HMRC - VATSC83100 - Carve Outs - Can A Single Supply Have More Than One VAT Liability Applied To It?

Ordinarily a single supply will have a single VAT liability. The limited exceptions are where the law restricts the scope of an exemption, zero rate or reduced rate.

The judgment in Talacre Beach Caravan Sales Ltd (C-251/05) VATSC83150 was one such exception. The ECJ held that a single, composite, zero-rated supply that included a supply element which a Member State’s legislation specifically excluded from zero-rating should be apportioned between the zero-rated and standard-rated elements to avoid an impermissible extension of the scope of the zero rate. In Commission v France (C-94/09) VATSC83200 (French Undertakers) a ‘concrete and specific aspect’ of the supply was permitted to have its own reduced rate liability because France had specifically legislated to produce that effect.

It is important to note that this is not strictly a single/multiple supply issue. These decisions give no information about how to make a single/multiple supply decision as there was an accepted single supply in both cases and the dispute was whether more than one liability could be applied to it.

Therefore the approach to take is to first establish whether there is a single supply or multiple supplies using the guidance in VATSC80100 and VATSC81000. If there are genuine multiple supplies then they will all have their own liability.

The ‘carve-out’ cases involved situations where there was an established single supply, but always remember the principles from CPP and Levob must always be considered first. Even if one element of the supply, viewed in isolation, might have its own VAT liability these cases do not automatically give a right to carve out that element, meaning there is still one VAT liability applied to the single supply.

Although it may appear from cases such as Talacre Beach Caravan Sales Ltd and French Undertakers that specific items referred to in domestic legislation can have a separate VAT liability within a single supply, it is HMRC’s view that it is artificial to mechanically split out each part of a single supply. This is based on the established case law and HMRC’s view is that this was not what the ECJ had intended with these judgments.

HMRC’s view is that they have only a very narrow application and were found on their facts. Neither are the rulings interchangeable as Talacre concerned a specific exclusion from a VAT relief of an element of a supply that otherwise qualifies for relief. Whilst in French Undertakers there is a specific inclusion in the VAT relief of just one element of a supply. In particular, the CJEU reasoning for the first (non-extension of the zero rate) cannot apply to the second.

Also, these cases do not go as far as to say that a single supply can be apportioned to reflect its constituent elements, neither do they turn a single supply into multiple supplies. The decision in Colaingrove Limited (TC02534) stated the principles from Talacre and French Undertakers would only apply ’in the very limited class of case where a reduced rate of VAT is in issue and the domestic legislation imposing it indicates an intention that the CPP jurisprudence should not apply’ (para 68).

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