



Case alert

DPAS Ltd

July 2018

Summary

The full Court of the CJEU has delivered its judgment in this UK referral.

The case concerns whether the services provided by DPAS (of collecting direct debits from customers and making arrangements for the transmission of money from its own bank account to dentists) were transactions involving payments or transfers and exempt from VAT.

The case arises from a similar case (AXA Denplan) that was heard at the CJEU a few years ago. In that case, the CJEU considered that as AXA Denplan was contractually obliged to collect payments from patients, the service it actually provided was a debt collection service and was liable to VAT at the standard rate.

In light of that finding by the CJEU, DPAS sought to change its contractual arrangements so that it provided its services to the patient rather than to the dentist. It considered that if it provided its services to the debtor (the patient) rather than the creditor (the dentist) it could not be regarded as debt collection.

HMRC took the view that, irrespective, the services provided by DPAS was, to all intents and purposes, the same and refused to accept that the service was a transaction involving payments or transfers.

DPAS appealed and the Upper Tribunal referred the matter to the Court of Justice.

Court of Justice of the European Union (CJEU) – judgment delivered 25 July 2018

The Court of Justice has delivered its judgment in this UK referral. Agreeing with the Advocate General, the Court has ruled that the services provided by the taxpayer were not 'transactions involving either payments or transfers' that could be exempt from VAT under the financial services provisions of the VAT Directive.

DPAS operated a dental plan for dentists which was virtually identical to the dental plan operated by AXA Denplan (a competitor). Under such an arrangement, AXA Denplan agreed with its dentist clients to collect direct debits from the dentist's patients and to then arrange for a payment – less its service fees to be made to the individual dentists. AXA Denplan argued that this was a transaction involving payments or transfers which qualified for exemption from VAT. HMRC disagreed and AXA Denplan appealed. Ultimately, the matter was referred to the CJEU which ruled that what was actually being supplied by AXA Denplan was debt collection services. These services do not qualify for VAT exemption but are liable to VAT at the standard rate.

With the AXA Denplan judgment in mind, DPAS sought to amend its contractual position such that it no longer provided its service to the dentist (the creditor) but to the patient (the debtor) considering that this could not, therefore, fall to be treated as debt collection services. DPAS considered that in light of this amendment to the contractual position that its service thus continued to be a transaction involving payments or transfers which qualified for VAT exemption. HMRC disagreed and the Upper Tribunal referred the matter to the CJEU.

Following a number of similar arguments in cases such as Bookit and NEC, the CJEU reiterated its view that to qualify for VAT exemption, the service being supplied must have the effect of changing the legal and financial positions of the payer and payee and must not merely be a preparatory or preliminary step or be of an administrative nature. In DPAS' case it merely arranged for the respective financial institutions (its own bank and the banks of the patients and the dentists) to be debited and credited with the agreed sums. It is the financial institutions themselves that make the actual transfer or payment acting on the instructions of DPAS. The Court considers that DPAS' role was thus administrative and did not constitute a transaction involving payments or transfers. Accordingly, the service provided by DPAS does not qualify for exemption from VAT.

Comment – Over the last few years, the CJEU has narrowed the definition of what constitutes transactions involving payments or transfers. It now seems fairly clear that to qualify for VAT exemption, such transactions must directly affect the legal and financial position of the payer and the payee (ie to alter the legal and financial obligations between the parties). Simply arranging for direct debits to be taken from one account and for payments to be made to another account is regarded by the Court as a preliminary or administrative service which does not qualify for exemption from VAT.

Contact

Stuart Brodie

Scotland

T +44 (0)14 1223 0683

E stuart.brodie@uk.gt.com

Karen Robb

London & South East

T +44 (0)20 772 82556

E karen.robbs@uk.gt.com

Vinny McCullagh

London & South East

T +44 (0)20 7383 5100

E vinny.mccullagh@uk.gt.com