HMRC - VATSC83200 - Commission V France (C-94/09)

Following on from Talacre, the ECJ decision in French Undertakers (C-94/09) is also quoted in evidence when there is an attempt to split out elements with different VAT liabilities from what is a single supply.

The case concerned the supply of services by undertakers and the ECJ was asked to decide whether or not France could choose to, or had the discretion to, apply a reduced rate to only a part of a supply listed in Annex III of the Principal VAT Directive.

The Commission argued that all the supplies of services by undertakers constituted a single supply so must be subject to a single rate of tax, in other words, if the member state chose to apply a reduced rate to that category of supply listed in Annex III, it could not split it up and decide to only apply a reduced rate to part of that supply. All the usual arguments such as elements being ‘so closely linked that they formed, objectively, from an economic point of view, a whole which it would be artificial to split’ were employed.

The general information on the application of VAT on the Commission’s website says ‘The detailed application of VAT varies according to the administrative customs and practices of each Member State within the framework set out by Community legislation’. The French government based its case on paras 22 and 23 of the Commission v France (C-384/01) judgment relating to the supply of electricity and natural gas and para 39 of Finanzamt Oschatz v Zweckverband zur Trinkwasserversorgung und Abwasserbeseitigung Torgau-Westelbien (C-442/05) relating to water supplies.

The alternative submission was that there was nothing in the text of the Principal VAT Directive which means the reduced rate can be charged only if it is applied to all aspects of a supply. Therefore a selective application of a reduced rate was allowed on condition there was no risk of a distortion of competition.

The ECJ ruled it was permissible to exempt part of that particular supply because there was a ‘concrete and specific’ aspect of the French legislation that allowed this. Consequently, providing the concept of fiscal neutrality was not breached, it was not artificial to carve out one aspect form a single supply in order to apply a different VAT liability.

This case does not give information on how to decide whether there is a single or multiple supply as the starting point is that there is a single supply and the issue is about whether there can be more than one VAT liability applied to it.

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