



VAT treatment of payment services

The law surrounding the applicability of the VAT exemption to payment services has been explored by the Court of Justice of the European Union (CJEU) on many occasions. Most recently in May 2016, the CJEU held that the intricate chain of services provided by wholly owned subsidiary, Bookit Limited¹ (on behalf of Odeon), when a card payment was made, were not sufficiently connected with the actual transfer of ownership of the underlying funds.

As such, Bookit was held as providing “no more than... technical and administrative assistance” in relation to the transaction, meaning that it could not benefit from the exemption from VAT applicable to payment services.

The CJEU reached a similar conclusion in a case involving the National Exhibition Centre (NEC)², which sold tickets for concerts and other events on behalf of unconnected third party promoters and charged a booking fee, which it claimed was exempt from VAT.

Applicability to Irish VAT

Schedule 1, paragraph 6, of the Value Added Tax Consolidation Act 2010 (VATCA) provides a list of financial services which are exempt from VAT. Schedule 1, paragraph 6(1)(c), of the VATCA provides an exemption for: “*operating a current, deposit or savings account and negotiating or dealing in payments, transfers, debts cheques and other negotiable instruments, but excluding debt collecting and factoring*”.

Revenue has recently issued guidance focusing on one particular aspect of the above exempt financial services, ie negotiating or dealing in payments and transfers.

Purpose and nature of a service

Revenue have confirmed that a determination will be made according to the purpose and nature of the service provided. The means by which the service is supplied, eg electronically or manually is not a decisive factor when considering the application of the VAT exemption. Furthermore, the nature of the person supplying the service is not relevant.

Guiding principles

Revenue have provided a list of principles that need to be considered when determining if a payment service qualifies for the exemption from VAT:

- the exemption can only relate to transactions which **form a distinct whole**, fulfilling in effect the **specific, essential functions of such transfers**;
- an exempted service must be **distinguished** from the supply of a **mere physical or technical service**;
- a transfer is a transaction consisting in the **execution of an order** for the transfer of a sum of money from one bank account to another;
- a transfer is characterised by the fact that it involves a change in the legal and financial relationship existing, on the one hand, between the person giving the order and the recipient and on the other, between those parties and their respective banks and in some cases, between those banks;
- the transaction which produces the change is **solely the transfer of funds between accounts**, irrespective of its cause; and
- the mere fact that a service is essential for completing an **exempt transaction does not warrant the conclusion that the service is exempt from VAT**.

¹ [C-607/14]

² [C-130/15]

Examples provided by Revenue

Revenue have provided a number of examples to support its updated guidance, two of which are examined below.

Standard banking services

Issue - A customer instructs their bank to transfer funds to another party. The service of the bank in this instance is the taking of the funds from the customer's account and placing those funds directly into the account of the transferee.

VAT treatment - By transferring the fund, the actions of the bank have directly resulted in the change of the financial and legal relationship between the customer and the transferee. Therefore, the service of the bank is exempt from VAT.

Information messaging services

Issue - In order to arrange for international transfers of funds, payment orders may be sent between financial institutions using a secure messaging system. The system ensures that standard message formats are used to transmit the financial information between the institutions. The messaging system does not settle the transfer of funds, this must be settled by the correspondent accounts that the institutions have with each other.

VAT treatment - Whilst the messaging service is essential for completing the transfer of the funds, the **change to the financial and legal relationship** between the parties is **effected by the transactions** through the correspondent accounts between the financial institutions. Therefore, the messaging systems services **do not qualify for VAT exemption**.

Conclusion

In some circumstances, it will reasonably clear as to whether the supply is exempt from VAT or subject to VAT. Revenue have recognised that business models and product offerings are evolving and there will be cases where a distinction between a financial service and a technology service can be difficult to determine.

Contact

Should you have any queries in this regard, please feel free to contact us to discuss your specific issue in further detail.



Jarlath O'Keefe

Partner, Head of Indirect Taxes
T +353 (0)1 680 5817
E jarlath.okeefe@ie.gt.com



Janette Maxwell

Manager, Tax
T +353 (0)1 680 5779
E janette.maxwell@ie.gt.com

Offices in Dublin, Belfast, Cork, Galway, Kildare, Limerick and Longford.

