

Land & property - liability of separately invoiced cleaning
C-572/07 RLRE Tellmer Property

Background

Tellmer is the owner of apartment blocks in the Czech Republic. As well as charging tenants exempt rent it separately invoices tenants for the cleaning of common parts by caretakers. The authorities viewed these cleaning services as separate taxable supplies and assessed for output tax. Tellmer appealed to the domestic court who referred the case to ECJ and asked whether the letting of an apartment and the cleaning of the common parts are separate supplies. A second question asked what should happen if they were not separate supplies – did the Directive nonetheless require VAT to be charged on the cleaning because of fiscal neutrality issues, as cleaning is taxable, or preclude VAT from being charged because the letting was exempt, or was the VAT treatment up to the Member States?

Held

The ECJ started by establishing that exemptions have their own definitions and should be interpreted strictly. The Court then went on to consider single versus multiple supply case law. It quoted paragraphs 50 to 53 of Part Service (C-425/06 Part Service 2008) which looked at cases such as CPP, Levob and OV Bank. This stated that every transaction must normally be regarded as distinct and independent but there is a single supply where one transaction is ancillary to the other or for the better enjoyment of the other, or the elements are so closely linked it would be artificial to split. Having established the cleaning services do not necessarily fall under the exemption for letting, the Court noted such cleaning supplies can be supplied in a number of different ways including direct from third parties to the tenants, and emphasised the fact that Tellmer invoiced these supplies separately. In a relatively short Judgment the Court stated that ‘in circumstances such as those at issue in the main proceedings’ the supplies in question cannot be regarded as constituting a single letting transaction. Although the case concerned cleaning, the same principles could apply to maintenance, gardening and a whole raft of other services needed to support communal areas.

Having answered the first question in the affirmative the ECJ did not need to answer the second one.

Implications

This case is of potentially wide application, however, the ECJs response is also limited to the specific circumstances of the case. Normally the ECJ answers questions on specific points of interpretation of the Directive, leaving the referring Court to apply the response of the ECJ to the facts of the case.

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Some of the reasoning of the decision may also be called into doubt. The ECJ seems to have focussed on the fact that the service charges were invoiced separately and could be supplied by a third party to the tenant direct in concluding they were a separate supply. However neither of these would automatically make a single supply into two supplies.

Furthermore, the ECJ has not considered the customer's perspective in any of this which seems to contradict the approach taken in previous supply cases. When a tenant pays the service charge it is generally for the better enjoyment of his demised area.

Comment

This is an interesting case and how it will or should be implemented in the UK is uncertain. We must await HMRC's response to the case, but until then, advise businesses to look at their particular circumstances to establish if they could be affected by the case. Whatever your status and position we advise that you consult 4 Eyes Ltd before making any decision.

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