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By PwC Deutschland | 20. Dezember 2019

Outsourcing finanancial services - VAT exemption

Services are provided to a bank operating automated teller machines (ATMs) which consist of setting up and maintaining these machines, replenishing them with cash and equipping them with hardware and software for reading the cash card data, forwarding authorisation requests for cash withdrawals to the bank which issued the cash card used, making the desired cash withdrawal and registering withdrawal transactions are not tax exempt supplies with the meaning of Section 4 No. 8 letter d of the VAT Act. This was the finding of the Supreme Tax Court on 13 November 2019, published on 19 December 2019.

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Background

The appellant provided contractual services to its principal, a bank, for the operation of ATMs.

The appellant installed operational ATMs with software and hardware bearing the bank's logo at the designated locations and was responsible for their proper operation. The appellant transported the cash made available to it by the bank to the ATMs and was responsible for replenising the ATMs with cash. It installed and maintained the software necessary for the proper operation of the ATMs. It advised on the ongoing operation of the ATMs.

If a customer used the ATM with his cash card to withdraw money, certain data was read from this card using special software. The appellant checked the data and sent on (indirectly in a chain) an electronic authorization about the transaction requested by the cardholder, which was ulimately forwarded to the bank that issued the customer's money card. The card-issuing bank checked the coverage of the customer's account and returned a corresponding approval or rejection of the request via the same chain. The appellant then received the result of the approval request within seconds. Upon receipt of this message, the appellant generated a record of the ATM and, if approved, performed the ATM dispensing operation. In the case of a payment out, the appellant also generated a data record about the cash payment. The appellant sent the data record to its client, the bank, as a booking instruction. This bank imported the data records unchanged into the system of the Deutsche Bundesbank (BBK). A non-editable (daily) data file generated by the appellant also contained all transactions of the respective day and was submitted to the BBK. The "import" into the system of the BBK was carried out by the bank itself, since only banks can maintain payment transaction accounts at the BBK. As a result of this import, the claim for reimbursement of the amount paid out by the appellant’s client, the bank, against the respective bank of the ATM user, as well as the fees incurred for this, were legally binding. In addition, when the data was imported, the settlement of the pay-out plus any fees incurred for the use of the ATM was booked directly between the appellant's client, the bank, and the customer's bank which issued the card.

On 7 February 2007, the appellant, who had initially treated its services as subject to VAT, submitted an amended annual VAT return for 2005 and applied for an amendment to the existing tax assessment. The application was rejected by tax office. The appellant’s claim was however accepted through a decision of the lower tax court, which was then appealed against by the tax office.

Judgment

The Supreme Tax Court accepted the arguments of the tax office and set aside the judgment of the tax court.

Section 4 No 8(d) of the VAT Act, exempts from VAT (inter alia) turnover from transactions concerning payments and transfers. The provision transposes into domestic law Article 13B(d)(3) of Directive 77/388/EEC, which also exempts turnover from transactions concerning payments and transfers and must therefore be interpreted in conformity with that directive.

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According to the ruling of the European Court of Justice in Cardpoint (EU:C:2019:822), services provided to a bank that operates ATMs, consisting in operating and maintaining ATMs, replenishing them, installing computer hardware and software in them, sending a withdrawal authorisation request to the bank that issued the bank card used, dispensing money and registering withdrawal transactions, are not VAT exempt.

The Supreme Tax Court following the judgment of the ECJ found that the appellant's services were taxable. The services provided by the appellant did not, as required by ECJ case law, give rise to any of the legal and financial changes which are characteristic of the transfer of a sum of money.

Furthermore, only the bank operating the ATM transmitted the data files into the BBK system (ECJ ruling Cardpoint, EU:C:2019:822, Para. 27). It was not enough that the service provided by the appellant was indispensable (ECJ judgment Cardpoint, EU:C:2019:822, Para. 28). There were also no difficulties in determining the consideration and thus the basis of assessment (see ECJ judgment Cardpoint, EU:C:2019:822, Para 29).

Source:

Supreme Tax Court judgment (V R 30/19 (V R 6/15)) of 13 November 2019, published on 19 December 2019

Schlagwörter

ATM, Sixth Directive, VAT Exemption