EUROPEAN COMMISSION
DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION
Indirect Taxation and Tax administration
Value added tax

taxud.c.1(2015)565227 – EN

Brussels, 5 February 2015

VALUE ADDED TAX COMMITTEE
(ARTICLE 398 OF DIRECTIVE 2006/112/EC)
WORKING PAPER NO 838

QUESTION
CONCERNING THE APPLICATION OF EU VAT PROVISIONS

ORIGIN:	**Sweden**
REFERENCE:	**Article 44**
SUBJECT:	**Cross-border repairs involving spare parts performed on goods owned by a third party**

1. INTRODUCTION

Sweden submitted a request to the VAT Committee related to cross-border repair services using spare parts and involving three or more parties. The opinion of the VAT Committee is sought on whether such repairs of goods should always be qualified, for VAT purposes, as a single economic supply which, in turn, would always be qualified as a supply of services in opposition to a supply of goods.

The question and the analysis submitted by Sweden are attached in Annex.

2. SUBJECT

It follows from Article 2 of the VAT Directive[1] that every transaction must normally be regarded as distinct and independent. However, a transaction which comprises a single supply from an economic point of view should not be artificially split, so as not to distort the functioning of the VAT system.

According to the case law of the Court of Justice of the European Union (CJEU) a complex supply must be regarded as a single supply in two situations.

Firstly, it is the case where one or more supplies constitute a principal supply and the other supply or supplies constitute one or more ancillary supplies which share the tax treatment of the principal supply[2].

Secondly, that is also the case where two or more elements or acts supplied by the taxable person are so closely linked that they form, objectively, a single, indivisible economic supply, which it would be artificial to split[3].

The request submitted by the Swedish delegation aims at clarifying whether repair services carried out in a B2B context, on goods owned by a third party (other than the two businesses involved in the transaction) and involving the use of spare parts should always be qualified as a single supply under the criteria defined by the case law of the CJEU.

While two scenarios involving trucks repairs are provided for illustrative purposes (see Annex), the proposed analysis seeks to establish a general solution applicable to all cross-border repairs of goods involving spare parts and a third party, regardless of the type of goods at stake.

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1 Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1).

2 See, case C-349/96 *CPP*, paragraph 30; joined cases C-497/09, C-499/09, C-501/09 and C-502/09 *Bog and Others*, paragraph 54; and case C-392/11 *Field Fisher Waterhouse LLP*, paragraph 17.

3 See case C-155/12 *RR Donnelley Turnkey Solutions Poland*, paragraph 22; case C-41/04 *Levob Verzekeringen and OV Bank*, paragraph 22; and case C-392/11 *Field Fisher Waterhouse LLP*, paragraph 16.

3. THE COMMISSION SERVICES' OPINION

The Commission services are of the opinion that application of a common VAT treatment by all Member States to the scenarios illustrated by Sweden would certainly be beneficial to decrease administrative burden and increase legal certainty for economic operators and tax administrations.

However, for complex situations which do not clearly qualify either as a single or as multiple supplies, one general solution cannot be adopted without having regard to the specificities of individual factual situations. This is also confirmed by the established case law of the CJEU ruling that for the purposes of assessing whether a complex situation must be treated as a single supply or as multiple supplies, an analysis should be carried out having regard to all circumstances under which the supply takes place.

When preparing the explanatory notes on the EU VAT changes to the place of supply of telecommunications, broadcasting and electronic services that entered into force in 2015, the question of bundled supplies was extensively discussed but, given the complexity and the diversity of the different cases that can occur in reality, it was not possible to give detailed explanations on this issue[4].

The Commission services consider that whilst the delegations could have an exchange of views on this question submitted by Sweden and the issues that it raises, the VAT Committee cannot adopt a single general position embracing all possible scenarios. Those are issues which should rather be addressed through a cross-border ruling approach which falls, in any event, outside the mandate of the VAT Committee.

4. DELEGATIONS' OPINION

The delegations are invited to express their opinions on the question raised by Sweden and to comment on the possibility to seek a common solution.

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[4] See The Explanatory notes point 2.4.4.1. "What if services are bundled with other supplies?"

ANNEX

Question from Sweden

Subject: Manufacturer's warranty repairs and other repairs involving spare parts performed on goods owned by a third party when done cross border – single transaction – supply of goods or supply of services – place of supply

1. Issue

Sweden has come across diverging interpretation of the VAT provisions in relation to the VAT treatment of B2B manufacturer's warranty repairs and other repairs involving spare parts performed on goods owned by a third party (below collectively designated as "third party repairs") in cross border situations.

These inconsistencies results in an increased administrative burden both for businesses and the different tax administrations.

Therefor Sweden wants to ask the VAT Committee if it is possible to always treat a third party repair as *a single economic supply of a service* from a VAT perspective. If not how should they be treated?

Treating the repair as a supply of services would mean a major simplification for businesses and tax administrations since these services in cross border situations would always fall under Article 44 of the Directive. Hence the place of supply would be where the customer (the manufacturer or other business receiving the supply) is established. Such services are normally subject to the reverse charge mechanism.

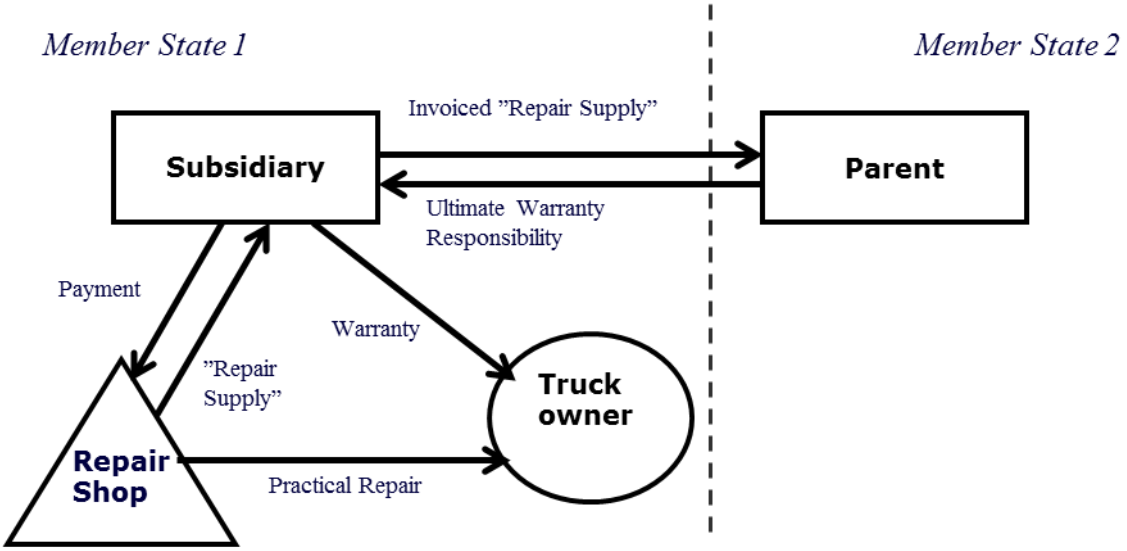
2. Background

The issue of the VAT treatment of third party repairs has, in the Swedish case, arisen primarily in the context of trucks being repaired either under "a manufacturer's warranty" or a "service agreement". This context will be used to illustrate the current problems. It should, however, be stressed that the solution presented below is applicable to all third party repairs in similar circumstances irrespectively of the type of goods being repaired. Therefor trucks in the examples below should only be seen as a type of good for illustrative purposes. *The main question being if the repair performed on a truck owned by a third party by a repair shop (the supplier) is a supply of goods or a supply of services to the customer (the manufacturer of the truck or other business receiving the supply)*

Example 1 – Warranty repair

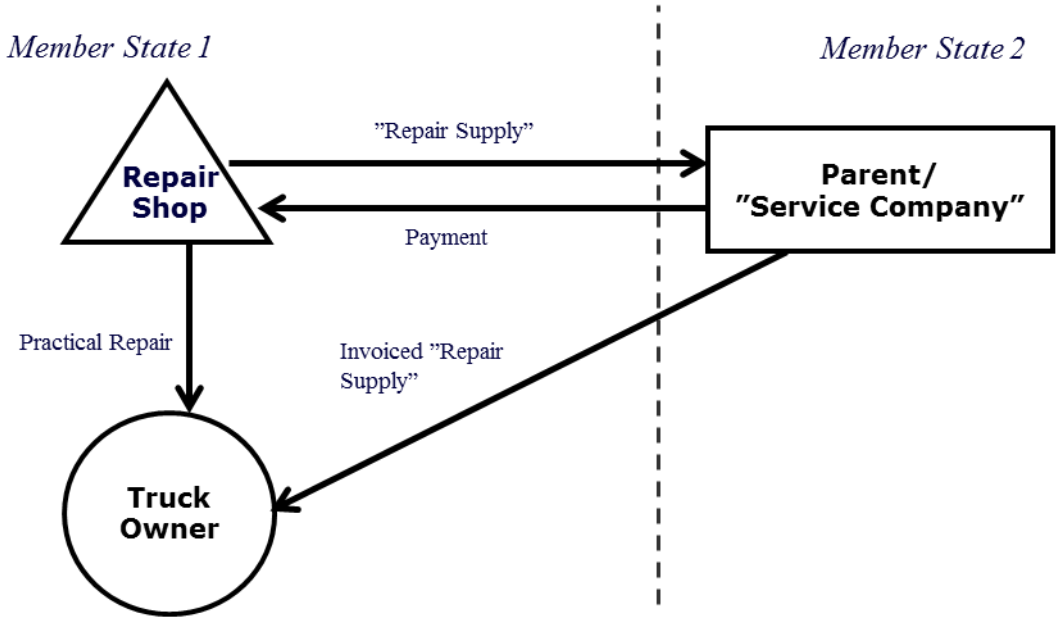
In the case of warranties the truck has normally been sold by a subsidiary to the manufacturer established in a Member State other than where the manufacturer is established, or by a retailer in another Member state, who in turn has bought the truck from the manufacturer's subsidiary in that state. In these cases the subsidiary or the retailer is responsible for "the manufacturer's warranty" in relation to their customer. If a repair is performed under the warranty, i.e. on a truck owned by a third party, the supplier (the repair shop) makes a "repair supply" to either the subsidiary or the retailer depending on who sold the truck in the first place. The warranty repair is, however, re-invoiced up the chain and will ultimately be re-invoiced cross border from the subsidiary to the

manufacturer. A cross border situation could also arise if the repair shop is located in another Member State than the business immediately responsible for the warranty is, i.e. the one receiving the initial "repair supply".



Example 2 – "Service repair"

In the case of "Service Agreements" the owner of a truck who requires repairs, e.g. out of office hours or when abroad, contacts the manufacturer or his subsidiary ("service company") which is established in another Member State, who directs him to a local repair shop. To facilitate the repair the local repair shop, which normally doesn´t know the owner of the truck, performs the repair under a contract with the manufacturer or a "Service Company", i.e. it supplies "the repair" to one of them. The manufacturer or the "Service Company" subsequently re-invoices the supply to the owner.



If the repair is always considered to be a supply of services the place of supply will be where the manufacturer or other business receiving the supply is established according to Article 44 of the Directive.

If on the other hand the supply always should be seen as a supply of goods Article 31 of the Directive will apply. In that case the place of supply shall be the place where the goods (spare parts) are located at the time when the supply takes place, since the goods are not dispatched or transported.

The third option, and the most burdensome for both businesses and tax administrations, is to treat each supply differently depending on for example the value of the spare parts compared to the repair service.

3. The Swedish View

According to the CJEU's case-law, where a transaction comprises a bundle of features and acts, regard must be taken to all the circumstances in which the transaction in question takes place in order to determine,

1. if there are two or more distinct supplies or one single supply and,

2. whether, in the latter case, that single supply is to be regarded as a supply of services or supply of goods (see for example case C-41/04 *Levob Verzekeringen and OV Bank*, paragraph 19).

A third party repair normally consists of two or more elements, namely the spare parts used for making the good operational again, installing the parts into the good and other indispensable repair elements for these purposes.

The starting point when classifying third party repairs is of course the CJEU's standpoint that regard must be taken to all the circumstances in which the transaction in question takes place.

One supply

The typical customer (the manufacturer or other business receiving the supply) would, in our view, find the spare parts and the repair services so closely linked that they form, objectively, a single, indivisible economic supply since all the elements of the transaction are necessary to its completion and are closely linked (see cases C-41/04, *Levob Verzekeringen and OV Bank*, paragraph 22 and C-111/05 *Aktiebolaget NN*, paragraph 25). It is not possible, without undue contrivance, to take the view that the typical customer will acquire first the spare parts and, subsequently, from the same supplier the supply of repair services.

The purpose of the manufacturer's warranty is to guarantee the good´s intended and proper functioning for a certain period of time. The manufacturer has no interest in the spare parts or the repair services separately or as such, only in fulfilling his obligation to ensure that the good becomes operational once again. The same goes for "service repairs" since the manufacturer or the service company are only facilitating the repair in that case. Against this background it seems obvious that we are dealing with a single supply from

the economic point of view of the typical manufacturer or other business receiving the supply.

A third party repair should in sum be regarded as one single supply.

A single supply of a service

In order to determine whether a single complex supply is to be classified as a supply of services, it is vital to identify the predominant elements of that supply (see case C-41/04, *Levob Verzekeringen and OV Bank*, paragraph 27).

In a single supply, 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 (see case C-111/05 *Aktiebolaget NN*, paragraph 28).

The Swedish delegation finds that there are good grounds for arguing that the spare parts are ancillary to the repair service. The reason for this is that the spare parts, even if necessary for the vehicle to work again, are not the most interested part for the manufacturer or other business receiving the supply. The repair service on the other hand is arguably normally seen as restoring the capabilities of the vehicle as a whole, which is also the purpose of a manufacturer's warranty or "service repair". The repair service is the part of the supply that is most important for the customer. The conclusion against this background is that the principal element of the supply is the service component. The customer wants the good to be functional again and therefor wants it to be repaired. If the supplier needs to use spare parts or not to make this supply is not the main factor for the customer.

Even if the spare parts are not deemed to be ancillary, the service element of the repair should be seen to dominate with regard to the classification of the transaction as either a supply of goods or a supply of services.

For VAT purposes a "supply of goods" means the transfer of the right to dispose of tangible property as owner. In the case of spare parts such a right will not be transferred to the customer (the manufacturer or other business receiving the supply). That right will instead belong to the owner of the good (a third party). In other words, once the spare parts are installed in the good, the manufacturer, or other business receiving the supply, cannot dispose the parts as owner (and in practice probably not even before that time). This decisively, as far as the Swedish delegation is concerned, settles the issue in favour of treating the transaction as a single supply of a service.

Against this background it should be stressed that in the case of manufacturer's warranty repairs and service repairs the relationship between the price of the goods and that of the services cannot be taken into account for the purposes of classifying the main transaction at all.

And at the same time it should be remembered that even in cases where the circumstances make it possible to take account of this relationship the cost of materials and work must not, according to the CJEU, of itself be a decisive factor (see case C-111/05, *Aktiebolaget NN*, paragraph 37). In such cases the relationship between the price of the goods and that of the services can at the most be seen as an objective piece of information which may be taken into account for the purposes of classifying the main transaction.

To summarise: In order to simplify the VAT treatment of the services discussed our opinion is that Article 44 of Directive 2006/112/EC should always apply when determining the place of supply.