



On 5 July 2018, the European Court of Justice (“ECJ”) issued its judgement on the case of Marcandi Ltd. The ECJ has held that the payments made by users for acquiring ‘credits’ to bid in auctions, represents a supply consisting of the granting of the right to participate in the auctions organized by Madbid. This should be treated differently from the supply of the product acquired on the website itself, therefore, it should separately be subject to VAT.

1. Facts of the Case

Marcandi Ltd, a company established in the UK, operates an online shop consisting of ‘high tech’ products such as mobile telephones, computers and televisions under its trading name ‘Madbid’. Madbid operates a ‘Pay-to-bid’ auction website’ where users can participate in the auctions by acquiring ‘credits’ in return for payment, which were necessary to bid. However, the ‘credits’ could not be used to purchase goods sold in the Marbid’s online shop.

The winner of the auction, has the right to purchase the product at the amount of the winning bid, plus a charge for shipping and handling costs. However, the value of ‘credits’ used for the bid are exhausted and are not credited towards the price of the product in case where the winner of the bid exercises the right to purchase the product. Furthermore, if the winner of the bid cancels the purchase, only the amount of the price achieved in the auction was reimbursed and not the value of the ‘credits’ used to bid.

In addition, two other features are offered by Madbid to the users. The ‘buy now’ feature which allows users to buy a product identical to the one in the auction in which they participated for a price reduced to the level of the value of the ‘credits’ that used to bid in the context of the auction. The ‘earned discount’ feature, allows users who were unsuccessful in the auction, and who also did not use the ‘buy now’ feature, to obtain a discount that they might use later when purchasing a product available in Madbid’s online shop. The ‘earned discount’ value corresponded to the value of the ‘credits’ that allowed users to bid in the auction.

The HM Revenue and Customs (HMRC) considered that the amount paid by Madbid’s clients in exchange for ‘credits’ represented the granting of the right to participate in online auctions organized by Madbid. Madbid lodged an appeal against that decision supporting that the issuing of ‘credits’ was not a supply of services and therefore it should be liable for VAT only on the supply of the goods.

2. Questions referred to the ECJ

As a result of the above dispute, the questions referred to the ECJ were the following:

- 1) Whether the issue of ‘credits’ in return for a money payment constitutes a ‘supply of services for consideration’ or a transaction not being subject to VAT.
- 2) Whether the value of ‘credits’ used in order to bid is included in the consideration received by a taxable person in return for the supplies of goods that it makes for the benefit of users who won an auction.
- 3) Whether where two EU Member States treat the same transaction differently for the purposes of VAT, the courts of one of those Member States is required, when interpreting EU and national law provisions, to take into account the need to avoid double taxation/non-taxation of the transaction having regard to the principle of fiscal neutrality.

3. Judgement of the Court

The court ruled that since the issue of ‘credits’ and the supply of goods do not constitute a single, indivisible economic supply, they cannot be classified as a single supply of goods, neither they can be classified as ancillary in relation from one to another.

In this context, the court emphasized that the issue of ‘credits’ could not serve as a payment for the purpose of buying goods in Madbid’s online shop since these were not credited to the purchase price fixed at the end of the auction. Moreover, with regards to the ‘buy now’ and ‘earned discount’ features, only the value of ‘credits’, which were first used in order to bid, could be credited towards the price of goods purchased through the ‘buy now’ or ‘earned discount’ features. Additionally, a user who decided to cancel a purchase made using the ‘buy now’ or ‘earned discount’ features was only reimbursed the discounted price, together with the delivery costs, and not the value of the ‘credits’ that were taken into account in the calculation of the price he paid for the goods. Hence, Madbid’s argument, that the issue of ‘credits’ represented the user’s right to purchase goods up to the value of those ‘credits’, did not correspond to the economic and commercial reality as the issue of ‘credits’ could not serve as a payment for the purpose of buying goods in Madbid’s online shop.

On the basis of the above, the Court concluded that the payment received by Madbid in exchange for the ‘credits’ represented the actual consideration for supply consisting of the grant of the right to participate in the auctions, which was separate from the supply of a product acquired on its website and hence was separately subject to VAT.

The Court also ruled that the payment made by a user in exchange for ‘credits’ cannot be regarded as a payment made on account before the goods are supplied and it cannot constitute the consideration for another transaction but it rather represents a discount. Therefore, the value of ‘credits’ used in order to bid should not be included in the consideration received in return for the supplies of goods to the users who were successful at an auction.

Furthermore, the Court concluded that when interpreting EU and national law provisions, courts of a Member State that find that the same transaction has been the object of a different tax treatment for the purposes of VAT in another Member State have the power, or even an obligation (depending on whether there is a judicial remedy under national law against its decisions), to refer a request for a preliminary ruling to the Court.

4. Way forward: How PwC can help you

The above decision of the ECJ is expected to have significant impact on companies operating auction websites and companies which require users to make payments acquiring credits/points which allow the access to a platform in which a subsequent supply of goods or services takes place.

The dedicated team of VAT professionals at PwC is ready to discuss with you the above developments and how they may affect your business.

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