



TC04071

Appeal number: TC/2013/00232

VAT – exempt supplies – supply of private tuition by an individual teacher acting independently – tuition in yoga – whether tuition in a subject ordinarily taught in a school or university – no – supplies of tuition services chargeable to VAT - Item 2, Group 6, Schedule 9 VATA 1994 – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

STUART TRANTER t/a DYNAMIC YOGA

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE SWAMI RAGHAVAN
MS HELEN MYERSCOUGH**

Sitting in public at 45 Bedford Square, London on 15 January 2014

**John McCabe and Douglas Cully of Coastal Tax and Accountancy for the
Appellant**

Erika Carroll and Lynne Ratnett, HMRC officers for the Respondents

DECISION

Introduction

- 5 1. The appellant runs a yoga studio at which a number of instructors, including the appellant teach yoga. HMRC made a decision that the appellant's tuition in yoga is not a supply of tuition "in a subject ordinarily taught in schools or universities" and that it was not therefore exempt under item 2, Group 6, Schedule 9 of the Value Added Tax Act 1994 ("VATA 1994"). The appellant's appeal is against that decision.
- 10 2. The appellant argues his supplies of yoga meet the statutory definition. Yoga is taught in a large number of schools and universities and the yoga taught there corresponds to the yoga taught by the appellant.
- 15 3. HMRC disagree. Yoga is not educational but recreational. It is not a subject which is ordinarily taught in schools or universities and, in any case, to the extent yoga is practised in certain schools, the aims and objectives of the yoga as taught by the appellant and the environment in which he teaches it differ significantly.

Evidence

- 20 4. We heard oral evidence from the appellant which was subject to cross-examination. The Tribunal also had the opportunity to ask questions. The appellant was a credible witness. In addition we had before us two bundles of documents containing correspondence between the parties and which included materials from various schools, colleges and a university relating to yoga, details of the assessment and subject matter relating to the GCSE in Physical Education which mentioned yoga, a survey carried out on attendees at the yoga studio, and information provided on the
- 25 appellant's website.

Stuart Tranter and the yoga he teaches

- 30 5. Mr Tranter is a full time yoga teacher and has been doing this for the last 18 years. The level of student he teaches ranges from complete beginners through to the advanced yogi student. The age of those he teaches ranges from 8 years to those in their eighties.
- 35 6. He is extremely passionate about the subject. He started off in a church hall. Five years ago he started to train teachers. Now he has a large studio open 7 days a week. He tries to promote a relaxed, laid back atmosphere with fun. As part of the classes he talks about health aspects of yoga to make students aware of the importance of moderation. In the course of his classes he also talks to students about the origins of yoga.
7. Yoga consists of eight "limbs" (to use the term that Mr Tranter used). The lower (physical) four are essential to the higher four (which included meditation,

concentration and “samadai”, meaning oneness with universe and god and everyone in the world).

5 8. There are different types of yoga. Mr Tranter teaches the type of yoga known as hatha yoga. This covers physical yoga. There are many styles of hatha yoga e.g. bikram, iyengar, and ashtanga yoga.

10 9. In the classes he teaches in the yoga studio he teaches different postures to cater for different abilities. So he would show a modified posture to students who were beginners. During the class he teaches and talks throughout. He physically demonstrates the posture. He walks around looking at each student individually to make sure the postures are safe, that they are not overworking themselves and to encourage people who are more advanced to push themselves. He explains the benefits of each posture. These have names such as “mountain”, “boat”, “tree” and “warrior”.

15 10. We saw a manual of various postures, “the Dynamic Hot Yoga Teaching Manual”. This contained diagrams with the Sanskrit name, the English name, figures showing the posture, with annotations and a section on benefits. The manual was used for teacher training classes but as at the date of the hearing Mr Tranter was not running any separate yoga teacher training classes. While he has in the past taught teachers, and while the classes he teaches at the studio include within them some yoga students who are interested in becoming yoga teachers, the classes do not cover the teaching of how to teach yoga to others.

11. The studio is heated to above normal room temperature (98 degrees Fahrenheit – a temperature similar to that of human blood). Heat is a vital part of yoga. It loosens up the muscles and increases the benefit to the circulation system.

25 12. Mr Tranter says his teaching opens the musculature of the body. He described the benefits of yoga as being about developing strength and balance, general improvement of health and awareness of body, improving discipline, determination and patience. In his experience it could make people more confident. At a higher level yoga also encompassed spirituality.

30 13. He teaches around 75% of the classes at the studio. This comes to about 16/17 classes a week. The classes are 90 minutes long and take place, at 10am, 12pm, 6pm and 10pm. He teaches both weekdays and weekends, but tries to have one day off per week. The typical class size is about 27 (the maximum being 50/60) and contains a mix of abilities.

35 14. When students start they can do a three week trial at a discounted rate. They can do pay as you go classes, but there is also a card system which enables them to come regularly and save money. There are around 90 students enrolled in regular direct debit membership.

40 15. There is no published syllabus. No formal qualifications are required to become a yoga teacher apart from experience.

The appellant's student yoga survey

16. A survey was conducted amongst students at the studio on 9 September 2013. The sample size was of 94 students, and was taken from three classes in one day. The survey was stated to be on the benefits of yoga and invited the respondents to tick
5 boxes which applied on various benefits such as improved concentration, energy, strength, balance, intelligence, health/body awareness, discipline, determination, patience, relaxation, well-being, self-esteem and confidence. There were also boxes which could be ticked for the following statements: "I am interested in the spiritual aspects of Yoga", "I studied Yoga at school", "I am studying a course in Yoga
10 elsewhere", "I wish to be Yoga teacher and am gaining the practical experience." Two of the students say they studied it at school. Ten stated they wished to be yoga teachers.

17. The survey also included a section inviting respondents to explain in a few words how Yoga had helped them and any other benefits not noted in the previous
15 section. In broad terms the respondents who answered referred variously to physical improvements in flexibility, muscle relaxation, body shape and assistance with previous medical or sporting injuries. They also referred to feeling relaxed, balanced, and having better mental well-being and positivity.

The yoga taught in schools and universities

20 18. The appellant referred us to various documents relating to the provision of yoga in schools, colleges and a university.

19. We were referred to a news article on the BBC website "Scottish children feel benefits of yoga". This referred to collaboration between a charity (Patanajli Yog Peeth UK Trust) and Glasgow City council in teaching yoga in schools. The article
25 refers to 15 schools in the city being involved so far and describes the scheme as involving Mr Poadda (of the charity) giving a taster lesson to pupils and then inviting teachers to free training so they can deliver the yoga classes without him.

20. In relation to Sevenoaks primary school we saw a letter from the Year 3 teachers dated May 2012 which informed parent and carers that the school as part of
30 providing wide range of sporting activities was offering yoga through Yoga for Kids at a cost of £4 per child. The letter stated:

35 "Yoga for Kids classes include modified yoga postures, co-operative games, creative stories, brain gym and music. Yoga can help children become aware of their own body, breath and mind. It can enhance their ability to relax and unwind, lengthen and tone muscles, increase metabolism and help them enjoy life!"

21. The prospectus of Holbrook school for 2011 mentions that the main hall is used for "assemblies, PE, yoga and music".

22. Materials relating to Millthorpe school and Key Stage 4 and "core PE" state:

“...students follow programmes of study that mirror and extend key stage 3...extend their skills in sports that they have experienced...follow a number of sports that are new to them. Example include...Squash, Yoga, Junior Sports Leaders Award, Netball Leaders Award, Cycling, Trampolining and Bowls.”

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23. In relation to Browns School literature from the school mentions that the “modern sports hall” provides:

“...us with generous covered space for daily occupational therapy exercises, yoga, gymnastics, indoor hockey, football, badminton, netball and basketball.”

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24. In relation to University provision we saw a document with hyperlinks to seven universities.

25. Yoga is mentioned in the AQA exam board specification for the GCSE in Physical Education. The specification is made up of units examined by a written paper (on knowledge and understanding for the “active participant” and a controlled assessment for units relating to the active participant). The specification sets out six groups of activities under various headings which are available for assessment against the latter type of units. Groups 1 to 5 deal respectively with game, gymnastic, dance and athletic activities. Group 6 relates to exercising safely and effectively to improve health and well-being, as in fitness and health activities. Yoga is one of nine activities mentioned along with aerobics or step aerobics, aqua aerobics or aqua fit, circuit training, pilates, indoor rowing, Speed Agility Quickness training, tai chi, and weight training.

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26. The provision of physical education in primary and secondary schools is something which has been evaluated by OFSTED. In April 2009 OFSTED published a report based on visits to what it described as a small sample of primary and secondary schools between 2005 and 2008 (99 primary schools and 84 secondary schools). We were referred by the appellant to the following extract where the report states:

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“Evidence from the schools visited suggests that, increasingly, students were being offered a much wider experience of physical education and sport. Golf, skateboarding, mountain biking and cycling, yoga, archery, cheerleading, martial arts and problem solving challenges were being taught alongside more traditional activities, often at students’ request.”

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27. We also saw materials relating to the MA in “Traditions of Yoga and Meditation” provided by the Department of the Study of Religions in the School of Oriental and Asian studies (of the University of London). The course started in September 2012. It was taught full or part-time. It is described as follows:

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“This MA offers an in-depth introduction to the yogic and meditational techniques and doctrines of India, Tibet, China and Japan within the historical and cultural context of their formation. Furthermore, it explores the nature of spiritual experience that arises from yoga and meditation through a cross-cultural, inter-regional perspective.”

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28. We saw materials from the website of Mr Michael Chissick relating to the teaching of yoga in primary schools, and correspondence from him. His website is www.yogaatschool.org.uk. Information provided by him shows the children's equivalent names of yoga poses. He has been teaching to children in primary and special needs schools for nearly two decades and he refers to having taught "thousands of pupils". His website states:

"My approach to teaching yoga as part of the integrated school day within established school routine plus input from teaching staff results in a much livelier, more vibrant and fun learning experience."

29. We also saw materials relating to the teaching of yoga teacher training.

30. The charity, the British Wheel of Yoga offers qualifications in yoga teaching (Level 4 certificate in Preparing to Teach Yoga). The assessment methods are listed as "portfolio of evidence, practical demonstration / assignment".

31. Morley College also provides Yoga teacher training. One of the entry requirements is or 1-2 either 2-3 years or experience and understanding of yoga based on a regular practice (proof of attendance at weekly classes is required) or 1-2 years coupled with experience of a related bodywork (Alexander technique, Osteopathy, pilates are given as some of the examples).

Relevant law

32. Section 4, VATA 1994 sets out the scope of the VAT charge on supplies of goods and services:

"(1) VAT shall be charged on any supply of goods or services made in the United Kingdom, where it is a taxable supply made by a taxable person in the course or furtherance of any business carried on by him.

(2) A taxable supply is a supply of goods or services made in the United Kingdom other than an exempt supply."

33. Section 31(1), VATA 1994 provides:

"A supply of goods or services is an exempt supply if it is of a description for the time being specified in Schedule 9 ... "

34. Schedule 9, VATA 1994 sets out those supplies, categorised in Groups, which are exempt. Group 6 is headed "Education".

35. Item 2 of Group 6 is the Item relevant to this appeal. It states:

"The supply of private tuition, in a subject ordinarily taught in a school or university, by an individual teacher acting independently of an employer."

36. This implements Article 132 of the Principal VAT Directive (Council Directive 2006/112/EC) which is within Chapter 2, which bears the heading "Exemptions for

certain activities in the public interest". Article 132, so far as relevant to this appeal, provides:

“ Member States shall exempt the following transactions:

...

5 (j) tuition given privately by teachers and covering school or university education;”

37. Both the Directive provision and the UK’s provision have been the subject of previous judicial consideration. We set out below the cases the parties referred us to and then go on to discuss the propositions to be extracted and applied to the facts of this case.
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Werner Haderer v Finanzamt Wilmersdorf C-445/05

38. This was a case before the European Court of Justice. Mr Haderer worked freelance for one of the states in Germany. He provided assistance with schoolwork at an adult education institute and ran ceramics and pottery courses at another adult education institute and at a parents’ centre. The question was whether the teaching activities carried out in such circumstances was exempted from VAT under Article 13A(1)(j) of the Sixth Directive (set out above at [36]).
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39. One of the arguments the tax authority made was that the ceramics and pottery courses provided by Mr Haderer did not involve the same demands as those of courses normally given in schools or universities and they were intended purely for leisure purposes.
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40. At [26] in relation to the Community concept of “school or university education” the court held that concept was not limited:

25 “...only to education which leads to examinations for the purposes of obtaining qualifications or which provides training for the purposes of carrying out a professional trade or activity, but includes 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.”

30 41. The exemption is not therefore restricted to just formal or academic subjects.

42. The approach to interpreting exemptions is set out at [18] of the decision and is uncontroversial in our view. We set those paragraphs out below at [58].

Colin Beckley t/a The College of Meditation (Decision 19860)

35 43. This was a case in the VAT Tribunal. The issue was whether private tuition of transcendental meditation fell within the exemption. It was accepted that what the appellant supplied was education.

44. At [13] of the decision the tribunal referred to Carnwath J’s decision in *North of England Zoological Society v Customs and Excise Commissioners* [1999] STC 1027 and the fact that a narrower sense of education in subparagraph i) of the European Directive provision than the general sense of broadening the mind was adopted (a specific and structured form of training of some kind). The tribunal applied this to subparagraph j). We agree with that proposition.

45. The Tribunal did not find that that transcendental meditation was a subject regularly taught in schools. In any case in those places where it was practised it was not a course of study or a subject to be studied. The Tribunal found it lacked the degree of formality or structure to bring it within the definition of school or university education.

Audrey Cheruvier t/a Fleur Estelle Belly Dance School [2014] UKFTT 007 (TC)

46. In a more recent case before the First-tier Tribunal the issue was whether the appellant’s tuition and instruction in belly dancing was a supply in a subject ordinarily taught in a school or university. Having considered the above passage in *Haderer* the approach taken by the Tribunal was to ask whether the appellant was providing education (and not something which had a different characteristic such as recreation.) In any case if it was education the question arose as to whether it was education in a subject ordinarily taught in a school or university? (See [48] of the Tribunal’s decision).

47. At [50] of its decision the Tribunal found belly dancing was recreational (which it described as being for the enjoyment and satisfaction of the participants including their satisfaction through performance rather than for their intellectual development in terms of expanding or deepening their knowledge). The decision drew a distinction between courses which were practical in nature (teaching how to belly dance) and courses in the study of belly dance in an educational sense.

48. In any case the Tribunal was not satisfied on the evidence that the appellant’s tuition in belly dancing was tuition “in a subject ordinarily taught in a school or university.” In relation to school courses in dance, this encompassed a subject which was wider than the practical aspects (history of dance, transposing and transmitting through choreography, critical analysis). The university course the Tribunal were referred to was “dance as an academic discipline”. The Tribunal also noted the dance taught in schools and universities was taught to standards that were externally set or capable of being externally reviewed, and was examined or assessed by external bodies.

49. The Tribunal concluded the appellant was not teaching privately “a subject which his or her student might otherwise be taught at school or university.”

50. The appellant referred us to the case of *Marcus Webb [2009] UKFTT 388 (TC)* which concerned private tuition by a golf coach. But we note it did not deal with whether golf tuition was ordinarily taught in schools and universities but was on the meaning of the Directive reference to “tuition given privately” and the issue of

whether the exemption extended beyond applying to tuition given by self-employed teachers to employed teachers too. It does not therefore help with the issue before us.

51. From the above cases it appears that the relevant exemption under consideration in this appeal is circumscribed by the following propositions.

5 52. On the one hand the exemption does not cover the teaching of something which is purely recreational. It must develop the pupil's or student's knowledge and skills. (*Haderer*). We would add that the reference to knowledge and skills in this context must we think mean more than knowing how to do the recreational activity itself otherwise recreational activities would probably always be educational too and the
10 distinction would be meaningless. Also, it is not enough to show that because an activity is taught in a school or university that it is covered by school or university education as recreational activities may be undertaken in schools or universities.

15 53. As to what the term "recreational" means it encapsulates something which is carried out for the enjoyment and satisfaction of the participants (including their satisfaction through performance rather than for their intellectual development in terms of expanding or deepening their knowledge). (*Cheruvier* at [50].)

54. It must be educational, but education not in the general sense of broadening the mind but a specific and structured form of training of some kind (*Zoological Society*).

20 55. On the other hand it is not restricted to just formal or academic subjects leading to qualifications (*Haderer*).

56. Relevant factors to consider include the following:

- (1) the degree of formality or structure (*Colin Beckley*), (although *Cheruvier* acknowledges that recreational activities may be pursued in a structured way and pursued with diligence and care (see [49] and [50] of decision))
- 25 (2) whether what is taught is taught to standards that are externally set or capable of being reviewed and examined or assessed by external bodies (*Cheruvier*)
- (3) the environment in which the subject is taught (the lack of class room component was noted in *Cheruvier*).

30 57. The appellant argues *Beckley* and *Cheruvier* are distinguishable on the facts. Whether the exemption is applicable or not will of course be dependent on the facts of each particular case. But, just because the facts may be different this does not mean the principles which may be derived from those decisions (which will at best be persuasive given they are VAT Tribunal and First-tier Tribunal decisions) do not fall
35 to be considered.

Approach to construction of VAT exemptions

58. The appellant referred us to *Haderer* at [17] and [18]:

“...the exemptions...constitute independent concepts of Community law whose purpose is to avoid divergences in the application of the VAT system from one member state to another...”

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“The terms used to specify...exemptions are to interpreted strictly, since they constitute exceptions to the general principle that VAT is to be levied on all services supplied for consideration by a taxable person...”

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“Nevertheless, the interpretation of those terms must be consistent with the objectives pursued by those exemptions and comply with the requirements of the principle of fiscal neutrality inherent in the common system of VAT.”

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“Thus, the requirement of strict interpretation does not mean that the terms used to specify the exemptions referred to in Art 13 should be construed in such a way as to deprive the exemptions of their intended effect...”

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While we understand the general approach to construction of exemptions not to be a matter of dispute between the parties, the appellant does take issue with how the exemption relevant to this case has been implemented in UK legislation. The appellant refers to *Haderer* to say the scope of the exemption should not be reduced by Member States’ tax authorities. In our view that is consistent with [17] of *Haderer* and what is said there about avoiding divergences in the application of the VAT system across the Community.

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To what extent is the UK’s legislation incongruent with the Directive?

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60. In the appellant’s reply Mr McCabe, for the appellant, raised an issue as to whether the UK legislation was too strict as compared with the Directive provision.

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61. We did not understand HMRC’s position to be in agreement with the appellant but we were unable to get HMRC’s detailed views on this point given the appellant raised it so late. But, having considered the point our view is that the UK legislation broadly covers the same ground as the Directive even though the exact same words of the Directive have not been copied out. There are two terms in particular to consider in the UK legislation which do not appear in the Directive’s wording; the UK legislation’s reference to “subject”, and its reference to “ordinarily”.

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62. In relation to the term “subject” we observe that while there is a spectrum of possibilities as to the level of specificity of what is taught which is envisaged by the Directive exemption, there are extremes at either end which can we think be discounted as possible interpretations. At one end of the spectrum it would not make sense to restrict the exemption only to a tutor who teaches all of what is taught in school education or university education. At the other end of the spectrum there must be some level at which the extent to which a discipline is taught is too minimal taking account of how much time is spent teaching it, the nature and style of the teaching and the regularity with which it is taught for it to be capable of meaningfully being regarded as “covered by school or university education”. The term “subject” seems to be a reasonable point to capture the appropriate point along the spectrum of

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specificity. We would add the proviso though that it needs to be acknowledged that the term “subject” affords some degree of flexibility. Accordingly the reference to “subject” in the UK legislation does not in our view mean the UK’s implementation of the Directive provision is too strict.

5 63. The reference to “ordinarily” reflects the Directive’s reference to teaching something which is covered by school or university education in the general sense i.e. the Directive wording does not suggest that it is sufficient that what is taught is taught in one school or university. Nor does it seem to us to go to the other extreme of requiring that the subject is taught in every school or university.

10 64. HMRC refer to the dictionary definition of “ordinarily” – “as a rule, commonly, customarily, generally, habitually, in general, in the general run (of things), in the usual way, normally and usually.” The dictionary definition is in our view in line with the sense of the exemption as used in the Directive.

15 65. Accordingly the reference to “ordinarily...” reflects the spirit of the Directive and its inclusion in the UK legislation does not we think mean the UK legislation is too restrictive.

66. We will in any case consider the issue against both the UK and the European legislation.

20 67. In relation to whether a subject is ordinarily taught in schools or universities we think the following tests are relevant. You could:

(1) look at population of schools and universities and then ask out of those what proportion teach yoga?

25 (2) look at the teaching of yoga and ask whether it is ordinarily taught in schools or universities as opposed to somewhere else? (HMRC’s arguments appeared to include consideration of this issue in so far as they were arguing that where the activity is far more widely practised outside the education system and is relatively uncommon in schools then the test is failed. We also canvassed this second test with the parties at the hearing.)

30 68. The first test involves looking at the subject’s prevalence in school and university education. The second involves a comparative test between the level of provision within schools or universities and the level of provision elsewhere. Both tests, which we go on to consider in our decision below, are we think consistent with the Tribunal’s description of the purpose of the legislation in *Cheruvier*. At [47] the Tribunal explained:

35 “...supplies made in the course of the provision of education by an educational institution are exempt from VAT, and for consistency and to avoid distortion in the market, supplies by an individual giving private tuition are likewise exempt if what is taught accords with what is taught in an educational institution.”

69. In considering the above tests it also needs to be taken into account we think that the exemption must be able to work practically in order that a person should be able to know without doing a survey of every single school and university whether the condition is satisfied. While there will inevitably need to be consideration of the sense
5 of scale upon which the subject is taught and of where it is ordinarily taught, an exhaustive detailed statistical analysis of the education provided by schools and universities cannot we think have been intended before the exemption is applied. (Also given the interpretation of the exemption must not diverge across the European Union, if an exhaustive statistical approach was the right one it would suggest that
10 this approach ought to be adopted across school or university education across the European Union. That cannot we think be the proper approach to ensure the practical workability of the VAT system.)

Parties' submissions on facts

70. We deal with the parties' arguments in our discussion. In summary, the
15 appellant has pointed to a number of schools, colleges and a university where they say yoga is taught. Yoga is not just about physical poses but contains other elements. The yoga the appellant teaches is like the yoga taught in the schools. It provides a foundation for getting onto yoga teaching courses.

71. By educational, HMRC require it to be shown that the subject taught is a
20 structured course with the aim of transferring knowledge and skills and not recreational or merely supervised. The lessons must be consistent with school or university education. The activity must be taught regularly in schools or universities. As with transcendental meditation in *Colin Beckley* yoga lacks the degree of formality and structure to bring it within the structure. It is not externally assessed. The yoga
25 taught by the appellant is different from that taught in schools.

Discussion

Application of legal principles to the facts.

72. Following *Haderer* the first question that needs to be asked is whether yoga is
30 purely recreational? The yoga-related activities carried out by the institutions we were referred to fall into three categories in our view:

- (1) The practice of yoga.
- (2) The teaching of yoga teaching.
- (3) The academic study of yoga.

73. The yoga activity taught by the appellant corresponds in our view most closely
35 to the first category, the practice of yoga.

74. In our view the yoga taught by the appellant is overwhelmingly recreational even if it is not purely recreational. The participants go to the courses to practise yoga. The practice is performed for the enjoyment and satisfaction of the participants. Any

expansion and deepening of knowledge is principally about the practice of yoga. It is a practical course.

5 75. HMRC argue the lessons are practical and are not tuition in the study of yoga in an educational sense. The ad hoc way the 90 minute classes are attended, and the lack of pre-booking resemble classes which take place at a leisure / recreational facility. It is not a structured course pursued over a set timeframe. The appellant says the key aspect is not just postures; there are spiritual elements, knowledge of anatomy, physiology, how not to injure oneself, and dietary considerations.

10 76. The non-physical elements described by the appellant in our view complement and enhance the physical practice. These other elements hang off and are intertwined with the physical practice. We accept that these other elements which explain the wider context of the practice as the poses are being demonstrated are not purely recreational. But participants are coming to perform and practise the poses. That this is the case is consistent with the feedback responses from the student survey which
15 highlight the physical and mental benefits of performing yoga. They do not refer to deepening their knowledge and understanding of yoga as a benefit.

77. We agree with HMRC the way in which the yoga is taught (drop in- ad hoc) is more consistent with a recreational activity than an educational one.

20 78. The question then arises if yoga is not purely recreational whether it is nevertheless educational? (We remember that the definition of educational cannot be education in widest sense of the word as anything which broadens the mind.)

25 79. Something which is educational could in principle be recreational too. The activity could have a dual existence. In that respect we agree with appellant. Recreational pursuits may have educational attributes. The *Haderer* test only eliminates things which are purely recreational.

80. However while the non-physical elements referred to by the appellant may not be recreational they are not of a degree that suggest that the yoga classes taught by the appellant are thereby educational.

30 81. Mr McCabe for the appellant made reference to the fact that some of the appellant's students are undertaking classes in order to provide them with sufficient experience to obtain qualification for the British Wheel of Yoga, or to do the Morley college yoga teacher training course. As well as ad hoc students there are ones who attend more regularly, getting sufficient expertise to get BTEC / BWY vocational element. But, the fact that the practice of yoga may be a pathway to a teaching course
35 does not mean the practice of yoga is ordinarily taught or covered by school or university education. It is the "teaching to teach" element of such course which is educational, not the yoga. There was no evidence that the 90 minute classes of mixed abilities Mr Tranter referred us to teach participants to teach yoga. Even if it could be said that there was an element of teaching yoga teaching in the sense that there were
40 particular students amongst the class participants who were interested in teaching

yoga and who were referred to the yoga pose instruction manual we think this form of teaching would lack the degree of structure and formality to count as education.

82. Our conclusion is that the practice of yoga is not educational. The fact yoga is mentioned in the GCSE Physical Education syllabus does not mean it is educational.
5 It is, as HMRC point out, only one of 4 options in the *practical* element part of the GCSE. That does not make yoga educational.

83. There are various factors which point towards the practice of yoga not being educational. It is not taught to a specification. In relation to the GCSE the yoga is undertaken as an optional activity to demonstrate the meeting of certain generic
10 standards relevant to the GCSE in PE. While, as a practical component of the GCSE, the activity may be assessed this is with a view to seeing whether standards that apply to any activity that is undertaken as part of the particular Group of activities in which yoga is mentioned are met. The activity of yoga is not assessed in its own right but as part of a PE GCSE. The activity is a means of demonstrating that other standards
15 relating to the wider subject are met. In relation to teaching in primary schools again there is no indication that it is taught to a specification or assessed. The performance of the practice may have beneficial mental and physical effects which assist in pupils' engagement through the school day but the practice is not itself educational. For both primary and secondary pupils it appears there is no class room component to the
20 teaching of yoga.

84. Even if the practice of yoga were educational it forms a tiny component of a wider subject (PE). The teaching of this yoga practice component would not be teaching of yoga as a subject.

85. To the extent we are wrong on the conclusion that the UK law correctly reflects
25 the scope of the European law exemption we would in any case disagree with the argument that yoga is something which is "covered by school or university education".

86. The practice of yoga is different from teaching it as an academic subject (the MA in yoga taught by SOAS is clearly educational) or from teaching others to teach
30 yoga which, when carried out with the requisite structure and formality would also appear to be educational. With the exception of the teaching of yoga in that sense (at SOAS and BWY and Morley College) the other courses the appellant has referred us to are all in the practice of yoga rather than educational courses. The list of hyperlinks to universities (see [24] above) refer variously to sports fitness centres, exercise
35 classes, and to well-being. This suggests to us that the yoga provision referenced by those hyperlinks is part of the recreational facilities offered by the university and not its educational programme.

87. Our conclusion therefore is that the practice of yoga is not education as that term is understood for the purposes of the VAT exemption. That is sufficient to
40 dispose of the issue under appeal. What follows are our observations if we were wrong in this conclusion.

88. Even if, yoga is educational (e.g. on the basis that it is sufficient that it is a component of PE GCSE) the question arises as to whether it is a subject ordinarily taught in schools or universities?

5 89. As discussed above at [63] we cannot read the test so widely so as to be satisfied that as soon as there is one school or university which teaches the subject, then that is enough. Dealing with the first test on the prevalence of teaching (see [67] and [68] above) HMRC, we are told by the appellant, ask for six examples of the subject being taught by schools or universities. The appellant says he has provided more. While we can see why HMRC might adopt a rule of thumb for practical purposes in terms of assessing whether the exemption applies under the law the fact HMRC only require six examples the fact that an appellant has fulfilled that requirement does not necessarily mean the test is satisfied. It will depend on the examples and wider factual context which they point to.

15 90. We note the following. The BBC news article the appellant referred us to suggests there are at least 15 schools where yoga is taught. But the very fact it is newsworthy indicates this is something out of the ordinary.

20 91. There are four named schools (Sevenoaks, Holbrook, Millthorpe and Brown school) where the practice of yoga is taught. In none of these is there a suggestion that it is taught as an educational subject. The fact that in Sevenoaks primary school an additional charge is made for the primary school students to take part in yoga also points towards yoga not being taught as an educational subject there.

25 92. A named individual (Mr Chissick) apparently teaches yoga in various schools to thousands of students and has been doing so for nearly two decades. Although we did not hear evidence from him even if we accept that is true (there appears to be no reason not to accept that what he says is correct) the inherent limitations of what one individual is able to do, however active and enthusiastic (and even taking in to account that the individual may have trained others to teach yoga classes) suggest that the number of schools where yoga is taught is not such that it can be said that yoga, even it could be described as a subject, is a subject which is “ordinarily” taught in schools.

30 93. The OFSTED report indicates that within the context of physical education, yoga along with other activities is increasingly offered. However the very fact that it has been singled out along with those activities for special comment would suggest to us that it is not something which can be described as being ordinarily taught.

35 94. Even if the yoga component in the PE GCSE is taken to indicate yoga may be viewed as a subject there was insufficient evidence before us upon which to make a finding that the provision of yoga was ordinarily taught in secondary schools. The evidence indicates that it is taught in some schools but this is exceptionally rather than ordinarily.

40 95. As for the survey and the fact that some respondents answered that they had studied yoga at school, this was, even taking into account the wide age range of class

participants, a small number, and in relation to one part of the country. We have difficulty extrapolating from that survey of one yoga studio what this tells us about the prevalence of yoga tuition in schools more broadly.

5 96. The facts in relation to the schools referred to, do not suggest to us the teaching of yoga is sufficiently widespread or commonplace (or whatever synonym of “ordinarily” is adopted) to indicate the test is met. In addition we were not able to find on the evidence that these were just examples and to infer that there are many more schools also teaching yoga. While the OFSTED report indicates that amongst the schools visited yoga was one of the non traditional activities which increasingly took
10 place, there is no indication as to the numbers of schools out of the sample who carried out the activity, and in any case the sample size is described by them as small.

97. The first of the tests (prevalence) is not therefore satisfied.

15 98. In terms of the second test of asking whether the subject is ordinarily taught in schools or universities as opposed to elsewhere there was insufficient evidence of the total scale of yoga provision and the way it split between schools and universities and other settings to demonstrate that the test was satisfied. We would add that taking account of the evidence we had on the many yoga teaching courses at Morley College, and the BWY, together with the fact that no formal qualifications are needed to teach yoga, and the low level of yoga provision in schools and universities it may
20 be inferred that there are likely to be more yoga teachers in the market providing yoga than would be accounted for simply by those teaching yoga in schools or universities.

25 99. Our conclusion, in the event we were wrong in our finding that yoga is not educational, and given that neither of the tests above is satisfied, is that yoga is not a subject which is ordinarily taught in schools or universities. Nor for the purposes of the directive is it something which can be described as being covered by school or university education.

30 100. Even if we were to find it was a subject ordinarily taught in schools then we have to consider whether what Mr Tranter teaches corresponds to that. In this respect we think HMRC have required too strict a level of correspondence. The test is not “is what Mr Tranter teaches the same or similar to what is taught in school or university?”. The test is, is the *subject* the same or similar? We think what Mr Tranter teaches does correspond to what is taught in primary schools at least. It does not correspond to the Traditions of Yoga and Meditation MA taught by SOAS, or to the yoga teacher training offered by Morley college. (The British Wheel of Yoga did not
35 appear to us to be a school or university.)

40 101. HMRC highlight differences between the benefits to be derived from yoga as described on appellant’s website (medical / health / injury related) with benefits described of primary school yoga (“contribute to the overall sense of a child’s self worth by: improving children’s confidence, improving concentration, improving coordination, improving flexibility and fitness, teaching children how to be calm, teaching children how to relax). HMRC say the structure and content as revealed by a testimonial on the appellant’s class is not analogous to yoga taught in a school or

university. This refers to the appellant's 90 minute class, running through a pose showing a beginner's version to copy, the fact the studio is heated, and also refers to focussing on breath.

5 102. We think HMRC are being too strict about comparison. The format is the same i.e. going through poses and copying them. We think the classes he runs are similar. Mr Tranter highlighted similar benefits to those experienced by primary school participants in his evidence. We accept the postures are broadly the same but that Sanskrit names may be used instead of English ones. We do not think the heat is a significant factor to distinguish the appellant's classes from the type which is carried
10 out in schools. They are essentially the same.

103. In summary the terms of the UK legislation for the exemption to apply are not met. The appellant teaches the practice of yoga. Even if that is education and even though what he teaches corresponds sufficiently to what is taught in the primary schools referred to, the practice of yoga is not a subject which is ordinarily taught in
15 schools or universities. Nor is it "covered by school or university education" in the sense required by the Directive (the generic sense, rather than taught in some schools or universities.)

But what about golf?

20 104. The appellant queries why it is the case that tuition in golf, in contrast to yoga is regarded as tuition in a subject ordinarily taught in schools when there are he argues no qualifications or examinations in golf. He points out that golf like yoga is also one of modules included in the GCSE PE syllabus.

25 105. HMRC's treatment of golf tuition is irrelevant to the issue before us. It has not been established as a matter of law whether their approach is correct or not. The fact HMRC have treated golf tuition this way does not mean we must read across their treatment of golf to yoga.

106. We note that Henderson J commented at [18] of his judgment in *Marcus Webb* [2012] UKUT 378 (TCC) that he found it surprising HMRC took no point on golf tuition being within the exemption.

30 107. HMRC told us evidence had been put forward and assessed in relation to golf tuition. Golf was according to them taught in a huge number of schools. In particular there was a form of golf called tri-golf which had been drawn up specifically for children. There was a BTEC and level 3 excel diploma in golf studies. This involved not just playing golf, but taking part in teams and competitions, coaching, and the
35 psychological aspects.

40 108. Despite the above we too are surprised with the conclusion. Even if golf as described is taught in a huge number of schools, nothing in the further explanation given by HMRC explains why private tuition in the skill of playing golf as commonly understood would correspond with the subject as they have described it taking place in schools. (Would a private golf coach teach coaching and psychology, would they

teach golf in the same structured way that HMRC rely on for it to be educational. Would they teach tri-golf to adults? If not then it is not clear why it would fall within education). But the point is not before us and we shall say no more on it.

5 109. As a parting shot Mr McCabe suggested in his reply that if we were minded to find against the appellant a reference should be made to the CJEU because the reference in the UK legislation to “ordinarily” was not in EU legislation. His argument is that Member States cannot restrict the scope of the exemption. As discussed above we do not think the UK interpretation is out of line with the Directive and that it is more restrictive. Even if it is more restrictive when read literally it is 10 when purposively read capable of being read in conformity with the Directive text so as not to be restrictive. The terms “subject” and “ordinarily” offer sufficient scope to cover the same breadth of exemption that the Directive test covers. We think it is unnecessary to make a reference and decline to do so.

Conclusion

15 110. The practice of yoga is not educational in the narrow sense used in case law. It is not about imparting knowledge and skills to pupils and students in the educational sense. The appeal therefore falls at that hurdle. Even if it was educational it is not a subject ordinarily taught in schools and universities. On the evidence it is only taught in a relatively small number of such places.

20 111. If we were wrong in our view that the scope of the UK legislation was the same as the European Directive, then tuition in the practice of yoga would in any case not be tuition “covering school or university education” within the meaning of the Directive exemption.

112. The appellant’s appeal is therefore dismissed.

25 113. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this 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 30 “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

35 **SWAMI RAGHAVAN
TRIBUNAL JUDGE**

RELEASE DATE: 15 October 2014

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