

Further education colleges - VAT

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The First-tier Tribunal has decided that certain students of further education colleges are treated as receiving their tuition 'free of charge', and thus not giving rise to a business activity. The point is important, since it could mean that the scale of business activities of such colleges is sufficiently low that new buildings can be constructed on a VAT-free basis (though this depends upon the detailed mix of the colleges' activities).

Wakefield College (TC03108) argued that students who made only part payment towards their fees, owing to means testing, should not be regarded as purchasing the services in the course of what is called an 'economic activity'. This is based directly on a previous European Court decision in the case of *Finland* (C-246/08) in which the CJEU decided that such payments were not consideration for supplies on the basis that they made such a small contribution to the cost, and were geared to ability to pay rather than to what was actually consumed.

It has always been something of a mystery as to why the CJEU did not regard the top-up payments met from the legal aid fund as a 'subsidy connected with the price of the supply', which would have meant that the activities were economic activities. The CJEU had not even addressed that point, and it seemed clear that the interpretation was rather that students were making 'contributions' according to their ability to pay, even though the selected contribution had to be made in order to access the training activity. The payments were thus not regarded as 'consideration'.

The Tribunal compared the situation applicable to Wakefield College with the facts in the *Finland* case, and could not see any distinction and therefore accepted that these activities were not business activities when only paid for partly by fees.


Whilst the overall result is something of a surprise, the *Finland* precedent is not reversible, and further education colleges and similar institutions should review their position to determine whether they could now take advantage of zero rating for new construction projects (including on a retrospective basis) by virtue of carrying out mainly non-business activities despite making partial charges to means-tested students.

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