



Case alert

DPAS Ltd

March 2018

Summary

The VAT Directive provides a mandatory VAT exemption for 'transactions, including negotiation, concerning deposit and current accounts, payments, transfers, debts, cheques and other negotiable instruments but excluding debt collection'.

DPAS provides practice-branded dental plans to dentists and supplies dental plan administration services to patients that subscribe to those plans. It considered that its collection of monthly payments from patients and the transmittal of that payment to the dentists (less its service charge fee) constituted a 'transaction concerning payments' that qualified under the above VAT exemption.

HMRC considered that, following the earlier Court of Justice judgment in AXA Denplan, which found that the service should be regarded as taxable debt collection services, the service provided by DPAS should be treated the same.

The Advocate General considers that the service provided by DPAS is neither a transaction concerning payments nor debt collection services. The financial institutions (the banks) provide the transfer service between the various accounts whilst DPAS merely provides an administrative service to facilitate that transfer. Such a service is not covered by the VAT exemption.

Court of Justice of the European Union – Case C-5/17 Advocate General's Opinion

Advocate General Saugmandsgaard has issued his opinion in this UK referral to the Court of Justice. The case was referred to the CJEU by the UK's Upper Tribunal as it required guidance on the correct interpretation of the VAT Directive. DPAS provides practice-branded dental plans. It originally only provided these services to dentists but, following the CJEU's judgment in the AXA Denplan case (see below), it changed its contractual relationship such that it then provided its services to the patient rather than to the dentist.

In Axa Denplan, the CJEU ruled that the collection of direct debts by the taxpayer was, in principle, a 'transaction concerning payments' which, ordinarily would fall within the VAT exemption. However, the Court considered that what AXA Denplan actually provided was a debt collection service (ie it collected amounts due from patients on behalf of dentists) that was specifically taken out of the VAT exemption and was subject to VAT. In light of that judgment, DPAS sought to circumvent it by ensuring that it provided its service to the patient (ie the debtor) rather than the dentist (ie the creditor). This was on the basis that, logically, a debt collection service can only be provided to the person who is owed a debt not to the person who owes the debt.

The Upper Tribunal was mindful of the CJEU's judgment in AXA Denplan and, in deciding to refer the case, asked the Court whether, as DPAS contended, the service it provided after it had made the changes to its contracts fell within the VAT exemption for transactions concerning payments. The Advocate General does not believe that to be the case. In essence, to be categorised as a transaction concerning payments, the Court has ruled in many previous cases that the service must result in a change in the legal and financial situation vis-à-vis a creditor and debtor. What DPAS provides is, in fact, a preliminary service of an administrative nature but it is the financial institutions that actually provide the service of transferring the payments. It is, therefore, only the financial institutions' service that qualifies for VAT exemption under the VAT Directive.

The Advocate General has, therefore, recommended to the full court that the services provided by DPAS do not qualify as transactions concerning payments and, as a result, the services are subject to VAT at the standard rate. The Advocate General also considers that, on the evidence, the facts in the case are almost identical to the facts in the AXA Denplan case. In the light of that similarity, the Advocate General is of the view that it is irrelevant to whom the services are supplied. The economic reality of the supply has not changed so the outcome from a VAT perspective should not change.

Comment – The Advocate General considers that preliminary services such as those provided by DPAS are merely administrative in nature and do not qualify for VAT exemption. They are merely preliminary to the financial institutions' exempt supply of transfer or payment services. If the full court agrees with the Advocate General, what constitutes 'transactions concerning payments and transfers' may be further narrowed and it will mean that affected businesses will need to review their VAT position as a matter of some urgency.

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