



TC07733

VALUE ADDED TAX – single composite supply or multiple supplies – car hire company providing children’s car seat to customers – car seat was optional “extra” and car seat customers had genuine option to supply their own car seats – key principles in Middle Temple considered – held: car hire and car seat hire were independent supplies – appeal allowed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal number: TC/2013/06589

BETWEEN

EUROPCAR GROUP UK LTD

Appellant

-and-

**THE COMMISSIONERS FOR
HER MAJESTY’S REVENUE AND CUSTOMS**

Respondents

**TRIBUNAL: JUDGE ZACHARY CITRON
MR JOHN WOODMAN**

Sitting in public at Taylor House, London EC1 on 2-3 March 2020

Mr D Garcia of Mishcon de Reya LLP for the Appellant

Ms A Sinclair of HM Revenue and Customs for the Respondents

DECISION

INTRODUCTION

1. This case concerned whether the letting of a car with a child car seat by the appellant (“Europcar”), a car rental company was, for VAT purposes, a single composite supply (as HMRC contended) or separate supplies of the car (standard rated) and the car seat (reduced rate of 5%) (as Europcar contended).

BACKGROUND TO THE APPEAL

2. HMRC refused “voluntary disclosure claims” seeking repayment of overpaid output tax during the period 1 October 2008 to 31 December 2015 in the total sum of £631,178 submitted by Europcar on 20 December 2012, 27 March 2013 and 6 September 2016. HMRC’s decisions were dated 21 June 2013, 28 August 2013 and 24 October 2016.

3. Europcar notified its appeal to the Tribunal by notice of appeal dated 23 September 2013 in respect of the first two decisions; and by notice of appeal dated 31 October 2016 in respect of the third decision. The appeals were stayed behind *Colaingrove Ltd v HMRC* [2017] STC 1287.

EVIDENCE

4. We had witness statements, and heard oral evidence from

(1) Mr Kevin Rand, who had worked with Europcar since 1994, first as a rental station manager (latterly at Heathrow airport), then as territory director (responsible for rental stations in central London and four airports), followed by regional manager for London and the North, and then operations manager. Mr Rand gave evidence about Europcar’s car rental process;

(2) Mr Neil Mott, who began employment with Europcar in 2014 in marketing and sales. His evidence included details of a survey Europcar conducted of 502 customers in 2019 (the results of which underpin our findings at [10] below);

(3) Ms Minal Shah, group tax manager for Europcar since 2007; and

(4) Officer Robin Holmes of HMRC Large Business team, one of the decision-makers in respect of the decisions under appeal.

5. The hearing bundle included:

(1) correspondence between the parties, including a “directional view” from HMRC and an agreed fact sheet, both from 2018; and

(2) Europcar’s 2017 terms and conditions of hire (32 pages):

(a) clause 6 was headed “What services are included if I rent a vehicle only?” This included technical assistance for breakdown recovery due to mechanical faults, the initial cleaning of the vehicle, third party liability insurance and limited or unlimited mileage;

(b) clause 7 was headed “What other services are available that are not included in my rental?” This listed a number of “additional services and products” including child seats and booster cushions, additional driver(s), one way hire, refuelling, additional rental days, other protection packages, out of hours collection, satellite navigation units, delivery and collection, roadside assistance and “Europdrive pack”;

- (c) the “tariff guide” following the terms and conditions included child seats for young children (0-7 years) at £10.99 per day up to a maximum of £109.99. The charge for loss or damage to child seats was £50.

FINDINGS OF FACT

6. Europcar was in the car hire business. A Europcar car hirer could, as an optional extra, hire a child car seat (a “car seat”) at the same time as renting the car. There is a legal requirement for children below a certain age to be seated in a car seat when travelling by car – the obligation is the driver’s. There was no legal obligation on Europcar to provide car seats for car-hire customers with young children.

7. With only rare exceptions, the only persons who hired car seats from Europcar were those who also hired cars – and the period of time for which the car and car seat were hired by a given customer were usually the same.

8. Europcar customers booked their car hire on the internet, by telephone or at an office. In the internet booking process, the section concerning the hiring of a car seat was under the heading “Extras” and came after the section in which the customer booked the hiring of the car. A booking could be amended in advance of rental, or on collection, to include other hired items such as a car seat.

9. A customer who was interested in hiring a car seat (as well as a car) was informed, when making the booking with Europcar, of the additional cost of hiring the car seat. Through out the booking process, and on customer invoices, hire of the car, and hire of the car seat, were separately itemised and priced. Customers needed to know what they were being charged and expected to see both car and car seat charges on the invoice. The daily rate for car hire was about £18; the daily rate for hire of a car seat was about £10, up to maximum of about £110. It cost approximately £30 to buy a new car seat. The pricing model used by Europcar for car hire was more complex than the pricing of car seat hire (the latter was static).

10. A very small proportion of Europcar’s customers opted to hire a car seat when they hired a car – about 1%. Of those customers who were traveling with children young enough to need a car seat, a large majority (about 75%) did not hire a car seat from Europcar – rather, they supplied their own car seat. Of those who supplied their own, about half did so because hiring from Europcar was too expensive, and about half did so because they preferred to use their own car seat.

11. Customers hiring both a car and a car seat (“Car Seat Customers”) were, in the typical case, on holiday with children and picking up the hired car from a location to which they had travelled by means other than driving their own car (often it was by means of air travel, and the Europcar facility was at the airport of destination). The chief advantage to a Car Seat Customer of hiring a car seat from Europcar was the convenience of not having to travel to the car pick-up location (typically, an airport, or a city central location easily accessible from a local airport) carrying a car seat (whether his or her own car seat, or one they procured for the holiday, for example by hiring from another provider).

12. At the Europcar hire location, the car seat was given to the Car Seat Customer by staff of Europcar or (from November 2015, in some cases) its subcontractor, Baby on Board; the Car Seat Customer would take the car seat to the car and buckle it in; or the car seat could be left upside down on the back seat of the hire car. Part of the reason for this procedure was that Europcar did not want to be held responsible for car seats that had been incorrectly buckled in.

13. Car seats are easily detachable and moveable. There was no requirement for a Car Seat Customer to retain the Europcar car seat in the hired car during the hire period – provided the

seat was returned undamaged, the Car Seat Customer had free rein over what use to be made of the car seat during the hire period.

THE LAW

14. It was common ground that the stand alone supply of a car seat attracts the reduced rate of VAT (5%) pursuant to item 1 group 5 Schedule 7A Value Added Tax Act 1994.

15. The relevant case law of the Court of Justice of the EU (the “CJEU”) was summarised by the Upper Tribunal in *Honourable Society of Middle Temple v HMRC* [2013] UKUT 0250 (TCC). We adopt the case name abbreviations used in that judgement.

PARTIES’ SUBMISSIONS

16. HMRC’s case relied on *CPP* at [28-30] and the observations of the Tribunal in *Dodadine Ltd t/a Toucanbox v HMRC* [2019] UKFTT 748 on the identity of the “typical consumer” at [72-73] (in turn citing *HMRC v Ice Rink Co* [2019] UKUT 0108 (TC) at [19]). HMRC submitted that the typical consumer here was a customer of the appellant who

- (1) wishes to hire a car with a children’s car seat; and
- (2) is accompanied by a child of an age for which a children’s car seat is required whom they want to transport in the car

17. From the customer’s point of view, HMRC submitted, what has been supplied is car hire in which all intended passengers can be transported safely and legally. In essence, this is what the typical consumer is paying for and what meets their needs.

18. HMRC further submitted, therefore, that the aim of the customer is not to hire a children’s car seat, but to hire a car in which all intended passengers can be transported safely and lawfully. The children’s car seat enhances the supply of the vehicle as it enables all intended passengers to be so transported and thus leads to a means of better enjoying the hire of the car. The typical consumer *has already* made his or her choice to source the car seat with the car hire. If a car seat was not available, the customer would not hire a car –he or she would go to a competitor that could provide a car seat. By time he or she decides to go with Europcar, has already made that decision.

19. HMRC submitted that, using the principles set out in *Middle Temple* at [60], the supply of car hire with a car seat was a single composite supply for the following reasons:

- (1) it is not possible to hire a car seat without first hiring a car;
- (2) car seat hire with car hire was rare;
- (3) there is no separate contract for the car seat;
- (4) car seats are not advertised separately;
- (5) the period of car hire and car seat hire is generally coterminous; and
- (6) it was irrelevant that customers installed the car seats themselves.

20. HMRC further submitted that:

- (1) the reduced rate is an exception to the normal application of VAT and must be construed narrowly;
- (2) Europcar had not proved that there would be a breach of fiscal neutrality if the supply of car with car seat hire is deemed to be a single composite supply;

21. Europcar’s case, having surveyed the CJEU case law, was that the predominant criterion to be applied in this case was the real freedom of choice, articulated by the Upper Tribunal in *Middle Temple* at [60(10)]. In addition, consideration and application to Europcar’s facts of the

other criteria in [60] of *Middle Temple* confirm the same finding. There is no suggestion in these authorities that the contractual framework has any part to play.

22. Mr Garcia compared the position to shopping for different items in a supermarket: the purchase was governed by a single contract, but the individual items bought may carry attract different rates of VAT as they are recognised as independent supplies. Mr Garcia argued there was significance in the fact that customers take the seat to the car and install it themselves: he suggested that if the car had the seat in place at the time of hire, it was more analogous to buying a bicycle wheel with an inner tube already inserted – suggesting a single supply.

23. Mr Garcia said that if his arguments on two independent supplies failed, he wished to argue for application of a reduced rate of VAT to the consideration attributable to the car seat. He acknowledged that this argument had been rejected by the Court of Appeal in *Colaingrove*.

DISCUSSION

24. *Middle Temple* provides (at [60]) a summary of the key principles for determining whether a transaction falls into one, other or both of the two types of single, composite supply described at [28] of that judgement. We shall consider those key principles as are relevant to the facts of this case. We refer to the key principles by the sub-paragraph numbers that precede them in [60] of *Middle Temple*.

25. Principles (2), (5) and (6) summarise guidance given by the CJEU in *Levob* and further explained in *Deutsche Bank*.

26. The essential features or characteristic elements of the transaction undertaken by Car Seat Customers – the typical consumer here – are that they wish to hire a car and, because they are travelling with small children, they need a car seat in order to transport the children in the hire-car safely and legally.

27. Clearly, the supplies of car, and car seat, are linked. The question is whether they are so closely linked as to be a single economic supply.

28. We regard the two supplies are economically distinct. Car Seat Customers go through a booking process that clearly indicates that hiring a car seat is an optional extra for which an additional, not insignificant, fee has to be paid. At each stage, the costs of car hire and car seat hire are separately set out – this invokes principle (11), supporting a finding of independent supplies (though not in itself decisive).

29. Car Seat Customers also have a genuine economic choice as to whether to hire a car seat or not. They have a practical and realistic alternative of supplying their own car seat. They could do this by bringing their own - as a practical matter, given that they are travelling with small children, it is likely that Car Seat Customers already own car seats for use by those children; or by purchasing one, the cost of which was equivalent to about three days' hire fee. There were also limited opportunities for hiring car seats from other suppliers. Based on our findings, particularly at [11] above, the reality here is that Car Seat Customers have made an economic decision to pay for the convenience of not having to travel to the car-hire location with their own car seat.

30. The considerations above engage principle (10) – an important factor, again supporting a finding of independent supplies, though, again, not in itself decisive.

31. We do not accept HMRC's argument that, because Car Seat Customers – the typical consumers for this analysis - are those customers who want to hire both car and car seat, they do not have a choice of the kind described in principle (10). We understand principle (10) to be a choice “whether or not to be supplied with a particular element of a transaction” (those are the words used in *Middle Temple* at [57], the source of principle (10)) – and Car Seat

Customers have precisely this choice, as a genuine economic matter, as we explain at [29] above. The source of principle (10) is of course *BGZ*, where the relevant customers were lessees of goods who had taken out insurance over those goods from the lessor – but could have taken out insurance from a third party, if they so chose. The CJEU found (at [43] of *BGZ*) that this choice was an important factor in establishing the distinct nature of the two supplies – there was no suggestion that the customers who decided to take insurance from the lessor had no “choice” because of this prior decision.

32. Turning to principle (6): as explained in *Middle Temple* at [31], the terms “inseparable” and “indispensable” come from *Deutsche Bank*, where the CJEU gave guidance on the concept (from *Levob*) of a single economic supply that would be artificial to split. In *Deutsche Bank*, portfolio management services consisting of both advice on what securities to buy and sell, and implementing such decisions, was held to be a single economic supply, because the two elements were inseparable and indispensable. As to what “separable” means, *Middle Temple* at [34] points us to *Tellmer*, where the court found that the letting of apartments and cleaning of common parts “can ... be separated from each other” (and so the two elements did not constitute a single transaction). *Middle Temple* at [61] drew out from this that *Tellmer* (and *BZG*) were to be distinguished from those cases where the tenants “had no choice but to receive” the services from the landlords. *Middle Temple* at [61] concludes:

“In our view, the CJEU cases show that where there is genuine contractual freedom to obtain a service from a third party and, consequently, a separately identified charge is made for the service, this supports the existence of several independent supplies rather than a composite single supply.”

33. In our view, the car-hire and car seat-hire supplies in this case are separable in the same way as those in *Tellmer* – as explained at [29] above, Car Seat Customers had the genuine economic option of hiring a car from Europcar and supplying their own car seat. Had Car Seat Customers chosen to supply their own car seat, the car hire would have been perfectly effective (given that there is nothing “bespoke” about a particular car seat and a particular car). The two elements in the overall transaction are therefore “separable” – and, all the more so, the car seat hired from Europcar is not “indispensable” to the hire of the Europcar car.

34. Principles (8) and (9) derive from the CJEU’s guidance in *CPP*. The question to be addressed is: is car seat hire for the Car Seat Customer not an aim in itself, but rather a means of enjoying the principal service, being the car hire? Viewed without regard to the more detailed guidance given by the CJEU subsequent to *CPP*, we can see how this question might be answered by saying that the car seat hire is indeed, for Car Seat Customers, a means of enjoying the car hire (as it enables the children to be transported legally). However, we read the later CJEU judgments – and *BGZ* in particular – as requiring us to pay due heed to the other side of this coin: here, whether it can be said that hiring the car seat is not “an aim in itself”.

35. In *BGZ*, obtaining insurance of goods provided by a lessor was found by the CJEU to be, for the lessee of the goods, an aim in itself, despite the close linkage between the taking of the insurance and the hiring of the goods (and the requirement of the lessor that the goods be insured). The CJEU considered the insurance “essentially” an end in itself, because it achieved the key goal of reducing risk (see [42] of the judgment); the insurance service facilitated enjoyment of the leasing service, but that was not enough to make it “ancillary”.

36. In this case, the close relationship between hiring the car seat, and hiring the car, parallels the situation in *BGZ* – just as the customer needed insurance to enjoy the goods in *BGZ*, so the Car Seat Customers need a car seat to enjoy the car hire. But, like the insurance service in *BGZ*, the car seat hire here has a distinct “end” or aim from the Car Seat Customers’ perspective – to enable the legal and safe transportation of the children. This would be in distinction to a

situation like that in *Purple Parking*, where the shuttle service was not something, from the customers' perspective, that had a distinct end or aim – it was just an “inevitable consequence” of the parking arrangements. The point is underlined, as it was in *BGZ*, by the fact that Car Seat Customers have exercised a genuine choice to opt for the car seat “extra” rather than supply their own car seat. As pointed out at [31] above, principle (10) – the importance of the customer's choice - is what the Upper Tribunal in *Middle Temple* (at [57]) derived from the CJEU's conclusion in *BGZ* that the supply of insurance services, even though required by the lessor in that case, was not indivisible or ancillary to the supply of leasing services.

37. We conclude that this is a case where the “normal” rule under principle (1) applies – i.e. the supplies are to be regarded as distinct and independent – because the car hire and car seat hire are, from Car Seat Customers' perspective, neither so closely linked that they form a single, indivisible economic supply which it would be artificial to split, nor in a principal/ancillary relationship such that car seat hire is not an aim in itself but a means of better enjoying the car hire.

38. The appeal is allowed.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

39. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

**ZACHARY CITRON
TRIBUNAL JUDGE**

RELEASE DATE: 05 JUNE 2020