

Taken for a ride?

JULIE BUTLER provides some guidance on the VAT exemption for private tuition.

Recent VAT tribunal cases have shown that the question of whether tuition is exempt from VAT is complex and complicated. VAT 1994, Sch 9, Gp 6, item 2 exempts 'the supply of private tuition, in a subject ordinarily taught in a school or university, by an individual teacher acting independently of an employer'. This individual could be, for example, a sole proprietor or a member of a partnership or limited liability partnership (LLP). However, what constitutes 'ordinarily', the level of tuition provided, and whether it qualifies as taught in schools or is deemed more specialist coaching, is often the subject of much debate.

Motocross racing

In the context of this VAT exemption, a recent case looked at the teaching of motocross riding. The case was *Simon Newell trading as Chiltern Young Riders* (TC4689).

Mr Newell claimed that the teaching he provided was exempt from VAT because he was offering private tuition that fell within item 2. He provided evidence that the lessons were relevant to a GCSE course in motor vehicle and road user studies and also to the subject of physical education.

The First-tier Tribunal decided that neither motocross riding nor motorcycle maintenance were subjects ordinarily taught in schools. The result is that private tuition provided in these circumstances is not exempt. Even though Mr Newell taught these subjects within school premises, the physical location did not satisfy the current legislative tests. The fact that he was a pioneer in introducing the subject to schools put him outside the exemption because there were no precedents already established

KEY POINTS

- In some circumstances, private tuition in a subject ordinarily taught in a school or university may be VAT-exempt.
- The subject must be 'ordinarily' taught, so rarity may be a barrier.
- HMRC has agreed exemption for some horse-riding lessons.
- A line must be drawn between basic and more advanced levels of tuition.
- The level of experience of both tutor and pupil can be relevant.



that could be relied upon. This, the tribunal determined, was an inevitable consequence of the way the test was formulated in the legislation in the use of the word 'ordinarily'. Although motocross and motorcycle maintenance were taught in universities and schools, too few institutions taught these subjects and they were too specialist to qualify for exemption.

This case emphasises the importance of the term 'ordinarily'. Advisers must be aware that, just because private tuition is given at an educational establishment such as a school or college, this does not automatically mean the VAT exemption will apply. The test is based more on the frequency of the subject being taught across a range of schools within the UK.

Horse riding

Riding lessons have a complicated history when it comes to establishing whether VAT is chargeable when providing them to private clients. Because riding lessons have previously been defined by HMRC as 'being taught in a number of schools on a regular basis', they are subject to an exemption from VAT as confirmed by HMRC's *VAT Education Manual* at VAT_{EDU}40200 (tinyurl.com/jzftdzd). There is a proviso that they are taught to a level similar to those being conducted by educational establishments across the country.

Basic lesson v specialist lesson

There is an issue, however, about what counts as a basic riding lesson conducted to an educational level and thus qualifying for the exemption; and whether the instruction given is classified as specialist training beyond this level. The second example is universally accepted, following guidance from HMRC, as a standard-rated supply as detailed on *VAT Notice 701/30: Education and Vocational Training*.

Unfortunately there is no clear distinction from the tax authorities as to what qualifies on either side and the defining characteristics that need to be identified to differentiate between the two. This can be problematic for equestrian businesses

when trying to determine whether to charge VAT. It therefore becomes necessary to investigate further and look at the individual facts of each case.

Relevant factors

Probable defining factors when reaching a decision on whether to charge VAT for riding tuition at a specialist level may include the following.

- *The reputation and skill of the person conducting the lesson.* If the instructor has a world-class reputation and is an internationally recognised sportsperson – to use an extreme example – it is highly unlikely that that individual would be giving basic educational lessons to a standard usually taught in schools. It would, in this example, be expected that people learning to ride would start elsewhere and only come to that person to hone their skills for competing at a regional, national or international level. This would indicate that the standard would be well above that ordinarily taught in schools and would thus qualify as professional coaching and be standard rated for VAT purposes. On the other hand, an instructor with little reputation beyond the local area is far more likely to be giving educational lessons. There would be little point in a professional rider coming to this individual for further guidance so the tuition would be deemed to be at a level more readily taught in schools. In this second situation, the VAT exemption is more likely to apply.
- *The amount charged for the service.* Riding lessons are readily available for £35 to £50 an hour across parts of the UK. If the proprietor is charging this level of fee, the argument would be that the riding lesson would be of an educational level, priced to match local competition and therefore qualifying for the VAT exemption. If, however, the proprietor was to charge significantly more, this would indicate that specialist coaching was being undertaken. The extra charge must represent more than simple educational advancement; otherwise why would the client pay a premium? In this situation, it is more likely that the exemption would not apply, and the standard rate of VAT should be charged on the transaction.
- *The level, skill and experience of the individual receiving the instruction.* If the client being taught is a beginner, with no reputation, national or international standing – using an extreme example – the argument follows that a basic educational service, qualifying for the VAT exemption, is being provided. If the client had international experience, the benefit of being coached by someone would not be to a standard ‘ordinarily taught in schools’ and would thus qualify as specialist training, subject to the standard VAT rating.
- *The invoice raised and details on it.* What the invoice specifically states as to the service has a direct bearing on whether a riding service can qualify for the VAT exemption. If the invoice states ‘for specialist training and coaching services’ the service would have to be standard rated. If the invoice raised reads ‘for basic riding lessons and general equine instruction’ it is more likely that the VAT exemption will apply.

- *Similar transactions and prior treatment.* Precedent is important. If the proprietor has given similar specialist training and charged VAT on the transaction, that is the service primarily provided by the business and HMRC will expect VAT to be charged on all similar transactions. If, however, the proprietor has taught basic lessons and the precedent for claiming the VAT exemption has already been set, the continuation of this stance would be the more readily accepted by HMRC.

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Summary

Several variables must be considered when judging whether the VAT exemption applies. In summary:

- If the proprietor gives regular basic riding lessons to a standard ordinarily taught in schools, for a value charged at a rate not in excess of local riding schools for the same service, to a person who has a similar background knowledge to a school or college-based student before going for the lesson; this would qualify for the VAT exemption. This is as long as the invoice explicitly states the basic nature of the service offered.
- However, if the proprietor gives instruction only to top level riders who have previously competed at national and international competitions and charges significantly above the market rate for riding lessons and states on the invoice that services given are for ‘specialist training’, the VAT exemption would not apply. In the eyes of HMRC, the service would be deemed to go beyond what is ordinarily taught in schools.

Action points

It is fair to say that many small businesses that provide tuition as part of their business model need the VAT exemption to survive commercially. Understanding the rules around the exemption and the provision of tuition is key to their survival. The fact that there are so many tribunal cases on the subject in recent years, including tuition given in Pilates, belly dancing and bridge, all show that the rules can be subject to misinterpretation and can have an impact on many areas of small business life. ■

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