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Reference for a preliminary ruling from the First-tier Tribunal (Tax Chamber) (United Kingdom) made on 12 November 2018 — Healthspan Limited v Commissioners for Her Majesty's Revenue and Customs

(Case C-703/18)

(2019/C 25/37)

Language of the case: English

Referring court

First-tier Tribunal (Tax Chamber)

Parties to the main proceedings

Applicant: Healthspan Limited

Defendant: Commissioners for Her Majesty's Revenue and Customs

Questions referred

1.

Where the customer contracts (a) with the supplier to purchase the goods, and (b) with a third party delivery company ('the delivery company') for dispatch and delivery, are the goods deemed to be supplied from the place where they are located at the time dispatch or transport of the goods to the customer begins, so that Article 32 (1) (and not Article 33) always applies?

2.

If the answer to Question 1 is no, are goods transported 'by or on behalf of the supplier' where the customer contracts with the delivery company and one of the following applies, and if so, which one(s):

a)

The customer has no practical alternative but to use the delivery company.

b)

The customer has contact only with the supplier and not with the delivery company.

c)

The supplier and the delivery company agree the price to be charged by the delivery company with no input from the customer.

d)

The supplier rebates the delivery charge to the customer by way of a discount on the price of the goods.

e)

The supplier collects the delivery charges from the customer and remits it the third party delivery company.

f)

The contractual terms which set out when title to the goods passes to the customer do not make commercial sense, but this does not matter in practice, because the supplier makes good to the customer the cost of any damage to the goods during delivery.

g)

In relation to delivery charges where there is a problem with the original delivery:

i)

under its contract with the customer the supplier is obliged to refund the charges already paid by the customer;

ii)

under its contract with the customer the supplier is not obliged to refund those charges, but does so as a matter of practice;

iii)

in either case, the supplier (and not the delivery company) bears the cost of these refunds; and/or

iv)

under its contract with the customer the supplier is obliged to pay both the costs of sending replacement goods, and the related delivery charge; or

v)

under its contract with the customer the supplier is obliged to pay the cost of sending replacement goods, but not for their delivery, but does so as a matter of practice.

3.

If the answer to question 2 is no, does the delivery company act on behalf of the supplier if more than one of the above points are satisfied? If so, which factors must be taken into account and what weight is to be given to each factor?

4.

If the answer to either Question 2 or Question 3 is yes, does the delivery company act on behalf of the supplier where the supplier intervenes directly or indirectly in the transport or dispatch of the goods, as will be the case from 2021 under Directive 2017/2455 (2)? In other words, do the changes introduced by that Directive simply express in clearer language the meaning of Article 33 in its current form?

(1) Article 32 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006, L 347, p. 1).

(2) Council Directive (EU) 2017/2455 of 5 December 2017 amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods (OJ 2017, L 348, p. 7).