

No exemption for agency service of locating sites for ATMs
Concept Direct Limited V HMRC - (19721)

Summary

The VAT & Duties Tribunal found that commission paid by a bank to the Appellant on cash withdrawal transactions made from ATMs was taxable consideration for the Appellant's taxable service of locating suitable sites and not an exempt financial service. The Appellant had accepted the bank's assurance that the fees were exempt.

Background

The Appellant's business activity was finding suitable sites for ATM machines for one of its banking clients. The Appellant received fees from the bank in respect of 'swipe' fees at ATM machines located in shops or other business premises. The question at issue was 'whether the sums received by the Appellant were exempt as either fees relating to the issue of money, or for intermediary services relating to the issue of money'.

Under the contract between the Appellant and the bank, the Appellant was paid a lump sum commission for identifying a site and securing a contract for the installation of an ATM machine, and also received recurrent transaction fees every time the ATM was used. Under the contract relating to the installation and operation of the ATMs between the shopkeeper or other owner of premises and the bank, the money in the ATM machine belonged to the shopkeepers, and settlement was made daily by the bank with the shopkeeper. The ATM machine was serviced by the bank. The Appellant was not involved in the physical installation of the machine.

The Appellant paid VAT on the commission paid for identifying each site for an ATM machine. The Appellant did not account for VAT on the transaction based fees as they were assured by the bank that the fees were exempt.

Judgment

The Tribunal decided that the Appellant's services to the bank consisted of identifying suitable sites for ATM machines and securing a contract for their installation. The fees it received therefore were for that service. As the Appellant took no part in the operation of the ATM machine and did not issue money, nor had any contact with the user of the ATM machine, it followed that the Appellant did not make exempt supplies within either Item 1 or Item 5 of Group 5 Schedule 9 VAT Act 1994. Neither did it deal with money, or provide intermediary services as that term is defined in Note 5 to Group 5.

Implications

The case illustrates the danger, particularly in outsourcing situations, of accepting assurances from the recipient on the liability of fees without checking the substance of what is being done. Charges between banks when other banks' customers use their ATM facilities (interchange fees) are for effecting the transfer of monies. These are exempt under Item 1, but providing and installing ATM hardware is taxable. Often the operation of an ATM system i.e. routine filling with cash, maintenance and repair is done by someone other than the bank, and such services are normally taxable, unless the operator actually takes legal ownership of the cash at some point.