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One or More Supplies? The UAE VAT Attempt to Codify It

Giorgio Beretta (Editor) (Amsterdam Centre for Tax Law (ACTL) of the University of Amsterdam; Lund University) · Friday, November 30th, 2018

VAT is a broad-based tax on final consumption by households. Even if, due to the invoice-credit mechanism through which the tax is normally levied, only final consumption is ultimately targeted, VAT uses each transaction taking place at every stage of the production and distribution process as taxing points. Depending on how a transaction is classified, a different set of rules may apply (e.g. with regard to tax rates and exemptions).

Classifying a transaction, however, is not always easy, especially in the case of transactions where the customer receives at once various goods and/or services bundled together. Remarkably, neither European VAT nor Australian and New Zealand GSTs have legislated on how to deal with transactions composed of several elements. Some guidance in this regard has nonetheless been provided through case-law or by means of administrative rulings. This is the case with composite supplies under European VAT, where, through the years, the Court of Justice of the European Union (CJEU) has developed a specific doctrine on their treatment.

The CJEU's Doctrine on Composite Supplies

The CJEU's doctrine on composite supplies has a main rule and two exceptions. The main rule stipulates that each of the various elements which compose a transaction shall be examined on its own merits and receive its own treatment. This primary course is termed as "splitting". As stated, there are, however, two exceptions to this main rule. Under the first exception, a supply must be regarded as a single supply where two or more elements supplied by the taxable person are so closely linked that they form, objectively, a single, indivisible economic supply that would be artificial to split. A single supply also exists where one or more supplies constitute a principal supply and the other supply or supplies constitute one or more ancillary supplies which share the tax treatment of the principal supply. In particular, a supply must be regarded as ancillary to a principal supply if it does not constitute for customers an end in itself, but, instead, is merely a means of better enjoying the principal supply.

The UAE VAT Legislation on Composite Supplies

The United Arab Emirates (UAE) has introduced specific provisions dealing with composite supplies in its VAT law, which applies since 1 January 2018, following the [Common VAT Agreement of the States of the Gulf Cooperation Council](#) (GCC) entered into by the six GCC member states (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates) during 2016-17.

A first reference to composite supplies is made in art. 47 of the [Federal Decree-Law No. 8 of 2017 on Value Added Tax](#) (hereinafter, UAE VAT Law), which is the only article listed in Chapter 3 and titled “Single and Mixed Supplies”. Notably, under art. 47, entitled “Supply of More Than One Component”, the detailed determination of “the tax treatment of any supply composed of more than one component for a single price, where each component is subject to a different tax treatment” is left to the [Cabinet Decision No. 52 of 2017 on the Executive Regulations of Federal Decree-Law No. 8 of 2017 on Value Added Tax](#) (hereinafter, Executive Regulations).

Art. 4 of the Executive Regulations, which provides the treatment of a “supply of more than one component”, essentially entails a codification of the CJEU’s doctrine on composite supplies recalled above. And yet, notwithstanding such codification, the terminology employed in the various UAE VAT provisions is not always plain. Notably, whilst Chapter III of the UAE VAT Law is titled “Single and Mixed Supplies”, art. 4(1) of the Executive Regulations instead distinguishes between “a single composite supply” and “multiple supplies”.

Moreover, although essentially mirroring the doctrine on composite supplies used under EU VAT, by which both the Common VAT Agreement of the States of the GCC and UAE VAT Law are largely inspired, art. 4 of the Executive Regulations contains some meaningful departures from it. Notably, under para. 4, for a single composite supply to exist two conditions are indispensable (and yet, not sufficient): (i) the price of the different components of the supply shall not be separately identified or charged by the supplier; and (ii) all components of the supply shall be supplied by a single supplier. Should one of these conditions lack, then no single composite supply would exist but rather multiple supplies would.

Neither of these two conditions is instead prescribed under EU VAT. As regards the first condition, the CJEU has considered that “the fact that a single price is invoiced, or that separate prices were contractually stipulated, has no decisive significance for the purposes of determining whether it is necessary to find that there are two or more distinct and independent transactions or only a single economic transaction”.^[1] The existence of separate prices, however, is not completely disregarded and, indeed, in certain instances, the CJEU has attached to it some importance so as to consider the existence of distinct supplies.^[2] The irrelevance, by itself, of the stipulation of separate prices is nonetheless confirmed by other findings. Notably, the CJEU has recently ruled that a single composite supply, to which a single tax rate applies, exists “even if the price of each element forming the full price paid by a consumer in order to be able to receive that supply can be identified”.^[3]

Also the second condition laid down in art. 4(4) of the Executive Regulations is not mandated under EU VAT. In recent years, the CJEU indeed seems to have hinted at the possibility to apply the doctrine on composite supplies even to the case in which a supply is jointly made to the same customer by two suppliers.^[4] As stated, the possibility to have a composite supply even when two suppliers intervene in the supply to the same customer is instead expressly excluded under UAE VAT. Such a restrictive approach resembles the [interpretative course taken by the UK tax authorities](#), which consider the intervention of two suppliers as a strong indication of the existence of multiple supplies.

Determining the Nature of a Single Composite Supply

Should a single composite supply exist, then its nature must be determined. More specifically, it is

necessary to establish if one of its various elements shall prevail over any other, or if, instead, the single composite supply, as a whole, has a distinct and independent nature from its various components. Depending on its classification, a supply may in fact be taxed or exempt. Under UAE VAT, the issue was addressed by a [public clarification of the Federal Tax Authority](#) concerning the classification of “labour accommodation” (i.e. accommodation provided by employers to employees). In particular, the public clarification deals with whether labour accommodation is to be treated as a supply of residential building, which is exempt from VAT (or zero-rated if supplied for the first time and within 3 years of the completion of the building), or instead as serviced accommodation, and therefore standard rated.

The Federal Tax Authority has clarified that such determination should be made with particular reference to the additional services provided along with accommodation. In this connection, the public clarification distinguishes services that are incidental to the supply of accommodation from those that, instead, cannot be regarded as such. Despite the term “incidental” is left undefined by the public clarification, the expression was probably borrowed from the [UK tax authorities’ guidelines](#), under which “an incidental element of a supply is one which naturally accompanies the main supply and generally is not a significant part of it”.

As incidental services, the public clarification lists cleaning of communal areas, maintenance services required for the general upkeep of the property, pest control, garbage collection, security, utilities (e.g. water and electricity), and access to facilities within the building for residents to use themselves (e.g. launderette facilities, gym, pool, prayer rooms). Listed examples of not incidental services are instead telephone and internet access, cleaning of the rooms (other than the communal areas of the property only), laundry services (including the regular changing of bed linen), catering, and maintenance services (other than those required for the general upkeep of the property). The public clarification however explains that both these lists are only exemplificatory and that the assessment of whether a supply consists of residential accommodation or serviced accommodation shall be made based only on “actual facts”.

The nature of a single supply composed of several elements has been discussed on several occasions by the CJEU. Notably, the Court has reasoned that the lease of a football stadium along with the provision of several other services (i.e. maintenance, cleaning, repair, and upgrading), which, overall, represented 80% of the charge agreed upon in a contract, did not constitute a letting of immovable property, but, rather, a composite supply of services, given the importance of such services to ensure that the football stadium was suitable for the use to which it was devoted (i.e. hosting football matches).^[5] A similar question has been referred to the CJEU more recently. Notably, in the referral the Court is asked to determine whether an agreement whereby a company leases a building in which specific catering activities were previously carried on in a restaurant to another company, together with all capital equipment and inventory items, is a supply of immovable property or, instead, of more complex services.^[6]

Considerations

The author submits that the case-by-case approach employed in the public clarification issued by the UAE Federal Tax Authority so as to determine the nature of a single supply composed of various elements should also underpin the assessment of whether, in the first place, there are one or more supplies for UAE VAT purposes. A case-by-case approach while dealing with composite supplies would arguably better serve the principle of neutrality mandated by the [OECD](#)

[International VAT/GST Guidelines](#) (at p. 30), stipulating that similar transactions shall not be treated dissimilarly and that the concept of similarity is only to be based on the characterization of a particular supply, irrespective of other conditions under which a supply is made (e.g. whether the supply is carried out for a single price or by a single supplier). Therefore, in the author's opinion, it is not appropriate, even with an aim to providing legal certainty on this matter, to lay down such stringent conditions as done by the Executive Regulations of the UAE VAT Law.

Reference to a single price and a single supplier for a composite supply to exist can in fact ease compliance by businesses (noteworthy, under UAE VAT suppliers face steep penalties if they fail to characterize a transaction correctly), but it might also be conducive to abusive practices and create competitive distortions. For instance, a supplier may be VAT-induced to charge his customers with separate prices for each service he supplies or could even split into different business units while making a single composite supply to his customers. With regard to labour accommodation, these operations might in particular be undertaken where labour accommodation would otherwise be characterized as a supply of residential building, which, if not firstly supplied, is exempt, with the consequence that no input VAT can be deducted by the supplier/employer even for the incidental services provided together with accommodation. If separate prices are charged or different business units intervene in the supply, the supplier/employer would instead be able to deduct at least the input VAT paid on the incidental services supplied together with accommodation. In order to increase the percentage of deductible input VAT, the supplier might even try to shift value from the supply of residential accommodation to that of incidental services. Given the principle of neutrality governing VAT matters, clearly similar practices should not be allowed.

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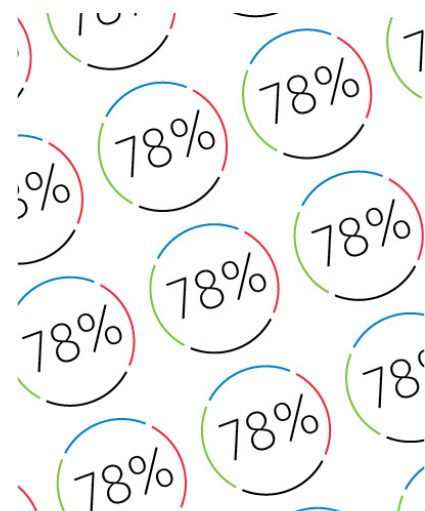
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