
# The EU VAT Treatment of Composite Supplies: Evolution Trends and Critical Points

*Master Thesis by*

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*I would like to express my sincerest appreciation and gratitude*
*To my supervisor Simon Cornielje for his guidance and support.*
*I dedicate this thesis to my parents, Rosalba and Francesco,*
*Without whose love and care nothing would have been possible.*

*"No government can exist without taxation.*
*This money must necessarily be levied on the people;*
*and the grand art consists of levying so as not to oppress".*
(Frederick the Great, 18th century King of Prussia)

*"He said that there was death and taxes, and taxes was worse,*
*because at least death didn't happen to you every year".*
(Terry Pratchett, British novelist)

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# I. Introduction

The European Union has evolved throughout the decades from a mere commercial framework of States to a politic and economic Union with widespread competence and ambitious objectives in several relevant fields, including taxation.

Specifically, turnover taxes were among the first taxes to be harmonized in what would have become the European Union. In 1967, the founding countries of the European Community -Belgium, France, Germany, Italy, Luxembourg and The Netherlands- took the relevant step of replacing their turnover taxes with a new common tax system in the form of a Value Added Tax ("VAT").[1] The first VAT Directive[2] was followed by five other directives, which progressively furthered the process of integration of all national indirect tax systems into a common EU framework of rules, constantly upgraded and enhanced. The last directive, the Sixth VAT Directive, was adopted on 17 May 1977.[3] Equally important, on 21 April 1970 the European Council adopted a decision requiring to base the calculation of Member States' contributions to the Community on (among other elements) a percentage of the VAT tax base in every country, thus calling for a common set of rules on this subject.[4] Furthermore, in 1993 the EC Treaty required the abolition of internal fiscal frontiers in the EU.[5] These legal and institutional developments led to the final recast of the Sixth VAT Directive, resulting in Directive 2006/112/EC, normally referred to as the VAT Directive.[6] This document, entered into force on 1 January 2007, collected and rationalized in a single legal piece of legislation various provisions spread out over several directives. For this reason the VAT Directive, later complemented with the VAT Regulation[7] and the Refund Directive[8], became the cornerstone piece of legislation for EU VAT.[9]

The relevance of the harmonization process finalized with the VAT Directive is easily understandable when considering that only in 2014 VAT generated a total of EUR 976.9 billion in tax revenue in all EU.[10] These revenues play a great role in the budgetary policymaking of EU and EU Members alike. A relevance which

[1] Van Doesum Ad, Van Kesteren Herman, Van Norden Gert-Jan, *Fundamentals of EU VAT Law*, Kluver Law International, Alphen aan den Rijn, 2016, p. 2
[2] First Council Directive 67/227/EEC of 11 April 1967 on the Harmonization of Legislation of Member States Concerning Turnover Taxes [1967] OJ 071/1301-03
[3] Council Directive 77/388/EEC of 17 May 1977 on the Harmonization of the Laws of the Member States Relating to Turnover Taxes – Common System of Value Added Tax: Uniform Basis of Assessment [1977] OJ L145/1
[4] Council Decision of 21 April 1970 on the Replacement of Financial Contributions from Member States by the Communities' Own Resources [1970] 70/243 ECSC, EEC, Euratom, p. 19
[5] EU, Treaty on European Union (Consolidated Version), Treaty of Maastricht , 7 February 1992, Official Journal of the European Communities C 325/5; 24 December 2002, available at: http://www.refworld.org/docid/3ae6b39218.html, art. 2
[6] Council Directive 2006/112/EC of 28 November 2006 on the Common System of Value Added Tax [2006] OJ L347/1
[7] Council Directive 2008/9/EC of 12 February 2008 Laying down Detailed Rules for the Refund of Value Added Tax, Provided for in Directive 2006/112/EC (the VAT Directive) to Taxable Persons Not Established in the Member State of Refund but Established in Another Member State [2008] OJ 44/23
[8] Council Regulation (EC) No 1777/2005 of 17 October 2005 Laying Down Implementing Measures for Directive 77/388/EEC on the Common System of Value Added Tax [2005] OJ L288/1
[9] Van Doesum Ad, Van Kesteren Herman, Van Norden Gert-Jan, *Fundamentals of EU VAT Law cit.*, p. 15
[10] TAXUD, *Study and Reports on the VAT Gap in the EU-28 Member States*, 2015/CC/131, Warsaw, 23 August 2016, p. 8

is also likely to increase in the coming years, as Member States (following a global trend) have resorted to increasing their reliance on consumption taxes as a necessary way (among other reasons) to generate essential tax revenues in the aftermath of the financial crisis.[11]

Yet, despite the fundamental role of the VAT Directive in developing a rational and complete framework of rules for EU VAT, several debated topics remain. One of those issues could be considered the definition of the VAT treatment of the so-called "Composite Supplies" (also sometimes addressed as "compound" or "bundled"). The term refers to those transactions comprised of *"*a bundle of elements and acts", which may be considered to constitute several supplies or a single supply, as well as a single supply of goods or services. The complexity of determining the legal regime of composite supplies under the EU VAT law has been acknowledged by the same European Commission, which considered that, when such supplies are involved in a transaction, *"invariably an issue on how to characterise such a supply arises"*.[12]

Nevertheless, over the past ten years, a relevant guidance in addressing the issue has been provided by the case law of the European Court of Justice, fulfilling its role as fundamental interpreter of the EU VAT regime.[13] The Court has specifically delivered several judgments on various VAT issues concerning composite supplies, such as the place of supply, the application of exemptions and the scope of the refund mechanism under the Eighth Directive.[14]

However, many uncertainties still remain on the subject of treatment of composite supplies. The same EU Member States have not already fully harmonized their disciplines: countries such as Germany, Ireland and Bulgaria have developed a comprehensive legislation for composite supplies; other States rely on internal rule concerning limited fields, such as Poland for the installation of windows and doors by their manufacturer, or Slovakia for construction works; others rely on national guidelines (e.g. Austria and Italy) or on a significant national case-law (e.g. Finland and Slovenia). Finally, countries such as France and Luxembourg have no national legislation, guidelines or national court cases of significance.[15]

The purpose of this contribution is therefore to analyse the case law of the European Court of Justice (hereinafter ECJ) by following the same step-by-step method the Court developed in order to distinguish multiple and composite supplies, and then composite supplies of goods and services. The author will use several academic contributions to elaborated relevant topics such as the intrinsic complex nature of supplies and the difficult definition of the typical consumer. A comparison will be also attempted between the EU VAT discipline and other national legislations, such as those adopted in Canada, Australia and New Zealand.

[11] OECD, *OECD Consumption Tax Trends 2014, VAT/GST and Excise Rates, Trends and Administration issue (Introduction)*, OECD Publishing, Paris, 2014, pp. 16-19

[12] Proposal for a Council Directive of 23 December 2003 Amending Directive 77/388/EEC as Regards the Place of Supply of Services [2003] COM(2003) 822 final, chap. 4.5

[13] Van Doesum Ad, Van Kesteren Herman, Van Norden Gert-Jan, *Fundamentals of EU VAT Law cit.*, pp. 17-18

[14] Liebman Howard, Rousselle Olivier, *VAT Treatment of Composite Supplies* in International VAT Monitor, March/April 2006, p. 110

[15] Westfahl Lena, Anefur Stefan, *Pan-European Survey on the VAT Treatment of Composite Supplies*, Ernst & Young AB, February 2012, available at: https://goo.gl/8kOhXn

On this basis, the author will finally try to enlighten flaws and gaps of the current discipline and provide suggestions in order to enhance the EU VAT treatment of composite supplies.

# II. The Concept of Composite Supplies

## 2.1 The Inherent Complexity of All Supplies

For the author of this contribution, the intrinsic difficulty in dealing with composite supplies begins with the very definition of such "bundles of elements and acts", and therefore with their distinction from the general array of transactions in the market which qualify as ordinary single supplies of a good or service. Such distinction seems to be rather vague.

In fact, it could be argued that, at least on an academic standpoint, every supply provided on a market against consideration could be deemed to be a composite supply, i.e. a supply composed by several elements. Even the simplest transaction taking place in the smallest store, for instance the sale of a can of soup, will normally involve a clerk helping out the client in finding and choosing the item, a cashier receiving the payment, maybe also a bagger packing the grocery, and possibly other services directly aimed at enabling the customer to choose or pay the due consideration. The same Court seems to mirror this concept when in *Bog and Others* it notices, in reference to the relevance of the marketing element, that *"the marketing of goods is always accompanied by a minimal supply of services such as the displaying of the products on shelves or the issuing of an invoice"*.[16]

Yet, it is not unlikely that the average consumer and maybe even the legal interpreter would disregard such "inherent complexity", whilst deeming the supply of soup as a simple, straightforward supply of a good (and specifically of food). Instead, complex cases such as Mapfre, Bookit and NEC[17], where the same supply is performed by more than one supplier, allow maybe the interpreter to better comprehend this complexity: it is in fact quite evident for the author of this contribution that, as any supply is potentially a "composite" aggregate of supplies, when the Court of Justice requires in Card Protection Plan -as a general rule- an autonomous treatment for every component of *"a bundle of elements and acts"*[18], the Court is already operating on the base of an unstated "understanding" of what a composite supply should be. It would in fact be unlikely for the ECJ to consider the aforementioned sale of a can as a composite supply (even as one based on an ancillarity relation[19]). Since no legal definition of "composite supply" is provided by the Court, the logical deduction -for the author- would be in that the ECJ operates on the base of an economic benchmark, namely the "complexity" of the supply itself and of its components. It would be in line with the other practical, case-by-case indicators provided by the Court, such as the typical consumer and the

[16] ECJ, Joined Cases C-497/09, C-499/09, C-501/09 and C-502/09, *Finanzamt Burgdorf v Manfred Bog, CinemaxX Entertainment GmbH & Co. KG v Finanzamt Hamburg-Barmbek-Uhlenhorst, Lothar Lohmeyer v Finanzamt Minden and Fleischerei Nier GmbH & Co. KG v Finanzamt Detmold* [2011] ECR I-01457 [hereinafter Bog and Others], para. 63
[17] See *infra*, pp. 22-25
[18] See *infra*, pp. 13-14
[19] *Ibidem*

circumstances of the case[20]. Such an economic benchmark, as all economic parameters, on the one side ensures more flexibility than a legal benchmark, but, on the other side, implies uncertainty: between the complexity of the transactions of Card Protection Plan and Levob[21], and the simplicity of the sale of a can of soup, there could be a relevant grey area of transactions whose composition may or may not justify a composite supply consideration and treatment.

## 2.2 The Relevance of Composite Supplies

Under the VAT Directive, transactions can be subject to different degrees of taxation: a supply may be taxed with the standard VAT rate[22], different in every country (although a lower limit of 15% is set at EU level[23]), with a reduced rate (which all Member States currently use except for Denmark[24]), or with a 0 rate or exemption with right to deduct.[25] Seemingly, supplies of goods (transactions regarding tangible, physical objects under the ECJ case-law[26]) and supplies of services (any transaction which does not constitute a supply of goods according to art. 24 VAT Directive) are regulated under different provisions, applying different treatments concerning time and place of supply.

As the interaction of these elements will determine a more or less favourable VAT treatment, it is easy to understand why a taxable person could try to reduce the VAT borne by its purchaser on the transaction by considering a bundle of several independent supplies as a single supply, or instead by disaggregating a single supply into its separate component supplies. The advantage would result even greater in the case where the buyer would be the final consumer, not entitled to reclaim input VAT.[27]

For instance, a doctor administering a drug to a patient could be theoretically considered providing only a supply of goods (the drug), only a supply of services (the medical activity), two separate and independent supplies (the drug and the medical activity), or a single supply of both goods and services (the medical activity of administering the drug). Determining the nature of this supply would not be without consequences, as only the doctor's service (not the provision of the drug) would be exempted under art. 132(1)(c) VAT Directive.[28] Another example, in the growing market of digital supplies, could be the remote

[20] See *infra*, pp. 51-54
[21] See *infra*, pp. 32-34
[22] Council Directive 2006/112/EC of 28 November 2006 on the Common System of Value Added Tax, art. 96
[23] *Ibidem*, art. 97
[24] EC, *Vate Rates Applied in the Member States of the European Union - Situation at 1st January 2017*, Taxud.c.1, 2017, p. 3
[25] Council Directive 2006/112/EC of 28 November 2006 on the Common System of Value Added Tax, art. 138-166
[26] ECJ, Joined Cases C-322/99 and C-323/99, *Finanzamt Burgdorf v Hans-Georg Fischer and Finanzamt Düsseldorf-Mettmann v Klaus Brandenstein* [2001] ECR I-04049, paras. 59-60
[27] Schenk Alan, Oldman Oliver, *Value Added Tax - A Comparative Approach*, Cambridge University Press, Cambridge, 2007, p. 130
[28] Van Doesum Ad, Van Kesteren Herman, Van Norden Gert-Jan, *Fundamentals of EU VAT Law cit.*, pp. 136-137

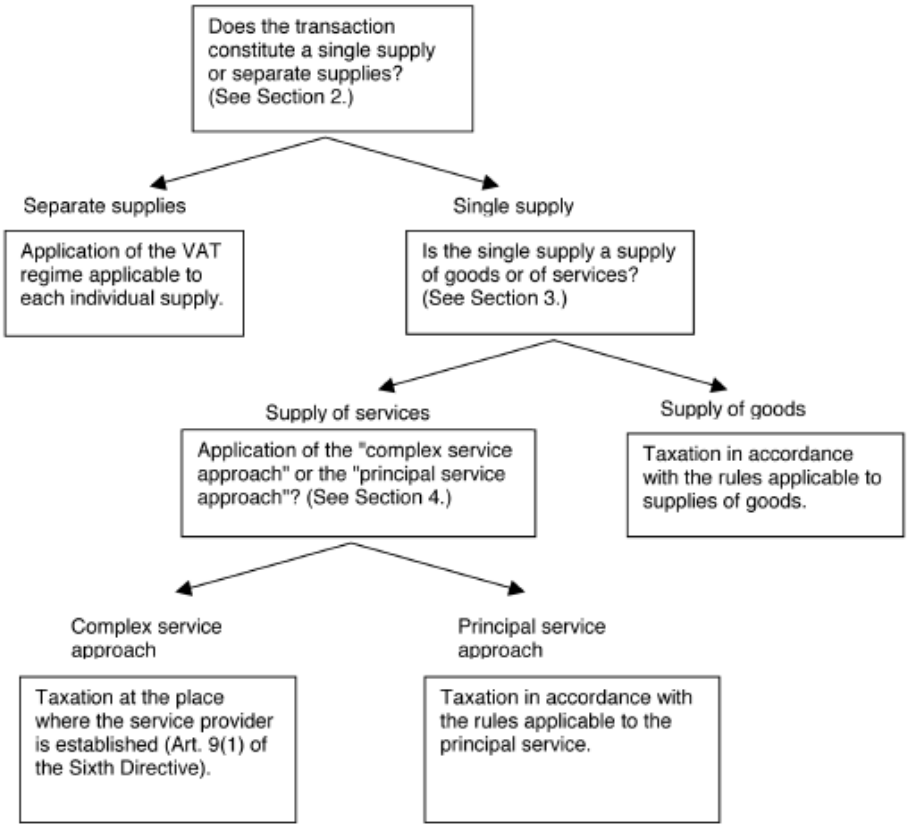
updates of items such as cars or phones, where new programs would be periodically installed. These installations could easily be considered part of the original purchase of the car or cell phone.[29]

Despite the relevance of the subject, the VAT Directive provides little guidance on the subject of composite supplies. Therefore, in order to ensure the coherence and unity of the EU law, the ECJ had to develop a jurisprudential set of rules to exactly identify the nature of these supplies, and their related treatment.

[29] Rendhal Pernilla, *Cross-Border Consumption Taxation of Digital Supplies*, Doctoral Series vol. 18, IBDF, Amsterdam, 2009, p. 135

# III. Multiple Versus Single Supplies

The European Court of Justice consistently holds that *"where a transaction comprises a bundle of elements and acts, regard must be had to all the circumstances in which the transaction in question takes place in order to determine, first, whether there are two or more distinct supplies or one single supply and, secondly, whether, in the latter case, that single supply is to be regarded as a supply of goods or a supply of services".*[30] A step-by-step approach is therefore provided by the Court, requiring an analysis which will determine firstly whether the plurality of acts and elements has to be treated as a plurality of autonomous supplies, or as unique single "composite" supply. In the latter case a further investigation will assess whether the composite supply qualifies as a supply of goods or as a supply of services. A composite supply of services could then be regarded by the Court following either the so-called "Complex Service Approach" (taxation at the place of establishment of the provider) or the "Principal Service Approach" (taxation in accordance with the rules applicable to the principal service").




*(Decision tree of the VAT treatment of composite supplies under the ECJ case-law[31])*

[30] ECJ, Case C-41/04, *Levob Verzekeringen BV, OV Bank NV v. Staatssecretaris van Financiën* [2005] ECR I-9433 [hereinafter Levob], para. 19; ECJ, Case C-231/94, *Faaborg-Gelting Linien A/S v. Finanzamt Flensburg* [1996] ECR I-2395 [hereinafter Faaborg], para. 13

[31] Liebman Howard, Rousselle Olivier, *VAT Treatment of Composite Supplies cit.*, p. 113

Starting from the first fundamental step, the case-law of the European Court of Justice has gradually produced and clarified a fundamental set of basic rules concerning the on the definition of a plurality of acts and elements as a single composite supply or multiple supplies[32]:

1. Splitting: As a main principle, every element of a composite supply should be regarded as independent and autonomous, and thus independently treated for VAT purposes. It would apply to the aforementioned services in the *Card Protection Plan* case, and to services and goods alike in all other instances.

2. Single Supply with Principal Elements and Ancillary Elements (or "through absorption"): as a first exception to the main rule, the ECJ held a plurality of supply can be considered as a unitary supply even when the elements are not all equally indispensable part of a single supply economically considered. This would be the case when one or more elements are considered as the "principal services", whilst others are regarded as mere "ancillary services", whose role is only to enhance the enjoyment of the principal service by its costumer. Since the ancillary element is not regarded as an aim by itself, but is only functional to the principal one, it will share the VAT treatment of the principal service.

3. Single supply from an Economic Point of View: according to the Court, all the supplies should be considered as forming a single supply with its own autonomous nature and VAT treatment, when those supplies would form, from the economic point of view of the typical customer, a unitary complex. Here the elements of the composite supply are all equally indispensable for carrying out the supply as a whole. Therefore in this case it would be artificial and detrimental for the EU VAT system to split the supply. As a consequence this single supply will have to be treated for VAT purposes on its own merits.

Each of these possibilities will be specifically addressed.

[32] Van Doesum Ad, Van Kesteren Herman, Van Norden Gert-Jan, *Fundamentals of EU VAT Law cit.*, pp. 135-136

## 3.1 Single Supplies with Principal Elements and Ancillary Elements

### 3.1.1 Introduction: The Card Protection Plan Case

The cornerstone of the EU regulation on composite supplies can be considered the *Card Protection Plan* case. This judgment provided clarifications on a first fundamental issue: whether a bundle of acts and elements should be treated as separate supplies, each subject to their own VAT regime, or as a single supply undergoing a single VAT treatment.

Card Protection Plan Ltd was an England-based company, offering *"holders of credit cards, on payment of a certain sum, a plan intended to protect them against financial loss and inconvenience resulting from the loss or theft of their cards or of certain other items such as car keys, passports and insurance documents*".[33] The company would purchase a block insurance policy from an insurance company and list its customers as the assured under the same company. At the same time Card Protection Plan Ltd provided assistance to its customers by notifying the credit card companies of the lost or stolen cards and providing their customers other minor services.[34]

The UK Commission of Customs and Excise held that the company had provided its customer a basket comprised of ordinary taxable services, whilst no insurance exempted services has been supplied, since no direct contractual relationship between the company's customers and the insurance company was found. On the other hand, Card Protection Plan Ltd claimed that its services constituted an arrangement for insurance services and that there was a sufficient direct relationship between the customers and the insurance company to constitute exempt insurance services. Thus, each part argued that only a single supply had been provided, either of exempt insurance or taxable card registration services.[35]

In the request for a preliminary ruling, the ECJ was asked about *"the proper test to be applied in deciding whether a transaction consists for VAT purposes of a single composite supply or of two or more independent supplies"*.[36] In its following judgment, the Court provided the fundamental set of rules for regulating the subject of the VAT treatment of composite supplies, holding that: *"where the transaction […] comprises a bundle of features and acts, regard must first be had to all the circumstances in which that transaction takes place"*. For the Court *"taking into account […] that every supply of a service must normally be regarded as distinct and independent and […] a supply which comprises a single service from an economic point of view should not be artificially split, so as not to distort the functioning of the VAT system, the essential features of the transaction must be ascertained in order to determine whether the taxable person is supplying the*

[33] ECJ, Case C-349/96, *Card Protection Plan Limited v. Commissioners of Customs and Excise* [1999] STC 270 All ER (EC) 339 [hereinafter Card Protection Plan], para. 7
[34] *Ibidem*, paras. 8-10
[35] *Ibidem*, paras. 11-12
[36] *Ibidem*, para. 12

*customer, being a typical consumer, with several distinct principal services or with a single service. There is a single supply in particular in cases where one or more elements are to be regarded as constituting the principal service, whilst one or more elements are to be regarded, by contrast, as ancillary services which share the tax treatment of the principal service. A service must be regarded as ancillary to a principal service if it does not constitute for customers an aim in itself, but a means of better enjoying the principal service supplied".*[37]

Therefore, in this first pronouncement, the Court provided the aforementioned fundamental set of rules for the qualification of the supply: based on art. 2(1) Sixth Directive every supply should be normally accounted and treated for VAT purposes as an autonomous supply, except for the case of a bundle of elements characterized as an economic unity. Here a distinction would be required between the "principal service" and the "ancillary service", the latter having no other purpose than ensuring a better enjoyment of the former, so that the VAT treatment of the composite supply should follow the treatment of the principal service.

It also worth noticing that the ECJ recognized the specific relevance of the issue *"both for identifying the place where the services are provided and for applying the rate of tax or, as in the present case, the exemption provisions in the Sixth Directive"*.[38] In the same instance the ECJ added that the fact that a single price was charged was not to be considered a decisive element for the analysis, although the same Court acknowledged that *"if the service provided to customers consists of several elements for a single price, the single price may suggest that there is a single service"*.[39]

Finally, it is surely relevant that the ECJ took from the very beginning a pragmatic approach to its analysis, stating that *"having regard to the diversity of commercial operations, it is not possible to give exhaustive guidance on how to approach the problem"*. For the author of this contribution Card Protection Plan fully reflects the awareness of the Court concerning the practical dimension of the composite supply assessment: in a modern, digital, global economy, transactions can be structured and shaped in several forms according to the specific sector, the national and international regulation, and the same needs of the parties, and therefore they require general, open criteria of interpretation to be adapted at the specific case. Such general criteria are in Card Protection Plan already present, as the Court references *"all the circumstances in which that transaction takes place"*, *"the essential features of the transaction"* and the *"typical consumer"*.[40]

[37] *Ibidem*, paras. 28-30
[38] *Ibidem*, para. 27
[39] *Ibidem*, para. 31
[40] *Ibidem*, paras. 27-29

### 3.1.2 The Evolution of the Case-law

The line of argumentation concerning the existence of a single supply composed by a principal and an ancillary element (so-called *"accessorium sequitur principale"* principle) was then strengthened in other judgments by national courts[41] as well as by the ECJ.

In *Madgett and Baldwin*, for instance, an English hotel undertaking used to offer its customers a package deal with a fixed price including, with the lodging, additional bought-in services from third providers such as a day excursions by coach. The owners of the hotel considered that they were hoteliers and not tour operators, and so they did not consider their activity to fall under the scope of what is now art. 306 et seq. VAT Directive. This provision in fact details a special regime for travel agents or tour operators who organize travel or tour packages in their own name and entrust other taxable persons with the supply of the services generally associated with that kind of activity.[42]

The ECJ confirmed the hotelier's point of view: it considered that traders such hoteliers, providing services habitually associated with travel, often used services bought in from third parties which would form anyway only a small proportion of the package price (compared to the accommodation). These services were also - for the Court- among the tasks traditionally entrusted to such traders. Those bought-in services did not therefore constituted for customers an aim in itself, but just a mean of better enjoying the principal service supplied by the trader. As a consequence such services were deemed by the Court as purely ancillary in relation to the in-house services, and the trader was not considered to be taxed under art. 306 et seq. VAT Directive. At the same time the Court pointed out that where an hotelier would habitually offer his customers, in addition to accommodation, services which would go beyond the tasks traditionally entrusted to hoteliers, and which would have a substantial effect on the package price charged, such services could not be deemed as purely ancillary services, so implying application of art. 306 et seq. to the aforementioned hotelier.[43]

Here again the Court built its assessment of ancillarity between different services considering, on the one hand, which services would just improve the enjoyment of other services for who was supposed to be the hypothetical typical customer, and, on the other hand, which circumstances were to be deemed relevant for the case: the ECJ focused on the frequency of the service supply, on the effect on the total price and on the historical element, in relation to the general category of the hotel undertakings; interestingly, it also indirectly acknowledged the contingent nature of its evaluation by adding that such an exclusion of the hotelier from the category (and related discipline) on travel agents would not have been allowed in the case

[41] See for instance: *College of Estate Management v CEC* [2005] 4 All ER 933
[42] ECJ, Joined Cases C-308/96 & C-94/97, *Commissioners of Customs and Excise V T.P. Madgett, R.M. and the Howden Court Hotel* [1998] ECR I-6229 [hereinafter Madgett and Baldwin], paras. 7-8
[43] *Ibidem*, para. 24-27

where the hotelier had provided services not traditionally provided by its category and with a substantial impact on the final price.

Another case where the same result on the matter of composite supplies was reached is *Primback*. Here a furniture retailer (Primback) offered its customers the possibility of paying for goods in cash of by way of interest-free credit. In the latter case a finance company, distinct from the seller, would paid the retailer on the consumers' behalf, whilst the consumer would paid the consideration to the finance company later on. However, due to an agreement between the retailer and the finance company, the latter was required to pay to the former less than the advertised price (element that final consumers were not actually aware of): such a difference was in fact intended as a remuneration for the supply provided from the financial company to the consumer.[44] Primback declared and paid VAT only on the sum actually received, whether directly from the customers in case of cash payments or by the finance company when customers had purchased goods on interest-free credit. The tax authorities however took the view that Primback should have paid VAT on the full sale price invoiced to the customer. Specifically, the House of Lords asked the ECJ whether *"the taxable amount for purposes of calculating the VAT payable on the sale of the goods consists only of the amount actually received by the seller, or whether, on the contrary, the taxable amount consists of the full amount payable by the purchaser"*.[45]

The ECJ had therefore to determine whether the service provided by the financial company should be treated as an autonomous supply or a supply ancillary to the supply of goods made by the retailer. The Court considered on the point that the customer willing to pay the for goods purchased from Primback by way of interest-free credit would receive from the seller an invoice stating the price of the goods as advertised in the store at the time of sale, and the same customer would conclude with the financial company a loan agreement for an amount exactly equivalent to the cash sale price of the same goods. As for the financial undertaking, it would pay that amount directly to the seller, on the purchaser's behalf, in settlement of the price advertised and invoiced by that seller, whilst the customer would repay to the finance house only the amount of the loan. Therefore the price agreed between the parties to the contract of sale and paid by the consumer was actually the same, irrespective of the means by which the purchase of the goods was financed (cash or interest-free credit), with the result that Primback could not reasonably argue that the price advertised contained a component representing the value of the credit. The transaction, based on the point of view of the final consumer, was thus deemed to be a single composite supply including an ancillary finance service and a principal supply of goods, so that the amount due for VAT purposes had to be deemed the full amount payable by the purchaser.[46]

Therefore, even in this quite complex transaction, involving a financial element, the relation of ancillarity was found by a specific assessment of the circumstances from the customer's perspective: he had purchased

[44] ECJ, Case C-34/99, *Commissioners of Customs & Excise v. Primback LTD* [2001] ECR I-3833 [hereinafter Primback], paras. 6-19
[45] *Ibidem*, para. 21
[46] *Ibidem,* paras. 41-49

the good from the vendor, paying for it through the financial company, which acted in the customer's behalf and with no interests charged. It was evident the purpose of the financial operation of enabling the customer to purchase and enjoy the bought good (whilst also increasing the volume of the retailer's sales).

In *Město Žamberk* the municipality of *Žamberk* (Czech Republic) would provide, against consideration, the access to a municipals aquatic park including facilities for several recreational activities such as water sports, table tennis, beach volley, etc. The municipal park would charge VAT to the users and request a refund for the excess input VAT. Such a request was denied by the Czech tax authorities on the basis that activities carried out in the municipal park were exempt under national provisions implementing art. 132(1)(m) VAT Directive, which refers to an exemption for the *"supply of certain services closely linked to sport or physical education by non-profit-making organisations to persons taking part in sport or physical education"*. The ECJ was therefore asked about the possibility to consider as exempt activities some of the services rendered by the municipal park, i.e. non-organised, unsystematic and recreational sporting activities which can be carried on in that manner in an open-air swimming-pool complex (for instance, recreational swimming, recreational playing of ball games, etc.); in addition, in such a case, it was asked whether other services provided by the same park (*"amusement or rest"* activities) should be deemed *"closely linked"* to said sport services and hence exempted from VAT.[47]

The Court judged the aforementioned services as included in scope of art. 132(1)(m) VAT Directive and the related exemption from VAT. In fact, according the ECJ, the terms of the exemption were to be interpreted, as proper of the nature of exemptions, in a strict way; nevertheless, *"the requirement of strict interpretation does not mean that the terms […] should be construed in such a way as to deprive them of their intended effect"*. Specifically, the Court observed that the wording of art. 132(1)(m) did not reference any specific sport, nor required level of professionalism and organization of the practice of such an activity; at the same time, the measure was deemed to have the purpose of encouraging certain activities in the public interest for large sections of the population, which was also found proper of the services and facilities in question.[48]

Furthermore, the Court considered that the fact that the park entrance ticket -and therefore the related price- granted access to all of the facilities, without any distinction according to the type of facility actually used and to the manner and duration of its use, would constitute a strong indication of the existence of a single complex supply. Regarding whether, in the context of such a single complex supply, the predominant element would be the opportunity to engage in sporting activities falling within art. 132(1)(m) VAT Directive or, rather, pure rest and amusement activities, the ECJ required to take into account the point of view of the typical consumer, to be determined on the basis of a group of objective factors such as *"the design of the aquatic park at issue resulting from its objective characteristics, namely the different types of facilities offered, their fitting out, their number and their size compared to the park as a whole"*.

[47] ECJ, Case C-18/12, *Město Žamberk v Finanční Ředitelství v Hradci Králové* [2013] ECR I-0000 [hereinafter Město Žamberk], paras. 9-15
[48] *Ibidem*, paras. 19-25

Specifically, in relation to aquatic areas, the national court was tasked to take into account, *inter alia*, *"whether they lend themselves to swimming of a sporting nature, in that they are, for example, divided into lanes, equipped with starting blocks and of an appropriate depth and size, or whether they are, on the contrary, arranged so that they lend themselves essentially to recreational use"*.[49]

The point of view of the typical consumer, assessed in the light of the specific features of the services provided in the park, was instead employed in order to determine which of the two kinds of services could be deemed dominant and which ancillary. It also worth noticing that in *Město Žamberk*, as in other cases, the ECJ indicated a remarkable amount of features (e.g. type, number and size of the facilities) to be considered as features of the transaction: for the author of this contribution the reason has to be found in the generic and rather vague "typical consumer" concept, which can be therefore substantiated only through a precise reference to a broad array of elements and circumstances composing the specific case.[50] The author also considers that in Město Žamberk, the Court, differently from other case-law, did not address the issue of bundles of supplies composed, among others, by exempt elements: instead, in judgments such as Talacre and Commission v France[51], the ECJ specifically mentioned the need of protecting the strict interpretation of exemption provisions and, by doing so, the internal coherence of the VAT system. This could potentially result, also in Město Žamberk, in a national court assessing the economic-based existence of a unique composite supply where, nevertheless, more different rates are applied, so not to unjustifiably extend the application of the VAT Directive exemption.

In *RR Donnelley* a Polish company (RR Donnelley) supplied a complex service relating to the storage of goods. That service covered, *inter alia*, admission of goods into a warehouse, shelving, storage, packaging for customers as well as issuing, unloading and loading of goods. In addition, for certain contractual partners which supplied goods to computer companies, the service included also the repackaging, into individual sets, of materials supplied in collective packaging. The Court was asked to provide guidance in relation to the place of supply of such a supply of complex storage services, and specifically whether the supply would be located in the country hosting the immovable property used for warehousing purposes (with Polish VAT due) or qualified as a general B2B service subject to the reverse charge mechanism.[52]

In order to provide an answer to the referring court, the ECJ established the necessity to examine, in the first place, whether that transaction had to be regarded as consisting of a single composite supply or of several distinct and independent supplies. The Court found (as proposed by the Advocate General) that the storage of the goods should, in principle, be considered to constitute the principal supply and that the reception, placement, issuing, unloading and loading of the goods amounted to only ancillary supplies. However, with regard to the repackaging of the goods, the Court deemed this service *"an independent principal supply in*

[49] *Ibidem,* paras. 31-37
[50] See *infra*, pp. 53-54
[51] See *infra*, pp. 36-39
[52] ECJ, Case C-155/12, *Minister Finansów v RR Donnelley Global Turnkey Solutions Poland Sp. Z.o.o.* [2013] ECR I-0000 [hereinafter RR Donnelley], paras. 10-17

*all cases in which that repackaging is not absolutely necessary to ensure better storage of the goods at issue"*.[53]

Once again, the customer's point of view was applied to the outcome of a precise analysis of the storage services provided by RR Donnelley. Such an approach provided a base to distinguish the exact relation between storage activity (principal service) and reception, placement, issuing, etc. (ancillary activities), with in addiction an evaluation of autonomy for the only repackaging in all cases where it was deemed not absolutely necessary to ensure a better storage.

The *Bertelsmann* case is also worth a mention. Bertelsmann was the German holding of a group of companies carrying on business as book and record clubs. Between 1985 and 1990, the companies of the group gave bonuses in kind, such as books, records and bicycles, to existing club members in return for the introduction of new members. Those companies purchased the bonuses in kind from third-party suppliers and bore the costs of delivering those bonuses to the introducing members. The tax authorities however considered the supplies of the bonuses in kind to constitute transactions akin to an exchange and included in the taxable amount of those transactions the costs of delivering the bonuses borne by those companies besides their purchase price.[54] The ECJ was then asked whether the taxable amount for the supply of a bonus in kind, which constituted consideration for introducing a new customer, would also include, besides the purchase price of that bonus, the costs of delivery when they were paid by the party delivering bonus.[55]

During the proceeding, the Court considered whether a direct link would exist not only between the supply of the bonuses in kind and the introduction of new customers, but also between the provision of the bonus and its delivery. It referred to the previous case law, such as *Card Protection Plan*, and to the situation where a supply *"does not constitute for the customer an end in itself but a means of better enjoying the principal service of the supplier"*. This relation was regarded as involving a supply *"incidental"* to a principal supply[56], term that for the author of this contribution is evidently a synonym for the "ancillary" concept: for both terms the Court consistently indicated an interpretation of the supply as not constituting a purpose *per se* for the customer, and having therefore the only function of furthering the enjoyment of the principal supply. The ECJ finally determined that in the case the delivery of the bonuses in kind constituted a service incidental to the principal supply, which was the supply of the same bonuses. Therefore, the supply and the delivery of the bonus in kind together formed a single composite supply, remunerated by consideration which consisted in the introduction of new customers.[57]

Thus, in Bertelsmann the ancillary relation among elements of a supply was found again, even if referenced with a different denomination. That finding proved the full applicability of the composite supply concept

[53] *Ibidem*, paras. 19-25
[54] ECJ, Case C-380/99, *Bertelsmann AG v Finanzamt Wiedenbrück* [2001] EU:C:2001:372 [hereinafter Bertelsmann], paras. 7-8
[55] *Ibidem,* para. 11
[56] *Ibidem,* paras. 19-20
[57] *Ibidem,* para. 21

also to the peculiar case of so-called "bartered transactions": here for instance goods, not money, were exchanged as consideration for activities leading to the introduction of new customers for the business.

Finally, a last useful example can be found in the *Purple Parking* case. The case concerned two companies established in the United Kingdom which provided a "off-airport park-and-ride" service, a service where customers would drive their vehicles to the car park, leave them in an arrival areas and then board a bus or mini-bus provided by the car park operator in order to be transported, with their luggage, to the airport terminal. Their vehicles would be parked by the employees of that operator. On their return, the customers would again use the means of transport provided by the car park operator between the airport terminal and the car park, where their vehicle would be made available in a departure area. The ECJ's guidance was again required in order to correctly establish whether the case involved a single taxable supply of parking services or two separate supplies, one of parking and one of transport of passengers, with the former regarded as dominant and the latter as ancillary service.[58]

The Court held on the point that with no doubt the parking and transport services formed, for the purposes of VAT, a complex single supply in which the parking element was predominant. The ECJ in fact, after having assessed as usual all the features of the transaction, focused and then based its founding on the element of the price: the appellants not only charged their customers a single price, but also calculated this amount on the basis of the time of parking, with no relevance for the number of passengers transported. This was considered to clearly represent the relevant interest of both the customers and the providers: the customers - fort the Court- were seeking *"first and foremost, parking at an advantageous price"*. By contrast, the transport service was only the inevitable consequence of the fact that the car park was located at a certain distance from the airport. Regarding the car park operators, they offered the transport service in order to be capable, in spite of that distance, of competing with the parking within the airport. An additional confirmation of the importance of the parking element was finally seen in the relevant measures adopted in order to guarantee the safety of the car park, also emphasised in the appellants' brochures. Those measures, according to the ECJ, were particularly important for the customers in the light of the fact that, on average, they parked their vehicles for several days.[59]

In this last instance of an ancillarity relation between services, the Court relied again on Card Protection Plan's basic framework of criteria: the price, in its specific composition and base of calculation (time instead of number of passengers), provided a first clear indication of the fundamental interest of the typical consumer involved in the transaction, namely, obtaining an affordable parking service. This indication was then strengthened by considering how exactly the parking service would be carried out and advertised (mainly in reference to the security measures). The enjoyment of that service would then be enhanced by the convenience of having a mean of transport connecting the parking slot and the air terminal. Interestingly,

[58] ECJ, Case C-117/11, *Purple Parking Ltd, Airparks Services Ltd v. the Commissioners for Her Majesty's Revenue Service* [2012] ECR I-0000 [hereinafter Purple Parking], paras. 12-22
[59] *Ibidem*, paras. 33-36

here, like in Primback, reference is also made to the interest of the provider of the service: for the author of this contribution this element, even if not relevant as the consumer's point of view, is to be included in the array of relevant features and circumstances of the transaction. That is why in a growing number of cases the Court examines a factor in the supplier's perspective in order to fully comprehend the nature and structure of the transaction.

### 3.1.3 Composite Supplies with More than One Supplier

In all the aforementioned cases which led to the said basic set of rules, the ECJ had to define the single or multiple nature of a bundle of supplies made by one single supplier. Instead, in more recent judgments, the Court had to consider the possibility that two different suppliers, each making a supply to the same customer, with the supplies being in some degrees connected, could be considered as making a single composite supply (so that supposedly both suppliers should charge and account VAT relating to their own part of the composite supply).

A first instance could be considered the *Part Service* case. It concerned leasing transactions structured by way of two contracts instead of one, and involved two companies in the same financial group and customers who were mostly undertakings leasing motor vehicles. The Italian tax authorities considered these separate agreements as constituting a single contract concluded between the three parties. It was argued that *"the consideration paid by the customer for the leasing arrangement had been artificially divided to reduce the taxable amount, as the role of the lessor was split between the two group companies*". The scheme was therefore judged as aimed to ensure the group companies a VAT saving, to be obtained through the use of a mixture of taxable supplies and exempt supplies under two different contracts but entered into with the same customer.[60] The companies instead argued that the development of the transaction in the form of several linked contracts was not due to tax avoidance purposes, but to *"valid economic reasons associated with marketing […] organization […] and the guarantee"*.[61] The ECJ was therefore asked to judge whether the scheme in question depicted a so-called "abuse of rights", defined in *Halifax* as a *''transactions, the essential aim of which is to obtain a tax advantage"*.[62]

The Court started specifying that EU taxpayers were in general entitled to structure their business so as to limit their tax liability, without this behaviour been qualified as *per se* abusive. Yet, a limitation of this possibility, and therefore a qualification of this scheming as an abusive conduct, was to be considered the situation involving the supply of several services. In this case, according to the ECJ, it was necessary to

[60] ECJ, Case C-425/06, *Ministero dell'Economia e delle Finanze, Formerly Ministero delle Finanze v. Part Service Srl, Company in Liquidation, Formerly Italservice Srl* [2008] ECR I-897 [hereinafter Part Service], paras. 8-18
[61] *Ibidem*, para. 19
[62] *Ibidem*, para. 32(1)

examine whether this should be considered a single transaction or several individual and independent supplies of services requiring separate assessments. The Court then referenced the aforementioned principles of *Card Protection Plan*[63], as a base to provide guidance to the national court in judging the alleged abusive nature of the transactions.[64]

As a result, in this first instance the ECJ seemed to admit the possibility of composite supplies being the result of single supplies from different suppliers of the same customer, but only by application of the principle of abuse of law. This principle in this case was deemed to impede the development of tax schemes relying on different but related suppliers acting with the purpose of obtaining a tax advantage, by imposing as a countermeasure a unitary qualification of the different supplies carried out.

A further evolution of the subject could have been provided in *Mapfre*. Mapfre Warranty SpA was a French resident company providing warranties for defect spare parts of second hand cars sold by third parties. Used car suppliers could therefore offer their customers the option to purchase a warrant for a specific predetermined price so that, in case a spare part was found defected over a predetermined period, Mapfre would have covered the repair costs. Mapfre would then charge and remit VAT on the services provided to the tax authorities.[65]

In the case the ECJ was firstly asked whether warranty services provided by an independent third party to the buyer of a used car, over a specific period and for a specific amount, could be regarded as insurance services and therefore exempt from VAT under art. 13(B)(a) Sixth Directive, now art. 135(1)(a) VAT Directive.[66] The Court answered positively to the query. It then considered a second allegation from Mapfre, namely the possibility that the service in question, even when categorized as an insurance transaction, should be nonetheless subject to VAT because inseparably linked to the sale of the second-hand vehicle and therefore subject to the same tax treatment[67]. The ECJ answered that in cases such as the one at issue the warranty did not appear "*to be so closely linked to the sale of the second-hand vehicle that those two transactions, provided, moreover, by two different suppliers, constitute an indivisible economic supply which it would be artificial to split"*. The two transaction were therefore deemed, *"in principle"* as distinct and independent transactions for VAT purposes. Yet, the Court seems not to have totally excluded that in other instances that relation could have been found. It in fact it concluded that *"it is for the referring court to determine whether, having regard to the specific circumstances of the cases in the main proceedings, the sale of a second-hand vehicle and the warranty provided by an independent economic operator to the dealer selling that second-hand vehicle covering mechanical breakdowns which may affect certain parts of that vehicle are so*

[63] *Ibidem*, paras. 52-53
[64] *Ibidem*, paras. 58-62
[65] ECJ, Case C-584/13, *Directeur Général des Finances Publiques v Mapfre Asistencia Compania Internacional de Seguros y Reaseguros SA, and Mapfre Warranty SpA v Directeur Général des Finances Publiques* [2015], EU::C:2015:488 [hereinafter Mapfre], paras. 11-24
[66] *Ibidem*, para. 25
[67] *Ibidem*, paras. 47-48

*interconnected that they must be regarded as constituting a single transaction or whether, on the contrary, they are independent transactions"*.[68]

Therefore, with this judgments, the Court seems to have opened for the first time to the possibility of treating supplies provided by different suppliers as a single supply. What differentiates Mapfre from Part Service, and makes the former an evolution of the latter, is that now the support of the "abuse of right" principle is not deemed necessary anymore, and in fact it is no mentioned by the ECJ in the proceeding. For the author of this contribution such an evolution of the Court's stance towards composite supplies with different providers, where no reference is made anymore to the abuse of right, could be seen as another evidence of the "economic reality" approach of the ECJ: the artificial split of a supply which has an economic unity would be detrimental for the functioning of the entire VAT system, and therefore such a unity has to be acknowledged in the form of the composite supply, despite formal elements such as, in these cases, the presence of more than one supplier.

A final relevant and very recent instance on the subject can be found in the *Bookit* and in the *NEC* cases, both regarding card processing services provided in order to enable customers to pay for services by debit or credit cards. Here the ECJ decided that card handling and card processing services concerning payments by debit or credit card, such as those provided by the parties in these cases, did not qualify as transactions concerning payments and transfers, which are exempt from VAT. Moreover, the Court in both cases preliminary analysed the possibility of two separate suppliers making a single supply of services.

Bookit would sell cinema tickets over the phone and online as agent for Odeon cinemas. It was in fact part of the Odeon group (but not VAT grouped with it). When collecting money from customers on behalf of Odeon, Bookit would also charge the customer what was referred to as a "card handling fee". The British tax authorities argued that Bookit's service could not fell within the exemption for transactions concerning payments under art. 13B(d)(3) Sixth Directive, now art. 135(1)(d) of VAT Directive, since either, the service would concern just a provision of information, not effecting the transfer of funds and/or the arrangements were abusive. The UK First-tier Tribunal rejected the argument that the arrangements were abusive, but decided to refer to the ECJ the question whether the fee charged was correctly described as a "transaction concerning payments and transfers".[69]

NEC instead operated for the National Exhibition Centre and other venues in Birmingham. Tickets could be purchased in person, by telephone, online via NEC's website or by post. Similarly to Bookit, acting as agent, NEC would sell tickets and collect money on behalf of the promoters of various events. The domestic dispute concerned the VAT treatment of booking fees charged by NEC to the customer for certain ticket sales. NEC treated the booking fee as exempt from VAT, again as a "transaction concerning payments" under art. 13B(d)(3) Sixth Directive, now art. 135(1)(d) VAT Directive, which exempts *"transactions,*

[68] *Ibidem*, paras. 57-58

[69] ECJ, Case C-607/14, *Bookit Ltd v Commissioners for Her Majesty's Revenue and Customs* [2014] UKFTT 856 [hereinafter Bookit], paras. 8-21

*including negotiation, concerning deposit and current accounts, payments, transfers, debts, cheques and other negotiable instruments, but excluding debt collection"*. The British tax authorities disagreed and assessed the booking fee to VAT. However, the UK First-tier Tribunal upheld NEC's appeal against the administration's assessment. The First-tier Tribunal considered that the booking fee was correctly described as a "card processing fee" and as such exempt from VAT. The UK Upper Tribunal agreed that the payment was correctly described as for a "card processing fee" but referred to the ECJ the question whether such a fee was exempt from VAT.[70]

Therefore, the queries on the exemption point were almost identical, apart from the additional question in NEC on whether the supply to the person who owed the money be considered debt collection. The cases were not joined, yet they were heard together and judgments too were given on the same day. Although the issue was not referred to it, the ECJ actually emphasised in its preliminary observations the need for the domestic courts of analysing, basing on the guidance from the Court, whether the supply by Bookit/NEC to a customer buying a ticket using a card would constitute a service distinct from and independent of the sale of the ticket. If not -the Court argued- the supply should have attracted the same VAT treatment as the ticket.

On the point, in both proceedings the ECJ referenced its 2010 judgment in *Everything Everywhere*[71], where it was clarified that additional charges invoiced by a provider of services to its customers for the facility to pay by a credit card do not constitute consideration for a separate service, as making available to customers the facility to pay by card does not constitute for those customers an end in itself. In fact for the Court *"that supposed supply of services, which those customers are unable to access separately from the use of the principal service, can have no interest for such customers that is independent of that principal service"*. Interestingly, the Court then added that the receipt of a payment and the handling of that payment are intrinsically linked to any supply of services provided for consideration and that it is inherent in such a supply that the provider should seek payment and make appropriate efforts to ensure that the customer can make effective payment in consideration for the service supplied. Lastly, the ECJ held that the fact that a separate charge was identified both in the contract and invoices to the customers for such an alleged financial service was not decisive to the question whether there was only a single economic transaction. Therefore, in Bookit the ECJ remitted to the national court the duty to assess, *"whether […] the card handling service provided by Bookit should be considered, for the purposes of the application of VAT, as a service that is ancillary to the sale of the cinema tickets concerned or as a service that is ancillary to another principal service that is supplied by Bookit to the purchasers of those tickets, which might be the remote reservation or purchase in advance of cinema tickets, and, consequently, as forming with that principal supply a single supply, with the result that that service should receive the same tax treatment as the principal supply"*; similarly, in NEC, the national court was required to determine whether *"NEC's card processing service*

[70] ECJ, Case C-130/15, *Commissioners for Her Majesty's Revenue and Customs v National Exhibition Centre Limited* [2015] UKUT 23 [hereinafter NEC], paras. 7-16

[71] ECJ, Case C-276/09, *Everything Everywhere Ltd v Commissioners for Her Majesty's Revenue and Customs* [2009] EU:C:2010:730 [hereinafter Everything Everywhere]

*must be considered for VAT purposes to be a service which is ancillary to the sale of the tickets concerned or as a service ancillary to another principal service which is provided by the NEC to the purchasers of those tickets, which could be the reservation or the delivery of tickets for shows or other events and, therefore, forming with that principal service a single service with the result that that service must share the tax treatment of that principal service"*.[72]

It is also worth noticing that the UK Court in the NEC case had considered and rejected the relevance of Everything Everywhere, noting that: *"there is an essential difference between that case and the circumstances of NEC's case. In Everything Everywhere, the critical finding was that there was no distinct and independent payment handling service, because that service was merely ancillary to the principal supply of telecommunication services. By contrast, as the FTT found, and which is not the subject of appeal, the service for which the booking fee is paid is distinct and independent from the supply of the tickets, as that supply is made by the promoter and not by NEC. There is thus no question of the supply made by NEC in return for the booking fee being regarded as ancillary to the supply of tickets. It is simply the nature of the supply for which the booking fee is the consideration that is in issue"*. Nevertheless, coherently with its casa-law, the ECJ rejected this line of reasoning, therefore re-establishing the possibility of a composite supply, constructed on the ancillarity relation, as result of different and yet connected supplies provided by different suppliers.[73]

### 3.1.4 Conclusions

Card Protection Plan is rightfully considered the backbone of the ECJ discipline on composite supplies. It formally acknowledges for the first time the need of a rational and comprehensive set of criteria for establishing whether a bundle of acts and elements should be treated as separate supplies, each subject to their own VAT regime, or as a single supply undergoing a single VAT treatment. Such criteria are founded on the EU VAT Directive, and on the related need of an autonomous treatment for every element of the bundle, but they also call for a deviation from this basis in every case where such elements should share a concrete bond of economic nature. This relation is in Card Protection Plan specified as a situation where an element has no other purpose than ensuring a better enjoyment of another (the ancillarity relation), so that the VAT treatment of the composite supply should follow the treatment of the principal service.

[72] *Bookit*, paras. 22-29; *NEC*, paras. 17-24
[73] UKUT, *Revenue & Customs v National Exhibition Centre Ltd* [2015] UKUT 23 (TCC), para. 39

The Court also understands the variety of ways in which such a bond could manifest in relation to the specific market, players or transaction of the case, and therefore requires an assessment of practical character, to be accomplished with a case-by-case approach and through a thorough and systematical examination of "all circumstances" on the light of the point of view of the "typical consumer". These are evidently general, open concepts, to be interpreted and adapted to the specific case, so ensuring a high degree of flexibility, even at the price -as typical of economic benchmarks- of a lower degree of legal certainty. This "reality-based" approach of the Court is mirrored -for the author- in the same parameter of the single price, which in Card Protection Plan seems to be considered rather relevant for the outcome of every assessment, and nevertheless is not deemed to be *per se* decisive or incontrovertible.

This line of reasoning has been respected and specified in the other judgments, where for instance the supplier's view has been taken into account among the other elements (Purple Parking), or where the existence of a composite supply has been acknowledged even in the context of a bartered transaction (Bertelsmann).

Lastly, an even more substantial indicator of the coherence of the ECJ approach is to be found, for the author, in judgments such as Mapfre and Part Service, where the Court opened for the first time to the possibility of treating supplies provided by different suppliers as unitary composite supplies. As already explained, the practical necessity of avoiding the artificial split of a supply characterized by economic unity was here consistently viewed as a sufficient reason for acknowledging the existence of a composite supply, despite the formal element of the presence of more than one provider.

## 3.2 Multiple Autonomous Supplies

### 3.2.1 The EU VAT Directive Basis

As explained in the Card Protection Plan judgment, the consistent starting point and other possible outcome of the Court's assessment of a bundle of elements and acts is the recognition of the presence of several autonomous supplies. This rule has in fact bases in several articles of the VAT Directive.

Art. 2 VAT Directive, for instance, lists the transactions to be subject to VAT, with reference -*inter alia*- to supplies of goods and supplies of services, and yet no specific indication is provided for the case of composite supplies. Art. 12(1)(a) and 135(1)(j), instead, require the same VAT treatment for *"the supply,*

*before first occupation, of a building or parts of a building and of the land on which the building stands"*, as being treated the same for VAT purposes. If the main rule would not entail that every transaction should be considered autonomously -argues Oskar Henkow- there would presumably be no need for this rule grouping buildings and land together[74]; furthermore, art. 307 states that *"transactions, made in accordance with the conditions laid down in art. 306, by the travel agent in respect of a journey shall be regarded as a single service"*. Art. 306 provides, *inter alia*, that a special scheme shall apply to *"transactions carried out by travel agents who deal with customers in their own name and use supplies of goods or services provided by other taxable persons, in the provision of travel facilities"*. Once again a VAT rule ensures (here in a specific business sector) a unitary consideration of transactions which otherwise would be accounted for separately.

Art. 73 VAT Directive states that the taxable amount shall include *"everything that constitutes the consideration in return for the supply"*. Art. 78 then specifies the previous provision by indicating some factors that shall be included in the taxable amount, namely: *"(a) taxes, duties, levies and charges, excluding the VAT itself, and (b) incidental expenses, such as commission, packing, transport and insurance costs, charged by the supplier to the customer"*. Under the same provision, Member States may also *"regard expenses covered by a separate agreement as incidental expenses"*. This means that depending on the choice of the Member State, and under the condition of the existence of one or more separate agreements, certain types of expenses paid by the supplier and charged to the customer may be regarded as parts of a unique transaction instead of separately supplied transactions. Nevertheless, for the author of this contribution, should not go unnoticed that the VAT Directive, by providing Member States with the option (not the obligation) of regarding such expenses as incidental expenses included in the taxable amount of another transaction, establishes a derogation to what would seem to be a general rule, namely, the autonomous VAT consideration of every supply, intended here as comprised of a payment directly linked to the supplier's performance. In fact, art. 2 VAT Directive defines the supply as *"for the consideration"*, since VAT, being a consumption tax, taxes consumption through the proxy of the consumption expenditure. For this reason doctrine and ECJ jurisprudence have required a so-called "direct link" between the payment and the related supply in order for the payment to be subject to VAT. For instance, in *RCI*, the Court was asked for assistance in classifying various supplies of services and establishing the place where these services were supplied. The services in question consisted essentially in facilitating the exchange among owners of the right to occupy each other's holiday homes, charging also several fees in the process.[75] The ECJ considered that the various payments served all the same objective, namely, providing users with the possibility of staying in other users' holiday homes. On this base, the ECJ assessed which payments were connected to which services in order to properly establish which services were actually provided for VAT purposes.[76] A

[74] Henkow Oskar, *Defining the Tax Object in Composite Supplies in European VAT* in European VAT, World Journal of VAT/GST Law, Vol. 2 Issue 3, 2013, p. 186
[75] ECJ, Case C-37/08, *RCI Europe v Commissioners for Her Majesty's Revenue and Customs* [2009] ECR I-7533 [hereinafter RCI], paras. 5-10
[76] *Ibidem,* paras. 28-35

concept that, as already said, would seem to strongly imply an autonomous treatment of every transaction comprised of a supply and a consideration directly linked.

The same line of reasoning can be found in the exemption discipline of the VAT Directive: art. 132(1)(b) in fact ensures exemption from VAT, under certain conditions, to *"hospital and medical care"* and also to activities which are deemed *"closely related"* to the exempted services. This close relation has been better interpreted by the ECJ in several judgements.[77] For instance, in the *Dornier* case the Court has stated that *"it is apparent from the very terms of that provision that it does not envisage services which are unrelated to hospital care for the patients receiving those services or to any medical care they might receive"*. Consequently, *"services fall within the concept of an 'activity closely related' to hospital or medical care […] only when they are actually supplied as a service ancillary to the hospital or medical care received by the patients in question and constituting the principal service"* and *"a service can be considered to be ancillary to a principal service where it constitutes not an end in itself but a means of enhancing the enjoyment or benefit of the principal service supplied by the provide"*.[78] Therefore the case-law from the ECJ clearly indicates that only a treatment which is ancillary to hospital or medical care could be deemed as an activity having a close relation to exempt medical care services: a strict and conditional interpretation which once again confirms the view of the autonomous consideration of every element of the supply as the general rule provided in the VAT Directive, whose only exception -according to the Court- would be the presence of such a relation among elements as to create a composite supply. In fact, in the same *Dornier* case the Advocate General Stix-Hackl referenced to *Card Protection Plan* when discussing the concept of "closely related" within the meaning of art. 132(1)(b).[79] However, even if the Court at the end ruled as proposed by the Advocate General, it did not refer explicitly to the said judgment. The ECJ casa-law concerning the "close relation" concept under art. 132(1)(b) could also provide guidance in interpreting art. 53, art. 54 and art. 59 VAT Directive: art. 53 concerns a number of services such as cultural, artistic and sporting services, and concludes the list with a reference to *"similar services"*; art. 54(2) instead refers to *"loading, unloading, handling and similar activities"*; art. 59(c) relates to, *inter alia*, services of lawyers, accountants *"and other similar services"*, and art. 59(h) refers to various services related to natural gas systems and *"other services directly linked thereto"*. The author of this contribution agrees with Oskar Henkow on the notion that, basing on the aforementioned ECJ concept of close relation under art. 132(1)(b), the references to such similar/other services/activities have to be interpreted in the sense that, in the normal course of events, services/activities similar to those listed in the said provisions should not receive the same treatment as those listed, but be viewed separately for VAT purposes.[80]

[77] See for instance: ECJ, Joined Cases C-394/04 and C-395/04, *Ygeia* [2005] ECR I-10373; ECJ, Case C-86/09, *Future Health Technologies* [2010] ECR I-05215; ECJ, Case C-262/08, *CopyGene* [2010] ECR I-05053

[78] ECJ, Case C-45/01, *Christoph-Dornier-Stiftung für Klinische Psychologie v Finanzamt Gießen* [2005] ECR I-12911 [hereinafter Dornier], paras. 33-35

[79] ECJ, Case C-45/01, *Christoph-Dornier-Stiftung für Klinische Psychologie v Finanzamt Gießen - Opinion of Advocate General* [2002], paras. 36-37

[80] Henkow Oskar, *Defining the Tax Object in Composite Supplies cit.*, p. 187

### 3.2.2 The Court's Case-law

When considering the case-law from the ECJ, it appears that the autonomous consideration of the components of a bundle of acts and elements has not been -so far- a very frequent outcome[81]. An instance where the Court found that several supplies were provided would be *BGŻ Leasing*. BGZ was a Polish leasing undertaking requiring to its clients, as a condition for entering a leasing contract, that the lessee would insure the leased assets. BGŻ Leasing allowed the lessee to arrange for this autonomously but also offered the service itself. In the latter case BGŻ Leasing would subscribe to the corresponding insurance with an insurer and re-invoice the cost of that insurance. The Polish tax authorities classified such insurance activity as ancillary to the principal supply, the leasing, so applying VAT on the insurance recharge costs. The ECJ was therefore asked whether the insurance element was separately supplied or not.[82]

The Court in this case held that *"as a general rule, a leasing service and the supply of insurance for the leased item cannot be regarded as being so closely linked that they form a single transaction"*. Furthermore *"the fact of assessing such supplies separately cannot constitute in itself an artificial splitting of a single financial transaction, capable of distorting the functioning of the VAT system"*. It then continued with its assessment, arguing that although the insurance supplied to the lessee through the lessor did facilitate the enjoyment of the leasing service, the insurance was to be deemed to constitute essentially an end in itself for the lessee instead then just the means to enjoy that service: the risks faced by the lessee was in fact relevantly reduced, as proper of the very nature of an insurance. Furthermore, the fact that in the case the insurance covering the leased item was required by the lessor, for the Court did not invalidate the previous finding denying the ancillary relation, as the lessee had the option of insuring the same item with an insurance company of his choice. Relevant was considered also the element of the separate pricing and invoicing, which reflected the interests of the contracting parties, as *"the lessee wishes above all to obtain leasing services and the insurance he is required to take by the lessor is of only secondary importance to him. If the lessee also decides to obtain insurance services through the lessor, such a decision is made independently of his decision to conclude a leasing agreement"*. On the same ground, the ECJ did not deem sufficient to reverse its position the fact that the contract specifically provided the lessor with the option, in certain circumstances, to terminate the leasing agreement if the lessee did not pay a fee (potentially covering also the insurance premiums) other than the rent stipulated in the contract. Lastly, the Court noted that its conclusions could not be subverted by reference to art. 78 VAT Directive, which includes insurance costs in the taxable amount: the leasing here constituted an independent supply and an end in itself for the lessee, and therefore the insurance costs would constitute the consideration for the supply of insurance for the leased item and not the consideration for the leasing service itself. For all such reasons, the Court finally held that the supply of

[81] Henkow Oskar, *Defining the Tax Object in Composite Supplies cit.*, p. 197

[82] ECJ, Case C-224/11, *BGŻ Leasing sp. Z.o.o. v Dyrektor Izby Skarbowej w Warszawie* [2013] ECR I-0000 [hereinafter BGŻ Leasing], paras. 16-25

insurance services for a leased item and the supply of the leasing services should have been regarded as distinct and independent supplies of services for VAT purposes.[83]

BGŻ Leasing, for the author of this contribution, proves once again how complete and comprehensive the Court's analysis of the circumstances of the case can be: in its assessment of the customer's point of view, the insurance's usefulness in enhancing the fruition of the leasing was acknowledged, and yet the ECJ considered that it was maybe the effect but not the intended aim of the transaction, as the insurance constituted essentially an end in itself for the lessee, in the form of an expected reduction of the risks of the transaction. At the same the Court directly referenced the connection of the customer perspective with the formal structure of the transaction: the separate pricing and invoices were used as a supporting argument for the autonomy of the supplies, the argument based on art. 78 was deemed not applicable due to the aforementioned customer's perspective, whilst the lessor's option to terminate the leasing agreement was instead considered relevant and yet not enough, by itself, for countering the other arguments. On the same line, for Henkow *"BGŻ Leasing points to the importance of the legal context"*[84], as the Court specifically acknowledged that any insurance transaction has, by nature, a link with the item it covers, for instance a leased item, and yet such a connection is not sufficient in itself to determine whether or not there is a single complex transaction for VAT purposes. *"If any insurance transaction were subject to VAT because the services relating to the item it covers were subject to VAT"* -the Court reasons- "*the very aim of art. 135(1)(a) of the VAT Directive, that is the exemption of insurance transactions, would be called into question"*.[85]

### 3.2.3 Conclusions

The autonomous consideration of every element of a supply is deemed the starting point of the method for addressing composite supplies developed by the Court, as it is the only approach which presents solid foundations in the EU VAT Directive. Nevertheless, so far the ECJ has required such an autonomous treatment of every component of a bundle of acts and elements in very few cases: for the author this would prove once again the overall practical nature of the method developed by the Court, which will depart from such a desegregate consideration and so define the bundle as a composite supply in every instance where the said assessment of relevant elements will display the existence of an economic bond among the different elements and acts. The possible occurrence of this situation has been certainly enhanced by Levob, as it has provided the possibility to recognize a

[83] *Ibidem*, paras. 39-50
[84] Henkow Oskar, *Defining the Tax Object in Composite Supplies cit.*, p. 197
[85] *BGŻ Leasing*, para. 36

composite supply where the economic relation is expressed in ways other than the simple ancillarity relation, so creating a new wider, open category of composite supplies.

## 3.3 Single Supplies from an Economic Point of View

### 3.3.1 Introduction: the Levob Case

The basic framework of rules developed by the Court with Card Protection Plan was then completed with the *Levob* case. The case concerned a supply of software customized by a US supplier to Levob, a Dutch insurance company. Such customization included the translation of the program in Dutch along several other modifications as well as the training of the purchaser's staff in the correct use of the same software. Fees were separately charged for these deliveries, as stipulated in the contract. Levob imported the standard software into The Netherlands and the supplier thereafter delivered the customisation services.[86] In the process of determining the place of taxation, the Dutch tax authorities considered that transaction as a single supply of services consisting of the provision of customized software, which was entirely taxable in the Netherlands. The insurance company, allowed to deduct only a small portion of the input tax payable on that service under the reverse charge mechanism, challenged that view by considering the transaction as involving a supply of goods.[87]

Seemingly to the *Card Protection Plan* judgment, the ECJ upheld that, based on art. 2(1) VAT Directive, every transaction should, as a base, be regarded as distinct and independent. However, when two or more elements or acts supplied by a taxable person to a typical consumer are so closely connected as to form a unitary transaction from an economic point of view which it would be artificial to split, all those elements or acts would constitute a single supply for VAT purposes. Reference was also made to the situation of principal-ancillary services.[88]

A step further was made by the Advocate General in his Opinion of 12 May 2005, where he considered that the absence of subordination of one supply to another did not preclude the existence of a single supply for VAT purposes. He noted that *"in the present case, neither of the two main supplies (the supply of the standard software and the customization thereof) is subsidiary to the other in such a way that it clearly represents an ancillary supply. However, it cannot be concluded on this basis that the two supplies cannot be regarded as a single comprehensive supply for value added the situation of principal-ancillary services, as described in Card Protection Plan, is only one of the cases of single supplies tax purposes. The principal/ancillary supply arrangement is only one scenario already recognized in case-law"*.[89] In the same *Card Protection Plan* judgment, in fact, the Court used the wording "*in particular"* for introducing the

[86] Levob, paras. 7-13
[87] *Ibidem,* paras. 14-15
[88] *Ibidem,* paras. 20-21
[89] ECJ, Case C-41/04, *Levob Verzekeringen BV, OV Bank NV v. Staatssecretaris van Financiën - Opinion of Advocate General Kokott Delivered on 12 May 2005* [2005] ECR I-9433, para. 68

concept of the principal-ancillary services, so clearly indicating that it constituted only one of the cases where a bundle of acts is to be considered a single supply for VAT purposes.[90]

In applying these principles to the facts of the case, the Court concluded that the related provision of standard software (a supply of goods, as it was supplied on a carrier medium) and its subsequent customization (a service) had to be considered for VAT purposes as a single supply of services, were the customization service, based on elements such its extent, cost or duration, was *"neither minor nor ancillary but, on the contrary, predominates"* and also *"of decisive importance in enabling the purchaser to use the customized software"*.[91] It was therefore not possible, without *"entering the realms of the artificial"* to deem the transactions in question as forming two distinct supplies, one of standard software and one of customisation.[92] The fact that separate prices were contractually stipulated for the supply of the basic software, on the one hand, and for its customisation, on the other, was again considered not decisive. Such a fact could not affect the said objective close link between the supply and the customisation nor the fact that they formed part of a single economic transaction.[93]

Levob is therefore fundamental in the case-law concerning composite supplies: the Court examined the circumstances of the case and deemed the customization a relevant component of the transaction due to its extent, cost and duration, as well as for allowing the customer to carry out the intended use of the software itself. A connection was therefore found between the service element (the said customization) and the good element (the provision of the software on carrier medium), so to exclude the existence of two separate autonomous supplies. However, no ancillarity relation was found either. Nevertheless, the Court, also by relying on the exact wording of Card Protection Plan, was capable to define the bundle of acts in question as a composite supplies by simply admitting the existence of a general category of composite supplies whose elements were economically integrated but with no dominance of one element over the other. The ancillarity relation was therefore deemed, *ex post*, as one of the several possible ways for this economic relation to be expressed (a so-called *genus-species* relationship). For the author of this contribution, the definition of this general category of composite supply once again proves the Court's intention to adapt its examination and judgment to the economic reality of transactions which are found concretely connected (even if no ancillarity relation arises). Furthermore, the open wording of the ECJ's founding *("only one scenario already recognized"*) also entails the possibility of the future jurisprudential definition of new kinds of specific economic relations among supplies, which would therefore be included in the broader category of the composite supplies through economic integration alongside the established ancillarity relation.

On the subject, Van Doesum et al. notice also that this new scenario of a single supply where no ancillarity relation is to be found would seem to imply the Court's acceptance of a double taxation situation: both the importation of the good (the software) and the service would be taxed in the country of importation, since

[90] *Card Protection Plan*, para. 30
[91] *Levob*, paras. 29-30
[92] *Ibidem*, para. 24
[93] *Ibidem*, para. 25

there is no so-called absorption of one supply (the principal one) over the other (the ancillary one) for VAT purposes. Both the taxable amount of the importation and the supply of the service contain the full value of the software. Therefore, for these authors, if the customer does not have a full right to deduct input VAT (as in the *Levob* case), the same software would be taxed twice.[94]

### 3.3.2 Evolution of the Case-law

Other relevant case, in *Swiss Re Germany*, German courts asked guidance to the ECJ in relation to the proper classification for VAT purposes of a transfer of a portfolio of 195 life reinsurance contracts, which were sold by Swiss Re Germany to a Swiss insurance company. The acquirer was here obliged to obtain the consent of the insured parties in order to accede to the contracts and to assume all rights and obligations arising from them. Furthermore, a negative value was fixed for the transfer of 18 of those 195 contracts, thus reducing the total cost of acquiring all of them.[95] The questions referred to the ECJ included whether the transfer of the portfolio was covered by a combination of the exemptions in art. 135(1)(c) and (d) VAT Directive.[96] On the point, the Court relied on its case-law when reaffirming that *"every supply of a service must normally be regarded as distinct and independent and that a supply which comprises a single service from an economic point of view should not be artificially split"*. Therefore the transactions in question, which overall consisted in the transfer for consideration of a portfolio of life reinsurance contracts, were deemed to constitute a single service which could not be artificially split into two services covered by the two said provisions respectively.[97]

Similarly, in *Graphic Procédé* a French undertaking would carry out reprographics activities involving the production, using its own materials, of copies of documents, files and maps at the request of the customer. Graphic Procédé's customers would retain title to the original documents they have asked to be reproduced. The undertaking considered the transactions it carried out to qualify as supplies of services, whilst the tax authority took the view that they were to be considered as supplies of goods, and therefore asked for guidance to the ECJ.[98]

The Court, after referencing the case-law on composite supplies, considered the need to ascertain *"whether, having regard to the essential features of the transaction at issue in the main proceedings, the reprographer makes to his customer, being a typical consumer, several distinct principal supplies or a single supply"*.

[94] Van Doesum Ad, Van Kesteren Herman, Van Norden Gert-Jan, *Fundamentals of EU VAT Law cit.*, p. 138
[95] ECJ, Case C-242/08, *Swiss Re Germany Holding GmbH v Finanzamt München für Körperschaften* [2009] ECR I-10099 [hereinafter Swiss Re Germany], paras. 11-14
[96] *Ibidem*, paras. 21-22
[97] *Ibidem*, paras. 51-52
[98] ECJ, Case C-88/09, *Graphic Procédé v Ministère du Budget, des Comptes Publics et de la Fonction Publique* [2010] ECR I-01049 [hereinafter Graphic Procédé], paras. 8-12

Specifically, it was found that the economic purpose of the reprographics activities consisted in the reproduction in varying numbers of copies of an original document provided by the customer, which however would also entail additional activities such as the selection and programming of the photocopiers, the compilation and binding of the documents and the sorting of the copies. It was clear for the Court that all the elements of the transaction were *"necessary for the reprographics activities and […] closely interlinked"*.[99]

A final confirmation of this new category of composite supplies was found by the ECJ in the *Deutsche Bank* case. Deutsche Bank provided to his investors, directly or through subsidiaries, portfolio management services. In accordance with predefined investment strategies chosen by the same investors, Deutsche Bank was instructed to manage securities at its own discretion as well as to take all measures which seemed appropriate for those purposes, comprising acquisition and disposal of the securities in the name and on behalf of the investors. The services consisted of a combination of activities of analysing and monitoring the assets of the client investors on the one hand, and the activity of actually purchasing and selling securities on the other. As a consideration for its services, Deutsche Bank would charge an annual fee of 1.8% of the value of the managed assets, which was actually composed of a fee for asset management amounting to 1.2% of the value of the assets under management and a fee of 0.6% of the value of the assets under management for buying and selling the same securities. The Bank reported its income as VAT exempt in its German VAT returns. The German authorities considered instead those services as taxable.[100] The ECJ was therefore asked to what extent the service was an exempt financial service but also whether the services offered by Deutsche Bank consisted of a single indivisible supply for VAT purposes or two separate supplies of advice and execution.[101]

The Court started citing the case law concerning the single supply composed by a principal service and an ancillary service, but also acknowledged that a single supply, for VAT purposes, was possible under other circumstances, such as where *"two or more elements or acts supplied by the taxable person to the customer, being a typical consumer, are so closely linked that they form, objectively, a single, indivisible economic supply, which it would be artificial to split"*. This was also deemed to be the situation of the two types of services provided by the bank in question: for the average client investor in the context of a portfolio management service such as that performed by Deutsche Bank -the Court reasoned- deciding on the best approach to the purchase, sale or retention of securities would have been pointless where that approach had not been put into effect; likewise, making (or not making) sales and purchases without expertise and without a prior analysis of the market would have been equally useless. Therefore the two elements, which admittedly could have been provided separately, were here considered not only inseparable, but must also *"on the same footing"*, as they were both indispensable in carrying out the service as a whole, with the result

[99] *Ibidem*, paras. 20-23
[100] ECJ, Case C-44/11, *Finanzamt Frankfurt am Main V-Höchst v Deutsche Bank AG* [2012] ECLI:EU:C2012:276 [hereinafter Deutsche Bank], paras. 9-14
[101] *Ibidem*, paras. 15-16

that it was not possible to regard one as the principal service and the other as the ancillary service. For these reasons those elements were considered so closely linked that they formed, objectively, a single economic supply, which it would have been artificial to split.[102]

Therefore, in all three case, regardless of the nature of the supplies (for instance, financial supplies in Deutsche Bank), the Curt employed its analysis method entailing the exact inclusion of all features of the transactions and their definition on the base of the customer's point of view: in all instances such a perspective led to establishing a connection among elements, not considered as an ancillary relation, and yet relevant enough to qualify several acts and elements as a single composite supply.

### 3.3.3 Composite Supplies with Different VAT Rates

A particular issue concerning composite supply can be considered the case where, on the base of the analysis of the so-called "Legal Context" of a dispute, the Court would ensure the possibility of different elements of the same composite supply to be taxed under different rates. Two cases from the ECJ can provide a guidance. The first one is *Talacre*, which concerned an undertaking selling fitted caravans. The caravan manufacturer's invoices to Talacre specifically separated the price of the caravan (no VAT charged) and the price of its contents (VAT charged at the standard rate). Talacre instead considered the sale of the caravan and its content as a single autonomous composite supply whose principal element, the caravan itself, would motivate the application of the 0 rate established for the sale of caravan under the Section 30 of the UK Value Added Tax Act. The VAT Directive in fact does not provide for zero-rating of caravans, but the UK was allowed to continue to apply the exemption with credit for caravans based on the stand-still clause in art. 110 VAT Directive. However, a note to the British provision in question (also part of the law) specified that the exemption did not apply to removable content (except when specifically provided for in the law). Then, in contrast to the argument of the undertaking, concerning the taxation of the supply of a fitted caravan, the British authorities applied the 0 rate only to the caravans, whilst the contents were submitted to the standard rate. The British Court of Appeal decided therefore to refer to the ECJ several questions, and among them, it asked whether a Member State would be allowed not to charge VAT at the standard rate on an item which actually was, under the national legislation derogating the VAT Directive, subject to VAT at the standard rate, but was also part of a supply composed of another item, in this case 0 rated.[103]

The Court started considering that the exemption provided in the UK VAT Act relied on art. 110 VAT Directive, which was deemed to be a derogation to art. 12(3), the one governing the standard rate of VAT. Such a derogation would operate only under specific conditions, acting (in the word of the Advocate

[102] *Ibidem*, paras. 19-28
[103] ECJ, Case C-251/05, *Talacre Beach Caravan Sales Ltd v Commissioners of Customs & Excise* [2006] ECR I-06269 [hereinafter Talacre], paras. 3-13

General) as *"a stand-still clause, intended to prevent social hardship likely to follow from the abolition of exemptions provided for by the national legislature but not included in the Sixth Directive"*. Therefore, being this one of the provisions of the Sixth Directive laying down exceptions to the general principle that VAT is to be levied on all goods or services supplied for consideration by a taxable person, it was to be interpreted strictly, so that no other elements could be included in the exemption list other than those covered by the UK legislation. Instead, if the contents of the caravan would have been zero-rated as a consequence of been integrated in a composite supply with a principal zero-rated element (the caravan itself), the effect would have been the opposite, namely, the extension of the scope of the zero-rate laid down for the supply of the caravans themselves and explicitly excluded for their contents. On this base the Court concluded that its jurisprudence on composite supplies did not *"preclude some elements of that supply from being taxed separately where only such taxation complies with the conditions imposed by Article 28(2)(a) of the Sixth Directive on the application of exemptions with refund of the tax paid"*. The ECJ was so acknowledging the fact that a single composite supply was, as a rule, subject to a single rate of VAT, but also held that the case-law did not preclude some elements of that supply from being taxed separately where only such taxation would comply with the conditions imposed by art. 110 VAT Directive on the application of exemptions. Such an assessment was also deemed consistent with said necessity of considering all circumstances of the supply, including the specific legal context of the UK VAT Act and its interaction with art. 110 VAT Directive.[104]

Therefore, in Talacre the Court provided the first instance of a composite supply liable at two rates: this unusual outcome was actually fostered by the aforementioned legal context of the case, included in the category of the circumstances of the supply. The VAT Directive provided Member States with the right to continue to apply previous exemptions, but at the same time in the context of a composite supply this could have brought, due to the interaction between principal and ancillary elements, to the an unjustifiable extension of a provision which, working as a an exception to a general rule, should have been always interpreted restrictively. On the basis of this legal context, by understanding the risk for the mechanism of the exemption provisions in the VAT system, the Court decided to take such a view of a composite supply liable at two rates. On the same point of the importance of the legal context, Henkow notices that in Talacre, if the particular legal context would have not been considered, the result would have probably been, instead of a single supply with two different rates applied, an artificial split of said supply. *"Only by conferring decisive importance to the specific legal circumstances"* -the author argues- *"can the Court come to the conclusion that there are several supplies"*.[105]

Furthermore, in *Commission v France* the specific legal context proved to be decisive not only in relation to derogations from the VAT Directive, but also concerning the application of reduced rates. The current formulation of the VAT Directive, in fact, ensures Member States some degrees of discretion on the matter

[104] *Ibidem*, paras. 17-27
[105] Henkow Oskar, *Defining the Tax Object in Composite Supplies cit.*, p. 198

of VAT rate, as under art. 98 they can apply one or two reduced rates to specific categories of supplies indicated in Annex III. Specifically, according to art. 98 VAT Directive and point 16 of Annex III, Member States could decide to treat under reduced rate *"the supply of services by undertakers and cremation services, and the supply of goods related thereto"*. On this base, the French *Bulletin Official des Impôts* provided that *"the transportation of the body, before and after it has been placed in the coffin, performed by approved service providers by means of vehicles specially equipped for that purpose is subject to the reduced rate. The same applies, where appropriate, to the transport of passengers in cars following the hearse or in cars of the clergy"* whilst *"all other operations which may be carried out by those service-providers in the context of the external services for funerals or other related activities are subject to the applicable rate, that is, in principle, the standard rate"*.[106]

However, in the case, the EU Commission, basing on the ECJ case-law, claimed that all supplies of services and goods by undertakers to the families of deceased persons constituted, for VAT purposes, a single composite supply to be subject to a single rate of tax.[107] The Court, on the point, started its assessment holding that *"there is nothing in the text of that provision [art. 98] which requires that it be interpreted as meaning that the reduced rate can be charged only if it is applied to all aspects of a category of supply covered by Annex [III] to that directive, so that a selective application of the reduced rate cannot be excluded provided that no risk of distortion of competition results"*. It also added that *"subject to compliance with the principle of fiscal neutrality inherent in the common system of VAT, Member States may apply a reduced rate of VAT to concrete and specific aspects of a category of supply covered by Annex [III] to the Sixth Directive"*. Therefore the ECJ denied the notion that the reduced rate could be charged only if applied to all aspects of a category of supply covered by Annex III, but it also provided two fundamental conditions for such "pick-and-choose" approach to the application of reduced rates: the respect of the principle of fiscal neutrality, and the application of said rate to concrete and specific aspects of the provided categories of supplies. Interestingly, the possibility granted to Member States of applying the reduced rate of VAT in such a selective way was not considered by the Court contrary to the mentioned restrictive interpretation of exemption provisions, as those two conditions were deemed to actually restrict its application. In the wording of the same Court *"those conditions seek to ensure that the Member States make us of that possibility only under conditions ensuring […] the prevention of any possible evasion, avoidance or abuse"*. Finally, the ECJ held that those criteria normally deemed relevant in the analysis of a bundle of elements, such as the expectations of a typical consumer, and intended to protect the functioning of the VAT system in the light of the diversity of commercial operations, could not be regarded as decisive for the purpose of the exercise by the Member States of the discretion left to them by Directive 2006/112 as regards the application of the reduced rate of VAT.[108]

[106] ECJ, Case C-94/09, *European Commission v French Republic* [2010] ECR I-04261 [Commission v France], paras. 2-8
[107] *Ibidem,* paras. 15-16
[108] *Ibidem,* paras. 25-34

Thus, here again the Court resorted to the evaluation of the legal context to determine the need to ensure the Member State's right, established in VAT Directive, to apply a reduced rate, whilst also providing that such a right would not imply an artificial split of a supply deemed to be considered as one. These elements resulted in the possibility for the State of applying different rates to different element of the same composite supply. However, the ECJ also tried to counter the possibility that in a context of ancillarity relation the principal element with a reduce rate would absorb the ancillary one and its standard rate, leading to an application of the reduced rate beyond the boundaries allowed to an exception rule: for this specific purpose the two fundamental conditions of the respect of the principle of fiscal neutrality, and the application of said rate to concrete and specific aspects of the provided categories of supplies were laid down. Finally, it is worth mentioning the Court's statement that the expectations of a typical consumer and the other features and circumstances normally used as a base for its decisions could not be decisive in cases such as those in question: for the author of this contribution this element could be connected with the very nature of EU VAT discipline, a legislation aiming to a gradual harmonization of the national provisions of the Member States, and therefore keen to fully ensure the effectivity of the derogations to the general discipline which are granted to Member States in its text.

Such a line of reasoning is also likely to be relevant in the near future, when the ECJ will perform its requested assessment and judgment on the *Stadion Amsterdam* case. This stadium is home to a renowned football club, AFC Ajax. In addition to operating the venue as a football stadium, the operators currently host guided tours of the stadium and its connected facilities. A single visitor ticket would include the cost of a guided tour of the venue and unguided entrance to the football club's in-house museum. In the Netherlands, entrance to museums is taxed at the reduced VAT rate (6%), while stadium tours are taxed at the standard VAT rate (21%). The parties to the dispute have already established that the operator is providing a single composite supply of a service; therefore, the current object of the dispute is whether this single service should be taxed at the reduced or the normal VAT rate. After two victories for the Dutch tax authorities before the Dutch Supreme Court[109], leading to a ruling pointing to the standard rate of taxation, the Supreme Court on 12 August 2016 has referred the case to the CJEU: the new question posed by the taxpayers concerns whether the consideration for such a single supply may be split, in order to apply two different VAT rates on a proportional basis.[110]

It is evident, for the author of this contribution, that the argument raised by the stadium operators is based on aforementioned ECJ judgments such as Talacre and European Commission v French Republic, where the Court has established that a composite supply could be taxed at several VAT rates where this approach would not diminish and even enhance the proper functioning of the VAT system.

[109] Hoge Raad, ECLI:NL:HR:2016:1866, available at: https://goo.gl/2DW8iK

[110] ECJ, Case C-463/16, *Request for a Preliminary Ruling from the Hoge Raad der Nederlanden (Netherlands) Lodged on 17 August 2016 - Stadion Amsterdam CV; other party: Staatssecretaris van Financiën* [2016] available at: https://goo.gl/bcMSqw

### 3.3.4 Conclusions

Overall, the scenario of a composite supply with no ancillarity would seem once again to confirm the reality-based approach applied by the ECJ. When a case-by-case economic assessment of the facts indicates the existence of a unique supply, such a unity has to be recognized even though no ancillarity relation arises. Despite its evident practical relevance, the ancillarity relation is now considered only one of the many "formats" expressing the economic close relation of acts and elements of a bundle of supplies. The direct consequence will be the possibility for national courts of devising the existence of a composite supply in a much large number of situations, as a new wider benchmark will apply, in the form of the said economic connection among elements.

Such a new category of composite supplies will normally imply a single tax rate, and yet the same reality-based approach which revealed its existence will also grant that in some cases, in order to pursue the practical purpose of the internal coherence of the EU VAT system, different rates will apply to different components of what will be nevertheless viewed as a unique composite supply.

# IV. Single Supplies of Services Versus Single Supplies of Goods

## 4.1. Introduction: The Faaborg Case

As already mentioned, the second step in the ECJ's approach to composite supply concerns having to determine whether a single composite supply is to be regarded as a supply of goods or a supply of services.

The problem has consistently been analysed in the *Faaborg* case, concerning restaurant activities performed on board ferries between Faaborg (Denmark) and (Geltingen) Germany. Asked to qualify the nature of these activities involving supplies of goods or services, the ECJ develop a method consisting in identifying the characteristic features of a transaction, by considering all the circumstances in which the transaction takes place, and then evaluating which character predominates.[111]

In the specific instance of *"prepared food and drink for immediate consumption"* the Court considered that the key feature of the supply was *"to enhance consumption on the spot in an appropriate setting"* and therefore deemed these transactions to be characterized *"by a cluster of features and acts, of which the provision of food is only one component and in which services largely predominate"*, as those services ranged *"from the cooking of the food to its physical service in a recipient, whilst at the same time an infrastructure is placed at the customer' s disposal, including a dining room with appurtenances (cloak rooms, etc.), furniture and crockery. People, whose occupation consists in carrying out restaurant transactions, will have to perform such tasks as laying the table, advising the customer and explaining the food and drink on the menu to him, serving at table and clearing the table after the food has been eaten"*. On this base the same Court stated that they had to be regarded as supplies of services within the meaning of art. 24 VAT Directive. The ECJ suggested also that if the transaction have regarded take-away food, a different treatment would have been necessary, as the service would not have been designed to *"enhance consumption on the spot in an appropriate setting"*[112] but instead to enable the customer to take the food with him and not to eat it at the place where it was provided.[113]

The author of this contribution believes that the natural conclusion of the last observation by the ECJ would be that take-away transactions, by showing an economic unity where the service element is not likely to have a predominant role, should be considered as single composite supplies of goods, with the relevant consequence of the application of the specific reduced rates normally provided in most legislation for food products.

[111] Faaborg, para. 12
[112] *Ibidem*, paras. 13-14
[113] Rendhal Pernilla, *Cross-Border Consumption Taxation cit.*, p. 137

## 4.2 Evolution of the Case-law

The same method of analysis of Faaborg was used in the aforementioned *Levob* case, as the ECJ upheld that was *"vital to identify the predominant elements of that supply"*.[114] To this purpose, the Court compared the purchase of the software and the customization required for its use by the purchaser, and also considered *"the extent, duration and cost of that customization"*. Thus the ECJ arrived to the conclusion that there was a single supply of services, due to the fact that the customization performance, far from being minor or ancillary, had a predominant role in the economy of the transaction, as only the customization was deemed to make the software useful for that purchaser and in reference to the specific purposes the purchase had been carried out for in the first place.[115]

A slightly different situation was instead considered in the *NN v Skatteverket* case. This case concerned a Swedish company involved in the installation of a fiber-optic cable from Sweden to another Member State across the bottom of the sea. The supplier purchased the required materials and hired personnel specialized in the installation of communication devices for this particular conditions.[116] Then, after the installation and after certain preliminary tests, the ownership of the cable was transferred to the purchaser.[117]

The Court, required to determine whether a single supply or several distinct supplies were involved, referred to the previous case-law, namely *Card Protection Plan* and *Levob*.[118] On that base the ECJ acknowledged that the contract between supplier and purchaser concerned the transfer of a cable *"in working conditions"*. All the elements of the transaction were therefore considered necessary to such completion and all closely linked, so forming a single composite supply for VAT purposes.[119] Moreover, since the laying of the cable required *"the implementation of complex technical procedures and the use of specialised equipment and specific knowledge, and appears not only inseparable from delivery of the goods in such a wide-ranging transaction but also vital to the later use and exploitation of those goods"* the Court held that the service of laying the cable was not to be considered as *"merely an element ancillary to its supply"*.[120]

Concerning the qualification of the single supply as a supply of goods or services, the ECJ referred to the contract, which clearly referred to *"a tangible object, namely a fibre-optic cable, which is bought and laid by the supplier and which, after functionality tests carried out by the supplier, is intended to be transferred to the client, who will dispose of it as owner"*. Furthermore, the fact that the cable was installed, for the Court did not in principle precluded its qualification as a supply of goods for two reasons: firstly, art. 17(2)(b) of the VAT Directive specifies that a tangible property could be installed or assembled, with or without a trial

[114] *Levob*, para. 27
[115] *Ibidem*, paras. 24; 28-29
[116] ECJ, Case C-111/05, *Aktiebolaget NN v Skatteverket* [2007] ECR I-2697 [hereinafter Aktiebolaget], para. 12
[117] *Ibidem*, para. 14
[118] *Ibidem*, paras. 22-23
[119] *Ibidem*, paras. 24-26
[120] *Ibidem*, para. 29

run, by or on behalf of the supplier, without the transaction necessarily losing its classification as "supply of goods": secondly, the Court noticed that in normal condition (no occurrence of storm, no difficult terrains, no need to extend the cable, etc.) the turnover which the supplier would have achieved from the transaction would have been mainly composed (80 to 85%) of the cost of the cable itself and the rest of the material. On the point, however, the ECJ acknowledged again that the cost of materials and work was not, of itself, a decisive factor. For this reason, finally, the Court considered the importance of the service elements of the supply: it found that the installation elements of the transaction, despite being both essential for the use of the cable itself and technically complex, did not have as their purpose or effect any adaption of the cable to the specific requirements of the client. Therefore, for all these reasons the Court could conclude acknowledging the transaction in question as a supply of a good.[121]

Pernilla Randhal notices how in cases like *Aktiebolaget*, concerning a supply where supplier and purchaser are both businesses (so-called B2B supply), the ECJ seems inclined to use the contract as a base for assessing the circumstances and features of the transaction, in order to arrive to the determination of the nature of the single supply.[122]

For the author of this contribution, the *Aktiebolaget* case provides also a relevant indication concerning cases of transactions with services connected to goods. In *Levob* those services had the fundamental purpose of adapting and customizing goods for their intended use, whilst in *Aktiebolaget* the service consisted in a mere installation of goods, with no purpose or effect to modify the nature of the good or adapt it to the specific needs of the customer. This difference seems to have determined the diverging outcome: in *Levob* the customization was considered to be the predominant part of the supply, whilst in *NN v Skatteverket* the installation was seen as a relevant but still not predominant element. The subtle difference between an installation and customization activity enlightens the relevance of correctly weighting all the element of the transaction, including costs and, above all, the customer's purpose, in order to correctly qualify the relevance and nature of the service (either installation or customization), and thus the nature of the same single supply.

This difference is even more relevant when considering the growing amount of electronic devices which are supplied with the inclusion of remote upgrading services for their software. If these upgrades should be recognized as pivotal elements for enabling the device to perform its purchase goal, a prominent role for the services could be established based on *Levob*. Otherwise, where the upgrades would have no significant influence on enabling the purchase use, the goods would remain the main elements of the same transaction basing on *Aktiebolaget*.[123]

Lastly, in the aforementioned Graphic Procédé[124], the ECJ, after establishing that the reprographics activities gave rise to a single, indivisible economic supply, assessed the nature of the supply as supply of goods or

[121] *Ibidem*, paras. 30-40
[122] Rendhal Pernilla, *Cross-Border Consumption Taxation cit.*, p. 142
[123] *Ibidem*
[124] See *supra*, pp. 34-35

services. The Court considered that in general the delivery by a reprographer of copies to the customer who ordered them would correspond to the transfer of the right to dispose as owner of those materials, specifically of those sheets of paper, on which the reproduction was carried out; materials which were at the disposal of the reprographer prior to their delivery to the customer. As for the customer, he was never deprived of his right to dispose of the intangible content of the copies created from the original provided by him, since the transaction concluded with the reprographer related exclusively to the materials allowing the delivery of the copies. Moreover, *"the price invoiced by the reprographer for the copies made is determined by taking account not of the intellectual value of the original, but of the technical features of the copies to be made and the number of copies ordered"*. This finally led the Court to define the transaction as supply of goods rather than a supply of services.[125] However, the same ECJ, in providing such a guidance to the national court, noted that all circumstances had to be taken into consideration in each situation, including *"the unique nature of the complex reprographics transactions"*. Specifically, the Court mentioned the case where a reprographer's activities may not be limited to the mere reproduction of an original, but may involve various additional services such as *"advice and adapting, modifying and altering the original according to the customer's wishes, for the purposes of producing copies which are to a greater or lesser extent different from the original document initially provided by that customer"*. It would not be unlike in this case for the service elements to be predominant in the supply, so redefining the transaction as a supply of a service instead than goods.[126]

## 4.3 Conclusions

The ECJ's approach in distinguishing composite supplies of goods and composite supplies of services, second step of the Court's method, encompasses an assessment of features and circumstances which -for the author- closely resembles the one to be operated in order to distinguish composite and multiple supplies. For instance, in Faaborg a very thorough examination of all elements of the restaurant activities was performed. In Levob the extent, duration and cost of that customization were all deemed relevant, whilst the pricing was again considered not *per se* determinant. In NN v Skatteverket both the contract provisions and the legal context were deemed relevant. In Graphic Procédé different possible outcomes were contemplated on the base of the different specific reprographics transactions.

It could be argued that such an approach aiming to differentiating composite supplies of goods and composite supplies of services does not directly reference, in the wording of the Court, the typical customer's perspective. Nevertheless, for the author, the customer's point of view is here hardly less relevant then in the definition of composite and multiple supplies. Firstly, it seems only logical to include such

[125] *Graphic Procédé*, paras. 29-30
[126] *Ibidem*, para. 31

element among the aforementioned features and circumstances to be assessed. Furthermore, when looking at the several judgments from the ECJ, the typical customer's perspective appears to be again the core of the analysis of the Court: in Faaborg, the dominance of the service elements in the restaurant activities was due to their purpose of *"enhancing consumption on the spot in an appropriate setting"* of a subject which could only be the typical customer; in Levob and Aktiebolaget the different outcome of situations with several similarities resulted from the fact that only in one case the provided services would modify the nature of the good or adapt it to the specific needs of the customer; in Graphic Procédé the retention by the customer of its rights on the intangible content of the copies was one of the main arguments in defining the composite supply as a composite supply of goods. Thus, all points towards a lasting relevance of the customer's point.

# V. Determination of the Place of Supply

As already mentioned[127], when the European Court of Justice deems a bundle of supplies to constitute a single transaction for VAT purposes, that composite supply has to be regarded autonomously as for its VAT treatment.

## 5.1 Principal Service Approach

Specifically, regarding the determination of the so-called "place of supply", for composite supplies of services this is generally the place established in the rules concerning the principal element (so-called Principal Service Approach). This approach has been constantly supported in cases such as *Faaborg*, *Levob* and *Deutsche Bank*. In *Faaborg* the Court, once established the existence of a single supply and the dominance of the service element, decided that the restaurant transactions should be deemed to take place where the supplier had established his business, on the base of the general rule on supply of services provided in art. 9(1) Sixth Directive, now art. 44 VAT Directive.[128] In *Levob* the same ECJ observed that the dominant service of the single supply, the supply of customized software, was taxable at the place where the customer was established, since this supply fell under Art. 9(2)(e) Sixth Directive, now art. 59(c) VAT Directive. This article referred, in its third indent, to *"services of […] engineers"* and the customization of computer was deemed likely to be carried out by engineers.[129] In *Deutsche Bank* the two categories of services (service of analysing and monitoring assets and services of actually purchasing and selling securities) were deemed to create a single supply with no principal and ancillary element[130], and therefore to fall under the scope of art. 56(1)(e) VAT Directive, stating that *"the place of supply of the following services to customers established outside the Community, or to taxable persons established in the Community but not in the same country as the supplier, shall be the place where the customer has established his business or has a fixed establishment for which the service is supplied, or, in the absence of such a place, the place where he has his permanent address or usually resides"*.[131]

[127] See *supra*, p. 11
[128] *Faaborg*, para. 19
[129] *Levob*, paras. 36-41
[130] See *supra*, pp. 35-36
[131] *Deutsche Bank*, paras. 47-55

## 5.2 Complex Service Approach

Nevertheless, a different approach has been taken in *Commission v. French Republic*. The case related to a German undertaking entrusted with the collection, sorting, transport and disposal of waste, which contracted French subcontractors in order to dispose of part of that waste. The German undertaking holding the main contract for the collection and disposal of waste invoiced its service customers, under art. 9(1) Sixth Directive, with the VAT of the Member State of their establishment in respect of the total amount of the price. It also paid the French VAT required by their French subcontractors. Then the German company claimed refunds of the VAT paid, but the French tax authorities did not grant such request. In fact they held that under art. 259 A 4° of the French "Code Général des Impôts", as interpreted by those authorities, the German main contractor itself was deemed to have carried out in France the whole of its supply of services relating to the waste, since the physical disposal of that waste, which constituted the main and decisive element of that supply and its price, had been carried out in France; consequently, in the view of those authorities, the Eighth Directive[132], establishing rights and conditions for the refund of VAT to taxable persons not established in the territory of a specific Member State country, could not apply: this directive in fact provides a taxable person with the right to a refund of VAT paid in another member State only if the person does not have a business or fixed establishment in that State and has not supplied goods or services there.[133]

The position of the French authorities was challenged by the European Commission. The Commission pointed out that this composite supply involved a set of different operations in succession, all of which alike were part of the waste disposal process; nevertheless, only some of them consisted of *"work on movable tangible property"* within the meaning of the fourth indent of art. 9(2)(c) Sixth Directive. When the waste disposal contractor had agreed to dispose of its customers' waste, the contract in question had applied to all those operations. For the Commission, the fact that the main contractor had then used the services of a subcontractor in another Member State in order to carry out one part of the process, consisting of the final disposal of the waste remaining after the various upstream operations, could not alter the rules governing the place where services, as defined in art. 9 Sixth Directive, were deemed to be supplied. In particular, the Commission argued that it was not possible to single out, as the French authorities did, one of the operations in the process, on the ground that that operation, the actual disposal of the waste taking place in France, was decisive from the point of view of the customer or even for achieving the objective of the composite supply.[134] Therefore, according to the Commission, the place of supply had in the case to be determined on

[132] Eighth Council Directive 79/1072/EEC of 6 December 1979 on the Harmonization of the Laws of the Member States Relating to Turnover Taxes - Arrangements for the Refund of Value Added Tax to Taxable Persons not Established in the Territory of the Country [1979] OJ L 331, art. 1-2

[133] ECJ, Case C-429/97, *Commission of the European Community v. French Republic* [2001] ECR I-537 [hereinafter Commission v. French Republic], paras. 9-11

[134] *Ibidem*, paras. 34-35

the base of the general rule provided in art. 9(1) Sixth Directive, which required taxation in the Member State of establishment of the taxable person (so-called Complex Service Approach); moreover, such rule was deemed fit to ensure the uniform taxation of the whole of the service rendered by the service provider to its customer. For the Commission, although the collection of French VAT was justified, the German undertaking bearing it should have been also entitled to obtain a refund of that VAT in France, in accordance with the Eighth Directive.[135]

On the point, the French authorities confirmed their view that the various activities of the German undertaking constituted a single waste disposal operation carried out only at the end of the treatment process in France, and that the contract concluded between the German undertaking and its French subcontractors did not alter the nature of the service provided.[136] The service supplied by the contractor to its customer was in fact invoiced to the latter on an aggregate and inclusive basis, so forming a whole which constituted a single and aggregate supply of a service of waste management. The French authorities also contended that, in accordance with the case-law, the characterization of such a supply of services should have been determined in the light of the purpose pursued by it, namely, in this case, the disposal or recovery of the waste produced by the customer, which constituted work on movable tangible property. Consequently, all the operations in question should have been characterized as *"supply of services relating to [...] work on movable tangible property"* within the meaning of the fourth indent of art. 9(2)(c) Sixth Directive, implying taxation at the place where the disposal was physically carried out. Therefore, for the French tax authorities, even if the French Republic did not systematically taxed the whole of the supply for which the main German contractor was responsible, the service which the latter rendered to his customer was deemed to have been performed in France, as the actual disposal of the waste was carried out there. That was finally intended as precluding the application of, at the very least, one of the conditions laid down in art. 1 of the Eighth Directive and, thus, the refund of VAT paid in France.[137]

Notably, the ECJ did not discuss which of the services supplied was the main service (and/or which were ancillary). Instead, the Court acknowledged that the parties disagreed on the element of the place of supply of a composite supply of services comprising various operations relating to waste, where the main contractor for that supply was established in Germany (where also some of those operations were carried out), whereas the actual disposal of the waste was carried out in France by subcontractors.[138] The Court reasoned that, having to characterize this composite supply for the purposes of VAT in connection to art. 9(1) or art. 9(2)(c) Sixth Directive, the choice had to be done so to ensure a *"rational and uniform taxation"*.[139] Having set this as a main goal, the ECJ observed that considering such a composite supply as covered by the fourth indent of art. 9(2)(c) would have created conflicts of jurisdiction between Member States and also resulted in

[135] *Ibidem*, para. 16
[136] *Ibidem*, para. 17
[137] *Ibidem*, paras. 36-39
[138] *Ibidem*, para. 32
[139] *Ibidem*, para. 40

uncertainty as to the rate of VAT at which the main contractor should have invoiced his customers whenever any of the operations comprising the composite supply would have taken place in a Member State other than that in which the main contractor was established. On the other hand, the general rule set forth in art. 9(1) was deemed by the Court as a definite, simple and practical criterion for the connection of this type of supply, capable to ensure the rational and uniform taxation of the composite supply taken as a whole and avoid conflicts of jurisdiction between Member States. The composite supply in question therefore was deemed to fall within the scope of art. 9(1) Sixth Directive, so ensuring the right for the German company to apply for a refund of the French input VAT.[140]

## 5.3 Conclusions

The last mentioned case demonstrates that, depending on the circumstances, composite supplies which must be treated as a single supply of services can be deemed to be provided at the place where the principal service is taxable (so-called "Principal Service Approach") or at the place where the service provider is established (so-called "Complex Service Approach").[141]

On the point, Liebman and Rousselle consider that the relevance of this scheme should be at least tempered by the consideration that the facts in Commission v. French Republic were *"highly specific and involved a very elaborate supply of services (much more complex than the supplies in Faaborg, Card Protection Plan and Levob)"*.[142] Therefore these authors deem questionable whether the ECJ will in future resort to applying the Complex Service Approach to supplies of a lesser level of complexity, since this use would also raise the question of how complex the supply should be in order to qualify.[143] In this respect, a relevant element of guidance is provided in Levob, where the ECJ did not apply the Complex Service Approach, even though the party involved claimed it should be used. In his opinion on the Levob case the Advocate General explicitly rejected the aforementioned approach referring to the very specific circumstances under which it had been applied in Commission v French Republic.[144] The aforementioned authors also point out the numerous gaps of this approach, such as the case where one of the elements of the single supply of services would be exempt from VAT, which could seem to suggest the use of the Principal Service Approach, yet combined with the Complex Service Approach as for the purpose of determining the place at which the single supply is deemed to be made.[145]

[140] *Ibidem*, paras. 46-50
[141] Liebman Howard, Rousselle Olivier, *VAT Treatment of Composite Supplies cit.*, p. 112
[142] *Ibidem*
[143] *Ibidem*
[144] ECJ, Case C-41/04, *Levob Verzekeringen BV, OV Bank NV v. Staatssecretaris van Financiën - Opinion of Advocate General cit.*, para. 92
[145] Liebman Howard, Rousselle Olivier, *VAT Treatment of Composite Supplies cit.*, p. 112

On the same line Oskar Henkow, which considers that the latest cases from the ECJ do not present any significative application of the Complex Service Approach. In RR Donnelley, for instance, the Court applied its usual composite supply doctrine. In Levob, which also essentially concerned where the acquisition of software was to be taxed, the Court -for said author- applied its doctrine *"seemingly without specifically considering the fact that the place of supply was at issue"*. Lastly, in Aktiebolaget, the Court considered the supply in question as a supply of goods without specifically addressing the fact that such a classification had an impact on the place of supply.[146]

Therefore the author of this contribution agrees with Liebman, Rousselle and Henkow on the point that in order to ensure and protect the internal coherence and clarity of EU VAT system, the safest option would still be determining the place of supply of a composite supply on the base of the Principal Service Approach, and therefore by direct reference to the rules applicable to the principal service, whilst resorting to the Complex Service Approach only when necessary for providing reasonable solutions in very complex cases.

[146] Henkow Oskar, *Defining the Tax Object in Composite Supplies cit.*, pp. 195-196

# VI. The Concepts of All Circumstances and Typical Consumer

## 6.1 The Circumstances of the Transaction

As already mentioned in several instances, the basic rule provided by the Court of Justice in Card Protection Plan entails that *"regard must first be had to all the circumstances in which that transaction takes place"* and *"the essential features of the transaction must be ascertained in order to determine whether the taxable person is supplying the customer, being a typical consumer, with several distinct principal services or with a single service"*. Therefore, in order to determine whether the taxable person is making several distinct principal supplies or a single supply, two fundamental elements have to be assessed: the customer's perspective and all circumstances of the case.

Concerning such circumstances, the Court never gives any single element decisive importance, favouring instead a case-by-case approach. On the point, Henkow considers that the wording of the ECJ could not mean literally "all circumstances". For the author *"whether or not the seller, when leasing out a car and selling insurance at the same time, is male or female, was sitting or not, was persuasive in promoting additional insurance and so forth are not of importance"*. It is therefore quite evident -and actually supported by the judgments of the Court- that *"all circumstances in which the transaction takes place"* refers to the supply from a pure business perspective.[147]

After having analysed the case-law of the ECJ, some final remarks can be attempted concerning said circumstance. First, the importance of whether one or several prices are agreed, or one or several contracts signed, has been discussed in a number of cases. It is clear from the case-law that whether one or several prices are stipulated is not in itself decisive, and yet if one price is stipulated and this reflects the interests of the parties, this supports the notion that one supply is present.[148] Likewise, if two contracts are stipulated, and two distinct prices agreed, this supports the conclusion that several supplies are made when it reflects the interests of the parties.[149]

Regarding the legal context, this element has proved to be decisive in cases of B2B supplies[150] and when the transactions concerned exclusions, deviations or derogations from the Directive where the Member States had some margin of discretion (for instance in relation to reduced rates, like in Commission v France[151]). On the point, Henkow considers that when a Member States has such a margin of discretion, the result is also

[147] Henkow Oskar, *Defining the Tax Object in Composite Supplies cit.*, p. 199
[148] See for instance: *Purple Parking*, para. 34
[149] See for instance: *BGŻ Leasing*, para. 45
[150] See *supra*, p. 43
[151] See *supra*, pp. 37-39

some flexibility in defining the tax object, as the definition of the tax object in these situations is heavily dependent on the legal context.[152] It is also worth noticing that the legal context could include, and therefore apply in the treatment of composite supplies, so-called "Inherent Principles" of the VAT Directive. For instance, in BGŻ Leasing the Court referred to the principle of neutrality in support of its finding that insurance should be seen as separately supplied from the leasing service.[153] However, neutrality was not accepted as an argument supporting the finding of a separate and exempt supply in Everything Everywhere[154], so that a more precise definition from the ECJ is evidently still needed.

The element of marketing has been considered relevant too.[155] Nevertheless, on the point the Court has remarked that the marketing of goods is always accompanied by a supply of services, such as the displaying of the products on shelves or the issuing of an invoice. For this reason, only services other than those which necessarily accompany the marketing of goods may be taken into account in assessing the part played by the supply of services within the whole of a supply also involving the supply of a product.[156]

Finally, the ECJ consistently referees to the contract.[157] The Court however does not rely on the letter of the contract, but rather considers what it refers as the *"economic reason"* for the conclusion of the contract[158], and similar expressions whose exact definition is however not provided by the Court. On the point, Oskar Henkow interprets quite convincingly this concept of "economic reason" as opposed to a "legal reason", that is, to a literal reading of the contract, so that this economic reason would instead entails a consideration of the intentions and purpose of the parties from an objective perspective.[159]

Regarding the typical customer's point of view, a quite specific feature of the EU system, it has to be considered that the Court has not been always totally consistent, as in some cases it has referred to facts related solely to the supplier. For instance, in Aktiebolaget the Court conferred decisive relevance to the costs of the supplier and to the legal context and interpretation of the contract, minimizing as a consequence the customer's perspective. However, the author of this contribution agrees with Pernilla Randhal when noticing that such a relevance for contract and legal context would seem to affect only cases, like Aktiebolaget, where supplier and purchaser were both businesses (so-called B2B supply).[160] This could imply a general rule, the customer's perspective, in line with the general focus of the EU law on the customer protection, whilst leaving space for exceptions for specific cases, where this would be necessary in order to ensure, once again, the internal coherence of the EU VAT system. This interpretation, for the author, would

[152] Henkow Oskar, *Defining the Tax Object in Composite Supplies cit.*, p. 200
[153] *BGŻ Leasing*, paras. 65-66
[154] *Everything Everywhere*, para. 31
[155] See for instance: *Purple Parking*, para. 36
[156] *Bog and Others*, para. 63
[157] See for instance: *Purple Parking*, para. 35
[158] See for instance: ECJ, Case C-392/11, *Field Fisher Waterhouse LLP v Commissioners for Her Majesty's Revenue and Customs* [2012] ECR I-0000 [hereinafter Field Fisher], paras. 14-19
[159] Henkow Oskar, *Defining the Tax Object in Composite Supplies cit.*, p. 201
[160] See *supra*, p. 43

also prevent, or at least reduce, the risk of a situation where both the customer and the supplier perspectives would be assessed, as such benchmarks could be (and for Henkow inherently are) in conflict.[161]

## 6.2 The Typical Consumer

Nevertheless, the question remains about who exactly should be considered as typical consumer, and how much the concept could vary according to the market. On the point, the Court has so far has provided very limited indications, not going further than the basing notion, expressed in Město Žamberk, that the intention of a typical consumer is not the same as the intention of some visitors.[162] The ambiguity of the concept is referenced by Paul Stacey and William Brown, which, quite suggestively, point out the difference between a *"Billinsgate Fishwife"* (a low-income middle-age woman employed in London's fish market) and a *"Sloan Renger"* (a wealthy young woman living in a prestigious neighbourhood of London). The same authors also wonder whether the typical consumer could coincide, to a certain extent, with the parameter of the *"reasonable person"*.[163]

For the author of this contribution, the reference in Card Protection Plan to the "essential features of the transaction", directly connected in the same sentence to the notion of "typical consumer", should provide a strong indication towards the necessity of assessing the characteristics of the typical consumer in relation to the specific transaction or category of transactions, rather than relying on a generic concept of consumer. Also on logical standpoint, the perspective of a specific class of consumers in reference to a specific supply of goods or services could prove far easier to be determined, compared to a generic consumer figure, potentially including in itself several contradictory perspectives toward the said supply. For instance, in the aforementioned Město Žamberk, relevance should not be given to a generic consumer concept, but to the specific consumer of the water-sport facilities, having needs and expectations, in relation to the supply, able to differentiate him in respect to the mass of consumers not attending such facilities. This interpretation would seem supported by the same Court, for instance in Deutsche Bank, where the mentioned conclusion of a unique composite supply with elements standing on an equal foot was specifically based on the argument that *"the average client investor, in the context of a portfolio management service such as that performed by Deutsche Bank in the main proceedings, seeks precisely a combination of those two elements"*.[164] Here the ECJ does not directly qualify the investor, for instance as a "professional investor"; yet, when it references the specific service sought in reference to the specific context, it seems to differentiate an investor requiring

[161] Henkow Oskar, *Defining the Tax Object in Composite Supplies cit.*, p. 199
[162] *Město Žamberk,* para. 35
[163] Stacey Paul, Brown William, *A Unifying Composite Supply Doctrine? An Australian View* in VAT Monitor, May/June 2003, pp. 183-184
[164] *Deutsche Bank*, para. 25

portfolio management services of the kind in question from the broader and general investors category, on the base of the specific necessities and expectations which motivated the purchase.

Of course, the author acknowledges that qualifying parameters as the needs and expectations of the consumer would once again constitute an economic benchmark, as such flexible and -at the same time- uncertain. Furthermore, the author of this contribution notices that even restricting such notion of consumer to the specific market or transaction would not always clarify every uncertainty. It could be the case, for instance, of a fast-food chain providing a single composite supply of food and/or beverage (covered by a reduced rate) plus a complimentary toy (subject to the standard rate). Based on the ECJ rules, and assuming an ancillarity relation, the supply would be taxed at the rate of the principal element, implying the necessity of assessing which supply would represent for the typical consumer an aim *per se*, and which would be just a tool for him to better enjoy the principal one. And yet, who would be here the typical consumer? Whose perspective should be taken into account? The one of children and teenagers, attracted by the complimentary toy and often directly targeted by the marketing and advertising of such products? Or the one of regular adults, allegedly more interested in the fast-food meal? It is evident, for the author, that more guidance from the Court of Justice is still needed.

# VII. Composite Supplies in Other Jurisdictions

A comparative overview will be provided here concerning the composite supplies treatment in Canada, Australia and New Zealand, all countries applying an equivalent of the VAT, namely the GST (Goods and Services Tax), as a form on indirect taxation.

## 7.1 The Canadian Discipline

The Canadian treatment of composite supplies is provided in the 1985 *Excise Tax Act* (ETA). In relation to so-called "Incidental Supplies", it is stated that when *"a particular property or service is supplied together with any other property or service for a single consideration, and it may reasonably be regarded that the provision of the other property or service is incidental to the provision of the particular property or service, the other property or service shall be deemed to form part of the particular property or service so supplied"*.[165] The concept of incident provision is indirectly clarified in relation to so-called "Combined Supplies", where it is stated that *"[…] where a supply of any combination of service, personal property or real property […] is made and the consideration for each element is not separately identified, where the value of a particular element can reasonably be regarded as exceeding the value of each of the other elements, the supply of all of the elements shall be deemed to be a supply only of the particular element"*. Otherwise, the supply of all of the elements shall be deemed a supply only of real property, if one of the elements is a real property, or a supply of a service in any other case.[166] Finally, a specific rule is provided concerning financial services: supplies which have financial services as a component are not to be split but treated as financial services as a whole.[167]

These definitions have been used and further clarified by the Canadian courts in several occasions. For instance, in the *Hidden Valley* case, supplies of residential lots, leased to leaseholders and deemed to be GST exempted, were argued by the same leaseholders to be partly taxable since they also had the right to use other facilities such as a golf course, club house and tennis court with no additional fee.[168] On the point, the Canadian Federal Court of Appeal considered that the base of the transaction was a long term residential lease and therefore it could not be considered as a supply of both lots and access to those facilities, but only as an exempt supply of lots.[169] The motivation -according to the Court- was to be found in the impossibility

[165] *Canadian Excise Tax Act*, 1985, part IX, section 138
[166] *Ibidem,* part IX, subsection 168(8)(a)
[167] *Ibidem*, part IX, section 139
[168] FCA, *Hidden Valley Golf Resort Assn. v. R.* [2000] G.S.T.C. 42 [hereinafter Hidden Valley], paras. 7-9
[169] *Ibidem*, para. 20

to separate the supplies of access to said recreational facilities from the overall lease of the land lots: when acquired separately, the consumer would have not ended up with a service of the same utility. Thus, the supply was to be considered as a compound supply not to be split for tax purposes.[170] Relevant was also considered the fact that just one payment has been provided, in the form of the rent.[171] For all these reasons the Court upheld the identification of the supply in question as a supply of lots, to be taxed accordingly, with no direct relevance attributed to the other elements of the supply.

A similar outcome was provided in the *Camp Mini-Yo-We* case, concerning a summer camp for children and teenagers held in Ontario, whose staff provided services of recreational, sportive and religious nature. The related fee covered the entire program, and the cost of the sporting and recreation activities amounted to only 5% or 10% of the total cost. The Canadian Court was asked, among other elements, about the application to the case of the ETA discipline concerning incidental supplies.[172] On the point, the Court answered that said discipline would only apply to multiple supplies, namely, supply which consisted of several autonomous supplies; different would be the case of compound supplies entailing several components but still considered single supplies, and therefore taxed as a unit and in accordance with the tax treatment of the predominant part. The latter was exactly the case of the services provided by the Mini-Yo-We, as the Court deemed them to be closely integrated, with a predominant GST taxed recreational service alongside religious services and others.[173]

In both *Hidden Valley* and *Camp Mini-Yo-We* the Canadian courts developed a similar reasoning: bundled supplies comprised of several elements (both incidental and predominant supplies) should be treated and taxed as a single supply.

Another relevant development for the Canadian jurisprudence on composite supplies was provided in the *Great Canadian* case. It concerned an elk hunting ranch providing services on which no GST had been charged to the customers, as such supplies had been considered zero-rated single supplies.[174] After a thorough analysis, the Tax Court of Canada considered the existence of two distinct supplies, namely, guided hunting excursions and supplies of trophies.[175]

An interesting element of the case is in that the same Court was faced with the need of determining whose standpoint, between the supplier and the consumer, would determine the nature of the supply.[176] The Court observed that, being both subjects parties of the contract, neither party's perspective could be disregarded. On this base, the supply of elk was deemed to be treated as an autonomous zero-rated supply and separated from the excursion package under subsection 163(2) of the ETA, which stated that non-taxable portions of a

[170] *Ibidem*, para. 17
[171] *Ibidem*, para. 13
[172] TCC, *Camp Mini-Yo-We Inc. v. R.* [2006] G.S.T.C. 154 [hereinafter Camp Mini-Yo-We], paras. 6-11
[173] *Ibidem*, paras. 28-29
[174] TCC, *Great Canadian Trophy Hunts Inc. v. R.* [2005] TCC 612 [hereinafter Great Canadian], paras. 1-2
[175] *Ibidem*, para. 25
[176] *Ibidem*, para. 29

tour package were to be excluded from the supply of tour packages.[177] Nevertheless the Court in this instance specified that such provision would not alter the treatment of Incidental Supplies (provided in section 138 of the ETA), as the distinction between multiple and combined supplied should be always the first step in the analysis of the supply. In addition, the Court held that the subsection 163 of the ETA *"looks to "services" and "property" that comprise a "tour package" and separates services and property (not supplies) into distinct supplies. Further, it does not matter which of the services or property is the principal supply. Indeed, not only is the non-taxable portion of a tour package deemed to be a separate supply (whether or not that portion is the principal aspect of the supply), but the taxable portion of a tour package is deemed in subsection 163(2.1) to be a separate supply (whether or not that portion is the principal aspect of the supply)"*.[178]

This way, by means of subsection 163, the Canadian Court in *Great Canadian* ensured the possibility to tax parts of a supply separately, on the base of the different criteria explained in the previous case-law such as the intention of the parties, the characteristics of the consideration, and all other available circumstances.

This discipline on composite supply developed by the Canadian jurisprudence was promptly supported and strengthened by the *Canada Revenue Agency*, which in its Policy Statement on the differentiation between single and multiple supplies provided the following principles[179]:

- Every supply should be regarded as distinct and independent;
- A single supply from an economic point of view should not be artificially split
- A single supply is a supply consisting of one or more elements and any other elements serve as enhancing the supply.

These criteria were backed by a set of guidelines concerning their application, where it is stated that *"multiple supplies occur when one or more of the elements can sensibly or realistically be broken out; [c]onversely, two or more elements are part of a single supply when the elements are integral components; the elements are inextricably bound up with each other; the elements are so intertwined and interdependent that they must be supplied together; or one element of the transaction is so dominated by another element that the first element has lost any identity for fiscal purposes"*.[180] On the last point, the guidelines specifically distinguish, in the analysis of the various elements of a package of property and/or services,

[177] *Ibidem*, para. 32
[178] *Ibidem*, para. 36
[179] CRA, *GST/HST Policy Statement, P-077R2 Single and Multiple Supplies*, 26 April 2004, available at: https://goo.gl/YuLYAt, Decision
[180] *Ibidem*, General Comments

*"between elements that are actually supplied to the recipient and those that are simply inputs consumed or used in making a supply"*.[181]

The document also recognizes that, due to the *"variety of situations in both traditional and electronic commerce"* a case-by-case approach will frequently be necessary. Nevertheless, specific elements can be assessed in order to perform such analysis, namely: the agreement, but also the *"intent of the parties, the circumstances surrounding the transaction, and the supplier's usual business practices"*. Should a contrast arise between the agreement and these other criteria, a "reality approach" is advocated, as the document suggests that *"it may be appropriate in some cases to discount the terms of an agreement if they do not reflect the reality of the transaction"*. As for the element of the price, it is deemed a relevant but not decisive feature of the transaction, to be considered in coordination with all the other said features both in the case when only a single price is provided and in the case when separate considerations are paid.[182]

The Revenue Agency's Policy Statement finally indicates the step-by-step method to correctly apply these criteria to the specific case: it is firstly required to determine whether the transaction consists of a single supply or multiple supplies. Several indicators of for multiple suppies are provided, such as: a single consideration, the presence of two or more suppliers, the presence of two or more recipients, the recipient's awareness of all the specific elements of the supply, the recipient's option to acquire the elements separately or to substitute elements, and finally the specific supply the supplier provides for the consideration (since *"if any one element could be viewed as satisfying the recipient's needs on its own, then the provision of that element could be viewed as a supply distinct from any other supplies or elements"*).[183]

If the outcome of the analysis is *prima facie* the existence of multiple supplies, it is then necessary to determine whether one of the supplies is incidental to another so to actually form a single supply pursuant to section 138 of the ETA, which deems a supply to form part of another supply provided that they are supplied together for a single consideration. Moreover, according to the Statement, *"to be considered incidental, a supply generally plays only a minor or subordinate role in relation to the provision of another supply"*.[184]

Lastly, after the identification of a supply as a single/multiple supply, the nature of that supply will be determined, and so also the due GST treatment.[185]

The same Tax Court was eager to recognize these criteria: in the *Manship Holdings* case, for instance, it had to determine whether supplies of massages and related premises could be performed independently. By following the criteria set up by the Revenue Agency, the Court found that those supplies could not be provided in that independent way, and therefore were to be deemed as constituting a compound supply.[186]

[181] *Ibidem,* Input, Part of a Supply, or a Supply
[182] *Ibidem*, General Comments
[183] *Ibidem*, Questions
[184] *Ibidem*, Incidental Supplies
[185] *Ibidem*, Nature and Tax Status of Supplies
[186] TTC, *Manship Holding Ltd. V. R.* [2009] TCC 75 [hereinafter Manship Holding], para. 34

Summing up, the Canadian discipline on composite supply has been built through several judgments of the Canadian courts and finally harmonized in a coherent and comprehensive Policy Statement by the Canada Revenue Agency. Such a discipline shows several remarkable similarities with the EU discipline set up by the ECJ: the starting point is considered the independent treatment of every supply, and yet a unitary treatment of several elements can be required when they are closely connected. This distinction has to be developed through a step-by-step analysis, as in the ECJ system. Among other cases, the Canadian discipline considers the instance where some of the elements supplied to the recipient are actually simply inputs consumed or used in making the supply, a distinction which closely mirrors the one between ancillary and principal elements in the EU system. Finally, both systems provide the interpreter with a wide and open array of features in order to exactly comprehend the relation among the several components of the supply, and both systems specifically declare the feature of a single or multiple price as not determinant for this assessment.

On the other hand, one of the most relevant differences is in the relevance of the consumer's view as key for understanding the purpose of the supply: the Canadian system does include it, but it also includes the supplier's stand point, whilst the ECJ have so far privileged the standpoint of the consumer.[187] The reason, for Stacey and Brown, can be easily found in the unstated but still clear priority of the ECJ for the consumer protection[188], which for the author of this contribution is also a distinctive feature of EU legal system as a whole. On a more formal ground, it is worth noticing that the term "single supply" within the EU system does not normally cover the case where elements of the same supply are incidental/ancillary to others, since they are normally referred as combined/composite supplies.

## 7.2 The Australian Discipline

As for the Australian discipline on composite supplies, the *Goods and Services Tax Ruling 2001/8* defines a mixed supply as *"a supply containing separately identifiable parts where one or more of the parts is taxable and one or more of the parts is non-taxable. None of these parts is integral, ancillary or incidental in relation to the whole supply"*. A composite supply, on the other hand, is defined as *"a supply of one dominant part that has other parts that are not treated as having a separate identity as they are integral, ancillary or incidental to the dominant part of the supply"*[189], so that the latter element *"is insignificant in*

[187] See for instance: ECJ, Case C-349/96, *Card Protection Plan Limited v. Commissioners of Customs and Excise - Opinion of Advocate General Fennelly delivered on 11 June 1998* [1999] STC 270 All ER (EC) 339, para. 44
[188] Stacey Paul, Brown William, *A Unifying Composite Supply Doctrine? cit.*, p. 183
[189] ATO, *GST Ruling GSTR 2001/8, Goods and Services Tax: Apportioning the Consideration for a Supply that Includes Taxable and Taxable Parts*, 15 October 2003, para. 43

*value or function, or merely contributes to or complements the use or enjoyment of the dominant part of the supply"*.[190]

The same document references *"overseas courts"* which, regardless of the different terminology, *"have considered a supply as being mixed where its parts are separately recognisable or have an aim in themselves [and] as composite where it contains, or appears to contain, several parts that may objectively be treated as if they are simply a supply of a single thing"*.[191] It also agrees with the line of reasoning emerged in those cases concerning the broad approach to the evaluation of the supply, which therefore has to rely on all useful circumstances of the transaction in order to distinguish mixed and composite supplies (so-called *"commonsense approach"*).[192]

Among others, a first direct reference is made to the *Card Protection Plan* case.[193] Equally relevant is deemed *British Airways*[194], a British case concerning the provision of in-flight meals, which were found incidental to the passenger transport, since the customers were deemed to have purchased an air ticket concerning a transportation service, and not an on-board catering of meals.[195] This outcome has to be integrated with another referenced British case, namely *Sea Containers*[196]: here the supply of gourmet meals by a rail company was considered a vital part of the supply, a mixed supply of food and transport, due to the fact that the catering service had been heavily advertised.[197]

As for the Australian jurisprudence, a good instance is provided by the *Re Food Supplier* case, where the *Administrative Appeals Tribunal of Australia* had to address the issue of composite and mixed supplies in reference to food products provided together with promotional non-food items such as clocks, radios or cricket balls.[198] The Tribunal decided that the supply of non-food promotion items should not be considered as part of a composite supply, but as part of a mixed supply, due to the fact that those items were *"mostly unconnected with food"*. The direct consequence was that food and non-food items would be treated and taxed independently.[199]

Overall, the Australian treatment of composite supplies displays several similarity with the EU and Canadian systems: once again a distinction has to be made between bundles of supplies requiring a differentiated treatment for each element (mixed supplies), and bundles requiring a unitary approach based on a dominant-ancillary relation between elements (composite supplies). The EU/UK case-law is directly referenced in the *Goods and Services Tax Ruling 2001/8*, which on this base requires the distinction between mixed and

[190] *Ibidem,* para. 59
[191] *Ibidem,* para. 40
[192] *Ibidem,* para. 41
[193] *Ibidem*
[194] *British Airways plc v. Customs and Excise Commissioners* [1990] 5 BVC 97 [hereinafter British Airways]
[195] ATO, *GST Ruling GSTR 2001/8, Goods and Services Tax cit.,* para. 48
[196] *Sea Containers Ltd v. Customs and Excise Commissioners* [2000] BVC 60 [hereinafter Sea Containers]
[197] ATO, *GST Ruling GSTR 2001/8, Goods and Services Tax cit.,* paras. 46-47
[198] *Re Food Supplier and Federal Commissioner of Taxation* [2007] 66 ATR 938 [hereinafter Re Food Supplier], para. 1
[199] *Ibidem*, para. 5

composite supplies to be based on all useful circumstances of the transaction, through a case-by-case approach.

On the other hand, the Australian system (seemingly to the Canadian one) does not focus specifically on the element of the consumer's perspective as in the ECJ discipline, and adds instead the original element of the advertisement depiction, confirmed by the Australian Administrative Appeals Tribunal in *Re Food Supplier*, where reference is made to explanatory materials.[200] As for the mentioned connection with the activity of *"overseas courts"*, Pernilla Randhal considers the interesting implication of future case-law from the ECJ possibly influencing the interpretation of Australian GST discipline on composite supplies: such an influence could indeed weaken as the Australian jurisprudence on the subject grows, and yet for the author *"principles may still be found to survive even in a longer perspective"*.[201]

## 7.3 The New Zealander Discipline

Lastly, another legislation which has recently dealt with the issue of composite supplies is the New Zealand's. In 2017 the New Zealand *Inland Revenue* has released an *Interpretation Statement* which sets out a step-by-step analysis process (completed with several examples[202]) for determining whether a supply should be regarded as a single or multiple supply.

According to the document, *"a registered person who enters into a contract with a recipient to supply several goods and services needs to determine what sort of supply or supplies they have made so they can correctly account for GST. Where multiple elements are supplied with potentially different GST treatments, the supplier must determine whether they have made a single composite supply (of all the elements) with a single GST treatment, or multiple separate supplies (of each element or a combination of elements) with different GST treatments"*. In some cases the contract could clarify that only a single element is supplied, or a specific rule from the 1985 *Goods and Services Tax Act*[203] could apply. Where that is not the case, the arrangement must be carefully considered on the base of several elements, structured as questions, namely: the true and substantial nature of what is supplied to the recipient for its payment; the relationships between the elements supplied; the opportunity to sever the elements into separate supplies.[204]

Regarding the *"true and substantial nature"* of the supply, no determinant relevance is attributed to the fact that *"elements supplied to the recipient could have been supplied separately"* or that *"a single price is*

[200] Re Food Supplier, para. 5
[201] Rendhal Pernilla, *Cross-Border Consumption Taxation cit.*, p. 151
[202] IR, *Goods and Services Tax - Single Supply or Multiple Supplies*, Interpretation Statement IS 17/03, 2017, paras. 70-109
[203] *Goods and Services Tax Act*, 1985 No 141, 3 December 1985, available at: https://goo.gl/2tyJm0
[204] *Ibidem*, paras. 1-4

*charged to the recipient"*. The same applies for the way the supply is invoiced or charged to the recipient. Moreover, the said determination has to be based on *"the recipient's perspective"*.[205]

Concerning the relationships between the different supplied elements, a case-by-case analysis should consider *"whether one element is merely ancillary or incidental to, or a necessary or integral part of, any other element of the transaction"*. The document provides also an open list of cases where the element of a supply can be deemed ancillary or incidental to, or a necessary or integral part of, a dominant element: this concern the cases where the element *"is not an aim in itself [but] instead, the element facilitates, contributes to, or enables the supply of the dominant element"* or the element is *"a means of better enjoying the dominant element"* or *"an optional extra and is not in any real or substantial sense part of the consideration for which a payment is made"*.[206]

In relation to the existence of a sufficient distinction between the different elements of a transaction so to make it reasonable to sever them into separate supplies, the statement require to determine *"the essential purpose of the transaction"*, in order to avoid an artificial split of what, from an economic point of view, is a single supply.[207]

Finally, the document details the consequences of the assessment: *"if there is one composite supply, the zero-rating provisions may apply to zero-rate part or all of the supply […] If there is no dominant element […], the GST treatment will be determined by the overall characteristics of the single composite supply"*. On the other hand *"if there are multiple supplies, the relevant provisions of the Act are applied to each supply"*.[208]

On balance, New Zealand's regulation has developed a rather comprehensive and detailed discipline on composite supplies. Once again it is recognized the necessity of determining whether a bundle of several goods and services requires a unified GST-treatment (being a single composite supply) or a differentiated treatment (as multiple autonomous supplies). In order to perform this distinction, the required step-by-step approach looks at the *"true and substantial nature"* of the supply, based on *"the recipient's perspective"*, to *"the essential purpose of the transaction"* and to the relationship among elements. As for the latter point, the Statement includes ancillary or incidental elements, but also elements *"necessary or integral part of, any other element of the transaction"*, concept that -for the author of this contribution- mirrors the ECJ position concerning composite supplies where an economic unity is achieved without any relation of dominance-ancillarity among the different elements of the supply. For all these reasons this regulation would seem to constitute the one, among those analysed in this contribution, which shows the highest number of similarities with the ECJ discipline (whose *Card Protection Plan* judgment is also directly referenced[209]).

[205] *Ibidem*, paras. 5-6
[206] *Ibidem*, para. 7
[207] *Ibidem*, para. 8
[208] *Ibidem*, paras. 9-10
[209] *Ibidem*, para. 35

## 7.4 Conclusions

From the analysis of these three different jurisdictions it is possible to develop a rather useful comparison with the European discipline on composite supplies, so to test it against said external models.

It can be observed that two of these legal systems (Australia and New Zealand) directly reference in their legal or jurisprudential discipline the EU regime. Moreover, all three systems guide the interpreter in defining whether a bundle of several goods and services requires a unified GST-treatment (being a single composite supply) or a differentiated treatment (as multiple autonomous supplies), by resorting to a step-by-step approach which includes an economic assessment of the relevant elements of the transaction. The concept of the ancillarity relation is (even with different denominations) referenced, and the New Zealander regime, the closest to the European one, seemingly includes the possibility of a composite supply formed by the economic relation of elements on the same foot where no ancillarity is to be found.

However, the latter is also the only system employing the consumer's perspective as a fundamental benchmark of analysis, whilst Canada and Australia resort to considering the point of view of both the customer and the supplier equally (with the additional original feature of the advertisement depiction in the Canadian case).

Overall, the author of this contribution considers that all the three referenced systems have either developed autonomously their treatment of composite supplies in a way that closely resembles the ECJ discipline, or taken inspiration from such a discipline in developing their own regimes (or, indeed, applied in different degrees both approaches). None of these systems seems to have acritically adopted the EU view on the subject, as proved by the different approach to the consumer's perspective and other minor differences. Therefore, the resulting close relation among the four systems would prove -for the author- that EU discipline, even if far from perfect, still provides the best method so far developed for treating composite supplies: it quite successfully addresses the practical complexity of composite supplies, by providing a flexible economic approach of assessment, whilst also granting a minimum degree of legal certainty in that same treatment. As these needs are also common to other jurisdictions, it comes as no surprise that such jurisdictions would have autonomously developed a similar discipline and/or adopted the EU regime concerning composite supplies.

# VIII. Final Remarks

In modern, complex economies it is not unusual for an economic operator to supply a consumer in the market with a bundle of more than one good or service. Almost every supply is *per se* a compound of different elements, and yet where the complexity of the bundle and/or the relevance of the different elements is deemed particularly significant, a legal system will try to define whether to treat such a compound as a unique complex element (a "composite supply") or ensure instead an autonomous consideration to every element.

Regarding the field of VAT, the most recent EU discipline, expressed in the 2007 VAT Directive, does not specifically address the subject. Nevertheless, on its basis, the European Court of Justice has been able to develop an organic set of jurisprudential rules. This mechanism is comprised of two fundamental steps, requiring to firstly differentiate composite and multiple supplies, and then define the formers as composite supply of goods or services. Case-law such as Card Protection Plan and Levob have expressed the fundamental rule of an autonomous treatment of a supply in every case but the one where such a supply presents a composite unique character from an economic point of view. This character will normally appear in the form of a relation between goods and/or services where one element -the ancillary element- does not represent an aim in itself for the customer, but just a tool for improving the enjoyment of another one -the principal element-, whose tax rate will then be applied to the whole composite supply. Nevertheless, this has been clarified as just one of several forms which such an economy unity could take, and therefore the Court has fully embraced the possibility of composite supplies where the internal elements are economically related but with no principal-ancillary relation among them. In the latter case a single rate would be normally applied, but later judgments such as Talacre and Commission v France have implied the possible application of more than just one tax rate (zero or reduce rates for instance) in order to ensure the internal coherence of the EU VAT system and the application of neutrality principle.

When considering the tools through which such an assessment should be operated (so-called circumstances), the Court has so far deemed relevant the contract (interpreted on the base of its underlying economic reason), the price, the legal context, the marketing and sometimes the supplier's perspective. There are some established patterns in the use of these tools: when a case deal with B2B services and derogations from the VAT Directive, the Court tend to look specifically at the legal context; in cases concerning the classification of goods and services, the costs for the supplier can be regarded as relevant circumstances. Nevertheless, in general the Court regards all circumstances as equally important, so that the final outcome -and the preponderant element- will depend on the specific evaluation of the case, which will be assessed autonomously and then require an in-depth analysis of all relevant facts.

Also the typical customer, the fundamental paradigm through which those elements should be read, remains currently a quite vague concept, even if the use from the Court seems at least to restrict its application to the specific market of reference.

As for the distinction between composite supplies of goods or services, a quite similar assessment is required, in order to determine again its predominant character. Even if not specified, particular relevance seems to be recognized to the customer's point of view, coherently with the focus on the customer protection proper of the entire EU legal system.

The Court has also addressed the issue of determining the place of supply of such transactions, so developing a reliance on the rules applicable to the principal service (Principle Service Approach). Some uncertainty has been created with the Commission v French Republic case, presenting a new Complex Service Approach based on taxation at the place of establishment of the service provider. However, both doctrine and the Court have been sharing a conservative attitude on the subject, restraining from using the latter principle and containing its relevance -at best- to more complex cases, so to favour the Principle Service Approach and protect once again the internal coherence of the EU VAT system.

On balance, the author of this contribution believes that the European Court of Justice has been capable, through its long series of judgments, of providing a first comprehensive and consistent discipline on the definition and treatment, for VAT purposes, of composite supplies. This discipline still presents relevant space from improvement, such as a more precise definition of the circumstances of the assessment and their usage and hierarchy, a clearer depiction of the so-called typical consumer and a definitive rule concerning the place of supply of the transaction. Furthermore, such a method distinguishes composite and multiple supplies on the base of an economic assessment, which (as said) requires a case-by-case approach with an in-depth investigation of all the aforementioned elements of the transaction. Indeed, this case-focused approach makes sometimes more difficult for the interpret to define common features and patterns beyond the basic set provided in judgments such as Card Protection Plan and Levob. Nevertheless, the nature of this method is justified not only by its jurisprudential origin, but above all by the mentioned complexity of modern transactions, which makes necessary a reality-based analysis of the "bundle of elements and acts" to justify any meaningful differentiation in treatment, whilst also ensuring a result coherent with the overall internal logic of the EU VAT system.

Nevertheless, despite such shortcomings, and despite the little guidance from the VAT Directive, the Court has managed to build a successful basic method and framework of rules. The positive outcome of this framework is proved by the resilience of its main concepts throughout the judgments, and also by the number of non-EU legal systems (e.g. Australia, New Zealand, Canada) which have -directly or indirectly- referenced the case-law of the Court in developing their own legislative or jurisprudential set of rules on composite supplies.

In the near future, the European Court of Justice will likely continue to better define and improve this framework of rules (for instance in Stadion Amsterdam), which could also finally result in their formal implementation in the EU VAT Directive or any other legal act of the European Union.

# IX. Bibliography

## 9.1 Primary Sources

### 9.1.1 Case-law

*British Airways plc v. Customs and Excise Commissioners* [1990] 5 BVC 97

ECJ, Case C-231/94, *Faaborg-Gelting Linien A/S v. Finanzamt Flensburg* [1996] ECR I-2395

ECJ, Joined Cases C-308/96 & C-94/97, *Commissioners of Customs and Excise V T.P. Madgett, R.M. and the Howden Court Hotel* [1998] ECR I-6229

ECJ, Case C-349/96, *Card Protection Plan Limited v. Commissioners of Customs and Excise* [1999] STC 270 All ER (EC) 339

ECJ, Case C-349/96, *Card Protection Plan Limited v. Commissioners of Customs and Excise - Opinion of Advocate General Fennelly delivered on 11 June 1998* [1999] STC 270 All ER (EC) 339

FCA, *Hidden Valley Golf Resort Assn. v. R.* [2000] G.S.T.C. 42

*Sea Containers Ltd v. Customs and Excise Commissioners* [2000] BVC 60

ECJ, Case C-34/99, *Commissioners of Customs & Excise v. Primback LTD* [2001] ECR I-3833

ECJ, Case C-380/99, *Bertelsmann AG v Finanzamt Wiedenbrück* [2001] EU:C:2001:372

ECJ, Joined Cases C-322/99 and C-323/99, *Finanzamt Burgdorf v Hans-Georg Fischer and Finanzamt Düsseldorf-Mettmann v Klaus Brandenstein* [2001] ECR I-04049

ECJ, Case C-45/01, *Christoph-Dornier-Stiftung für Klinische Psychologie v Finanzamt Gießen - Opinion of Advocate General* [2002]

ECJ, Case C-41/04, *Levob Verzekeringen BV, OV Bank NV v. Staatssecretaris van Financiën* [2005] ECR I-9433

ECJ, Case C-41/04, *Levob Verzekeringen BV, OV Bank NV v. Staatssecretaris van Financiën - Opinion of Advocate General Kokott Delivered on 12 May 2005* [2005] ECR I-9433

*College of Estate Management v CEC* [2005] 4 All ER 933

ECJ, Case C-45/01, *Christoph-Dornier-Stiftung für Klinische Psychologie v Finanzamt Gießen* [2005] ECR I-12911

ECJ, Joined Cases C-394/04 and C-395/04, *Ygeia* [2005] ECR I-10373

ECJ, Case C-251/05, *Talacre Beach Caravan Sales Ltd v Commissioners of Customs & Excise* [2006] ECR I-06269

TCC, *Great Canadian Trophy Hunts Inc. v. R.* [2005] TCC

TCC, *Camp Mini-Yo-We Inc. v. R.* [2006] G.S.T.C. 154

Re Food Supplier and Federal Commissioner of Taxation [2007] 66 ATR 938

ECJ, Case C-425/06, *Ministero dell'Economia e delle Finanze, Formerly Ministero delle Finanze v. Part Service Srl, Company in Liquidation, Formerly Italservice Srl* [2008] ECR I-897

ECJ, Case C-242/08, *Swiss Re Germany Holding GmbH v Finanzamt München für Körperschaften* [2009] ECR I-10099

ECJ, Case C-276/09, *Everything Everywhere Ltd v Commissioners for Her Majesty's Revenue and Customs* [2009] EU:C:2010:730

ECJ, Case C-37/08, *RCI Europe v Commissioners for Her Majesty's Revenue and Customs* [2009] ECR I-7533

TCC, *Manship Holding Ltd. V. R.* [2009] TCC 75

ECJ, Case C-86/09, *Future Health Technologies* [2010] ECR I-05215; ECJ, Case C-262/08, CopyGene [2010] ECR I-05053

ECJ, Case C-88/09, *Graphic Procédé v Ministère du Budget, des Comptes Publics et de la Fonction Publique* [2010] ECR I-01049

ECJ, Case C-94/09, *European Commission v French Republic* [2010] ECR I-04261

ECJ, Case C-117/11, *Purple Parking Ltd, Airparks Services Ltd v. the Commissioners for Her Majesty's Revenue Service* [2012] ECR I-0000

ECJ, Case C-44/11, *Finanzamt Frankfurt am Main V-Höchst v Deutsche Bank AG* [2012] ECLI:EU:C2012:276

ECJ, Joined Cases C-497/09, C-499/09, C-501/09 and C-502/09, *Finanzamt Burgdorf v Manfred Bog, CinemaxX Entertainment GmbH & Co. KG v Finanzamt Hamburg-Barmbek-Uhlenhorst, Lothar Lohmeyer v Finanzamt Minden and Fleischerei Nier GmbH & Co. KG v Finanzamt Detmold* [2011] ECR I-01457

ECJ, Case C-155/12, *Minister Finansów v RR Donnelley Global Turnkey Solutions Poland Sp. Z.o.o.* [2013] ECR I-0000

ECJ, Case C-18/12, *Město Žamberk v Finanční Ředitelství v Hradci Králové* [2013] ECR I-0000

ECJ, Case C-607/14, Bookit Ltd v Commissioners for Her Majesty's Revenue and Customs [2014] UKFTT 856

ECJ, Case C-130/15, *Commissioners for Her Majesty's Revenue and Customs v National Exhibition Centre Limited* [2015] UKUT 23

ECJ, Case C-584/13, *Directeur Général des Finances Publiques v Mapfre Asistencia Compania Internacional de Seguros y Reaseguros SA, and Mapfre Warranty SpA v Directeur Général des Finances Publiques* [2015], EU::C:2015:488

UKUT, *Revenue & Customs v National Exhibition Centre Ltd* [2015] UKUT 23 (TCC)

ECJ, Case C-463/16, *Request for a Preliminary Ruling from the Hoge Raad der Nederlanden (Netherlands) Lodged on 17 August 2016 - Stadion Amsterdam CV; other party: Staatssecretaris van Financiën* [2016] available at: https://goo.gl/bcMSqw

Hoge Raad, ECLI:NL:HR:2016:1866, available at: https://goo.gl/2DW8iK

### 9.1.2 Legislation

ATO, GST Ruling GSTR 2001/8, Goods and Services Tax: Apportioning the Consideration for a Supply that Includes Taxable and Taxable Parts, 15 October 2003

Canadian Excise Tax Act, 1985

Council Decision of 21 April 1970 on the Replacement of Financial Contributions from Member States by the Communities' Own Resources [1970] 70/243 ECSC, EEC, Euratom

Council Directive 2006/112/EC of 28 November 2006 on the Common System of Value Added Tax [2006] OJ L347/1

Council Directive 2008/9/EC of 12 February 2008 Laying down Detailed Rules for the Refund of Value Added Tax, Provided for in Directive 2006/112/EC (the VAT Directive) to Taxable Persons Not Established in the Member State of Refund but Established in Another Member State [2008] OJ 44/23

Council Directive 77/388/EEC of 17 May 1977 on the Harmonization of the Laws of the Member States Relating to Turnover Taxes – Common System of Value Added Tax: Uniform Basis of Assessment [1977] OJ L145/1

Council Regulation (EC) No 1777/2005 of 17 October 2005 Laying Down Implementing Measures for Directive 77/388/EEC on the Common System of Value Added Tax [2005] OJ L288/1

CRA, GST/HST Policy Statement, P-077R2 Single and Multiple Supplies, 26 April 2004, available at: https://goo.gl/YuLYAt, Decision

Eighth Council Directive 79/1072/EEC of 6 December 1979 on the Harmonization of the Laws of the Member States Relating to Turnover Taxes - Arrangements for the Refund of Value Added Tax to Taxable Persons not Established in the Territory of the Country [1979] OJ L 331

EU, Treaty on European Union (Consolidated Version), Treaty of Maastricht , 7 February 1992, Official Journal of the European Communities C 325/5; 24 December 2002, available at: http://www.refworld.org/docid/3ae6b39218.html

First Council Directive 67/227/EEC of 11 April 1967 on the Harmonization of Legislation of Member States Concerning Turnover Taxes [1967] OJ 071/1301-03

Goods and Services Tax Act, 1985 No 141, 3 December 1985, available at: https://goo.gl/2tyJm0

IR, Goods and Services Tax - Single Supply or Multiple Supplies, Interpretation Statement IS 17/03, 2017

Proposal for a Council Directive of 23 December 2003 Amending Directive 77/388/EEC as Regards the Place of Supply of Services [2003] COM(2003) 822 final

## 9.2 Secondary Sources

EC, *Vate Rates Applied in the Member States of the European Union - Situation at 1st January 2017*, Taxud.c.1, 2017

Henkow Oskar, *Defining the Tax Object in Composite Supplies in European VAT* in European VAT, World Journal of VAT/GST Law, Vol. 2 Issue 3, 2013

Liebman Howard, Rousselle Olivier, *VAT Treatment of Composite Supplies* in International VAT Monitor, March/April 2006

OECD, *OECD Consumption Tax Trends 2014, VAT/GST and Excise Rates, Trends and Administration issue (Introduction)*, OECD Publishing, Paris, 2014

Rendhal Pernilla, *Cross-Border Consumption Taxation of Digital Supplies*, Doctoral Series vol. 18, IBDF, Amsterdam, 2009

Schenk Alan, Oldman Oliver, *Value Added Tax - A Comparative Approach*, Cambridge University Press, Cambridge, 2007

Stacey Paul, Brown William, *A Unifying Composite Supply Doctrine? An Australian View* in VAT Monitor, May/June 2003

TAXUD, *Study and Reports on the VAT Gap in the EU-28 Member States*, 2015/CC/131, Warsaw, 23 August 2016

Van Doesum Ad, Van Kesteren Herman, Van Norden Gert-Jan, *Fundamentals of EU VAT Law*, Kluver Law International, Alphen aan den Rijn, 2016

Westfahl Lena, Anefur Stefan, *Pan-European Survey on the VAT Treatment of Composite Supplies*, Ernst & Young AB, February 2012, available at: https://goo.gl/8kOhXn