

3. If the answer to the previous question should be affirmative, do the provisions of Article 2(2)(a) and of Article 4(4) of the directive preclude national legislation such as Article L.621-2 Ceseda, which penalises with a term of imprisonment the illegal entry into national territory of a third-country national in respect of whom the return procedure established by that directive has not yet been completed?

⁽¹⁾ Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code), (OJ 2016 L 77, p. 1).

⁽²⁾ OJ 2008 L 348, p. 98.

Request for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 26 July 2017 — A & G Fahrschul-Akademie GmbH v Finanzamt Wolfenbüttel

(Case C-449/17)

(2017/C 330/10)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: A & G Fahrschul-Akademie GmbH

Defendant: Finanzamt Wolfenbüttel

Questions referred

1. Does the concept of school or university education in Article 132(1)(i) and (j) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax cover driving school tuition to acquire category B and category C1 driving licences?
2. If the answer to question 1 is in the affirmative:

Can the applicant be recognised as an organisation with similar objects for the purposes of Article 132(1)(i) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax on the basis of the provisions on the driving instructor examination and the issue of a driving instruction and driving school licence in the Law on driving instructors (Gesetz über das Fahrlehrerwesen) of 25 August 1969 (Bundesgesetzblatt I 1969, 1336), last amended by the Law of 28 November 2016 (Bundesgesetzblatt I 2016, 2722, Fahrlehrergesetz, Law on driving instructors), and of the public interest in the training of learner drivers to be safe, responsible and environmentally aware road users?

3. If the answer to question 2 is in the negative:

Does the term 'tuition given privately by teachers' contained in Article 132(1)(j) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax require that the taxable person be an individual trader?

4. If the answers to questions 2 and 3 are in the negative:

Is an instructor always providing tuition privately within the meaning of Article 132(1)(j) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax if he acts on his own account and at his own risk, or must further requirements be met to qualify as a private teacher?
