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## Composite Supplies: Some Reflections Regarding the Fundamental Identification of Single Supplies

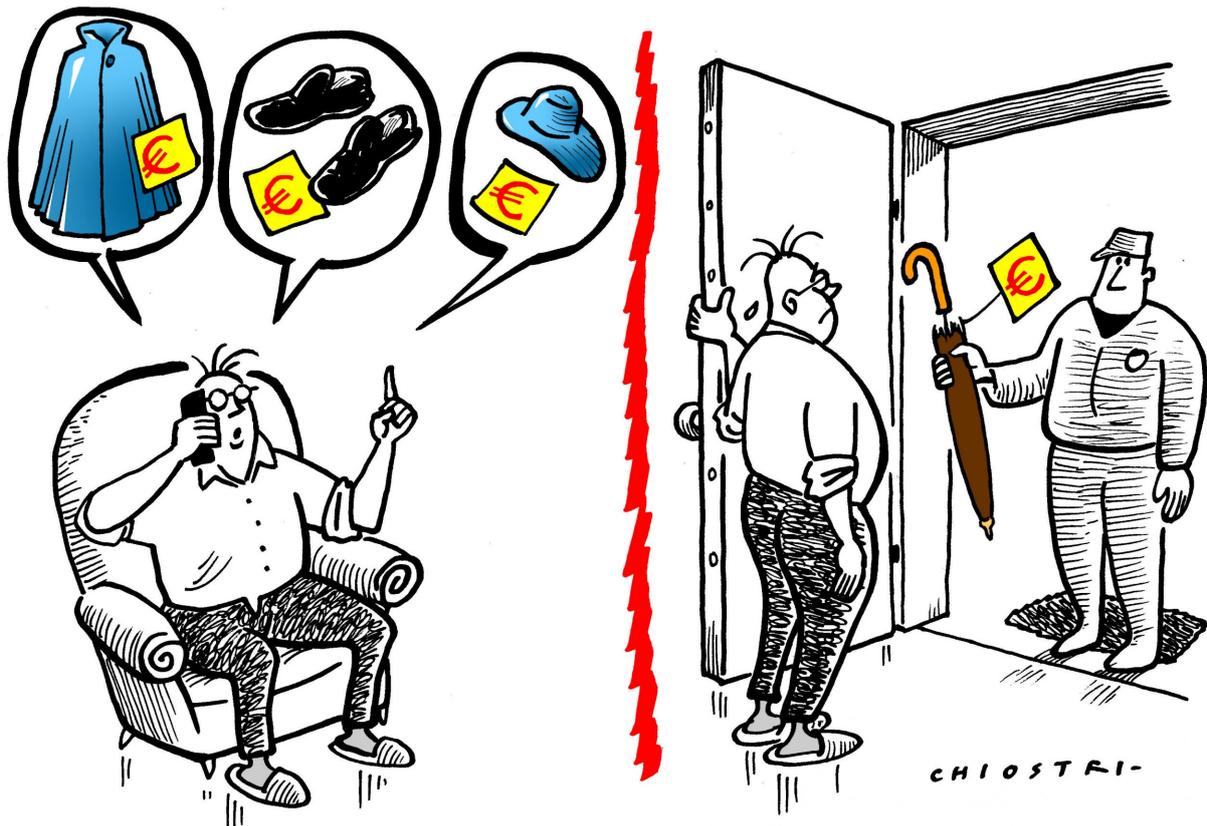
Giacomo Lindgren Zucchini (Orebro University) · Monday, September 28th, 2020

The classification of transactions comprising several elements, features, and acts<sup>[1]</sup> is a complicated and prominent issue in the EU's common system of VAT. It is also a popular topic for discussion and analysis which is often explored in the literature. The purpose of this post is to contribute to that discussion by presenting certain perspectives and different ways of describing some of the issues related to the aforementioned kinds of transactions. The reflections are essentially based on the analyses made, and conclusions drawn, in the author's recently published doctoral dissertation.<sup>[2]</sup>

### The Concepts of Supply and a Single Supply

The issue of classifying transactions comprising several elements, features, and acts is most common for taxable supplies, which are defined as the supply of goods or services for consideration within the territory of a Member State by a taxable person acting as such. Analysing that wording, it becomes apparent that it must be determined whether there is something that constitutes a 'supply' which, in turn, has certain specifically stated features. Given this, the question of how to define what constitutes such a 'supply' arises. Whilst there are no generally applicable definitions in the VAT Directive for the concept of supply as such,<sup>[3]</sup> the word itself means the action of providing someone with something. That meaning, in conjunction with the aim of the common system of VAT to tax consumption, provides grounds to consider the actions in question to be understood as human activities, or the result thereof, which entail that someone is provided with a *consumable* benefit.<sup>[4]</sup>

Further clarification with regard to the definition of the concept of supply follows from certain rather well-known statements in the case law of the CJEU. In this respect, the Court has held firstly, that every supply must normally be regarded as distinct and independent for VAT purposes, and secondly, that a transaction which comprises a single supply from an economic point of view should not be artificially split, so as not to distort the functioning of the common system of VAT.<sup>[5]</sup> To satisfy these benchmarks, the CJEU has furnished two general legal rules which combine certain actions to form a cohesive single supply for VAT purposes, even though said actions might constitute distinct single supplies in other circumstances. These *general composite supply rules* provide that a combination of a principal item and one or more ancillary items, both of which in turn consist of one or more actions, constitutes a single supply. In addition, there is a single supply where two or more actions are so closely linked that they form a single cohesive whole, which it would be artificial to split.<sup>[6]</sup>



### The Identification of a Single Supply

Based on the above, the general composite supply rules may essentially be described as *identifying* a single supply, which concerns determining that something, and only that something, constitutes a single supply for VAT purposes. This means that where a transaction comprises several actions, it is necessary to determine whether those actions have the *identity* of being distinct and independent single supplies or whether they are to be identified as merely parts of the *composition* of a single supply. This need to identify single supplies follows from the fact that the common system of VAT makes *each* and every taxable supply subject to VAT. Moreover, once any single supply or single supplies have been identified, the provisions in the VAT Directive are applied on a supply-by-supply basis depending on the properties and nature of the supply assessed. Consequently, if a transaction comprises several actions, those actions may receive one tax treatment if they are identified as single supplies, and another if they are identified as merely parts of the composition of a single supply.[7]

From a theoretical perspective, the above entails that the identity of a single supply or supplies must *always* be assessed in any given case. Nevertheless, from a practical perspective, the identification of single supplies may normally be immediately apparent or done implicitly. There is a case to be made for such straightforward identifications having support in the case law of the CJEU. This is because the Court, in particular, has stated that certain categories of facts may indicate a specific identity of single supplies without being decisive in themselves. These categories of facts, or *identifying factors*, primarily concern how the parties to a transaction have formally expressed their dealings and include the contents of a contract in general or, more specifically, the specification of a ‘single price’ or ‘separate prices’ for various items therein.[8] Identifying factors may therefore be used to identify one or more single supplies for VAT purposes. Furthermore, using the identifying factors for those purposes may be in accordance with the principle of legal certainty, which provides grounds for taking ‘the relevant contractual terms’

and the ‘declared intention of the parties’ into account for the classification of transactions with regard to VAT.[9]

Whilst identifying factors may therefore be a legal basis for a straightforward identification of single supplies, the outcomes they indicate might sometimes be contradicted by the general composite supply rules. In the specific cases where the CJEU has addressed such contradictions, the identity given by the general composite supply rules has thus far prevailed.[10] A possible explanation for this might be that the principle of legal certainty is explicitly to stand aside in ‘exceptional cases’.[11] Therefore, there may be such an exceptional case where the general composite supply rules provide for a particular identity of a single supply or supplies, since the objectives of those rules is to protect the functioning of the common system of VAT in the light of the diversity of commercial operations.[12] This means that identifying single supplies in a particular case might involve weighing the principle of legal certainty against the need to protect the functioning of the common system of VAT.

### **Identifying Factors – a Means of Simplification?**

All in all, it is clear that the concept of supply has a wide scope and allows many different interpretations and approaches for the identification of what constitutes a ‘single supply’. This has obvious benefits for the application of VAT as a general tax on consumption and thereby diverse commercial operations and transactions are effectively taxed. On the other hand, the wide scope of the concept of supply is problematic since it complicates the legal assessments of transactions, which in turn have implications for the specifics regarding their taxation. Whilst the identity of any single supplies must therefore *always* be determined in any give case, the identifying factors may offer a straightforward approach which arguably has a legal basis in the case law of the CJEU and the principle of legal certainty. Hence, considering the identifying factors as a well-founded legal basis for the identification of single supplies might justify an increase in their use, thereby simplifying the classification of transactions in general, and those comprising several actions in particular.

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[1] These particular terms follow from *Deutsche Bank* (Case C-44/11), para 18 and *M?sto Žamberk* (Case C-18/12), para 27.

[2] G. Lindgren Zucchini, *Composite Supplies in the Common System of VAT* (Örebro University 2020) available in open access at <http://urn.kb.se/resolve?urn=urn:nbn:se:oru:diva-83345>.

[3] See J. Kollmann, *Taxable Supplies and Their Consideration in European VAT: With Selected Examples of the Digital Economy* (IBFD 2019), at p. 35. There are also certain specific provisions in the VAT Directive, such as the special scheme for travel agents, which define specific kinds of single supplies.

[4] See Lindgren Zucchini (n 2), at pp. 58-61 and Kollmann (n 3), at p. 76.

[5] *Field Fisher Waterhouse* (Case C-392/11), p. 14-15.

[6] See, for instance, *Card Protection Plan* (Case C-349/96), para 30 and *Levob Verzekeringen and OV Bank* (Case Case C-41/04), paras 21–22 respectively. See also Lindgren Zucchini (n 2), sections 4.2.4 through 4.2.7.

[7] See to that effect *Purple Parking and Airpark Services* (Case C-117/11), para 39 and *Stadion Amsterdam* (Case C-463/16), para 36.

[8] *Field Fisher Waterhouse* (Case C-392/11), para 23, *Purple Parking and Airparks Services* (Case C-117/11), para 34, and *Everything Everywhere* (Case C-276/09), para 29. For more identifying factors and analyses on their function and role, see Lindgren Zucchini (n 2), at pp. 92-107.

[9] See *Newey* (Case C-653/11), para 43 and *KPC Herning* (Case C-71/18), para 40 respectively.

[10] See to that effect *BG? Leasing* (Case C-224/11), para 47 and *Levob Verzekeringen and OV Bank* (Case C-41/04), para 25.

[11] *DTZ Zadelhoff* (Case C-259/11), para 25.

[12] See *Commission v France* (Case C-94/09) para. 32.

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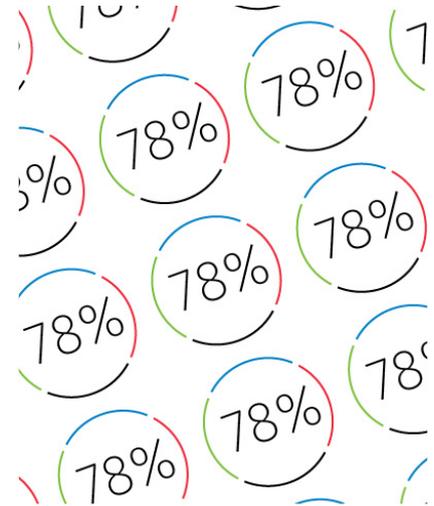
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