Constable VAT Consultancy

VAT Focus on Single v Mixed Supplies
14 June 2013

Some recent VAT cases illustrate the potential complexities surrounding whether a supply should be treated as a single supply, with a single VAT liability, or a number of separate supplies each with potentially different VAT liabilities applying. In considering these recent cases the Tribunals referred to a number of historic VAT cases (sometimes the same ones) but came to different conclusions. Some of the cases referred to in seeking guidance are worth briefly re-visiting before the more recent cases are considered.

Past Cases

Card Protection Plan (CPP) is seen as a lead authority in this area. CPP supplied a package of services, including insurance services (exempt) and card registration services (taxable). The question was whether this was a single composite supply of VAT exempt insurance or a supply of several separate services both taxable and exempt. In reviewing the reason why customers bought the product. It was decided that the taxable services were ancillary to the main supply of insurance and as such there was one single supply of insurance.

At the time of this decision a number of commentators saw CPP as providing a clear, logical process which would enable any such issues to be determined with relative ease. However, more than 10 years later there is no shortage of litigation on the issue.

In the ***Talacre Beach Caravan Sales Ltd*** case, the taxpayer argued the principals of CPP enabled their supplies of caravans to be treated as zero-rated. UK VAT legislation zero-rated the supply of certain caravans, but specifically excluded from the zero-rating the contents of these caravans. The question was whether, using CPP principles, the supply of a zero-rated caravan and its standard rated contents be treated as a single zero-rated supply. As the UK legislation explicitly excluded the contents from the zero-rating, the Court ruled that CPP principles could not be applied.

In a European case generally referred to as the “French undertakers” French law allowed that a reduced VAT rate could be applied to the transportation of the body by vehicle. The European Commissioners argued that this was incorrect and that although EC law allowed a reduced rate to apply to supplies by undertakers it should apply to the whole supply. The European Court found EC law did not restrict the application of the reduced rates to the whole supply and found that the supply of transportation of the body was a “concrete and specific” element, qualifying for the reduced rate for undertakers’ services in France.

Recent cases

Morrisons contended that the sale of disposal barbecues was a mixed supply of standard rated packaging and reduced rated charcoal. The First Tier Tribunal agreed with HMRC and said that the supply was a single standard rated supply. The retailer appealed to the Upper Tier Tribunal. In setting out its appeal the retailer referred to the charcoal being a “concrete and specific” aspect of the supply. The UTT’s analysis pointed out that there was no specific identification in the UK legislation of the reduced-rate applying to charcoal as part of a disposable barbeque in UK legislation. As such the French Undertaker’s approach was not appropriate but CPP was. As such the disposable barbeque was seen as a single supply, taxable at the standard- rate of VAT.

The second case, ***The Honourable Society of Middle Temple***, involved the supply of commercial property and cold water. The taxpayer contended there was a mixed supply of standard rated property (they had opted to tax) and zero-rated cold water. The First Tier Tribunal agreed with this view and HMRC appealed the matter to the Upper Tier Tribunal. The Upper Tier did not see the two supplies as being capable of separation (the historic background meant that the taxpayer had ownership of the water supply) as far as the tenants were concerned. As such it was a single supply at the standard rate (as the water could not be supplied without there first being a lease in place).

Even when the status of the supply is decided it is not necessarily the end of the matter. A recent Tribunal hearing was a follow up to a decision about a mixed supply of standard rated and zero-rated supplies. Eight potential methods of attribution were considered by the Tribunal in a dispute with HMRC regarding the most appropriate. In its decision the Tribunal said they “needed all the help we could get” in evaluating the merits of each method, as they found themselves “trying to navigate with a dim and flickering light across a dark and difficult terrain”.

Visit our website for current news updates. To discuss any of the above issues please contact us on 0207 830 9669 or email: info@ukvatadvice.com .You can also follow CVC on Twitter

Thinking outside the box