HMRC - VATSC82140 - Levob Verzekeringen BV (C-41/04)

This was a Dutch referral to the ECJ involving a contract with different elements which were valued and charged for separately. The ECJ looked at whether the elements were ‘so closely linked that they formed objectively, from an economic point of view, a whole transaction’, decided they were and so ruled there was a single supply.

This was important because the decision provides guidance on a scenario where none of the elements of a transaction are ancillary to the others. Also the invoicing arrangements and valuation of the different elements was deemed irrelevant and the objective nature from an economic point of view as set out in the CPP advice was more significant. The phrase ‘so closely linked that they formed objectively, from an economic point of view, a whole transaction’ is well used and has become a central factor when making decisions.

Levob operated an insurance business and entered into a contract with a US company (FDP) to acquire customised software in order to market the insurance products to US insurance companies.

The contract further stipulated that FDP would customise the basic software for a separate fee and to install and customise it on Levob’s systems in order to enable Levob to use it in the management of the insurance contracts which it sells.

The ECJ concluded that the uniform basis of assessment within the Sixth Directive must be interpreted as meaning that ‘where two or more elements or acts supplied by a taxable person to a customer, being a typical consumer, are so closely linked that they form objectively, from an economic point of view, a whole transaction, which it would be artificial to split, all those elements or acts constitute a single supply for purposes of the application of VAT…this is true of a transaction by which a taxable person supplies to a consumer standard software previously developed, put on the market and recorded on a carrier and subsequently customises that software to that purchaser- specific requirements, even where separate prices are paid’.

The judgement went on to say that Article 6(1) of the Sixth Directive 77/388 must be interpreted as meaning that ‘a single supply is to be classified as a supply of services where it is apparent that the customisation in question is neither minor nor ancillary but, on the contrary, predominates; such is the case in particular where in the light of factors such as its extent, cost or duration the customisation is of decisive importance in enabling the purchaser to use the customised software’.

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