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DIRECTORATE-GENERAL  
TAXATION AND CUSTOMS UNION  
Indirect Taxation and Tax administration  
**Value added tax**

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**VALUE ADDED TAX COMMITTEE  
(ARTICLE 398 OF DIRECTIVE 2006/112/EC)  
WORKING PAPER NO 1084**

**QUESTION  
CONCERNING THE APPLICATION OF EU VAT PROVISIONS**

**ORIGIN:** Denmark

**REFERENCE:** Article 132(1)(i) and (j)

**SUBJECT:** School and university education – Cases C-449/17, A&G Fahrschul, C-47/19, Finanzamt Hamburg-Barmbek-Uhlenhorst, C-373/19, Dubrovin & Tröger Aquatics

## **1. INTRODUCTION**

Denmark wishes to consult the VAT Committee on the application of the VAT exemption for school and university education in the VAT Directive<sup>1</sup>. The question and further explanations submitted by Denmark are attached in the annex.

## **2. SUBJECT MATTER**

### **2.1. Outline of the subject matter at stake**

In response to a number of recent rulings by the Court of Justice of the European Union (“CJEU”), Denmark’s tax authorities intend to change their practice in respect of the application of the exemptions under Article 132(1)(i) and (j) of the VAT Directive<sup>2</sup> with regard to school and university education.

Between 2019 and 2021, the CJEU decided in three consecutive decisions that driving school tuition provided by a driving school<sup>3</sup>, surfing and sailing courses provided for schools and universities<sup>4</sup>, and basic swimming tuition provided by a swimming school<sup>5</sup> did not fall within the exemptions stipulated in Article 132(1)(i) and (j) of the VAT Directive.

The CJEU essentially found in these three decisions that although the tuition provided covered a wide range of practical and theoretical knowledge or was of undoubted importance and in the general interest, it nevertheless constituted specialised tuition, which does not, in itself, amount to the transfer of knowledge and skills covering a wide and diversified set of subjects or to their furthering and development, which is characteristic of school or university education.<sup>6</sup>

Against this background, Denmark’s tax authorities are of the opinion that the exemptions can no longer cover teaching offered by **self-governing evening schools, private and municipal music schools, private dance schools, private gyms or similar entities** – which are currently generally exempted in Denmark.

The intended changes in the practice of handling the exemptions in Denmark entail the provision of certain “interpretations” and “conditions” that are to be taken into account when assessing whether a teaching service may be exempt under the Danish VAT Act.

The details of the subject matter as put forward by Denmark are outlined hereunder.

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<sup>1</sup> Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, OJ L 347, 11.12.2006, p. 1, as amended.

<sup>2</sup> Articles mentioned in this document refer to the VAT Directive, unless otherwise stated.

<sup>3</sup> CJEU, judgment of 14 March 2019, *A&G Fahrschul-Akademie*, C-449/17, EU:C:2019:202.

<sup>4</sup> CJEU, order of 7 October 2019, *Finanzamt Hamburg-Barmbek-Uhlenhorst*, C-47/19, EU:C:2019:840.

<sup>5</sup> CJEU, judgement of 21 October 2021, *Dubrovin & Tröger – Aquatics*, C-373/19, EU:C:2021:873.

<sup>6</sup> *A&G Fahrschul-Akademie*, paragraph 29, *Finanzamt Hamburg-Barmbek-Uhlenhorst*, paragraph 33, and *Dubrovin & Tröger – Aquatics*, paragraph 31.

## **2.2. Detailed outline of the subject matter**

### *2.2.1. The three decisions by the CJEU in cases C-449/17, A&G Fahrschul-Akademie, C-47/19, Finanzamt Hamburg-Barmbek-Uhlenhorst and C-373/19, Dubrovin & Tröger – Aquatics*

The three decisions by the CJEU referred to by Denmark, based on which Denmark's tax authorities intend to change their practice in respect of the application of the exemptions under Article 132(1)(i) and (j), are outlined below in detail.

#### *a) C-449/17, A&G Fahrschul-Akademie*

Facts of the case: A & G Fahrschul-Akademie GmbH is a company incorporated under German private law which operates a driving school. It was refused applying an exemption under Article 132(1)(i) and (j) in respect of driving school tuition for the acquisition of category B and category C1 driving licences.<sup>7</sup> The referring court hence inquired whether the concept of “school or university education” in Article 132(1)(i) and (j) covers driving school tuition to acquire category B and category C1 driving licences.

Decision of the CJEU: In recapitulating its settled jurisprudence, the CJEU ascertained that Article 132 provides for exemptions which are intended to **encourage certain activities in the public interest**. However, this provision does not cover every activity performed in the public interest but **only those listed** therein and described in great detail.<sup>8</sup>

The CJEU maintained that these exemptions constitute **autonomous concepts of EU law** which have the purpose of avoiding divergences in the application of the VAT system from one Member State to another.<sup>9</sup>

Since the exemptions constitute exceptions to the general principle that VAT is to be levied on all services supplied for consideration by a taxable person, the CJEU stressed that they **need to be interpreted strictly**. However, such **strict interpretation cannot deprive the terms used to specify the exemptions of their intended effect**.<sup>10</sup>

The CJEU further recalled that there is **no definition of the concept of “school or university education”**. However, it has taken the view that, **first, the transfer of knowledge and skills between the teacher and students is a particularly important element** of educational activity.<sup>11</sup> Second, the CJEU stated that the concept of “school or university education” is **not limited 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

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<sup>7</sup> For the types of driving licenses, cf. Directive 2006/126/EC on driving licenses (OJ L 403, 30.12.2006, p. 18). Category B licenses involve motor vehicles with a maximum authorised mass not above 3.5 t and constructed for the carriage of no more than eight passengers in addition to the driver. Category C1 licenses involve motor vehicles with a maximum authorised mass which exceeds 3.5 t but does not exceed 7.5 t and which is constructed for the carriage of no more than eight passengers in addition to the driver. For further details pls cf. Article 4 of Directive 2006/126/EC.

<sup>8</sup> CJEU, judgment of 4 May 2017, *Brockenhurst College*, C-699/15, EU:C:2017:344, paragraph 22 and the case-law cited.

<sup>9</sup> Cf. e.g. CJEU, judgment of 26 October 2017, *The English Bridge Union*, C-90/16, EU:C:2017:814, paragraph 17 and the case-law cited.

<sup>10</sup> *Brockenhurst College*, paragraph 23 and the case-law cited.

<sup>11</sup> Cf. e.g. CJEU, judgment of 14 June 2007, *Horizon College*, C-434/05, EU:C:2007:343, paragraph 18.

taught in schools or universities in order to develop pupils' or students' knowledge and skills – **provided that such activities are not purely recreational.**<sup>12</sup> The CJEU underlined that activities which are not purely recreational, and **which are provided in schools or universities are likely to be covered** by the concept of school or university education within the meaning of Article 132(1)(i) and (j).

According to the CJEU, the concept of “school or university education” within the meaning of Article 132(1)(i) and (j), **thus, covers activities which are different, both, because of their specific nature and by reason of the framework in which they are carried out.**<sup>13</sup>

By that concept, as the CJEU outlined, 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 and university education” for the purpose of the VAT system, refers generally to an **integrated system for the transfer of knowledge and skills covering a wide 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.**

Following this line of arguments, the CJEU concluded that even if driving tuition provided in a driving school covers a range of practical and theoretical knowledge, it nevertheless remains specialised tuition which does not, in itself, amount to the transfer of knowledge and skills covering a wide and diversified set of subjects or to their furthering and development which is characteristic of school or university education.<sup>14</sup>

*b) C-47/19, Finanzamt Hamburg-Barmbek-Uhlenhorst*

Facts of the case: HA runs two surfing and sailing schools and employs for this purpose several surfing and sailing instructors, but also teaches some of the courses himself. The CJEU addressed the question whether the concept of “school and university education”, within the meaning of Article 132(1)(i) and (j), should be interpreted so as to include surfing and sailing lessons provided by surfing and sailing schools for schools or universities, where such lessons may have formed part of the sports programme or the training of sports teachers, and where those lessons may have contributed to the grading.

Decision by the CJEU: The CJEU considered that the answer to the questions of the referring court may be clearly derived from its case-law and in particular from the judgment in the case *A & G Fahrschul-Akademie* and decided the case by reasoned order. The CJEU, thus, repeated the line of arguments of the case *A & G Fahrschul-Akademie* and concluded in the same way that even if surfing and sailing covers a range of practical and theoretical knowledge, it nevertheless remains specialised tuition provided occasionally, which does not, in itself, amount to the transfer of knowledge and skills covering a wide and diversified set of subjects or to their furthering and development

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<sup>12</sup> Cf. e.g. CJEU, judgment of 28 January 2010, *Eulitz*, C-473/08, EU:C:2010:47, paragraph 29 and the case-law cited.

<sup>13</sup> Cf. to that effect, *Horizon College*, paragraph 20.

<sup>14</sup> Cf. *A & G Fahrschul-Akademie*, paragraph 29.

which is characteristic of school or university education within the meaning of Article 132(1)(i) and (j).<sup>15</sup>

Moreover, the CJEU also clarified that such activities do not fall under the exemption pursuant to Article 132(1)(h), as inquired by the referring court, as they do not constitute services closely linked to the protection of children and young persons by bodies governed by public law or by other organisations recognised by the Member State concerned as being devoted to social wellbeing. The activities in question constitute more of a sports activity than activities closely linked to the protection of children and young persons. It also does not follow from the reference for a preliminary ruling that the surfing and sailing schools in question qualify as bodies governed by public law or other organisations recognised by the Member State concerned as being devoted to social wellbeing.<sup>16</sup>

c) C-373/19, Dubrovin & Tröger GbR - Aquatics

Facts of the case: *Dubrovin & Tröger*, a civil-law partnership governed by civil law, runs a swimming school. In the context of its activities, it provides swimming courses of different levels, essentially, for children. The CJEU addressed the question whether the concept of “school and university education”, within the meaning of Article 132(1)(i) and (j), should be interpreted so as to include swimming tuition.

Decision by the CJEU: Following the same approach and line of arguments as in the *A & G Fahrschul-Akademie* case, the CJEU concluded that while swimming tuition provided by a swimming school is of undoubted importance and in the general interest, it nevertheless remains specialised tuition provided occasionally, which does not, in itself, amount to the transfer of knowledge and skills covering a wide and diversified set of subjects or to their furthering and development which is characteristic of school or university education within the meaning of Article 132(1)(i) and (j).<sup>17</sup> By making reference to the two earlier decisions on driving and, respectively, surfing and sailing lessons, the CJEU stressed that although the importance of the knowledge transferred, in particular in order to deal with emergency situations and to ensure the safety and physical integrity of persons, cannot be denied, such tuition nevertheless does not fall within the concept of “school or university education”. It is to be noted, however, that this additional argument put forward by the CJEU does not explicitly follow from its decisions in cases *A & G Fahrschul-Akademie* and *Finanzamt Hamburg-Barmbek-Uhlenhorst*.

2.2.2. *Treatment of certain services in the context of the exemption under Article 132(1)(i) and (j)*

The Danish authorities seek to inquire how services, which could be considered as being of a similar nature as driving lessons, surfing and sailing classes or swimming lessons, should be treated for the purpose of the exemptions under Article 132(1)(i) and (j) in view of the recent decisions of the CJEU.

This concerns particularly services provided by self-governing evening schools, private music schools, private dance schools, private gyms, or similar entities, which are currently generally exempted in Denmark. Denmark also seeks to inquire whether school related

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<sup>15</sup> *Finanzamt Hamburg-Barmbek-Uhlenhorst*, paragraphs 33, 34.

<sup>16</sup> *Finanzamt Hamburg-Barmbek-Uhlenhorst*, paragraphs 35-40.

<sup>17</sup> *Dubrovin & Tröger – Aquatics*, paragraph 31.

activities, such as school chess offered by associations, are affected by the recent jurisprudence.

As regards education at **evening schools**, evening schools are generally self-governed institutions which are often run with public subsidy and which provide the education against the payment of a small contribution by the participants. Evening schools offer tuition in a wide range of areas, such as sciences, languages, music and drama, painting, political education, sports activities, aimed at citizens of all ages. Evening schools usually have no connection with the ordinary school system.

As regards **private music schools**, these schools offer courses at different levels in singing, voice training, songwriting, music theory, and playing various instruments, such as piano, guitar, violin etc. Private music schools often receive substantial public funding in order to provide the services, while the pupils and students generally pay a fee or contribution. The courses are offered for all age groups, but predominantly for children and young people. The music schools have generally no connection with the ordinary school system.

Similar considerations as for music schools also apply to **private dance schools**. Private dance schools offer courses in various types of dances, including, classical dance, ballet, but also jazz dance, hip-hop, disco, salsa etc. Private dance schools may often receive public funding in order to provide the services, while the pupils and students generally pay a fee or contribution. The courses are offered for all age groups, but predominantly for children and young people. The dance schools have generally no connection with the ordinary school system.

As regards **physical education**, the VAT exemption of school and university education in Denmark currently also covers instruction in physical education given in private fitness centres. This includes both group and personal instruction in a wide range of types of sports as well as fitness and wellbeing exercises, such as spinning, yoga, pilates, aerobics etc. The sale of access to use exercise machines etc. is the supply of a service that is subject to VAT. The VAT exemption presupposes that the service contains a significant element of teaching, so that an instructor leads the participants throughout the lesson through a predetermined programme which follows an increasing learning curve. The participants in these courses are typically adults.

### **3. COMMISSION SERVICES' OPINION**

#### **3.1. General remarks**

The VAT Directive envisages in Article 132(1)(i) an exemption from VAT for “*the provision of children’s or young people’s education, school or university education, vocational training or retraining, including the supply of services and of goods closely related thereto, by bodies governed by public law having such as their aim or by other organisations recognised by the Member State concerned as having similar objects*”.

Similarly, Article 132(1)(j) stipulates that “*tuition given privately by teachers and covering school or university education*” shall be exempted from VAT.

The VAT Committee dealt with questions related to the exemption of school and university education at the 97<sup>th</sup>, 117<sup>th</sup> and 122<sup>nd</sup> meetings. However, the present question and the reference to the most recent jurisprudence of the CJEU, as put forward by Denmark, has not been elaborated yet.

### **3.2. Scope of the term “school or university education”**

#### *a) Rationale behind the exemption in Article 132(1)(i) and (j) of school and university education*

In order to better understand the recent jurisprudence of the CJEU and to assess what impact it might have had on certain services hitherto generally treated as “school or university education” within the meaning of Article 132(1)(i) and (j), it is useful to take a look at the rationale behind this provision. This is particularly pertinent as the jurisprudence of the CJEU is dynamic and contains legal terms that themselves require further legal interpretation.

Article 132 is to be found in Chapter 2 of Title IX thereof, entitled ‘Exemptions for certain activities in the public interest’. The justification for the exemptions set out in that article, and thus also in paragraph 1(i) and (j) thereof, is the public interest in which the activities covered by the exemptions are carried out.

With regard to “school and university education”, the overwhelming majority of the language versions of Article 132(1)(i) and (j) use the term ‘school or university education’ like in the English version, *e.g.* ‘enseignement scolaire ou universitaire’ (French), or ‘Schul- und Hochschulunterricht’ (German), or ‘skole- og universitetsundervisning’ (Danish), and so on. The Polish version, by contrast, puts it slightly differently by using the terms ‘kształcenie powszechnie lub wyższe’ (general or higher education).

Undoubtedly, not every entity bearing the name school or university provides educational services that would fall under this provision. The intention of the EU legislator, as pointed out by Advocate General Szpunar in the *A & G Fahrschul Akademie* case<sup>18</sup>, relates to education which is general, *i.e.* accessible to – and at lower levels even compulsory for – everyone, and general, in the sense that it covers a very broad range of knowledge, provided as part of the school and university system which exists in every Member State. That system provides the general public with a broad set of knowledge and skills which allows them to operate successfully in their daily lives, both, in the private and professional spheres.

This system of general education is characterised, *inter alia*, by the fact that it is tightly and comprehensively regulated by the provisions of law. Those provisions set out *e.g.* the structure of the school system and the way in which schools operate, the curriculum, teachers’ qualifications and, finally, the rules on obtaining certificates.

At the same time, it is recognised that this education system may be based on both State schools and universities and private entities providing educational services for consideration. In some cases, certain educational services are also provided for consideration in State schools.

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<sup>18</sup> Opinion of Advocate General Szpunar delivered on 3 October 2018 in Case C-449/17, *A & G Fahrschul-Akademie*, EU:C:2018:791, paragraphs 18 to 29.

To avoid on the one hand increasing the cost of such services – which serve the public interest – to the recipients and on the other distorting competition between State and private sector bodies, the EU legislator introduced the exemption as set out in Article 132(1)(i) and (j) for the activity defined as school or university education.

Therefore, that provision should be construed as meaning that where, in the system of general (school) or higher (university) education operating in a Member State, certain services are provided for consideration, whether by State schools (‘bodies governed by public law’), or private schools (‘other organisations recognised ... as having similar objects’), those services are exempt from VAT.<sup>19</sup>

In relation to general education services at primary, secondary and higher level the demand to serve a public interest seems quite clear. Possessing a certain set of knowledge and skills – a certain level of education – is necessary for living in modern society and is in the interest not only of each individual but also of that society as a whole. For that reason, education to a certain level is even compulsory. However, the public interest cannot be confined to providing tuition only on a compulsory and basic level.

As pointed out by Advocate General Szpunar in his Opinion in the *A & G Fahrschul Akademie* case, societies cannot function and develop economically, culturally and politically without a set of highly qualified persons who go significantly beyond the compulsory and basic level of education. This is why societies are often referred to as knowledge-based societies which promote a life-long learning. This is also why Member States and the Union invest substantially in maintaining and developing their education systems. It would be contradictory if Member States at the same time restricted access to that system by increasing the costs of the services provided through taxation. Moreover, such taxation could also give rise to concerns as regards the principle of equality, as it would make access to the education system dependent on the availability of financial means. Costs for education might not be insignificant or a one-off. They often need to be borne over a longer period, no matter whether these costs relate to pupils or students, in which case such costs have to be borne by the parents, or if they relate to an adult who takes the chance of investing in his/her education.

This justifies the exemption for school and university education in Article 132(1)(i) and (j).

*b) Impact of the recent jurisprudence of the CJEU on certain activities*

It is against this background that the explanations of the CJEU need to be read. When the CJEU states that “school or university education” within the meaning of Article 132(1)(i) and (j) covers activities which are different, both, because of their specific nature and by reason of the framework in which they are carried out<sup>20</sup> and that the EU legislator intended to refer to a certain type of education system which is common to all Member States, it does not refer merely to the lowest common denominator. The scope of schooling is broad and does not refer to the “ordinary” schooling alone but includes other types of schools, such as schools for disabled, blind, or deaf students or religious schools as well as schools that may follow a particular educational approach, such as Montessori, Pestalozzi or Waldorf schools. These schools may be constituted not only in public but also in a private

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<sup>19</sup> Ibid.

<sup>20</sup> Cf. to that effect, *Horizon College*, paragraph 20.



form, provided they follow similar objects, within the meaning of Article 132(1)(i). Similarly, in the same way as musical, cultural and physical education is generally part of the ordinary schooling curriculum, music schools, theatre or ballet schools, as well as physical education facilities may also be considered a constituent element of the necessary level of education in a modern society, not only if they are set up in a public form but also if they are offered in a private form, depending on the activities in question in the individual case.

Drawing the boundaries and to determine what constitutes the specific nature and the accompanying framework of education that is common to all Member States is not static but a dynamic process in a changing knowledge-based society.

The CJEU has shed light in its recent decisions on the scope of the term “school and university education”, and found that driving tuition, surfing and sailing courses as well as swimming classes constitute – in the cases brought before it – “specialised tuition” falling outside the integrated educational system the CJEU has in mind.

This jurisprudence cannot, however, be generalised to such extent as to conclude that other services, such as those mentioned above, *i.e.* educational services in music schools, dance or ballet schools, or fitness and sports facilities, would all *per se* fall outside the integrated educational system referred to by the CJEU.

It is thereby of note that according to the CJEU it is the integrated system for the transfer of knowledge and skills that needs to cover a wide and diversified set of subjects and that is built upon various constituent stages. How this integrated system is designed, which elements it entails and how these elements contribute to constituting an integrated educational system, may be up for each Member State – the CJEU acknowledged that educational systems across the Union might differ. However, the VAT rules need to be applied coherently across the Union, irrespective of the differing characteristics each national system might have.

Hence, there is need to take a look at the various elements that may make up such integrated system together. The reference of the CJEU to an integrated system for the transfer of knowledge and skills covering a wide and diversified set of subjects cannot be understood in a way that tuition provided by a teacher in one subject *e.g.* Maths or Latin only, is barred from the exemption from VAT as such. The decisive point is that it needs to be considered whether this transfer of knowledge in the particular case at hand is part of the integrated educational system in that Member State. It is not a mere quantitative assessment but a qualitative assessment.

### Evening schools

As regards evening schools, even if evening schools generally are not part of the ordinary school system, it is not excluded that they could form part of the overall integrated educational system in a Member State on the transfer of knowledge and skills, as envisaged by the CJEU. Evening schools offer a wide range of scientific and educational courses that are not limited to personal wellbeing and development or that are recreational in nature. They generally follow an annual or semi-annual curriculum and do not provide their transfer of knowledge on an *ad hoc* basis or occasionally only. These schools are often financially supported by public bodies and the fees paid by the participants do not necessarily constitute a consideration for the services received. They may also be

governed by national, regional or municipal legislation. Evening schools may – and often do – play an important role in complementing the morning schools in a way as they allow young adults or adults to pursue educational classes *e.g.* in support of or in addition to other tuition, or after work – in the evening – to learn and develop further skills or obtain additional certificates or degrees. These schools, thus, often fill a gap between the ordinary schooling for children and the higher education at universities. Such education may be not only in the individual interest of the person pursuing such courses, but also in the interest of knowledge-based societies which promote life-long learning.

However, whether and to which extent evening schools and the courses offered at those schools may be exempted under Article 132(1)(i) and (j) has to be assessed by taking a look at the individual case. Thereby it is essential whether the activities provided may be considered as forming part of an integrated system for the transfer of knowledge and skills, as outlined by the CJEU and whether they are recreational only. To that end it may be possible to compare the activities with other activities offered at public or private schools and ask whether they meet similar demands in the context of the individual case. However, it does not necessarily follow from the recent jurisprudence of the CJEU mentioned above that evening schools cannot be covered by the VAT exemption for school and university education *per se*. Accordingly, the CJEU allowed, in principle, in the *Haderer* case the exemption to cover tuition at an evening school.<sup>21</sup>

#### Music and dance/ballet schools

Similar considerations apply to music and dance/ballet schools. Musical and cultural education is generally part of the ordinary school education, while private music schools and dance/ballet schools generally are separate entities. This does not exclude that they are, in the individual case, part of the integrated educational system in a Member State on the transfer of knowledge and skills, as envisaged by the CJEU.

Music and dance/ballet schools usually offer a wide field of activities, including theory and practice in playing various instruments and musical areas. These schools often, too, follow a curriculum that often lasts not only for a year but mirrors the progress for several years. Often these classes lead to pursuing studies at a higher school of music, theatre, or dance, or to a career as a professional artist. These activities are not organised on an *ad hoc* or occasional basis only. These schools are, too, often financially supported by public bodies or municipalities and the fees paid by the participants do not necessarily constitute a consideration for the services received. Moreover, those schools may also be governed by national or local legislation, that may set the framework within which the schools have to operate including qualifications, certificates and degrees to be obtained, as well as the curricula to be followed.

As mentioned above, the circumstance that a student receives tuition *e.g.* in playing one instrument only, does not suffice alone to bar that tuition from the application of the exemption under Article 132(1)(i) or (j), provided that it is to be considered part of the integrated educational system and not recreational, as outlined by the CJEU.

In practice, tuition in music and dance activities might in many cases be of a recreational nature only and thus fall out of the exemption of Article 132(1)(i) and (j).

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<sup>21</sup> CJEU, judgment of 14 June 2007, *Haderer*, C-445/05, EU:C:2007:344.

However, whether and to which extent music and dance/ballet schools and the courses at those schools may be exempted under Article 132(1)(i) and (j) has to be assessed taking a look at the individual case. Thereby it is essential to take account of the jurisprudence of the CJEU in its entirety and to establish whether these schools may be considered as forming part of an integrated system for the transfer of knowledge and skills, as outlined by the CJEU and whether they are recreational only. However, it does not necessarily follow from the recent jurisprudence of the CJEU mentioned above that music schools and dance/ballet schools cannot be covered by the VAT exemption for school and university education *per se*.

#### Physical education and other school related activities

The same considerations may apply, in principle, to physical education, such as fitness facilities, as well as to other school related activities, such as chess. In practice, tuition in fitness activities and related activities, such as chess, might in many or even most cases be of a recreational nature only, and thus fall out of the exemption of Article 132(1)(i) and (j). Moreover, it may at first sight appear that such facilities do not form part of the integrated educational system common to all Member States that is covered by the exemption pursuant Article 132(1)(i) and (j).

However, whether and to which extent these facilities may be exempted under that Article has to be assessed taking a look at the individual case, thereby taking account of the jurisprudence of the CJEU in its entirety.

### **3.3. Vocational training and retraining as stipulated in Article 132(1)(i) and (j)**

Another aspect that needs to be taken into consideration when assessing whether the exemption of Article 132(1)(i) and (j) comes to application is that that provision does not only refer to school or university education but also to vocational training and retraining.

It should be recalled that the CJEU clarified that it is irrelevant to the interpretation of Article 132(1)(j) that the formulation of the exemption in that provision is narrower than that of the exemption provided for in Article 132(1)(i), in particular that, unlike the latter provision, Article 132(1)(j) does not, in addition to school or university education, specifically mention training.<sup>22</sup>

Article 44 of the VAT Implementing Regulation<sup>23</sup> provides that the term “vocational training or retraining“, includes instruction relating directly to a trade or profession as well as any instruction aimed at acquiring or updating knowledge for vocational purposes. The duration of a vocational training or retraining course is thereby irrelevant.

As pointed out by Advocate General Szpunar in his Opinion in the *A & G Fahrschul Akademie* case, (even) driving school tuition may, under certain circumstances, fall under the term vocational training or retraining. An activity may, however, only be regarded as vocational training if it leads to the acquisition of knowledge or skills used **exclusively or primarily** for the purposes of vocational activity, or, possibly, an activity **targeted specifically** at persons intending to acquire specific skills for professional purposes. By

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<sup>22</sup> *Eulitz*, paragraph 34-36.

<sup>23</sup> Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax (recast) (OJ L 77, 23.3.2011, p. 1, as amended).

contrast, this is not the case, where the skills acquired in the course of a vocational training may merely be used for any type of professional activity, as this would result in a potentially unlimited extension of that concept.

Consequently and as outlined by Advocate General Szpunar in his Opinion in the *A & G Fahrschul Akademie* case, driving school tuition for the acquisition of category C1 driving licences, which permits driving trucks with a maximum authorised mass of up to 7.5 tonnes, could be regarded as vocational training, if it was targeted at persons intending to carry out an activity relating to the carriage of goods by road or formed an integral part of the training of those persons.

This question depends on the individual case and the referring court did not expressly raise the interpretation of the term ‘vocational training’ in its questions referred for a preliminary ruling in the *A & G Fahrschul Akademie* case. There were hence no grounds for the CJEU to regard driving school tuition for the acquisition of category C1 driving licences as amounting to vocational training in that case.

Consequently, it is imperative to take a look at each case individually and in context when assessing whether an activity could fall under the exemption of Article 132(1)(i) and (j). Even when it comes to driving tuition, the decision of the CJEU in the *A & G Fahrschul Akademie* cannot be generalised in such way as to exclude driving lessons *per se*.

The same considerations apply, as the case may be, to tuition in music, dance or physical education. Tuition in music, dance or physical education may form part of preparations for or directly lead to the exercise of a vocational activity or professional purposes.

Whether and to which extent the activity in question may be exempted under Article 132(1)(i) and (j) has to be assessed taking a look at the individual case. However, it does not follow from the recent jurisprudence of the CJEU mentioned above that these activities *per se* cannot be covered by the VAT exemption for school and university education.

#### **3.4. Other types of exemptions and additional conditions**

The above considerations do not exclude the possibility that some of the activities, while they may not fall under the scope of Article 132(1)(i) and (j), nonetheless could fall under another exemption provided in Article 132(1), such as the supply of certain services closely linked to sport or physical education by non-profit making organisations (Article 132(1)(m)) or the supply of certain cultural services and goods closely linked thereto (Article 132(1)(n)). This needs to be assessed in line with the prerequisites of the respective provision in the individual case.

Member States may in line with Article 133 make the granting to bodies other than those governed by public law subject in each individual case to one or more additional conditions, as laid out in that provision.

#### **3.5. Conclusion**

Based on the above considerations, it is possible to conclude that:

While the CJEU has shed light in its recent decisions particularly referred to in this document on the scope of the term “school and university education”, this jurisprudence cannot necessarily be generalised to such extent as to conclude that other services, such as educational services provided in evening schools, music schools, dance or ballet schools, or fitness and sports facilities, would all *per se* fall out of the integrated educational system as referred to by the CJEU.

Nonetheless, in practice, tuition given in evening schools, music and dance/ballet schools as well as in fitness facilities may in many cases be of a recreational nature only, and thus fall out of the exemption of Article 132(1)(i) and (j). Moreover, it may at first sight appear that some facilities do not form part of the integrated educational system common to all Member States that is covered by the exemption pursuant Article 132(1)(i) and (j).

However, for the purpose of this assessment, the requirements of Article 132(1)(i) and (j), as interpreted by the CJEU, need to be considered in their entirety and in the context of the concrete case and in relation to the individual service provided.

#### **4. DELEGATIONS’ OPINION**

Delegations are asked to express their opinion on the Commission services’ opinion.

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### **Question from Denmark**

#### **VAT exemption – “School and university education” - Cases C-449/17, A&G Fahrschul, C-47/19, HA, C-373/19, Dubrovin & Tröger Aquatics**

In response to a number of rulings from the European Court of Justice, the Danish tax authorities have announced a change in Danish practice with regard to VAT exemption for school and university education, tuition given privately by teachers and covering school or university education.

The cases in question from the European Court of Justice are C-449/17, A&G Fahrschul, C-47/19, HA, and C-373/19, Dubrovin & Tröger Aquatics.

The Danish tax authorities have proposed a change in practice regarding VAT exemption for school and university education and tuition given privately by teachers and covering school or university education, such that these exemptions can no longer cover teaching traditionally offered by self-governing evening schools, private and municipal music schools, private dance schools, private gyms etc.

However, the proposed changes in practice have generated a number of responses. Several market players believe the activities in question should be covered by the VAT exemptions for school and university education or cultural services.

To ensure that VAT exemptions are applied equally in the EU, we would like to discuss the Danish interpretation of the rulings of the European Court of Justice.

### **Current Danish practice**

#### Education at evening schools

According to current Danish practice education provided by evening schools is exempt from VAT following the VAT exemption for school and university education in the Article 132(1)(i) of Directive 2006/112. Evening schools are self-owned institutions which are run with public subsidy and which provide the education against the payment of a small fee by the participants.

Evening schools offer a very wide range of educational services aimed at citizens of all ages. The teaching range includes topics in, for example, exercise and movement, creative leisure, music and drama, language, health and lifestyle, family activities, outdoor life, IT, communication etc.

Participants can thus follow courses in, for example, painting technique, democracy, drama, EU food and culture, Arabic, guitar, embroidery, yoga, dog training, ceramics, fishing, mindfulness, singing, stocks for beginners, etc.

The teaching is typically organized in such a way that, for a fee, you can register for a course, after which you receive weekly group teaching in the chosen subject over a season.

The evening schools have no connection to the ordinary school system.

### Instruction in physical exercises

In Denmark, the VAT exemption of school or university education covers instruction in physical exercises given in private fitness centres.

This includes both group and personal instruction in, for example, spinning, yoga, pilates, aerobics etc. The sale of access to use exercise machines etc. is a service that is subject to VAT.

The VAT exemption presupposes that the service contains a significant element of teaching, so that an instructor leads the participants throughout the lesson through a predetermined program which includes an increasing learning curve.

The participants in these courses are typically adults.

### Education at music schools

In Denmark, the VAT exemption of school or university education also includes tuition given at private and municipal music schools.

The music schools offer courses in singing, voice training, songwriting, rhythm, piano, guitar, violin etc. The teaching is typically organized in such a way that, for a fee, you can register for a course where you receive weekly teaching in the chosen subject over a season.

The participants in these courses are in all age groups, but predominantly children and young people.

The music schools have no connection to the ordinary school system for children and young people.

### Education at dance schools

According to current Danish practice the VAT exemption for school and university education also includes tuition given at private dance schools.

The dance schools offer courses in various types of dance, including, for example, show dance, hip-hop, disco, jazz, Latin, salsa. The teaching is typically organized in such a way that, for a fee, you can register for a course where you receive weekly teaching in the chosen subject over a season.

The participants in these courses are in all age groups, but predominantly children and young people.

The dance schools have no connection to the ordinary school system for children and young people.

### **Rulings of the Court of Justice of the European Union in cases C-449/17, A&G Fahrschul, C-47/19, HA and C-373/19, Dubrovin & Tröger Aquatics**

Case C-449/17, A&G Fahrschul concerned a driving school which provided services in the form of theoretical and practical driving tuition to its customers against consideration.

The driving school regarded its services as being covered by the German VAT exemption for school or university education.

Case C-47/19, HA, concerned a business which ran two surfing and sailing schools in Germany. The company's income came primarily from the sale of surfing and sailing courses, rental and sale of surfing equipment and accommodation for course participants. The surfing and sailing courses were offered to school institutions and universities as part of their physical education (PE) programmes or sports science programmes or the professional training of PE teachers, and grades could be awarded. The surfing and sailing schools considered their tuition services to be exempt from VAT.

Case C-373/19, Dubrovin & Tröger Aquatics concerned a swimming school in Germany which, in connection with its activities, offered tuition of different levels relating to the basics and techniques of swimming – essentially for children. The swimming school regarded its services as being exempt from VAT.

In these cases, the European Court of Justice finds that, in the application of the concept of “school or university education”, the EU legislature intended to refer to a certain type of education system which is common to all the Member States, irrespective of the characteristics particular to each national system.

The VAT-exempt activities therefore include 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

Furthermore, the European Court of Justice notes that 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 wide 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.

The Court also notes that these criteria apply within the meaning of both Article 132(1)(i) and (j) of Directive 2006/112.

On the basis of these observations, the European Court of Justice finds in Case C-449/17, A&G Fahrschul that even if it covers a range of practical and theoretical knowledge, driving tuition provided in a driving school nevertheless remains specialised tuition which does not amount, in itself, to the transfer of knowledge and skills covering a wide and diversified set of subjects or to their furthering and development which is characteristic of school or university education.

In Case C-47/19, HA, the European Court of Justice concluded that, even if it covered a range of practical and theoretical knowledge and skills, the surfing and sailing tuition nevertheless remained specialised tuition which did not amount, in itself, to the transfer of knowledge and skills covering a wide and diversified set of subjects.

Finally, in Case C-373/19, Dubrovin & Tröger Aquatics, the European Court of Justice concluded that while the swimming tuition provided by a swimming school is of undoubted importance and in the general interest, it nevertheless constitutes specialised tuition provided occasionally, which does not amount, in itself, to the transfer of



knowledge and skills covering a wide and diversified set of subjects or to their furthering and development which is characteristic of school or university education

The VAT exemption for school and university education was therefore not applicable to any of the cases in question.

#### **Assessment by the Danish tax authorities**

It is estimated that the decisions of the European Court of Justice mean that Denmark must change its practice in relation to the VAT exemption for education. The VAT exemption no longer seems to be able to be extended to cover tuition given at evening schools, music schools, dance schools and in fitness centers.

It is the opinion of the Danish tax authorities that the VAT exemption for education must always be subject to a concrete assessment of whether the conditions are met in relation to the individual service, and the above examples are therefore the Danish tax authorities' immediate assessment of which education providers are expected to be primarily affected of the practice change.

This is mainly with reference to the fact that much of the education offered at evening schools, music schools, dance schools and in fitness centers is specialized education, which does not contain a wide and diversified set of subjects. Likewise, a not insignificant part of the teaching offered concerns subjects that must be regarded as purely recreational.

In addition, neither evening schools, music schools, dance schools nor fitness centers are considered to be part of the ordinary school system in Denmark.

#### Evening schools

It is noted that the evening schools offer teaching in a very wide range of subjects, but the characteristic for all of them is that they are seen to be limited and specialized in the same way as was the case in the three decisions from the European Court of Justice.

It is therefore the assessment of the Danish tax authorities that when evening schools offer courses in individual subjects such as exercise and movement, creative leisure, music and drama, language, health and lifestyle, family activities, outdoor life, IT, communication, etc., then these constitute specialized education in same level as driving school lessons, swimming school lessons and surf/sailing school lessons.

The teaching given at the evening schools also does not seem to contain a transfer of knowledge and skills covering a wide and diversified set of subjects to the furthering and development of that knowledge and those skills by the participants in the course of their progress and their specialization within the various parts of the school system, paragraph 26 in case C-449/ 17, A&G Fahrschul.

In contrary, in the case of evening schools, it is ad hoc teaching that participants typically sign up for in their spare time.

Furthermore, in the view of the Danish tax authorities, many of the courses offered by evening schools seem to be of a purely recreational nature, which is excluded from the VAT exemption, cf. for example paragraph 22 in case C-449/17, A&G Fahrschul.

This applies, for example, to teaching in family activities, health and lifestyle, creative free time, exercise and movement, etc.

On the basis hereof, the Danish tax authorities are of the opinion that education provided at evening schools cannot be covered by the VAT exemption for school and university education.

The Danish tax authorities, on the other hand, are of the opinion that education given at evening schools instead could be covered by the VAT exemption for cultural services in the Directive 2006/126, Article 132 (1)(n).

Thus, in paragraph 20 of the case C-592/15, British Film Institute, the European Court of Justice has determined that the EU legislature, with the choice of the words “certain cultural services” in the wording of the exemption, has given the Member States the opportunity to determine which cultural services they exempt. Furthermore, in paragraph 28 of case C-90/16, The English Bridge Union, the Court of Justice of the European Union has stated that an activity can fall under the concept of “cultural services” if the activity, in the light of the way in which it is practiced, its history and the traditions to which it belongs, in a given Member State, holds such a place in the social and cultural heritage of that country that it may be regarded as forming part of its culture.

In Denmark, evening schools have roots dating back to the beginning of the 19th century, and the schools flourished in particular in the wake of the adoption of the Danish constitution. During this period, a large number of associations were formed, which had public information and education on the programme, which became part of the activities of the evening schools. The evening schools are considered to have their ideological origin from a well-known Danish writer, theologian and poet, who sought to enlighten the ordinary Dane so that he could become a knowledgeable and active participant in society.

In Denmark, the evening schools is subsidized by the Ministry of Culture, and the evening schools receive this in accordance with the Public Information Act. It has been stated during the process of adapting the Public Information Act, that public information education has its roots in Danish democracy and the resulting requirement for citizenship. Public information must therefore, among other things, strengthen the desire and ability to participate in society, culture, family and working life.

On this basis, the Danish tax authorities are of the opinion that evening schools therefore occupy a place in Denmark's social and cultural heritage, and a VAT exemption for evening school tuition must be within that discretion, which according to the European Court of Justice is left to the individual Member States in this connection.

#### Instruction in physical exercises at fitness-centres

The Danish tax authorities have also assessed, on the basis of the decisions of the European Court of Justice, that the VAT exemption for teaching physical exercises given in private fitness centers cannot be maintained either.

Single subject teaching in spinning, yoga, pilates, aerobics does not appear to relate to a wide and diversified amount of subjects in the sense of the VAT exemption. Teaching of this kind must instead be considered to be specialized teaching in the same way as teaching given at driving schools, swimming schools and surf/sailing schools.

Furthermore, it is the opinion of the Danish tax authorities that these activities must be considered to be of a purely recreational nature, which is excluded from the VAT exemption for school and university education. This is regardless of the fact that being in good physical shape is often relevant to the working life of citizens, and thus the teaching of physical exercises cannot be said to be of a purely recreational nature.

Finally, it should be noted that in Annex III to the VAT directive in section 13, member states are given the opportunity to apply a reduced VAT rate to the sale of access to use of sporting facilities, and the supply of sport or physical exercise classes, which in the view of the Danish tax authorities must presuppose that these services are not already VAT exempt according to Article 132 (1)(i) or (j).

#### Music- and dance schools

The Danish tax authorities have had the same assessment in relation to teaching at music and dance schools. Single subject teaching in playing musical instruments and teaching in dancing must, in the opinion of the authorities, be regarded as specialized teaching which does not relate to a wide and diversified amount of subjects.

This only applies to music schools which offer the teaching as single subject teaching, as music schools which offer primary school courses with a focus on music and music conservatories are considered part of the ordinary school system, just as the teaching offered by these institutions contains a significantly wider and varied amount of subjects.

It should be noted that the teaching at music and dance schools is organized in the same way as at swimming schools, driving schools and surf/sailing schools, where courses are offered in individual and limited subjects, where the participants receive teaching weekly during a season. Regardless of whether, for example, by participating in a course for beginners in one season, you can qualify to participate in the following season in a team for slightly more experienced participants, etc., this is not sufficient for the teaching to meet the conditions for VAT exemption from school- and university education.

Nor does the fact that the teaching of children at music and dance schools contributes to some of these children choosing music or dance as a professional way of life subsequently seem to be able to justify a VAT exemption, since the same possibilities exist in relation to, for example, swimming and sailing /surf schools.

Against the background of the decisions of the Court of Justice of the European Union, the Danish tax authorities therefore find it difficult to exempt from VAT this form of education given at dance and music schools as “school and university education” in the VAT Directive, Article 132 (1)(i)(j).

In addition to school and university education, the VAT exemption in Article 132(1)(i) also covers the provision of children's or young people's education. The practice for this VAT exemption seems to be limited, and a literal interpretation of the exemption seems to make the same demands in relation to the wide and diversified amount of subjects, which the European Court of Justice has established in relation to school- and university teaching. This with reference to the use of the term “education” in both parts of the exemption.

Nevertheless, the teaching at music and dance schools is very much aimed at children and young people, and from a Danish point of view the VAT exemption for education of children and young people otherwise seems to have no real independent content.

It can therefore be argued on this basis that education of, for example, children and young people under the age of 21 at music and dance schools should be included in the VAT exemption of the provision of children's or young people's education.

Finally, it can be argued that teaching at music and dance schools could be covered by the VAT exemption for cultural services within article 132(1)(n).

The music and dance schools in Denmark go back over 100 years, and there is a tradition of many children attending classes at the schools. Schools are also seen to have a not insignificant role in educating children who later become professional musicians/dancers. On this background, the music and dance schools can be said to have a certain significance for Danish culture.

However, it is the assessment of the Danish tax authorities that these arguments are not sufficient for teaching at music and dance schools to be exempt from VAT as cultural services.

Thus, there seems to be no reason to assume that the activities of the music and dance schools, in terms of their practice, history and the traditions they are part of, occupy a place in the Danish social and cultural heritage. In doing so, the Danish tax authorities have taken particular account of the fact that the same arguments must be able to be asserted by a large number of other market players, whereby the scope of the VAT exemption for cultural services will be much larger than the EU legislator seems to have assumed.

It is on this basis that the Danish tax authorities have concluded that, with reference to the decisions of the European Court of Justice, tuition at dance and music schools must be considered services subject to VAT.

#### Other school related activities

In continuation of the above, the Danish tax authorities are also considering whether there is a need for a changed approach to other teaching-like activities linked to the ordinary school system. This is, for example, an association that offers school chess, which are chess-based learning courses and activities that are built around the game of chess. Schools can join the association and pay a membership fee. The chess activities are offered as an integrated part of the teaching, for example in connection with the mathematics teaching at schools.

The question is therefore whether the described activities within school chess can fall under the education exemption. The Danish tax authorities are of the opinion that single subject teaching in playing chess must be regarded as specialized teaching which does not relate to a wide and diversified amount of subjects, which is why the supply of school chess activities is subject to VAT.

We hope that the matters mentioned above can be discussed at the next meeting in the VAT Committee.