HMRC - VATSC82190 - Part Service Srl (C-425/06)

This referral from Italy concerned the leasing of motor vehicles where the taxable supply of leasing was split with the finance element being characterised as an exempt supply by a separate entity. The Italian tax authorities contended that the abuse principle applied as the supply of leasing had been artificially divided to gain a tax advantage rather than for valid economic reasons. The case was referred to the ECJ for guidance as to whether abuse applied on the facts of the case and whether the second limb (‘essential aim’) of the two-part test for abuse (identified by the ECJ in the Halifax case C-255/02) was a sole purpose test.

The ECJ ruled it was for the national court to decide whether the arrangement was abusive, but it gave guidance on relevant factors concerning single/multiple supplies and it identified significant characteristics of the arrangements which should be taken into account (at para 57) including the price paid by the customer and that the leasing service by itself was economically unprofitable so the viability of the business was compromised. The Italian supreme court subsequently ruled that the arrangements were abusive.

This case is therefore important when considering situations where it appears that a single supply has been split between two entities. You should consult TAPE colleagues at an early stage if you think that the abuse principle might apply in such circumstances.

Previous page

Next page