London in any documents or online.

39. As is apparent from the preceding paragraphs, the majority of the factors set out in *School of Finance and Management* lead to the conclusion that the College is not a college or institution of either of the Universities. We agree, however, with the HMRC Information Sheet 3/10 that deciding whether an entity is a college or an institution of a university is not simply a ‘tick the box’ exercise. The different factors must be weighed in the balance, having regard to the circumstances of the case. Some factors may carry more weight than others. Having considered the various factors, whether the College is a college of the Universities, or one of them, is a matter of impression. In forming that impression, we consider that the Tribunal must take into account all of the activities of the College, not just those activities that relate to the Universities. The Tribunal in *School of Finance and Management* found that it was helpful to consider the fundamental purpose of the would-be college or institution. We note that in both *School of Finance and Management* and *HIBT*, the appellants only provided university education whereas, in this case, the College provides other courses, such as training and teaching English as a foreign language. Those other courses are not university education and are not associated in any way with the University of Wales or the University of London. The fact that the College supplies education which is not university education reinforces the impression created by considering the 15 factors from *School of Finance and Management* that the College was not a college of the University of Wales or the University of London and we so find.

Decision

40. We find that the College is not a school or the “college, institution, school or hall” of a UK university and is, therefore, not an eligible body within Note (1) to Group 6 of Schedule 9 VATA. It follows that the supplies of education by the College were not exempt and HMRC's decision to refuse its claim for a repayment of VAT, except to the extent that it related to supplies of English as a foreign language tuition, was correct. The appeal is dismissed.

Rights of appeal

41. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with the Tribunal's 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.

**GREG SINFIELD
TRIBUNAL JUDGE**

RELEASE DATE: 11 September 2012