

Credit provider subsidy did not reduce consideration for underlying supply of goods

The consideration for a supply of goods by a retailer was the full agreed price, even where the retailer received a lower amount pursuant to a credit arrangements agreed between it and the credit provider.

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The First Tier Tribunal (FTT) has held that sales of goods on credit terms by Dixons Carphone to customers were made for a consideration equal to the full sales price, even though the amount received by Dixons via the credit provider was less than the full sales price: *Dixons Carphone v HMRC* (TC06731). A detailed consideration of the contractual arrangements involved led to the conclusion that the reduced amount received from the credit provider by Dixons was not third party consideration and therefore did not directly affect the consideration for VAT purposes received by Dixons. Instead, on a true reading of the contracts, the reduction represented a “subsidy” provided by Dixons to the credit provider as consideration for the credit provider’s agreement to provide credit facilities to Dixons customers on favourable terms.

The decision highlights the importance of the contractual arrangements in determining the nature of the supplies taking place and the identification of the consideration for VAT purposes, particularly in scenarios involving multiple parties.

Background

When Dixons offered goods to its customers, it was able to do so on credit terms negotiated with a credit provider, LaSer. Where a customer took up the offer of credit, they would pay a deposit to Dixons and the remainder of the cost of the purchase funded by a loan was provided direct from LaSer. In some cases, where the loan was on certain favourable terms, the amount paid by LaSer to Dixons was less than the full purchase price authorised to be paid by the customer, following the deduction of a “subsidy” under the terms of the contractual arrangements between Dixons and LaSer.

Dixons contended that the amount paid by customers for the goods was reduced by the amount of the subsidy. In effect, Dixons argued that the consideration it received for the goods was made up of the deposit from the customer and third party consideration from LaSer. An adjustment to the consideration for VAT purposes was necessary (under VAT Regulations 2005 reg 38) where the amount received by Dixons was less than originally agreed by the customer.

HMRC disagreed and contended that the purchase arrangements and the credit arrangements were separate. A

customer agreed to pay the full purchase price and that remained the case, funded in part by a loan from LaSer. The subsidy represented consideration going from Dixons to LaSer for LaSer's agreement to provide credit facilities on agreed terms to Dixons customers. The fact that it was deducted from the full purchase price did not affect this analysis.

Decision of the FTT

The FTT (Judge Fairpo) agreed with HMRC's analysis of the situation. In this case, there were, in addition to the transaction between Dixons and the customer, two formal contracts, the Retailer Contract (between Dixons and LaSer) and the credit agreements (between LaSer and customers). The Retailer Contract governed the relationship between Dixons and LaSer and provided that LaSer is required to provide credit to Dixons customers (subject to meeting their lending criteria) and Dixons was obliged to refer customers to LaSer for credit. It was clear that this was a mutually beneficial arrangement with Dixons benefiting from the promotional aspects of certain types of credit and LaSer benefiting from the ability to lend. Equally, the contract for credit between LaSer and a customer made it clear that LaSer was making a loan to the customer.

Nothing in these contractual arrangements suggested that Dixons was supplying goods in return for consideration to be paid by LaSer on behalf of a customer. In fact, the arrangements did not expressly make payments by LaSer to Dixons dependent on the making of a supply by Dixons to a customer. It was clear from the contractual arrangements that LaSer's role was simply to provide credit to a customer and, as authorised under the credit agreement, pay the amount of that credit over to Dixons. This did not involve the payment of "third party consideration" by LaSer and, as such, any reduction in the amount of the funds transferred by LaSer to Dixons did not affect the purchase price of the goods.

Whilst it was strictly unnecessary for the judge to go to consider the true nature of the subsidy. Nevertheless, the judge offered the opinion that it was clear that the subsidy was in reality consideration from Dixons to LaSer for LaSer's agreement under the Retailer Contract to offer credit facilities. In particular, some of the credit options offered (such as buy now, pay later) were on particularly generous terms which were not competitive for LaSer to offer. Dixons clearly benefited from the promotional aspect of such credit being made available, however, and the subsidy was the way in which it ensured that LaSer could offer such credit on economic terms. The evidence from the contracts and the commercial reality was that the subsidy was in return for LaSer providing a service to Dixons in making available credit at Dixons' request and to Dixons' specification.

Comment

The decision reinforces the fact that the contractual arrangements are key to a correct determination of the nature of supplies and a correct identification of the consideration for such supplies. Indeed, the judge noted that her delay in producing the judgment in this case was "as a result of considerable review and re-review of the contractual documentation", all parties having accepted that "the VAT position must be determined on the basis of the specific provisions of these contracts and not merely on the basis of earlier case law".

In this case, the overwhelming evidence from the contractual arrangements was that LaSer was involved in providing credit to customers, not in paying for the goods through third party consideration. The reduction in the amounts paid by LaSer to Dixons, the subsidy, did not, therefore, reduce the purchase price for the goods sold to customers, but, rather, represented consideration flowing from Dixons to LaSer in return for LaSer offering particularly attractive credit terms to Dixons customers.

It is essential, therefore, that the terms of each of the contracts involved in a transaction are consistent with both the economic reality of those transactions and any desired VAT outcome.

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