

Mixed and composite supplies EWHC 53 Weight Watchers (UK) Ltd

The Court of Appeal has released its decision in Weight Watchers (UK) Ltd (Weight Watchers) which allowed HMRC's appeal and dismissed that of Weight Watchers. As a result, the Court agreed with HMRC's original ruling that Weight Watchers make a composite supply of meetings and literature which is standard rated. The complexity of matters in the area of mixed and composite supplies for VAT purposes is borne out by the fact that the Tribunal, the High Court and the Court of Appeal reached such wildly different conclusions on the same fact file.

Background

Thorough witness accounts provide great detail about Weight Watchers services. Essentially customers attend weekly meetings in which they are weighed, attend a talk and obtain printed material. At the first meeting a customer pays a £9 registration fee and £4.95 for that meeting. At this point the customer also receives a substantial 170 page handbook. Customers then pay £4.95 for each meeting and receive weekly leaflets and the monthly magazine, 'Irresistible!'. HMRC argued there was a single standard-rated supply of a weight-loss programme. However, the Tribunal held that customers received separate supplies of zero-rated printed material and standard-rated support services. The Tribunal stated "where there are no principal and ancillary supplies the relevant test for whether there is an indivisible supply is that established in the ECJ case of Levob". The Levob test was whether two or more elements supplied to the customer, being a typical customer, are so closely linked that they objectively form:

- a single indivisible economic supply; and
- it would be artificial to split such a supply.

Applying this, the Tribunal held that for both first and subsequent meetings, the handbook and other printed material respectively were divisible from the weight-loss services. The consideration should be apportioned between the standard and zero-rate. HMRC appealed to the High Court. The High Court held the Tribunal had been correct to use the legal test established in Levob. Despite some minor disagreements, the Court found the Tribunal had not made an error in law or in the legal test applied. However, given the facts, the High Court disagreed with the Tribunal's characterisation of the transactions. With regards to the first meeting the Judge considered the arguments to be evenly balanced. Despite placing a closer link between the goods and services than that of the Tribunal, there were insufficient grounds to overturn the Tribunal's decision.

Therefore, for the first meeting, HMRC's appeal was refused. With regards to the subsequent meeting, the Court was clear that this was not a borderline case and if the test was applied correctly it would be artificial to differentiate between the services and printed matter. These subsequent meetings are therefore single standard rated supplies and this part of HMRC's appeal was allowed.

Decision

The case then went to the Court of Appeal, with HMRC appealing the decision in respect of the first meeting and Weight Watchers appealing the decision in respect of the subsequent meetings. The Chancellor concluded that the Tribunal erroneously applied two of the tests for determining mixed/composite supplies per Levob, namely regarding the 'economic aspect' and the 'perspective of the typical customer' and their motivations to buy the product. As a result, the Chancellor was entitled to interfere with the decisions of the Tribunal and the Lower Court and concluded that the meetings and literature, as a whole, formed a single supply of a taxable service. His conclusions were based on the following reasoning: A 'typical' customer is one who becomes a member of Weight Watchers' to obtain the benefit of a weight loss program. One of the features of the program is attendance at regular meetings for the benefit of group therapy and to learn about recipes from the handbook. From the customers' perspective, the Chancellor concluded that it made no sense to pay separately for the meetings and the publications (since it was the 'combination' of both that the member was buying). He could see no difference between the first and subsequent meetings, except to the extent that some members may be enrolling for the first time and even

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then, from their perspective, the first meeting was a preliminary to obtaining the events of the program. His view is that the correct legal test points clearly to the conclusions that there was a single supply at meetings in accordance with HMRC's original ruling.

Why is this important?

The case reaches another different conclusion from the same legal test and facts. This is an area of VAT law where uncertainty is reinforced by a prevailing view that "it is not possible to give exhaustive guidance" (Card Protection Plan), "the legal test which is to be applied is not cut and dried" "there is no precise measure or yard stick." This can only highlight the scope for interpretation in an area which is increasingly contested. Where a close connection exists between supplies which creates doubts about their divisibility and VAT status, it is no harm to consider them in the context of the tests outlined above.