HMRC - VATSC82270 - BGZ Leasing Sp Z.O.O (C-224/11)

BGZ Leasing leased equipment and made a charge to customers for insurance services in case of damage or loss. It was a requirement of the contract that customers had insurance, but they could arrange their own and did not have to take the BGZ-offered product. The insurance itself was provided by a third party insurer to BGZ who then made a recharge of the cost to the customer.

The ECJ considered past case law and observed at para 30 ‘in certain circumstances several formally distinct services, which could be supplied separately and thus give rise in turn to taxation or exemption, must be considered to be a single transaction when they are not independent’ but went on to say that all the circumstances of the transaction must be taken into account.

Considering this, the ECJ found the insurance to be a distinct and independent supply that ‘constitutes essentially an end in itself for the lessee and not only the means to enjoy that service under the best conditions’ (para 42).

Although the two elements were supplied together, and the insurance was a requirement of the lease, the customer had a genuine choice. The judgment observed:

‘it is true that those two elements are likely to be supplied together. In fact, there is a link between the supply of a leasing service and the supply of insurance for the leased item, since such insurance for that item is only of use with respect to the latter’ (para 35) and

‘It must be stated, in that regard, that any insurance transaction has, by nature, a link with the item it covers. It follows that there is necessarily a connection between the leased item and the relevant insurance. Nonetheless, such a connection is not sufficient in itself to determine whether or not there is a single complex transaction for VAT purposes. If any insurance transaction were subject to VAT because the services relating to the item it covers were subject to VAT, the very aim of Article 135(1)(a) of the VAT Directive, that is the exemption of insurance transactions would be called into question’ (para 36).

Therefore the conclusion at para 39 was ‘as a general rule, a leasing service and the supply of insurance for the leased item cannot be regarded as being so closely linked that they form a single transaction. The fact of assessing such supplies separately cannot constitute in itself an artificial splitting of a single financial transaction, capable of distorting the functioning of the VAT system’.

The concept of fiscal neutrality was also influential since the customer’s choice over where to obtain insurance meant the BGZ product must be treated in the same way as other providers.

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