



Case alert

Upper Tribunal - Target Group Ltd

November 2019

Summary

This was an appeal by Target Group Ltd against a decision of the First-tier Tax Tribunal.

The case concerns the application of the VAT exemption for certain financial services set out in Article 135(1)(d) of the VAT Directive. In particular, whether the services provided by Target Group Ltd to a bank were 'transactions concerning deposit or current accounts' or were 'transactions concerning payments or transfers'.

The First-tier Tax Tribunal found that, although the services supplied were capable of falling within the VAT exemption provided for by Article 135(1)(d), on the evidence, the services were, in fact, debt collection services which is specifically excluded from the exemption.

Target Group appealed to the Upper Tribunal on the grounds that the First-tier Tax Tribunal had made a number of errors of law. However, the Upper Tribunal has dismissed the appeal on the basis that the services provided by Target Group Ltd to its customer bank did not fall within Article 135(1)(d). As a consequence, the services were liable to VAT at the standard rate.

Upper Tribunal (judgment delivered 15 November 2019)

Article 135(1)(d) of the VAT Directive stipulates that certain financial services are exempt from VAT. The exemption applies to (among other things), transactions relating to deposit and current accounts and to transactions concerning payments or transfers (of money). However, if the service being provided is 'debt collection', the Directive specifically excludes that service from exemption.

In this case, Target Group Ltd (Target) provides outsourced loan administration services to a bank. It argued that its services to the bank either concerned deposit or current accounts or, alternatively, concerned payments or transfers of money which, in either case should qualify for VAT exemption. However, HMRC took a different view contending that the services in question were simply administration services that were liable to VAT at the standard rate. Target appealed to the First-tier Tax Tribunal (FTT) which found that, whilst the services were, clearly, capable of falling within Article 135(1)(d), by their nature, they were, in fact, debt collection services. The FTT therefore dismissed Target's appeal and Target was given permission to appeal to the Upper Tribunal.

In its judgment, the Upper Tribunal took a different approach to the FTT. It considered that the correct way to proceed was to ascertain first whether the services fell within Article 135(1)(d) and only then consider the question of whether the services were excluded from exemption because of the specific provision relating to debt collection. In its judgment, the Upper Tribunal ruled that the loan accounts that were set up and administered by Target on the bank's behalf were neither deposit accounts nor were they current accounts as those terms are understood in the financial services arena. As a result, the services were not transactions concerning deposit or current accounts. The Tribunal then looked at whether the service concerned payments or transfers. It referred to earlier case law (Axa Denplan and DPAS) and confirmed that to fall within that provision, it is a condition that the supplier's actions must have the effect of changing the legal and financial relationship between the debtor and the creditor and must do more than merely pass instructions to a financial institution to affect a transfer or payment. On the evidence and on the facts found by the FTT, the Upper Tribunal was satisfied that Target did not meet that condition. As such, the service was also not one concerning payments or transfers.

On the basis that the Upper Tribunal considered that the services provided by Target did not fall within Article 135(1)(d), it had no need to consider whether the service was debt collection. Target's appeal was, therefore, dismissed.

Comment – It seems that the courts and tribunals now take a very narrow view of what constitutes transactions relating to payments and transfers such that the exemption now will only apply if the party concerned actually affects the transfer or payment. Anything less (such as the loan administration services in point in this case) is likely to be viewed as an administrative function and will not qualify for exemption from VAT. This is not good news for banks and other financial institutions as any VAT charged by the service provider may not be reclaimable in full.

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