20 March 2019

PRESS SUMMARY

SAE Education Ltd (Appellant) v Commissioners for Her Majesty's Revenue and Customs (Respondent) [2019] UKSC 14
On appeal from [2017] EWCA Civ 1116

JUSTICES: Lord Reed (Deputy President), Lord Sumption, Lord Briggs, Lady Arden, Lord Kitchin

BACKGROUND TO THE APPEAL

Supplies of education to students in the United Kingdom are exempt from value added tax ("VAT") if they are made by a college of a university within the meaning of Note 1(b) to Item 1, Group 6 of the Value Added Tax Act 1994 ("the VAT Act").

The appellant ("SEL") contends that its supplies of education to students in the United Kingdom were and are exempt from VAT because it was and remains a college of Middlesex University ("MU"). SEL is a subsidiary of SAE Technology Group BV. Both are part of the SAE group of companies which trades around the world under the name "SAE Institute" ("SAEI"). MU is a United Kingdom university within the meaning of the VAT Act, Group 6, Item 1, Note 1(b). It has never had any financial interest in any SAE group company. Nevertheless, the relationship between MU and SAEI has been very close and is a reflection of a series of agreements addressing the nature of that relationship, the validation by MU of SAEI programmes of education and the accreditation of SAE group companies.

SEL appealed against assessments raised by the Commissioners for Her Majesty's Revenue and Customs ("the Commissioners") in respect of its accounting periods 1 May 2009 to 29 February 2012. It has also appealed against subsequent assessments, but these have been stayed by agreement with the Commissioners pending the outcome of this appeal. SEL's appeal was allowed by the First-tier Tribunal ("FTT"). The Commissioners appealed that decision to the Upper Tribunal which allowed the appeal. SEL then appealed to the Court of Appeal, this appeal was dismissed.

There are two issues for the Supreme Court: first, whether the Court of Appeal adopted the correct approach in determining whether SEL was a college of MU for the purposes of Note 1(b) to Item 1, Group 6 of the VAT Act; and secondly, if it did not, whether, upon application of the correct test, SEL was such a college.

JUDGMENT

The Supreme Court unanimously allows the appeal. Lord Kitchin, with whom the rest of the Court agrees, delivers the judgment.

REASONS FOR THE JUDGMENT

The starting point for a consideration of the proper interpretation of Note 1(b) to Schedule 9, Group 6, Item 1 of the VAT Act must be articles 131 to 133 of the Principal VAT Directive. These make clear that member states must exempt transactions involving the provision of, among other things, university education by bodies governed by public law having such education as their aim. Member

states must also exempt transactions by other organisations which they have recognised as having similar objects to those governed by public law and which also have education as their aim **[41]**. The general objective of the exemptions is to ensure that access to the higher educational services is not hindered by the increased costs that would result if those services were subject to VAT **[43]**.

Parliament has chosen to exercise the discretion conferred upon it by exempting from VAT the provision of education by a United Kingdom university and any college of such a university. The term "university" is not defined in the VAT Act. However, the conditions under which a body in the United Kingdom is entitled to use the word university in its title are regulated by statute. Over 100 bodies are presently entitled to call themselves a university and they vary greatly in character. A small but nonetheless significant number of them are private and run for profit **[46]**.

It is against the background of the range of possible arrangements between universities and their colleges that the meaning of the phrase "college of such a university" in Note (1)(b) falls to be determined **[47]**. In Lord Kitchin's judgment the following points are material **[47]**. First, for its activities to fall within the scope of Item 1(a), any college of a university, as an eligible body, must provide education **[48]**. Secondly, the supply of educational services is exempt only if it is provided by bodies governed by public law or by other bodies recognised by the member state as having similar objects **[49]**. Thirdly, there is nothing in Note 1(b) or the broader context which would justify limiting the scope of the phrase "any college of such a university" to colleges which are a constituent part of a university in a constitutional or structural sense. To the contrary, if satisfaction of such a constituent part test were required, it would effectively exclude commercial providers such as SEL from the exemption for it is a test they will rarely if ever be able to satisfy **[50]**. Fourthly, it is necessary to examine the characteristics of those educational services and the context in which they are delivered rather than the precise nature of the legal and constitutional relationship between the body that provides them and its university **[51]**.

Lord Kitchin recognises that the presence of a foundation or constitutional document or some other legal relationship establishing the college as a constituent part of the university in a constitutional or structural sense will be sufficient to prove that it is a college of the university within the meaning of Note 1(b), save in an exceptional case. However, that is not a necessary condition. In assessing whether a body is a college of a university the following five questions are also likely to be highly relevant: (i) whether they have a common understanding that the body is a college of the university; (ii) whether the body can enrol or matriculate students as students of the university; (iii) whether those students are generally treated as students of the university during the course of their period of study; (iv) whether the body provides courses of study which are approved by the university; and (v) whether the body can in due course present its students for examination for a degree from the university **[53]**. If a body can establish the presence of each of these five features, then it is highly likely to be a college of the university within the meaning of Note 1(b). This is not to suggest that that there may not be other cases where the degree of integration of the activities of the body and the university is such that it may properly be described as a college of the university. All will depend on the particular circumstances of the case **[54]**.

Lord Kitchin concludes that the factual findings of the FTT were sufficient to justify its conclusion that SEL's activities were integrated into those of MU and that it shared the objects of MU. The FTT was entitled to find that in May 2009 SEL became and thereafter remained a college of MU within the meaning of Schedule 9, Group 6, Item 1, Note (1)(b) of the VAT Act **[73]**.

References in square brackets are to paragraphs in the judgment