

Circular 2021/C/19 on the positioning of education services

The purpose of this circular is to clarify the administration's interpretation of the judgment C-647/17 of the Court of Justice of the European Union in the case Skatteverket v SRF Konsulterna AB. The duration can no longer be regarded as the sole decisive criterion for defining an event within the meaning of Article 21, § 3, 3° of the VAT Code. One must examine the whole of relevant elements such as, among other things, duration, the content and the place where the event takes place.

Value Added Tax; educational services ; place of service

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General Administration of Taxation – Value Added Tax

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1. Historical context

The purpose of this commentary is to explain the changed interpretation of the scope of [Article 21](#), § 3, 3°, of the VAT Code, with regard to the location of educational events.

Granting the right of access to seminars, conferences, study days and similar events may fall within the scope of this provision. It is also irrelevant in this regard whether the exemption for educational services, included in the provisions of [Article 44](#), § 2, 4°, of the VAT Code, applies.

When determining the location of educational events and activities, a distinction must be made whether the recipient of the service is regarded as a taxable person within the meaning of Article 21, § 1, of the VAT Code (B2B relationship) or as another person (B2C relationship).

In a B2C relationship, determining the location of the service is usually not a problem in view of the broad scope of the provisions included in [Article 21 bis](#), § 2, 5°, of the VAT Code. Under that article, services related to educational events and activities take place where they are materially provided. We refer to [Circular AAFisc No. 50/2013 \(ET124.537\) of 29.11.2013](#) for more information.

The location of educational events and activities in a B2B relationship takes place in accordance with the provisions of Article 21, § 2 and § 3, 3° of the VAT Code.

In accordance with the provisions of Article 21, § 3, 3° of the VAT Code, the service consisting in **granting access** to an educational **event** is deemed to take place where the service is materially provided.

Granting access, also referred to as the right of access, within the meaning of the provisions of the aforementioned Article 21, § 3, 3°, includes permission to enter a place where the said event takes place and thus to attend the event (for example, granting access to seminars and associated workshops). The fact that the fee for the access concerned is paid in advance or that the admission ticket was purchased electronically or not is irrelevant in this regard.

The fact that the organizer has a fixed infrastructure from which the relevant service is provided is of course not important (for example, granting access to a seminar organized by a university of applied sciences can be regarded as an event).

The administration has previously established that no agreement has been reached between the Member States regarding a uniform definition of the term 'event' in the context of Article 53 of [Council Directive 2006/112/EC of 28.11.2006](#) on the common system of value added tax of which Article 21, § 3, 3° of the VAT Code is the conversion.

Pending more clarity on this and for practical reasons, the administration assumed that the scope of Article 21, § 3, 3° of the VAT Code was limited to granting access to an educational event with **a duration of at most one full day** . In the other cases, Article 21, § 2 of the VAT Code had to be applied (see [circular AAFisc no. 50/2013 \(ET124.537\) of 29.11.2013](#) , point 45 and answer to [parliamentary question no. 1.461 by Mr. Luk Van Biesen from 03.02.2017](#)).

Following the judgment C-647/17 of the Court of Justice of the European Union ([Court of Justice of the European Union, judgment *Skatteverket v SRF Konsulterna AB*, case C-647/17, of 19.03.2019](#)), the Member States have the issue was discussed again within ^{the} 114th VAT Committee.

However, in the light of the aforementioned case law of the Court of Justice of the European Union, the administration has decided to change its position.

2. Case law of the Court of Justice of the European Union

In the judgment C-647/17 of 13.03.2019, in the case *Skatteverket v SRF Konsulterna AB* , the Court of Justice of the European Union ([Court of Justice of the European Union, Judgment *Skatteverket v SRF Konsulterna AB*, case C- 647/17, of 19.03.2019](#)) has taken the position that a service consisting in 'providing access to educational events' extends to a service consisting in attending a five-day course on accountancy provided only to taxpayers and requiring both registration and payment in advance.

The Court of Appeal hereby reiterates that it follows from its settled case-law that the general rules on positioning included in Articles 44 and 45 of the aforementioned Directive 2006/112/EC, of which Articles 21 and 21 *bis* , of the VAT Code are the transposition into Belgian law. do not take precedence over the deviating positioning rules (which are included in Belgian law in the provisions of Articles 21, § 3 and 21 *bis* , § 2, of the aforementioned VAT Code). As a result, these deviating positioning rules should not be regarded as an exception to a general rule that can be interpreted restrictively.

The Court of Appeal also confirms that the aforementioned Directive 2006/112/EC on the location of services aims to ensure that the tax is levied as much as possible at the place where these services are used.

In accordance with Article 53 of the aforementioned Directive 2006/112/EC, of which Article 21, § 3, 3°, of the VAT Code constitutes the transposition into Belgian law, a service consisting of granting access to, among other things, educational events which are open to a taxable person is deemed to take place where these events actually take place.

follows from Article 32(2)(c) of [Council Implementing Regulation No 282/2011 of 15.03.2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax](#) that the services referred to in the aforementioned Article 21, § 3, 3° of the VAT Code, which consist in granting access to events in the field of education and science, such as conferences and seminars, comprise services which essentially consist in access to an event in exchange for a ticket or for a fee.

In that context, it is usually assumed that an event in the sense of the foregoing is distinguished by the fact that its organization is more related to a specific event or is more of an occasional nature. The opinion of the Advocate General in this case is : ' *The duration of the service should normally make it possible to distinguish educational events from other educational activities. A conference or seminar usually lasts from a few hours to a few days, while a university course generally covers a significantly longer period of time (eg three weeks, a month, a semester, an academic year). In my view, the former will generally fall under Article 53 [of the VAT Directive], while the latter will not.* ' †

3. Administrative position

Margin 45 of [circular AAFisc no. 50/2013](#) is replaced as follows:

Taking into account [judgment C-647/17 of the Court of Justice of the European Union of 13.03.2019, in the case Skatteverket v SRF Konsulterna AB](#), the administration assumes that the duration can no longer be regarded as the only decisive criterion to define an event within the meaning of Article 21, § 3, 3° of the VAT Code. Other criteria must also be taken into account, such as the fact that the educational activities are planned in advance, take place in a specific place and relate to a predefined subject (answer to [Parliamentary Question No 195 by Mr Benoît Piedboeuf from 06.02.2020](#)).

With regard to the educational events that materially take place in Belgium, the administration will, with regard to the criterion of the duration, assume the application of Article 21, § 3, 3° of the VAT Code if this **does not exceed seven calendar days**. When the duration of the educational activity exceeds this period of seven days, the administration will make a decision per individual file regarding the application of this provision, taking into account the whole of factual circumstances, including the duration, the content and the place where the educational activity takes place.

With regard to educational events also involving at least one other Member State, attention is drawn to the following:

- **educational events that take place exclusively in another Member State** : it initially falls within the competence of the tax authorities of the other Member State where the aforementioned educational event actually takes place to rule on the applicability of Article 53 of the aforementioned Directive 2006/112/EC.

In accordance with the guidelines of the 114th ^{VAT} Committee, when assessing such a situation, all the factual circumstances, including the duration, the content and the place where the educational activity takes place, should always be taken into account.

If a Belgian taxpayer participates in an educational event that takes place exclusively in another Member State, it initially falls within the competence of the tax authorities of the other Member State where the aforementioned educational event actually takes place to rule on the applicability of Article 53 of the aforementioned Directive 2006/112/EC.

However, if a situation of double taxation arises as a result of a different interpretation of the positioning rules, the administration will make a decision for each individual file, possibly after consultation with the competent authorities of that Member State.

- **educational events that materially take place in different Member States** : it is initially within the competence of the tax authorities of each Member State concerned where the above-mentioned educational event actually takes place to rule on the applicability of Article 53 of the aforementioned Directive 2006/112/EC and this as far as educational events actually take place on its own territory.

from the guidelines of the 114th ^{VAT} Committee that when the same educational event takes place in different Member States, as a rule, for the purposes of the application of the provisions of Article 53 of Directive 2006/112/EC, the service must be considered to have been performed in each of the Member States concerned in proportion to the duration of that event in each of those Member States.

Example

An educational event will take place from 10.12.2020 to 14.12.2020. From 10.12.2020 to 12.12.2020 it will take place in Brussels and from 13.12.2020 to 14.12.2020 in Paris. The educational event is deemed to take place in Belgium for the period from 10.12.2020 to 12.12.2020 in accordance with the provisions of Article 53 of the aforementioned Directive 2006/112/EC. Mutatis mutandis, the event is deemed to take place in France for the period from 13.12.2020 to 14.12.2020 inclusive.

4. Transitional measure

As a rule, judgments of the Court of Justice have consequences for the past.

Consequently, the administration cannot criticize if taxpayers have already applied the [judgment C-647/17 of the Court of Justice of the European Union of 13.03.2019](#), despite the previous interpretation of the scope of Article 21, § 3, 3 °, of the VAT Code by the Belgian administration.

On the other hand, taxpayers who have followed the administration's old stance to date may encounter difficulties (e.g. on pricing, communication, invoicing and accounting) to apply the questionable judgment immediately upon publication of this comment. The taxpayers can continue to apply the previously published position until 30.06.2021 or until the date determined by an individual decision.

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