

Mixed Supplies of Goods and Services

This document should be read in conjunction with section 47 of the VAT Consolidation Act 2010 (VATCA 2010)

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1. Introduction

Section 47 of the VAT Consolidation Act 2010 provides the rules on how the supply of a package comprising two or more elements, each potentially attracting VAT at different rates, is treated for VAT purposes. Previously this was known as the "package rule". Under the "package rule", the rate of VAT on a supply of goods or services sold together for a single consideration was the rate chargeable on the highest rated item contained within the package.

2. General

The current legislation aligns the provisions of the VAT Act more closely with those of the Sixth VAT Directive as interpreted by the European Court of Justice. As a general rule, the consideration payable in respect of goods or services supplied as a package is to be apportioned between each of the individual elements in the supply. VAT applies to these elements at the rate that would apply to them if they were each sold separately. However, in relation to certain categories of supplies referred to as composite supplies, the legislation provides that VAT is chargeable at the rate applicable to the principal element in the supply.

Section 97(1)(b) of the Finance Act, 2006 introduced Composite and Multiple supplies. In practice, Revenue had been concessionally taking on board the principles established in ECJ case law in its interpretation of the Irish VAT legislation prior to 1 November 2006.

Regulation 12 of the Value-Added Tax Regulations 2010 (S.I. No. 639 of 2010), covers certain specific areas and supplements the primary legislation in the VAT Act.

This publication sets out the key features of the current legislation and how it applies to the business sectors affected. Overall, it is anticipated that this approach will evolve over time, judging by the experience of other Member States operating on the same principles. It will be influenced by, and adapted in the light of, ongoing experience in the field, new product development, and by the outcome of cases at national and ECJ level.

3. Definitions in VAT Act

There are five definitions of different types of supply in section 2 of the VAT Consolidation Act 2010 : Ancillary Supply, Composite Supply, Individual Supply, Multiple Supply and Supply. These are in line with section 47 regarding the rates to be applied to different types of supply.

Although there are five definitions, two main categories are of relevance for the purpose of applying the appropriate VAT treatment namely a "multiple supply" and a "composite supply":

- a **multiple supply** is defined as being two or more supplies made in conjunction with each other to a customer for a total consideration covering all those where each of those supplies are physically and economically dissociable from each other. In this arrangement each of the supplies made in conjunction with others is treated as an **individual supply** and is taxable/exempt in its own right;
- a **composite supply** has one principal element referred to as a **principal supply** with the other elements of that supply being described as **ancillary supplies**. These always accompany the principal supply and the main feature of an ancillary supply is that it would not make sense from an economic or practical point of view to supply it other than in the context of that principal supply.

4. How the rates of VAT are applied under the current rules

Section 47 of the VAT Consolidation Act 2010 provides for how tax is to be applied in the case of a multiple supply or a composite supply as defined in the Act.

- In the case of a multiple supply, each constituent element of the transaction is treated as an individual supply for VAT rating purposes. The taxable person must apportion the consideration payable by the customer between all the constituent elements supplied, thereby ensuring that the appropriate rate of VAT is applied to each portion of the consideration payable. In this regard the VAT Act requires that the total consideration be apportioned in a way that correctly reflects an accurate ratio of the values involved. The taxable person must be able to demonstrate, on request, to the satisfaction of Revenue that the result of the apportionment calculation is reasonable. Acceptable apportionment methods would include, for example, splitting the consideration according to the ratios of the cost of supplying each element, or according to the market value of each element.
- In the case of a composite supply there is one principal element or supply to which any other element or elements are ancillary. A single rate of VAT applies to the entire transaction at the rate applicable to the principal supply.

In the majority of transactions it will be clear what is the appropriate category for each supply. However, cases will inevitably arise where it is not so clear. In such cases the following criteria, illustrated by examples, are relevant in deciding on the nature of a particular supply i.e. whether it is a **multiple supply** consisting of a number of **individual supplies** taxable at different rates or a **composite supply** taxable at a single rate or exempt as appropriate.

A feature of an **individual supply**, which by definition always forms part of a **multiple supply**, is that it is physically and economically dissociable from the other elements of that multiple supply. This means that each element the customer is being supplied with must be a distinct element of the overall supply. It must amount to more than a mere enhancement of a principal supply. In the language of the ECJ it must be capable of constituting "an aim in itself". An indicator that it is an individual supply is that it would be possible and sensible to supply the item or element separately in its own right.

The following are examples of a multiple supply:

- The sale of food hampers which contain goods which if sold separately would be taxable at the zero, reduced and standard per cent rate. Under the current rules each of the differently rated elements is taxed as an individual supply at the rate appropriate to it. The consideration must be apportioned so as to reflect the taxable amount applicable to each VAT rate. (This accords with the concessionary treatment of these supplies under the old rules.)
- A meal made up of food together with a soft drink or wine is sold for a single price. The food is liable to VAT at the second reduced rate whereas the soft drink or wine is liable at the standard rate. Under the current rules such a meal is taxed as a multiple supply as each of the parts of the meal are physically and economically dissociable from one another. Accordingly, the total consideration payable should be apportioned so that the food element is taxed at the second reduced rate and the drink element is taxed at the standard rate. (This accords with the concessionary treatment of these supplies under the old rules.)
- A car repair service is provided at the same time as the fitting of a set of tyres for a single consideration. As the supply of car tyres does not normally form part of a routine car service, the repair service and the supply of tyres would be regarded as a multiple supply. Both supplies are physically and economically dissociable from each other. In these circumstances the consideration should be apportioned so that the service is taxed at the reduced rate and the tyres at the standard rate.

The **composite supply** rule applies where there is a principal element as well as an ancillary element or elements being supplied and where the ancillary elements would not realistically be sold on their own without the principal element. Such ancillary supplies are not physically and economically dissociable from the principal supply. The VAT rate applicable to the total consideration is the rate applicable to the principal supply. Again, in the words of the ECJ, a supply must be regarded as ancillary "if it does not constitute for customers an aim in itself, but a means of better enjoying the principal service supplied." In addition, when considering if a transaction is a composite supply or not, due regard should be given to the essential features of the transaction, e.g. would it make sense or would it be practical to supply an ancillary element on its own, what are the terms of the contract, the intention of the parties involved, the pricing arrangements, etc. Also, a supply that is a composite supply, from an economic point of view, should not be artificially split to gain a tax advantage. In this regard the existence of separate contracts, or the furnishing of two or more invoices is not always indicative of two individual supplies having taken place.

The following are some examples of a composite supply:

- The supply of a mobile phone (the standard rate VAT) with an instruction booklet (zero % VAT). The instruction booklet is clearly for the better enjoyment of the mobile phone and is clearly ancillary to it. The rate applicable to the principal

supply is the standard and this rate applies to the entire supply regardless of how the consideration for the supply is allocated by the supplier.

- The purchase or lease of computers programmed to perform a specific function coupled with specific training on how to operate and access the system as an integral part of the overall deal. The leasing of the equipment (the standard rate of VAT) is the principal supply and the provision of the training (exempt from VAT) is ancillary. Accordingly the standard rate will apply to the overall transaction.

5. Regulations

Regulation 12 of the VAT Regulations 2010 S.I. No. 639 of 2010, covers the situation where the cost to the supplier of an individual supply or supplies in a multiple supply does not exceed 50 per cent of the total tax exclusive consideration which a taxable person is entitled to receive or €1 whichever is the lesser (de minimis rule). In that case, as a simplification measure the Regulation provides that the taxable person may choose to disregard such individual supply or supplies for the purpose of applying the appropriate rate of VAT. This means that even where more than one individual supply in a multiple supply has a tax exclusive cost of less than €1, the maximum value of all the supplies that can be disregarded is €1 (for this purpose the value of any individual supply cannot be split).

For the rule to apply, the multiple supply must contain at least one individual supply which is not disregarded. An individual supply which is not disregarded is referred to in the Regulation as a "remaining individual supply". The Regulation does not permit the supply of beverages to be disregarded.

Whereas the tax applicable to the individual supplies which are not disregarded continues to be calculated as outlined in paragraph "7", where the taxable person chooses to disregard one or more individual supplies in a multiple supply the following rules apply:

- where there is only one remaining individual supply after an individual supply or supplies have been disregarded then the rate of tax chargeable on the portion of the total consideration attributable to the supplies disregarded is the rate applicable to that remaining individual supply,
- where there is more than one remaining individual supply after an individual supply or supplies have been disregarded then the rate of tax chargeable on the portion of the total consideration attributable to the supplies disregarded is the rate applicable to the remaining individual supplies or, if there is more than one rate applicable to those remaining individual supplies, the lowest of the rates applicable to those remaining individual supplies.

6. Existing concessions.

It is clear that in some instances concessionary treatment granted under the old rules will now be covered in the current legislation.

Administrative simplifications that have already been agreed in certain areas will continue to apply. Examples are:

- The supply of biscuit assortments where the chocolate biscuits are 15% or less of the total weight may be treated as a composite supply of biscuits liable at the reduced rate.
- The supply of a potted plant may continue to be taxed at the rate appropriate to the plant i.e. reduced rate where the value of the pot is less than 20% of the tax exclusive price of the plant and the pot.
- The spreading only of fertilisers is liable to VAT at the reduced rate whereas the supply of fertiliser is liable to VAT at the zero rate. However, the combined supply and spreading of fertiliser is liable to VAT at the zero rate.

7. Other

7.1 Discounts:

Where a trader gives a price discount on a multiple supply, the details of how that discount is apportioned between the various individual elements of the supply must be recorded at the time of sale, and available for inspection by the local Revenue District. A trader who does not have electronic point of sale systems (EPOS) which can record the appropriate break-down of how the discount applies to the various elements in the supply must agree the apportionment with the local Revenue District (see in particular Tax Briefing 63 May 2006, page 10 and Cash Registers (EPOS) leaflet).

7.2 Gifts and Promotional Items:

Problems frequently arise when goods are supplied on a promotional basis either on their own or in conjunction with other supplies. A gift for VAT purposes is legislated for in Article 16 of Council Directive 2006/112/EC and section 21 of the VAT Consolidation Act 2010 and Regulation 5 of the Value-Added Tax Regulations 2010. A gift only arises where no consideration is received for it by the supplier. In such cases, where the cost of the gift is below €20, there is no output VAT due by the supplier, although input VAT is deductible.

However, if there is a requirement for the customer to pay a consideration in connection with the receipt of an item, even if the supplier describes part of that item as a **"gift"**, or as being **"free"**, (for example "buy one, get one free", a free bar of chocolate with the purchase of a jar of coffee, a CD/promotional item with a newspaper/magazine), it does not come within the terms of a gift for VAT purposes. Where there is consideration it is always referable to all the items supplied.

As regards "buy one, get one free" offers the VAT analysis is that the consideration is referable to the supply of both items. There is no issue regarding which rate applies. As regards the free bar of chocolate (at the standard rate) with a jar of coffee (0% rate), assuming the bar of chocolate does not come within the de minimus rule (see

paragraph 11) the VAT analysis is that the consideration is referable to both items, resulting in a multiple supply. As regards the supply of newspapers, magazines and periodicals when they are supplied together with, for example, a CD or other promotional item Revenue would regard all such supplies as multiple supplies for consideration in the course or furtherance of business. In these circumstances the promotional item should not be treated as a gift. The total consideration payable must be apportioned as outlined in paragraph 7 for a multiple supply. However, the de minimus rule provided for by regulation may apply (see paragraph 11).

7.3 Manufacturers' Warranties/ Additional Insurance:

Under the existing rules insurance forming an integral part of the supply of goods, typically a manufacturer's guarantee or warranty, attracts the rate of VAT applicable to the goods. Additional insurance, sold with goods, where it is paid over in full to the insurance company will continue to be exempt from VAT.

7.4 Opticians:

Opticians: Following a decision by the Appeal Commissioner, Revenue now accepts that where a dispensing service is supplied by an optician with corrective spectacles or contact lenses that constitutes a multiple supply consisting of two individual supplies namely:

1. A taxable supply of goods
2. An exempt supply of professional services of an optical nature referred to as 'dispensing services'.

7.5 Cable television:

In a Supreme Court case regarding the supply of a broadcasting service and an installation service it was ruled that these are two distinct supplies. Some of the factors taken into account by the Court in reaching that decision included the facts that two separate amounts were invoiced for the two distinct services and the installation work was physically and temporally distinguishable from the broadcasting service. The Supreme Court took into consideration the ECJ case law on the question.

In the context of the current legislation, the two supplies involved form a multiple supply as the installation is capable of being supplied in its own right e.g. to a builder/developer prior to the sale of a property to individual buyers. As such Revenue would not see the operation of the current legislation as changing the tax status of the two supplies. The supply of installation services does not fall to be treated as ancillary or as capable of being supplied only in the context of the better enjoyment of the broadcasting service.

7.6 "Two-thirds" rule:

The current legislation is subject to the two-thirds rule. Accordingly the two-thirds rule continues to operate, as heretofore, where supplies of services also involve supplies of goods. In practical terms, in accordance with section 41 of the VAT Consolidation Act 2010, where a contract for the supply of services also involves the supply of goods (apart from food), the total consideration is deemed to be referable to the goods, where the VAT-exclusive cost of the goods exceeds two-thirds of the total contract price (excluding transport costs). In these circumstances the taxable person is liable to account for VAT on the total consideration at the rate applying to the goods.

8. Records.

In accordance with section 84 of the VAT Consolidation Act 2010, records and documents relating to all transactions which affect or may affect a taxable person's liability to VAT must be retained for the appropriate time period. A trader using the electronic point of sale (EPOS) system should ensure it is programmed to record how the various VAT rates have been applied to a multiple supply. Where a taxpayer chooses to disregard a supply in accordance with the regulations referred to in paragraph 11 or where an agreed special methodology referred to in paragraph 13 is used the records must clearly show how the consideration is apportioned.

9. Conclusion

Since VAT was introduced issues have continually arisen regarding the proper VAT liability of supplies consisting of separately identifiable goods or services. This is particularly relevant where some elements are taxable and others, if supplied on their own, would qualify for relief from VAT. These issues will continue to arise as long as there are new commercial models and new products coming on stream and in the light of evolving case law. The current legislation, drafted in the context of European case law, does not purport to solve all of these issues, but provides the potential for more equitable solutions, based on up to date case law. Revenue has attempted to give guidance in as many scenarios as possible but new issues will inevitably arise on an ongoing basis. Revenue will attempt to address these issues as they arise.