HMRC - VATSC82070 - Card Protection Plan (C-349/96)

Why this decision was important

This decision was an important precedent because Card Protection Plan (CPP) was the first to be referred to the ECJ for specific guidance on what factors to consider when making a judgement rather than just for advice in relation to CPP alone.

The ruling stated it was always for the national court to make the final decision, but the judgment gave guidance on the factors to consider. The House of Lords in their decision on Dr Beynon VATSC82130 referred to CPP as a restatement of principle and commented it was not necessary to refer to cases predating the ECJ guidance. The ECJ decision in Deutche Bank VATSC82240 in paragraph 24 also commented on this issue by quoting from CPP and referring to it as ‘settled case-law.’

Background

Card Protection Plan provided an assistance package to customers in case of the loss of personal items - mainly credit cards, but also including keys, passports or insurance documents. They also provided an insurance-backed indemnity for fraudulent use of the cards and other forms of assistance, such as medical, where the loss occurred away from the customer’s home. The question was about whether this was a single supply or multiple supplies and whether the package was an exempt supply of insurance or a taxable supply of ‘convenience’ where the customers would be paying for someone else to cancel their cards/order new cards etc.

The ECJ hearing

The question put to the ECJ was:

‘Having regard to the provisions of the Sixth VAT Directive and in particular to Article 2(1) thereof [now Article 2(1)(a) of the Principal VAT Directive], what is the proper test to be applied in deciding whether a transaction consists for VAT purposes of a single composite supply or two or more independent supplies?

In reply, the key policy points arising from the ECJ judgement were:

Since it is not possible to give guidance that would cover all cases of single/multiple supplies, when considering a transaction that consists of a number of components regard must be given to all the circumstances in which that transaction takes place.

Each supply of a service must normally be regarded as distinct and independent.

A supply that comprises a single service from an economic point of view should not be artificially split - the essential features of the transaction must be ascertained to decide if the supply to a typical customer comprises several distinct principal services or a single service.

There is a single supply in cases where one or elements are to be regarded as ancillary services. An ancillary service is defined as something that does not constitute for customers an aim in itself but is a means of better enjoying the principal service supplied.

The fact that a single price is charged is not decisive. If the circumstances indicate that customers intend to purchase two or more distinct services a single price will not prevent these being treated as separate supplies with different liabilities applying, if appropriate, to those services.

The House of Lords decision

Following the recommendations from the ECJ, the House of Lords observed that ‘It seems that an overall view should be taken and over-zealous dissecting and analysis of particular clauses should be avoided’. Lord Slynn said that “if anyone asks what is the essential feature of the scheme or its dominant purpose, perhaps why objectively people are likely to want to join it, I have no doubt it is to obtain insurance cover against loss arising from the misuse of credit cards or other documents.”

The other features of the scheme, such as card registration and obtaining replacement cards, were found to be ancillary to the main objective of the scheme ie the financial protection against loss of the card. Accordingly, CPP was deemed to be making a single supply of exempt services.

Wider application of the ECJ decision

The decision reflected much of the past findings of UK courts on similar subjects and our own interpretation of the law. The description of ancillary services is in line with the concept of ‘integral’ and ‘incidental’ supplies on which we previously relied, although the ECJ decision is a more precise and easily understood description.

In addition, the need to consider all the circumstances in which a transaction takes place and the establishment of the essential features to avoid artificial splitting is in line with the ‘substance and reality’ approach taken in previous cases. The ECJ criteria adopt a common sense approach examining the substance of the facts, rather than a simple analytical approach based on the scheme of the legislation, as had some cases before CPP.

The CPP decision did not mean rulings of an opposite nature given before it were automatically incorrect since they were based on the litigation in place at the time, but Business Brief 2/2001 (16 February 2001) drew attention to the ECJ’s judgment in CPP and it required businesses to review their treatment of transactions and make any changes using the ECJ tests in CPP by 1 June 2001.

When considering CPP before the ECJ referral, the Court of Appeal ([1994] STC 199) had viewed the single/multiple supply issue as being one of impression and believed different minds were likely to reach different conclusions on the question of impression. So although the ECJ guidance gave more certainty in dealing with cases, it cannot be used as a universal solution in isolation and subsequent precedents must also be considered.

Previous page

Next page