

Baxi Group Limited v HMRC [2006] EWHC 3353 (Ch)

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Baxi Group Limited, decided by Lindsay J in the High Court on 21 December 2006, is the latest in a series of cases concerning the question when a composite transaction will constitute a 'single supply' for VAT purposes.

Baxi manufactured gas boilers, which it sold to installers, who installed the boilers in their customers' homes. The market was "massively competitive", so Baxi engaged a company known as "@1" to operate a loyalty reward scheme designed to encourage installers to buy their boilers from Baxi.

Under the scheme an installer would collect 'points' when it installed a Baxi boiler, which it could redeem against a list of goods and services ("rewards") offered by @1. When @1 provided a reward to an installer it would invoice Baxi for the reward's retail price, including VAT.

Baxi sought to deduct as input tax the VAT on the sums paid to @1. The Commissioners were willing to allow deduction of the proportion of that VAT which related to 'advertising services' provided by @1 to Baxi, but would not allow deduction of the VAT on the provision of the rewards to installers, since the rewards were not supplied to Baxi.

Baxi appealed to the VAT Tribunal, contending that the whole of the loyalty scheme represented a single supply of advertising services by @1 to Baxi, in respect of which input tax was deductible. The Tribunal dismissed Baxi's appeal, holding that the single supply argument was irrelevant. On the facts, @1 had supplied the rewards to Baxi, which then supplied them to the

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installers. As a result Baxi could deduct as input tax the VAT it paid relating to the rewards, but was liable to output tax on the value of the subsequent supply to the installers under paragraph 5 of Schedule 4 to the VAT Act 1994.

On Baxi's appeal to the High Court, Lindsay J dealt first with the Tribunal's reasoning, which neither party sought to uphold. Lindsay J found that there was no basis on the facts or in the agreement between Baxi and @1 for the Tribunal's view that the rewards had first been supplied to Baxi.

Next, Lindsay J dealt with the more difficult question whether @1 had made a single supply of advertising services to Baxi (as Baxi claimed), or rather had made separate supplies of the rewards to installers and advertising services to Baxi (as the Commissioners argued). In determining the correct approach to that question, he referred to recent authority such as the ECJ's judgment in Case C-349/96 *Card Protection Plan* [1999] STC 270, as well as the decisions of the House of Lords in *Beynon* [2005] STC 55 and *College of Estate Management* [2005] STC 1597 and of the Court of Appeal in *International Masters Publishers* [2006] EWCA Civ 1455. Counsel for Baxi condensed these authorities into nine principles, which Lindsay J broadly accepted. In the light of those principles, Lindsay J concluded that his task was to ask himself:

"what is it, if anything, looking at the acts performed under [the loyalty scheme] from an economic and commercial standpoint, that can be said to be their dominant purpose? What is it, striving to attain a level of generality that corresponds to economic reality rather than descending into fine detail, that can be seen to be their essential feature? Is there a core supply to which other distinguishable supplies are ancillary? In point of economic and commercial reality are there distinguishable supplies which are economically dissociable?"

On the facts, Lindsay J held that this was indeed a case of a single supply of advertising services by @1 to Baxi. That single supply included as an indivisible part the provision of the rewards to the installers. Lindsay J referred in particular to the fact that *"Baxi wanted not a mere provision of goods to installers and a separate provision of some advertising or marketing service to it but, as a predominant feature, a supply of goods to installers in such a way [...] that the supply would ultimately generate or at least tend to generate loyalty to and sales by Baxi"*. Lindsay J noted that it would in some circumstances be possible to apportion the consideration provided for a single supply, but that would not be appropriate in this case. It followed that Baxi was entitled to deduct as input tax all the VAT it paid to @1, and its appeal was allowed.

Comment

In ruling on the 'single supply' issue Lindsay J does not appear to have placed much reliance on the ECJ's judgment of October 2005 in Case C-41/04 *Levob* [2006] STC 766, referring instead principally to the opinion of the Advocate General in that case. Nonetheless the principles he distilled from a vast array of recent authority seem consistent with the ECJ's latest pronouncement.

On the facts, Lindsay J took a broad view, relying to a large extent on what Baxi's intentions were when it developed the loyalty scheme. This might be said to run counter to the observation of Advocate General Kokott in *Levob* that *"[t]he subjective perspective of the provider [...] of the supply is irrelevant"* (para. 66), but on the other hand it seems consistent with the ECJ's requirement in the same case that *"regard must be had to all the circumstances in which the transaction in question takes place"* (para. 19). All in all, the facts appear to have been finely balanced, and Lindsay J could quite justifiably have taken the opposite view. The decision will be welcome among companies with similar loyalty schemes.

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