HMRC - VATSC80400 - The General Approach

Introduction

As explained in VATSC80300 this guidance addresses the situation where a transaction consists of more than one element. For example, tuition and books supplied together; or the installation of a heating system. There is no simple, single answer as to whether a transaction comprises a single supply or several different supplies - the answer will always depend on the facts of each case. The decision will be a matter of judgement based on an objective assessment of all the facts and circumstances. There is no absolute dividing line between single and multiple supplies and there will always be borderline cases where the argument could go either way.

A factor to keep in mind when making a decision is whether there appears to be a single transaction from the customer’s perspective, but the contractual arrangements give rise to separate supplies; or conversely where there are multiple supplies from the customer’s perspective which are presented as a single supply. As explained in VATSC80500, case law always considers the artificiality and economic reality of a situation.

Normally, it will be clear that a single supply is being made where the supply consists of one item. A book, for example, may have various components contributing to its final stage - supplies of paper, printing and binding - but what is being supplied at the final stage is the finished product which is a single item.

Although it should be clear in the majority of cases whether one or more supplies are being made, many transactions consist of more than one element. This guidance will be of most use where the elements would have different VAT liabilities if sold separately as deciding on what is the principal element can influence the overall liability.

HMRC’s general approach

The underlying principle set out by courts is that when a supply contains different elements they should be regarded as ‘distinct and independent’ meaning that they are separate supplies with their own identity.

However, where there has been uncertainty in the past, the majority of court decisions have said that there is a single supply where the different elements combine. This is usually in two situations, identified in the precedent ECJ decisions Card Protection Plan VATSC82070 (CPP) and Levob Verzekeringen VATSC82140 (Levob). From these, a single supply will be either:

The CPP definition where one or more elements are the principal supply with other elements being ancillary (in that they are not an aim in themselves but a better way of enjoying the principal supply), or

The Levob definition where two or more elements are so closely linked as to form, from an objective point of view, ‘a single, indivisible economic supply which it would be artificial to split’

An example of the CPP definition is: a courtesy bus service from an off-site car park to an airport is ancillary to the main supply of parking (see the decision in Purple Parking/Airparks VATSC82230)

An example of the Levob definition is: the lease of land together with a supply of water (see the decision in The Honourable Society of Middle Temple VATSC82260)

Considering this, HMRC’s general approach is that, in cases where a transaction consists of more than one element, there is likely to be a single supply in the majority of situations because most elements of a transaction are either ancillary to a dominant element or are working together to create a whole.

So when making a decision you should consider all the facts and ask whether there is one dominant element to which the other elements are ancillary or whether the elements are so closely linked that they cannot be realistically separated. If so, then there is a single supply.

Whilst the likelihood of there being a single supply serves as a starting point you should also consider the facts against indicators where the courts have advised that there are multiple supplies.

Theses indicators are not absolute tests or ‘hurdles’, but can be used if the above two descriptions of a single supply do not immediately give an answer. Alternatively they can be a useful ‘second opinion’ when testing the facts of the case against the multiple supply indicators. If one or more indicators are present then there are likely to be multiple supplies, and if none is present then the likelihood is that there is a single supply.

Multiple supply indicators

Multiple supplies occur when there is more than one supply made, even if there is only a single payment. The components of multiple supplies should not be integral or ancillary and, from the viewpoint of the typical consumer, are separate, principal supplies in their own right.

The following indicators were present in cases where the courts ruled there were multiple supplies:

(i) There is more than one supplier.

(ii) The view of a typical consumer is that they are buying two or more distinct and independent supplies.

(iii) The terms of the contract and ‘economic reality’ indicate more than one supply

(iv) The intention of the legislation.

These indicators are explained in greater detail in VATSC81000

There may be instances, for example, where a customer has asked for the various elements of a supply to be listed individually on an invoice in order to see a cost breakdown; or where the supplier needs to do this to ensure that all the necessary components are delivered from stock, as might be the case when installing a heating system in a customer’s premises. This does not in itself necessarily indicate that there are multiple supplies - multiple supplies will not be integral or ancillary to each other and, from the viewpoint of the typical consumer, are separate, principal supplies in their own right. Conversely, a single contract or payment is not determinative of a single supply. All the circumstances surrounding the supply should be taken into account using these indicators.

Incidental, integral or ancillary elements

Where a supply consists of more than one component, the supply is still a single supply if there is clearly one overall supply being made to which the remaining components are incidental, integral or ancillary. This means that whilst the components may be either minor or significant in their own right and may be capable of being supplied separately, they are an integral part of the main supply.

An incidental element of a supply is one which naturally accompanies the main supply and generally is not a significant part of it. Examples of incidental elements are the instruction booklet provided with new electronic equipment, packaging materials or the services of packing and transport.

An incidental element is also regarded as an integral part of the overall single supply in that it is required to fulfil the end supply. The definition of an integral element is that it includes anything which is essential, necessary or incidental, but goes further to incorporate non-essential elements which are nevertheless integral to the nature and economic reality of the supply.

Ancillary elements are not integral to the main supply taking place but provide both crucial support and complement the principal supply being made. The CPP decision described an ancillary element as ‘something that does not constitute for customers an aim in itself but is a means of better enjoying the principal service supplied’.

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