

Composite supply of printed matter and tutor support***Metropolitan International Schools – FTT***

The taxpayer supplies correspondence courses in practical topics like plumbing, and computer game design. These courses are expensive but cheaper than the equivalent college courses. It has tens of thousands of students and very few staff. The students receive very detailed and comprehensive printed manuals for self-study. These are prepared by an associated company, and not the taxpayer. Tutor support is available but is little utilised, and most queries that are received can be answered by referring the student to the relevant part of a manual. At the end of each manual there is a multiple choice test – if the student answers incorrectly he or she will be referred back to the relevant part of the manual where the correct answer is to be found, so that this area can be further studied. There is no classroom tuition and the taxpayer does not offer any examinations that would lead to a qualification, though in limited circumstances it will pay the exam fees charged by third parties, on behalf of students that have completed all the manuals, passed the self-assessments and taken the practical sessions on offer – very few students meet these conditions.

The taxpayer argued that it made a single supply of zero rate printed matter, with any add on services being ancillary to its zero-rated supply. HMRC, citing College of Estate Management (CEM) (HoL – 2005), argued that a single supply was made, but that the single supply was one of standard rate education (the taxpayer is not an eligible body so the supply cannot be exempt).

Held

The FTT disappplied CEM due to the different fact pattern here and concluded that there was a single supply of printed matter. However, the FTT chairman said he found it difficult to arrive with confidence at the correct tests to apply in reaching this decision and records in the decision that the case may go further and may even require a reference to the ECJ.

The basis for disapplying CEM seems to be the conclusion that the typical customer here just wants the manuals to study himself (or herself) rather than, as was the case in CEM, to obtain a qualification offered by the supplier or to be taught by someone. Thus, although the conclusion was that there was a single supply made by both CEM and Metropolitan the single supply made by each is not the same supply. The single supply made by Metropolitan (what the typical customer wanted) was the printed matter and not education. This taxpayer was a bookseller, offering some other, ancillary services.

**WE HOPE YOU FIND THIS NEWS ARTICLE HELPFUL. IF YOU WOULD LIKE TO REGISTER TO RECEIVE
FUTURE UPDATES BY EMAIL THEN PLEASE SEND A REQUEST TO**

info@4eyesltd.co.uk

This VAT update is published for the general information of 4 Eyes Ltd personnel, clients and contacts. It provides only an overview of the rules and regulations in force at the date of publication, and no action should be taken without consulting the detailed legislation or seeking professional advice. Therefore no responsibility for loss occasioned by any person acting or refraining from action as a result of the material contained in this e-mail will be accepted by the authors or the firm.

In taking this approach this FTT has applied the same reasoning as was applied by the Scottish Tribunal in 2002, in International Correspondence Schools, which predates CEM.

This decision goes into the tests to identify whether there is a single or multiple supply in a fair amount of detail, but the analysis is based on well-known decisions such as CPP, Levob, Deutsche Bank, Faaborg etc. Where what is provided to a customer has different elements these may well be separate independent and distinct supplies, but equally a transaction may be a single supply, economically speaking, and it might then be artificial to split the indivisible elements into different supplies with different VAT liabilities.

If there is not a mixed supply, the process involves deciding whether there is a principal element and ancillary ones, (in which case the whole single supply is taxed at the liability of the principal element) or whether each element is of equal value and combines to create a, possibly different, overarching single supply which reflects what the typical customer wants. The VAT liability is then based on the liability of that overarching supply and VAT will be due unless the overarching supply is covered by the exempt or zero rate Schedules.

In 2009, as a result of CEM, HMRC had wanted to withdraw an agreement that the taxpayer made mixed supplies (75% zero rated) and assess for VAT on all income for the three years prior to that withdrawal. However, HMRC changed its mind when a Judicial Review (JR) was threatened. The JR remains open on a grandfathering issue (what should happen to income received after the agreement was withdrawn, where the income date was the tax point, in respect of contracts signed before the agreement was withdrawn, since the taxpayer could not pass any additional VAT on to its customers and would have suffered a huge loss if VAT became due on all this income). This is however, irrelevant if the FTT decision on the main supply issue is upheld as the FTT has decided no VAT is due on any of the income.

The FTT confirmed that it had no jurisdiction over issues that are the subject of a JR but if it was wrong on the supply point and if it had jurisdiction, it would have concluded that grandfathering should be allowed.

Comment

There are some key issues in this case, which go beyond just another airing of the single v multiple supply tests. Putting oneself in the shoes of the typical consumer is not always easy or straightforward and the length of the section of the decision that covers the various supply tests reflects this.

WE HOPE YOU FIND THIS NEWS ARTICLE HELPFUL. IF YOU WOULD LIKE TO REGISTER TO RECEIVE FUTURE UPDATES BY EMAIL THEN PLEASE SEND A REQUEST TO

info@4eyesltd.co.uk

This VAT update is published for the general information of 4 Eyes Ltd personnel, clients and contacts. It provides only an overview of the rules and regulations in force at the date of publication, and no action should be taken without consulting the detailed legislation or seeking professional advice. Therefore no responsibility for loss occasioned by any person acting or refraining from action as a result of the material contained in this e-mail will be accepted by the authors or the firm.

Questions of supply continue to appear in the Tribunal and in higher jurisdictions on a regular basis, and though we have all the tests from the ECJ cases, and their detailed practical application by the UK courts (most recently in the Middle Temple UT decision) it is fair to say that the decisions reached at the different stages of litigation are not always consistent, which simply serves to underline how difficult this whole area of VAT is. In the correspondence course sector however the widespread replacement of printed manuals with standard rated online material means technological developments have resolved the issue for any supplier who is not an eligible body, (unless we get a Tribunal decision that online material can nonetheless be classed as a zero rated “book”, and that this would not be a prohibited extension of the scope of the zero rate which we deem to be unlikely).

**WE HOPE YOU FIND THIS NEWS ARTICLE HELPFUL. IF YOU WOULD LIKE TO REGISTER TO RECEIVE
FUTURE UPDATES BY EMAIL THEN PLEASE SEND A REQUEST TO**

info@4eyesltd.co.uk

This VAT update is published for the general information of 4 Eyes Ltd personnel, clients and contacts. It provides only an overview of the rules and regulations in force at the date of publication, and no action should be taken without consulting the detailed legislation or seeking professional advice. Therefore no responsibility for loss occasioned by any person acting or refraining from action as a result of the material contained in this e-mail will be accepted by the authors or the firm.