



VAT alert Belgium

DPAS: CJEU limits scope of exemption on payment handling

On 25 July 2018, the Court of Justice of the European Union (CJEU) delivered its judgment in DPAS Limited (Case C-5/17: [Dutch](#) | [French](#) | [English](#)) regarding the scope of the exemption for payment handling.

Facts

The case concerned a dental plan whereby patients paid DPAS a fixed sum each month by direct debit to cover the costs of their dental work and for insurance cover for emergency treatment. The principal issue under dispute was whether the fee charged to the patients for running the payment arrangements (i.e. collecting the sums due by direct debit and remitting them to the dentists and insurers concerned) was an exempt supply of payment or money transfer services within the meaning of article 135(1)(d) of the European VAT Directive.

CJEU decision

The CJEU concluded that the services provided by DPAS did not constitute an exempt supply of payment or transfer services, on the basis that the supply did not result in the legal and financial changes which are characteristic of the transfer of a sum of money. In addition, the exemption can relate only to transactions which form a distinct whole, fulfilling in effect the specific, essential functions of such transfers.

The CJEU distinguished the case at hand from its previous judgment in AXA (which held that similar services were payment handling, but were disqualified from exemption for being debt collection), asserting that the Court had not particularly focused on the payment handling exemption in that judgment. Consequently, DPAS should have charged VAT.

Having reached this conclusion, the CJEU did not go on to consider whether it was providing debt collection services, notwithstanding the restructuring of its contracts.

Impact

The judgment makes it even more difficult for this exemption to apply to outsourcers providing payment processing services. This case is particularly relevant as new types of payment services can be provided by operators other than banks or financial institutions based on the Payment Services EU Directive (PSD2).

It should be noted that under Belgian VAT law, financial institutions established in Belgium have an option to tax the (in principle VAT exempt) payment processing services they provide. Based on the DPAS judgement however, this option may not be available to other parties involved in payment processing, as their activities might be subject to VAT in any case.

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