HMRC - VATSC81300 - The View Of A Typical Consumer Is That They Are Buying Two Or More Distinct And Independent Supplies

In summary: whether different elements constitute a separate aim for a typical consumer is important because precedent decisions frequently refer to this criterion. It is particularly important if there is only a single price paid for the whole transaction. An indication of the view of a typical consumer might, for example, be ascertained from what is said in the supplier’s promotional material. An example is when a river trip and barbeque were separate and equally important aims of the customer (see the decision in Durham River Trips VATSC82110).

The view of the typical consumer and whether the elements are aims in themselves must always be taken into account. However, this can lead to some difficulty in attempting to define a typical consumer and in identifying their aims when purchasing a supply.

Whatever the difficulties, this component cannot be ignored and in the cases where there were multiple supplies, the aim of the customer was typically a primary factor in the decision. Examples include:

Leighton Ltd (17498) where dispensing services were not ancillary to the supply of the goods because the services are an aim in themselves for the customer. The customers could purchase ready-made reading spectacles if they wished elsewhere meaning the choice to buy from Leighton meant they thought they were receiving two supplies. This was also the decision in Prescription Eyewear Limited (UKFTT 357 TC) in respect of internet sales.

Cairngorm Mountain (17679), taking Leighton’s lead, where the transport was a different aim from the hire of equipment and so the price should be apportioned.

Appleby Bowers ([2001] STC 185) where ‘it appears from the evidence that each party…regarded the supply of brochures as a separate matter’.

National Westminster Bank Plc (17687) in respect of the supply of personalised cheques, para 55 states:

‘These are all aims quite independent from the basic functions of the banking relationship. They do not in any way contribute to the better enjoyment of the service of the bank honouring the cheque, which may or may not be required depending on whether the cheque is filled in. The honouring of the cheque by the drawee bank is the only financial service which can be said to be associated with the cheque’.

Charterhall Marketing Ltd (19050), in respect of the supply of printed matter in mailpacks - the final consumer (ie the public) is not the recipient of the printed service but the point of view of HBOS was important because they were ‘the recipient of the goods, and as the only person who pays for them, each document is significant and important’. The different elements of the supply ‘are intended to be individual parts of a picture’.

Equitable Life Assurance Society (LON/01/272 & LON/01/373) at para 59 ‘notwithstanding the single price under the contract, both the surrounding circumstances and the provisions of the contract indicate that Wesleyan intended to purchase distinct services of claims handling and training’.

De Montfort University Students’ Union (MAN/02/523) considered the student’s view when buying the separate food and drink items. It was found there was a specific choice to buy all three items and the non-sandwich items were not a better way of enjoying the sandwich, meaning the transaction was of separate supplies where ‘customers can choose to buy three separate items, or any one or more of them, or they can buy all three at a reduced aggregate price’.

One of the important factors in the Telewest (2005] STC 481) judgment was whether there was an acceptance by the customer of the revised contracts that split the two elements of television services and listing magazine. The Court of Appeal inferred this acceptance from the customers’ acts and conduct ie by accepting the new contract with two suppliers they accepted there were two suppliers and therefore two supplies.

The ECJ decision in Bog (C-497/09) commented ‘it should also be pointed out that the predominant element must be determined ‘from the point of view of the typical consumer (see, to that effect, inter alia, Levob Verzekeringen and OV Bank, paragraph 22, and Everything Everywhere, paragraph 26) and having regard, in an overall assessment, to the qualitative and not merely quantitative importance of the elements of supply of services in relation to the elements of supply of goods’.

The judgment in Courts (LON/02/312) at para 70 stated ‘The VAT consequences are determined by looking at the essential features of the transaction from the customer’s point of view. The supply of the goods is the principal supply because that is the principal purpose of the customer’s visit to the store. The insurance is an ancillary service which does not constitute an aim in itself but a means of better enjoying the principal supply of the goods because it will be a benefit to the customer only if there is a manufacturing defect in the goods’.

The ECJ’s judgment in BGZ Leasing (C-224/11) referred to the customer’s choice: ‘If the lessee also decides to obtain insurance services through the lessor, such a decision is made independently of his decision to conclude a leasing agreement’.

Goals Soccer Centres plc (TC02253) at para 129: ‘The supplies have to be assessed objectively for their significance to the consumer and their connection one with the other’, the conclusion being ‘from the point of view of the typical consumer, there is a discrete supply of the use of a pitch, on the one hand, and the supply of league management services on the other hand’ (para 132).

Alternatively, this criterion may also provide a strong indication of a single supply. An example of this is the decision in Everything Everywhere ([2010] ECR I-12359) where paragraph 30 says ‘customers who pay their mobile telephone bills using one of the payment methods…do not intend to purchase two distinct supplies’.

See also the decision in David Baxendale (Court of Appeal STC 2009 2578) which, in finding for a single supply, says; ‘the correct focus ought to be on whether, from the customer’s point of view, what is being purchased for a single consideration is a single supply of services’ (para 41).

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