

Pan-European survey on the VAT treatment of composite supplies

Svenskt Näringsliv Service AB

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1 Summary

One of several hardships that Swedish companies are subject to on a daily basis is whether composite supplies consisting of both goods or services, or several services, should be treated as one single supply or as several supplies, meaning that the supply should be regarded as a main supply to which the ancillary supplies are treated in the same manner as the main supply from a VAT perspective, or if the supply should be divided into separate supplies treated individually.

Svenskt Näringsliv (the Confederation of Swedish enterprise) has commissioned Ernst & Young AB to conduct a survey on the treatment of composite supplies in all Member States, as well as in Norway and Switzerland.

To summarize, the survey indicates the lack of a general and uniform implementation of the treatment of composite supplies in the European Union (as well as in Norway and Switzerland). Several countries have no, or very limited national legislation, guidelines or court cases of importance.

Several countries refers to the rulings of the European Court of Justice, such as C-349/96 *Card Protection Plan*, C-111/05 *Aktiebolaget NN*, and C-41/04 *Levob*, in order to determine how a composite supply should be assessed from a VAT perspective. These cases all have in common that the Court states that an assessment on the handling of composite supplies must be made in light of all circumstances in the specific case.

The established, more general guidance that exists in some countries also relies heavily on the principles stated by EC case law. Other than that, most regulations are for specific cases, such as delivery and installation of a good, or for specific sectors, such as the car industry.

Several countries also apply a percentage assessment based on the price of the supply. This means that if a composite supply of goods and services, generally when dealing with delivery and installation of goods, should be seen as a supply of goods if the price of the goods exceeds a certain percentage of the total price. However, the percentage used differs quite a lot between different countries, from 33 % (Greece and Spain), to 50 % (Belgium and Austria), to 67 % (Ireland).

More detailed information on each individual country, can be found in the attached survey (*Questionnaire – VAT treatment of composite supplies, 2012-02-24.pdf*), which shows the unedited answers provided by each country.

2 Approach and method

The original survey was conducted by Ernst & Young during 2009, by sending a questionnaire to VAT experts in respective country. The questionnaire contained the following questions.

1. Is the VAT treatment of composite supplies
 - a) governed by national legislation, and/or
 - b) governed by national guidelines or similar from the Tax authorities, and/or
 - c) clear and distinct according to national case law?

2. If such national legislation, guideline or case law exists:
 - a) what does it state regarding separate versus single supplies?
 - b) if a supply is considered a single supply, does it determine whether it is a single supply of goods or a single supply of services? If so how is it determined, e.g. is it a single supply of a service if a certain percentage etc of the supply is considered to be a service?

3. If it exists national legislation, guideline or case law that determine whether it is a single supply of goods or a single supply of services, does it determine:
 - a) the place of supply?
 - b) the applicable VAT tax rate?
 - c) other VAT aspects?

4. If such national legislation, guideline or case law exists, is it applicable in general or only for a specific line of business?
5. If such national legislation, guideline or case law exists, is it put into practice and working well or is it obsolete/questioned?

All answers were then compiled in a matrix, in order to be able to compare the answers from different countries with one another. After the initial review of the answers, follow up questions were sent to the countries that were deemed more relevant and had national legislation or guidelines. After the second round of questions, all answers were compared, and compiled in a report.

During the end of 2011 and the beginning of 2012, Ernst & Young has requested all countries in question to confirm that the answers previously provided are still valid. In cases where changes have occurred the countries have been asked to adjust their previous answers. The report was subsequently adjusted in accordance with all relevant changes.

3 The answers provided by each country

Below follows a compilation of the answers provided by each country. Based on the answers provided, the countries have been divided into the following groups:

- Countries whose national legislation governs the treatment of composite supplies.
- Countries that lacks national legislation, but has national guidelines and/or significant national case law dealing with composite supplies.
- Countries that lacks legislation, guidelines and significant court cases dealing with composite supplies.

3.1 Countries whose national legislation governs the treatment of composite supplies.

In the following countries there is, at least in certain areas national legislation governing the treatment of composite supplies.

3.1.1 Bulgaria

In Bulgaria the treatment of composite supplies is governed by law.

In order for a supply to be considered a single supply, the following conditions should be met:

1. The supplier and the recipient of both the main and the ancillary supply should be the same
2. The ancillary supply should have no value in itself for the recipient if provided separately.
3. The payment for both supplies should be determined as a total.

3.1.2 Ireland

In Ireland the treatment of composite supplies is governed by law. The rules are regarded as clear and distinct.

Composite supply means a supply made by a taxable person to a customer comprising two or more supplies of goods or services or any combination of these, supplied in conjunction with each other, one of which is a principal supply.

Principal supply means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary. *Ancillary supply* means a supply, forming part of a composite supply, which is not physically and economically dissociable from a principal supply and is capable of being supplied only in the context of the enjoyment of that principal supply.

Multiple supplies means two or more individual supplies made by a taxable person to a customer where those supplies are made in conjunction with each other for a total consideration covering all those individual supplies, and where those individual supplies do not constitute a composite supply.

Individual supply means a supply of goods or services which is a constituent part of a multiple supply and which is physically and economically dissociable from the other goods or services forming part of that multiple supply, and is capable of being supplied as a good or service in its own right.

Where a contract for the supply of services also involves the supply of goods, the total consideration is deemed to be referable to the goods, where the cost of the goods exceeds two-thirds of the total cost.

3.1.3 Malta

For certain composite supplies, such as construction contracts and energy, it is regulated in the Irish VAT act whether the supplies should be viewed as a

supply of goods or a supply of services. The handling of other types composite supplies are determined on a case by case basis, in accordance with the principles laid down by ECJ case law.

3.1.4 Norway

In Norway, the treatment of composite supplies are only regulated by law to a certain extent, namely that a supply of goods including installation is on certain conditions classified as supply of goods.

Other than the above, it must be determined whether a supply consists of independent and separate services or whether there is one service/supply and that the other "services" should be classified as the cost of the supplier enabling him to make his supply of goods or services to the customer.

3.1.5 Poland

The national legislation covers only the issue of the installation of windows and doors by their manufacturer, which is to be treated as a service.

With respect to the other issues regarding composite supplies, Poland takes guidance from EC-legislation.

3.1.6 Portugal

A supply composed by several goods, whenever it composes a different commercial product, the VAT rate applicable will be determined as below:

- a) When the nature of the goods remains the same, the VAT rate applicable will be the one which is applicable to those goods or in case there are different VAT rates applicable, the higher one should be applied.
- b) When the nature of the goods is changed, the VAT rate applicable will be the one which will be more suitable to the new product.

3.1.7 Romania

The Romanian VAT rules only provide for some specific examples when a supply should be treated either as a supply of goods or as a supply of services.

Firstly, the supply of standardized software on CDs is deemed as a supply of goods while supply of customized software is a supply of services.

Moreover, the printing of books could be considered either a supply of goods or a supply of services, determined by, among other things, if the product is printed on the printing house's own paper (goods) or if the paper is supplied by the customer (service).

Finally, the supply of construction-assembly works, where the same supplier supplies both the material as well as undertakes the construction work, is deemed as a supply of services.

3.1.8 Switzerland

Supplies that are economically closely related and interact with one another in such a way that they must be regarded as an indivisible whole are regarded as a single supply.

The starting point is otherwise, that each supply is to be viewed as a separate supply. In case there is a dominant supply that represents by value at least 70 per cent of the aggregate consideration the VAT regime applicable to the dominant supply can be applied to the combined individual supplies that are offered for a single inclusive consideration. Two exceptions to the 70/30 rule apply. First off, the rule only applies to supplies whose place of supply is in Switzerland. Secondly, the 70/30 rule does not apply if the dominant supplies are taxable and the rest of the supplies are exempt without credit.

3.1.9 Slovakia

Domestic regulations only exist pertaining to the supply of construction work, which is deemed to be a supply of goods although it includes both goods and services.

Otherwise, the Slovak Tax Directorate has issued general information about ECJ case law on composite vs. single supplies, which indicates that this case law should be followed.

3.1.10 Germany

The determination whether there are separate supplies or a single supply should be based on an average customer's view.

The determination of a single supply as a supply of goods or a supply of services depends notably on which element is prevailing and determining the content of supply.

3.1.11 Hungary

In Hungary the treatment of composite supplies is governed by law.

When determining whether a supply is a composite supply, or several supplies, the following aspects may be considered:

- the value of the main and the ancillary supply,
- whether the ancillary activity is regularly connected to the supply of the main activity.
- the main purpose of the transaction based on the contract concluded between the parties.

Further, any supply made after the date of supply of the main supply should be treated as a separate supply.

It is however not decisive whether the supplies were made on the basis of separate agreements or were invoiced separately.

3.2 Countries that lacks national legislation, but has national guidelines and/or significant national case

The following countries have no national legislation that governs the treatment of composite supplies from a VAT perspective. However, different kind of national guidelines and/or significant national court cases on how to treat composite supplies is present.

3.2.1 Belgium

Criteria that are generally used are the cause of the intent (the final service wished by the customer), and the main character of a transaction.

According to the national VAT Manual as well as a court case a supply and installation of moveable goods are determined by a 50 % rule. If the value of the good is lower than 50% of the total price which is paid by the purchaser or the taker, the transaction must be considered for a whole as a supply of services.

If an entity in a VAT group performs leasing of vehicles and a second entity in the same VAT group provides insurance for these vehicles, then the insurances services are considered as being ancillary to the leasing.

3.2.2 Finland

In Finland, there are several court rulings regarding the question of composite supplies. Most of the cases relate to the supply of goods. In general, the decisive factors have most commonly been whether the goods in question have been priced separately or as a package, whether it has been possible to purchase the goods separately or only as a package deal, and also whether it is a question of a spin-off that truly relies on the main product or not. In 2011 the TAX Authorities have stated with respect to reverse charge in construction services, that pricing is of no significance, when determining this issue.

3.2.3 Greece

According to the Greek Code of Books and Records a supply is considered as a service if the total cost of goods sold is no higher in value from the 1/3 of the total value.

3.2.4 Italy

Guidelines reflecting the position of the ECJ are followed. Transport, packaging, and installation are considered ancillary supplies, and therefore generally treated as such.

3.2.5 Latvia

No composite supply rules and principles are introduced in Latvian VAT legislative acts. The main supply is based on information available from agreements, invoices, and other documents, and in light of the economic reality of the supply.

3.2.6 Slovenia

In Slovenia there are cases regarding certain specific supplies, such as advertisement.

The national Tax Authorities has stated that in regards to single supply of goods subject to reverse charge, services in connection with these goods are also subject to reverse charge.

3.2.7 Spain

Generally, guidelines in compliance with ECJ rulings are applied.

In case of work carried out on immovable property, if the cost of the materials provided by the supplier exceeds 33% of total consideration, the transaction would qualify as a supply of goods. Otherwise, it would qualify as a supply of services.

3.2.8 The United Kingdom

In the United Kingdom, it is essential to determine the nature of the supply.

Further, the pricing of the different elements of a supply can be decisive. If a distinct service element represents 50% or more of the price of a bundle of goods or services, this will be a strong indicator that this service is not ancillary to a principal supply of any other goods or services in that bundle.

There is also guidance following on from the test carried out by the ECJ, in C-349/96, *Card Protection Plan*. The first step is to identify the essential features of the transaction. To represent a supply of its own, what is received must be distinct and independent. The Second step is to determine whether the supply is a principal supply or an ancillary supply. An ancillary supply does not amount to an aim in itself, other than enhancing the principal supply.

3.2.9 Austria

In Austria, national guidelines states that a unitary economic transaction must not be separated into its single components.

The question of whether the transaction is a supply of goods or services has to be assessed according to economic impact, generally accepted standards and the will of the involved parties.

To differentiate between work performance supply and work performance services, the supply is considered as goods if the value of the materials used exceeds 50 % of the invoice value (this differentiation applies to car industry according to the Austrian VAT Guidelines).

3.2.10 The Netherlands, Lithuania, Denmark

In these countries, guidelines in compliance with EC legislation are said to be applied, but there are no other distinct national guidelines.

3.3 Countries without national legislation, national guidelines or significant court cases

In Cyprus, Estonia, France, Luxembourg and the Czech Republic, there is neither any national legislation, nor any national guidelines on the matter of composite supplies. Moreover, there are no national court cases of significance.

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