

Services related to the operation of ATMs not exempt from VAT

On October 3, 2019 the Court of Justice of the European Union ('CJEU') rendered judgment in the Cardpoint GmbH case (case no. C-42/18) about the scope of the VAT exemption for transactions concerning payments and transfers. The CJEU ruled that services related to the operation of automated teller machines (ATMs), such as those in this case, do not qualify for the VAT exemption for transactions concerning payments and transfers.

1. The case

The taxable person ('Cardpoint') provides services related to the operation of ATMs owned by its client, a bank. Cardpoint is responsible for ensuring the ATMs are operational and for their maintenance. To this end, Cardpoint equips the ATMs with the computer hardware and software required for their proper operation and bearing the logo of the bank. Cardpoint is also responsible for the transportation of the bank notes made available by the bank and for replenishing the ATMs. Lastly, it advises on the day-to-day operation of the ATMs. The bank in question has thus almost entirely outsourced the daily operational activities to Cardpoint.

Account holders from various banks can withdraw cash from the ATMs. The withdrawal of cash takes place as follows. As soon as the account holder inserts their card into the ATM, the software installed by Cardpoint reads the data on the card and sends an authorization request to the intermediary 'Bank-Verlag'. Via the interbank network, Bank-Verlag forwards the authorization request to the bank that issued the bank card being used for the cash withdrawal. This bank verifies the bank balance of the account holder and approves the cash withdrawal via the same channels, after which Cardpoint processes the cash withdrawal. At the same time, Cardpoint generates an entry instruction in the form of a data file for the bank that operates the ATM being used for the transaction. It is this bank that subsequently enters the unedited data file in the system of the German federal bank 'BBK'. Each day Cardpoint also prepares a non-editable list of all the day's withdrawals, which is also sent to the BBK. These entries enable the right of action of the bank operating the particular ATM toward the bank of the account holder withdrawing the cash, as well as the costs thereof, to be determined.

The reference for a preliminary ruling from the German court to the CJEU asked whether the services Cardpoint provides for the operation of the ATMs qualify as 'transactions concerning payments', which are exempt from VAT under the VAT exemption for transactions concerning payments and transfers, despite the fact that, according to a previous judgment rendered in the [Bookit case \(CJEU May 26, 2016, C-607/14\)](#), technical and administrative services provided by a service provider in connection with card payments for the sale of cinema tickets were not in scope of the VAT exemption.

2. Analysis of CJEU judgment

The CJEU referred to its previous case law in which it concluded that services are regarded as 'transactions concerning payments' if these services, form a distinct whole, fulfilling in effect the specific and essential functions of a payment. The CJEU reiterated

that a payment is characterized by the fact that such a transaction entails the transfer of money and a change in the legal and financial relationship between parties. In that respect, the CJEU noted that more than a mere physical or technical service must be provided, which given the way the reference for a preliminary ruling was framed, the referring court was aware of.

Although the CJEU considered that the withdrawal of cash from an ATM must be regarded as a VAT-exempt 'payment' and the services of Cardpoint are indispensable for the execution thereof, it concluded that these services cannot be regarded as VAT-exempt 'transactions concerning payments'. According to the CJEU, the Cardpoint services as such do not result in a cash transfer nor do they change the legal and financial relationship between parties. This is because it is not Cardpoint that debits and credits the relevant bank accounts. Moreover, Cardpoint does not itself approve any transactions. After all, it has no authorization to do so, but transmits, via a chain of intermediaries, data to the bank that issued the bank card used for the cash withdrawal. Cardpoint subsequently follows the instructions from that bank by providing the cash.

The CJEU also addressed the fact that supplying cash to the user of an ATM is not a transfer of ownership by Cardpoint, but a transfer by the bank that issued the bank card and approved the cash withdrawal. It is the bank that operates the ATM that enters the data files in the BBK's system. According to the CJEU, this means that it is the bank that makes changes to the financial and legal relationship between parties. Cardpoint only sends the BBK the daily non-editable list with transactions for the purposes of notifying the BBK about the approved transactions performed. According to the CJEU, the registration of the withdrawal transactions does not display the essential functions which are characteristic of a payment.

The CJEU also found support for its ruling in the purpose of the VAT exemption for transactions concerning payments and transfers, which is to alleviate the difficulties in determining the consideration and the taxable amount. According to the CJEU, in the present case it is a simple matter to determine which consideration Cardpoint receives for its services.

3. Practical consequences

In its judgment in this case, the CJEU has delineated even further the contours of the scope of the VAT exemption for transactions concerning payments and transfers. The CJEU's ruling in the present case confirms the limited scope of the VAT exemption for transactions concerning payments and transfers and the expression 'specific and essential functions of payments'. In light of previous case law, including the *Bookit* and *DPAS* cases (CJEU July 25, 2018, C-5/17), the judgment thus does not come as a complete surprise. The CJEU has, in any case, provided further guidance on the VAT treatment of the various services making up the payment and cash processing chain. What is, for example, important for the purposes of the VAT exemption is whether the service provider is authorized to approve payments or whether it can debit and credit the particular bank accounts itself.

In particular for parties that perform outsourced financial and banking services for financial institutions, but do not themselves qualify as such, the VAT exemption consequently seems ever more unobtainable. The strict interpretation maintained by the CJEU is increasingly at odds with the wish to keep payment transactions affordable and accessible. Of course, the actual activities and functions performed by the service provider within the chain, as well as the manner in which they are contracted, remain crucial for determining the correct VAT treatment. That does not only apply to the VAT exemption for transactions concerning payments and transfers, but also to other VAT exemptions. For example, the VAT exemption for transactions concerning notes and coins could possibly apply in a situation such as the present case. However, the referring court did not ask the CJEU for a preliminary ruling on that exemption and so the CJEU did not address it.

The tax advisors of Meijburg & Co's Indirect Tax Financial Services Group would be pleased to help you identify the potential impact of this judgment on your business. Feel free to contact one of them or your regular advisor for more information.

Meijburg & Co
October 2019

The information contained in this memorandum is of a general nature and does not address the specific circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.