Is VAT neutrality guaranteed under our present VAT legislation?

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In brief

One of the basic characteristics of Value Added Tax (VAT) is the non-cumulative aspect of the system whereby, irrespective of the business structure, it is always the final consumer that bears the VAT charge. This means that a trader has always the possibility to either claim for a refund of the input VAT suffered on his purchases or offset the input VAT against the output VAT in respect of his sales. The process of nullifying the VAT impact on traders is in fact referred to as VAT neutrality. Any VAT system worldwide would generally ensure that the concept of neutrality is adhered to in order to avoid double taxation.

In detail

Under Section 21(2) (b) of the Mauritian VAT Act, no input tax can be claimed on the acquisition, maintenance, rental or repairs of any motor vehicles transporting less than 9 persons ("Motor Vehicles"). The general rule of VAT is that input VAT suffered on goods or services that are used to make a taxable supply can be claimed as credit against output VAT in full. Therefore, the recoverability of input VAT on Motor Vehicles which is used to make a taxable supply is inconsistent with the general VAT principles. Further, there is no rationale for imposing on a trader to charge VAT on the sale of a Motor Vehicles without a possibility of netting off the input VAT initially not claimed. Section 21(2) (b) defies the concept of VAT neutrality; a trader bears the VAT as a final consumer on the acquisition of the Motor Vehicle and double taxation arises. The Mauritius Revenue Authority ("MRA") first collects VAT when the trader acquires the Motor Vehicle and then when the Motor Vehicle is disposed of! This scenario is further multiplied as many times as the vehicle is disposed to a VAT registered trader. The end result is that the MRA is collecting VAT on the same good several times over!

The Ohsan-Bellepeau J.C (the appellant) v/s The Director General of the MRA case (dated 18 May 2015) debated on this "anomaly" of the Section 21(2) (b). The appellant bought a private car at least two years prior to registering for VAT and subsequently sold the car after being VAT registered. The MRA claimed that the appellant should have charged VAT on the sales price of the car as the appellant was a taxable person (i.e. is required to charge VAT) who was making a "taxable supply" in the course of a business. It was undisputed that the appellant used his "private" car for business use as he claimed capital allowance for corporate tax purposes. On this basis, the car formed part of the fixed assets of the appellant's business and was therefore subject to VAT upon disposal by virtue of Section 9(1). Interestingly, the Supreme Court of Mauritius ("the Court") stressed that, to adhere to the VAT Act, any VAT registered person will have to remit VAT twice to the MRA on such Motor Vehicle transactions. The first instance occurs when the MRA collects VAT from the car dealer/seller (such VAT is not recoverable from the buyers perspective), and the second one is when the taxable person charges VAT on the sale to another person.

The Court referred to Bakcsi v/s Finanzamt Fürstenfeldbruck (ECJ) (2002) STC 802, where similar to the appellant's case, Bakcsi purchased a car for both private and business use. While there was no input VAT as the car was purchased from a non-VAT registered person, the German Tax Authority claimed that VAT should have been imposed on the sales price of the car when Bakcsi sold it.

Overall, in the Ohsan-Bellepeau J.C v/s The Director General of the MRA case, the contention of the appellant was not that VAT should not be imposed on the sale of the Motor Vehicle as this is law and enforceable under the VAT Act. The appellant sought to fight for the recoverability of the input VAT on the purchase of the car used to make taxable supplies as this goes against the basic principle of VAT neutrality. Section 21(2)(b) is unfair as the tax authority collects output VAT at different points of sale for the same item on which there is no added value; further, under a VAT system, it is the final consumer who should bear the VAT burden and not the trader (i.e. taxable person). The latter is only required to collect and remit the VAT to the tax authority.

VAT was introduced on 7 September 1998 and it is now perhaps high time that the provisions under Section 21(2) (b) are reviewed. The current application of Section 21 (2) (b) creates a situation of double taxation of such Motor Vehicle (i.e. cumulative tax) and which is contrary to the principles of neutrality.

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