HMRC - VATSC82180 - Weight Watchers (UK) Ltd (Court Of Appeal [2008] STC 2313) & David Baxendale (Court Of Appeal [2009] STC 2578)

These similar cases both concerned the provision of a managed weight-loss programme. Weight Watchers delivered their assisted weight loss and weight management programme by a number of methods; support at meetings, by telephone and by printed and online material. Customers could subscribe to the programme by various combinations of these methods.

Weight Watchers argued that where customers chose to register and attend meetings, paying a registration fee followed by meeting fees, they were supplied with:

standard-rated services and facilities (meeting room, weight recording, talks and discussions), and

zero-rated printed materials

HMRC argued that the customer obtained one supply of a standard-rated personally assisted weight loss programme. The Court of Appeal adopted the CPP tests, namely:

the requirement to look at the transactions from the viewpoint of the typical consumer rather than that of the supplier, and

the extent of the link between the supplies when considered from an economic point of view

The fact that the supplier charged a single price for the aggregate of the transactions, whilst relevant, was not found to be conclusive as a single price may be apportioned if necessary. The court asked itself whether it would be artificial to split the transactions into separate supplies. The judgment found that it would be artificial: the test clearly pointed to the conclusion that there was a single supply of services at the meetings.

David Baxendale marketed, under licence, a weight-loss programme. The physical aspect of that programme was the total replacement in the initial months of normal food with special food packs. That was accompanied by counselling and advice in weekly group sessions run by franchisees. Customers paid for the special food packs but made no specific payment for the support services provided at the group sessions.

David Baxendale argued the individual elements should have their own VAT liability, for example the food packs should be zero-rated. HMRC argued the franchisee made a supply of services in the form of a weight-loss programme of which the provision of the food packs was only one element and although the food packs and counselling services were not ancillary to each other, the two elements constituted a single composite supply that was economically indivisible.

The judgment in David Baxendale was that there was only one supply of weight management, having considered:

the inclusion of the support service in the price paid for the food packs, whilst not conclusive in itself, was consistent with that being what the taxpayer offered

more particularly, it was what the consumer wished to purchase and receive.

the support services were integral to the achievement of the consumer’s needs.

the typical consumer purchased a single package of food packs and support services, which he wished to use in combination with each other and which, in the context of the transaction, were not economically divisible - they were to be taken together and were purchased on that basis.

the typical consumer regarded the food and counselling as complementing each other and valued them both.

the product was promoted on the basis that the customer would be supported in his or her slimming endeavours by the counselling services provided, and those were an essential aid in reinforcing the diet.

in those circumstances it would be artificial to split up what anyone wishing to use the programme would regard as a single economic supply.

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