HMRC - VATSC81500 - The Intention Of The Legislation

In summary: EU and UK legislation attribute particular liabilities to particular supplies. The single/multiple supply rules cannot be used to either artificially extend the defined scope of an exemption, or a zero, or reduced rate of VAT or split out an element with one of these liabilities if it is ancillary to a principle standard-rated supply.

This must be borne in mind when deciding whether a transaction is a single supply or multiple supplies as it will help to establish whether any split or bringing together of different elements is artificial. An example is where drugs dispensed by a doctor are not a separate supply from their administration by the same doctor (see the decision in Dr Beynon VATSC82130).

UK VAT is governed by both European and UK legislation which sets out what is included or excluded from particular VAT liabilities. A common issue with single/multiple supply decisions is whether there is an illegal extension to an exemption or a UK zero or reduced rate.

To decide if there is a single supply or multiple supplies where the constituent parts have more than one VAT liability you must look at the essential features as directed by CPP, which was in turn a reflection of cases such as Madgett and Baldwin (C-308/96 and C-94/97) which considered the meaning of the then Sixth VAT Directive when determining the supply position.

This is a general principle present in all VAT cases which is demonstrated in decisions such as Amministratrazione delle Finanze dello Stato v Simmenthal (C-106/77) that confirmed the requirement of member states, including their courts, to respect the primacy of European law. But where there is no specific guidance in legislation we must continue to observe the judgments of both the CJEU and UK courts. For example, the High Court decision in Hartwell plc (2002 STC 22) said at para 44: ‘in my judgment, in those circumstances the Card Protection Plan principle must be applied consistently in relation to provisions dealing with the chargeability to VAT’.

However, it is not simply a matter of applying the court judgments without considering the background to the transaction. If HMRC disputes an arrangement on the grounds of artificiality we must look to the intention of Parliament when introducing particular legislation where the primary arguments will rest on either the scope of the legislation or abuse.

On joining the EU the UK agreed it could operate zero rates on some items which had not previously been subject to a sales tax on condition that they must not be augmented or extended in any way. The Government White Paper issued in March 1972, prior to the introduction of VAT on 1 April 1973, detailed the extent of the zero rates which had parallels with the previous purchase tax legislation.

A common issue with single/multiple supplies is whether there is an illegal extension to a zero or reduced rate. This is demonstrated, for example, where a significant standard-rated item is being held to be ancillary to a zero-rated supply when in fact it is either a supply in its own right or the zero-rating legislation does not cover that particular supply. Either outcome results in an extension to the zero rate which is not permitted and so the standard-rated supply must have its own VAT liability, this is explored further in the guidance on carve outs VATSC83100.

A situation that attempts to make a substantial standard-rated item ancillary to a zero-rated supply might be considered abusive if it results in a VAT advantage unintended by Parliament and involves artificial structuring of the supply. If you suspect an arrangement is abusive, you should seek advice from an anti-avoidance officer and VAT Policy.

Previous decisions that consider the intention of Parliament include:

British Telecommunications Plc ([1999] STC 759), Lord Slynn said at para 764:

“It is essential, to my mind, to analyse the individual supplies of goods and services by reference to the specific taxing and relieving provisions of the … Act, as a preliminary to deciding whether any of them are no more than ancillary or incidental to another or others …”.

Dr Beynon ([2004] UKHL 53) at paras 17 & 18:

‘This conclusion has, as I indicated earlier, some relevance to the main question in the appeal. If Parliament had thought that the personal administration of drugs by doctors was a separate supply of goods, it would be very strange that it was not also zero-rated. So the restricted scope of item 1A(a) suggests that Parliament never contemplated that personal administration involved any supply of goods at all.

However, whatever Parliament may have thought, the question of whether there is one supply or two involves the application of principles of European law in compliance with the Sixth Directive’.

The Lower Mill Estate Limited (Upper-tier Tribunal FTC 10/2009) asked of the circumstances ‘does it give rise to a tax advantage contrary to the legislation?’

Tellmer (C-572/07) at para 49: ‘the Community legislature intended to limit the VAT exemption provided for in art 13B(b) of the Sixth Directive expressly to ‘letting’ within the strict meaning of that term and to extend it only to services constituting—on an objective assessment—an element of a comprehensive supply which retains its character as a ‘letting’’.

French Undertakers (C-94/09) at para 38: ‘according to the information provided by the French Republic and not contradicted by the Commission, the transportation of a body by vehicle is governed in France by specific legislation, in so far as it may be carried out only by approved service providers by means of vehicles specially equipped for that purpose’.

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