

Financial services exemption - management of foreign currency exposure of multi currency loans

[ECU Ltd UKFTT 297](#)

This case concerned the liability of ‘managing foreign currency exposure of multi currency loans’ that were provided by third party lenders. HMRC argued this was a taxable supply of debt management by a person other than the one who had granted the credit. The taxpayer argued the supply was exempt.

The Tribunal concluded the taxpayer used its best endeavours to reduce the capital value of the loan by means of forex transactions, even though it only instructed brokers to carry out these forex deals (said brokers were in a minority of occasions part of the lender’s Treasury team but were usually independent of the lender) and did not make the exchanges itself. The taxpayer’s services when viewed as a whole were ‘transactions concerning currency’ under Art 135(1)(e) and hence exempt. The exemption that was envisaged under this heading went beyond the mere payment or transfer of currency as the latter was exempt under a different heading (transactions concerning payments/transfers (Art 135(1)(d)). The taxpayer described its services as debt management, but objectively that was not what was done.

Where the broker instructed was independent of the lender, the taxpayer’s services were also exempt as negotiation concerning currency since the appellant brought together the broker, the lender and the execution banks. It did not matter that the underlying loan had already been granted before the appellant became involved – the negotiations were relevant to the later forex deals and the FNBC case confirmed the currency deals were transactions.

Comment

Swiss Re, Bookit, SDC, Ludwig, FNBC, CSC, Axa and HBOS were all cited as both sides attempted to identify what was being done and if it was covered by the exemption or excluded from it. This is another case which demonstrates that although exemptions must be construed strictly, they have to be given their proper effect as envisaged by the Directive. It is also a reminder that what you call a supply does not necessarily reflect what is actually being supplied and does not drive the liability of the supply.