

VAT alert

Ireland

VAT treatment of payment-related services

Implications of the CJEU judgments in the cases of NEC and Bookit

Contacts

If you require further information, please call your regular contact in EY or contact any of the following:

Breen Cassidy (*Partner*)
E: breen.cassidy@ie.ey.com
T: +353 1 2212413

Brian Keenan (*Director*)
E: brian.keenan@ie.ey.com
T: +353 1 2212487

Gavin O'Connor (*Director*)
E: gavin.oconnor@ie.ey.com
T: +353 1 2212278

On 26 May 2016, the Court of Justice of the European Union (CJEU) released its judgments in two cases: National Exhibition Centre Limited (NEC) (C-130/15) and Bookit Limited (C-607/14), referred by the UK Upper Tribunal and First-tier Tribunal respectively.

The CJEU has held in both cases that booking fees charged to customers making advance bookings for concert and cinema tickets on debit and credit cards are taxable and do not qualify for exemption under Article 135(1)(d) of the Principal VAT Directive.

The CJEU's conclusions are widely drawn and could impact businesses operating across a range of industries and sectors. Affected businesses may wish to consider the implications of the judgment, analysing their role in each payment and supply chain.

Background

NEC owns and manages locations for concerts, sport events, etc., selling tickets for these events on the organisers' behalf through its own ticketing system. It checks ticket availability, books tickets, and transfers customer payment details to merchant acquirers (and issuers). Once payment is accepted, authorisation codes are sent (via the merchant acquirer) to NEC.

Bookit, a member of the Odeon Cinema group, also arranges cinema ticket sales. It accepts payment by credit and debit card and, like NEC, charges a separate fee for its payment service.

The questions in both cases focus on the correct VAT treatment of these services.

Questions referred

The questions referred in these cases focus on some fundamental questions around the scope of the payment processing exemption and the payment cycle including:

- ▶ Permissions required for a service to constitute 'payment processing'
- ▶ The 'to whom' test for debt collection (i.e. whether a service to a person who owes the debt can constitute taxable debt collection)
- ▶ The dividing line between an information service and a true payment service
- ▶ Whether the provider has to exercise control over the parties' bank accounts, making the appropriate debt and credit adjustments.

CJEU judgments

The CJEU's analysis in both cases is, as expected, largely the same. In its judgments, the CJEU set out its view on the key criteria which need to be met for exemption to apply. In particular, the CJEU drew a clear distinction between the execution of a payment and tasks which are preparatory to that. Whilst exemption can apply to the payment execution service, anything which falls short of that should, in the CJEU's view, be taxable.

The judgments suggest that the issue and communication of payment authorisation codes and payment instructions is not an exempt supply but a provision of information. Thus, businesses (such as Bookit and NEC) which create and transfer payment files are not providing the underlying payment function; this is undertaken elsewhere in the supply chain by the person which actually moves the money, thereby creating a change to legal and financial relations, the key criterion emerging from the SDC case.

The CJEU also questioned the purpose of the VAT exemption for financial services itself. It argued that the exemption had been introduced because financial services were difficult to value. In Bookit and NEC, however, this was straightforward given each charged a set fee. Thus, in its view, such a service should not under first principles be exempt.

Unfortunately, having decided that these services fall short of being VAT exempt payment services, the CJEU did not address issues around the proper interpretation of 'debt collection'.

Implications

The CJEU's judgments could impact a wide range of industries and businesses. In the first instance, any business which currently exempts payment handling fees and similar may face challenge from the Revenue Commissioners. This is particularly so where the business itself does not move money or make appropriate debits and credit entries.

Although the CJEU did not specifically address outsourced providers, its conclusions could have a wider impact. For example, businesses which have chosen to delegate certain functions to third party suppliers may wish to confirm that those services continue to benefit from VAT exemption. This is obviously a complex area with a huge number of functions, roles and responsibilities being assigned. Furthermore, these judgments would also need to be compared and contrasted with existing case law precedents, such as SDC and FDR cases which state that exemption should be available.

Any business which either charges for or provides payment-related services should carefully review these judgments to assess whether the CJEU's functional tests in Bookit and NEC are met. Having done so, businesses may choose to assess the financial impact of VAT being due and any options that may be available to it. This analysis is not always clear-cut and, in certain supply chains, a move from VAT exempt to taxable can produce efficiencies and savings. In particular, businesses which may have been assessed or which are currently in dialogue with the Revenue Commissioners on the treatment of these services should consider what impact, if any, these judgments will have.

How we can help

We have a global Indirect Tax practice which is experienced in providing support in relation to technical VAT issues. If you feel that these judgments could have implications for your business, and you would like to discuss the position in more detail, please speak with your usual EY Indirect Tax contact or one of the Indirect Tax Team in the Contacts panel on page one.

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Ernst & Young, Harcourt Centre, Harcourt Street, Dublin 2, Ireland.

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