Use and enjoyment: making the rule work

Indirect Tax

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Making the rule work

The summer Budget announced proposals to extend the ‘use and enjoyment’ rules to prevent VAT avoidance. The changes, in effect from 2016, are intended to ensure that the VAT ‘use and enjoyment’ provisions apply so that it is clear that all UK repairs made under UK insurance contracts will be subject to VAT here. In addition, it was announced that the government would consider a wider review of offshore-based avoidance in VAT-exempt sectors, with a view to introducing additional use and enjoyment measures for services such as advertising in the following year.

These measures are aimed at countering the use of offshore entities to avoid VAT on costs incurred in indemnifying insured persons against loss, for example in relation to motor car damage claims.

The ‘use and enjoyment’ rule aims to allow countries to tax activity where it really takes place, on a destination basis, but problems such as that identified by the government can arise.

Professor Ben Terra and Julie Kajus identify one of the main issues in their paper *A Guide to the Recast VAT Directive*. At paragraph 5.7.4 they note that neither the PVD nor any of the member states has provided any real guidance on what is meant by the phrase ‘use and enjoyment’.

We have suggested to the government that, when drafting the legislation to effect the proposed changes, proper consideration should be given to the meaning of ‘use and enjoyment’.

As a starting point, we are of the view that ‘use’ and ‘enjoyment’ must have a separate, independent meaning. This may result in ‘use’ taking place in a difference country from ‘enjoyment’. Looking at various language versions, we suggested that ‘use’ may refer to physical use while ‘enjoyment’ refers to actual exploitation.

One of the few cases on the subject was that of *Athesia Druck* (C-1/08). This concerned advertising services carried out in Italy in Italian media. The Court of Justice stated:

‘The effective use and enjoyment of the advertising material must therefore, in circumstances such as those in the main proceedings, be regarded as taking place in Italy.’

However, consider an event such as the rugby world cup. Advertisers from many states may pay for a mobile broadcasting unit to broadcast the event to their own country and any advertising messages may be aimed at and be received exclusively in the destination country. It is possible in such circumstances to make a case that only ‘use’ is engaged so the normal place of supply rules would apply in any event.

The CIOT will consider the proposed changes when these are available in more detail.