



## *Bookit* (C-607/14) and *National Exhibition Centre* (C-130/15) – CJEU Judgments

The Court of Justice of the European Union (CJEU) has released its judgments in *Bookit* (C-607/14) and *National Exhibition Centre* (C-130/15) (NEC). To access the *Bookit* judgment click [here](#) and for *NEC* click [here](#). The CJEU has issued almost identical judgments, finding that the fees charged by the taxpayers are not exempt transactions regarding transfers and payments. This is likely to result in a narrowing of the UK's exemption for payment handling services.

### Background

The taxpayers' disputes, leading to these two references to the CJEU, concern the VAT liability of charges to consumers, which are described as 'card handling fees' and 'booking fees'.

The references seek guidance as to whether debit and credit card handling services are exempt under Article 13B(d)(3) of the Sixth Directive, now Article 135(1)(d) of VAT Directive, which exempts:

*'transactions, including negotiation, concerning deposit and current accounts, payments, transfers, debts, cheques and other negotiable instruments, but excluding debt collection.'*

The high level background is as follows:

**Bookit** – Bookit sold cinema tickets over the phone and online as agent for Odeon cinemas. Bookit is part of the Odeon group, but it is a separate entity and not VAT grouped with Odeon. As well as collecting money from customers on behalf of Odeon, it also charged the customer what was referred to as a 'card handling fee'. The First-tier Tribunal (FTT) dismissed HMRC's argument on abuse and debt collection, but referred the exemption point to the CJEU.

**NEC** – NEC operate the National Exhibition Centre and other venues in Birmingham. Tickets could be purchased in person, by telephone, online via NEC's website or by post. Again, acting as agent, NEC would sell tickets and collect money on behalf of the promoters of various events. The domestic dispute concerned the VAT treatment of booking fees charged by NEC to the customer for certain ticket sales. In *NEC* the Upper Tribunal (UT) agreed with the earlier FTT's conclusion that NEC was acting as agent for the promoter and as principal to the customer, but made a reference to the CJEU on the exemption point.

The questions on the exemption point were almost identical, apart from the additional question on debt collection (could a supply to the person who owed the money be debt collection?) in *NEC*. The cases were not joined but were heard together and Judgments given on the same day.

### The Judgments

The observations and response to the questions are, as expected, essentially the same. The CJEU began by making some preliminary observations on whether the service was an ancillary supply. This single supply argument was put forward by a number of parties at the hearing. However, the CJEU gave only general guidance on this point, leaving this very much up to the referring court to decide if this is the case. Given that the referring courts have already found for the taxpayers on this point, and



given that the taxpayers have lost on the exemption point, this will not be something that the referring courts will need to consider. The CJEU does not explore these arguments in any great depth, and hence there is nothing that extends the notion that two separate suppliers can be deemed to be making a single supply, especially where there is no abuse.

Turning to the exemption point, the CJEU noted that the supply could only be exempt if it was regarded as a transaction concerning transfers and payments. Under established case law the CJEU stated that in order to be exempt, the services must, viewed broadly, form a distinct whole, fulfilling in effect the specific, essential functions of a transfer and, therefore, have the effect of transferring funds and entailing changes in the legal and financial situation.

The CJEU concluded that the services in question cannot qualify for exemption. In supporting its conclusion, the CJEU observed:

- Whilst the taxpayers' services were essential for completing an exempt transaction, the taxpayers' services involve the transmission of settlement files at the end of the day, which then triggers the payment process or transfer from the card issuers to the merchant bank and ultimately to the service provider's account;
- Agreeing with the Commission, the settlement files were nothing more than an electronic demand for payment. It therefore cannot be regarded as executing the payment or transfer or having the effect of fulfilling the required specific and essential functions; and
- Neither of the references make clear if the taxpayers assume liability or responsibility in relation to the making of legal and financial changes. This is a characteristic of the existence of an exempted transaction of transfer and payment.

The CJEU considered that the services were technical and administrative, involving the collection and provision of information to the merchant acquirer bank and information which enables the ticket sale to take place and be paid for. To support its conclusion, the CJEU added that if such services were exempt, then any business which takes steps to receive a debit or credit card payment would be making an exempt supply. The CJEU also makes reference to the objectives of the exemption of financial transactions, which it considers is to avoid an increase in cost of consumer credit and to avoid any problem in identifying the taxable amount. Neither of the fees charged involved the provision of credit to the purchaser and the taxable amount was easy to identify.

In *NEC*, the CJEU considered that, given its response on the exemption point, it was not necessary to consider the debt collection point.

## Why is this important?

The arrangements involved in these specific cases have changed and there has been a general reduction in such charges since changes to consumer rights regulations, which limit such fees for paying by card to the actual costs incurred by the trader. However, the values of such transactions, and the implications of their VAT treatment, are significant.

The CJEU's judgment is clear that the specific supplies involved are not exempt. As well as other cases awaiting the outcome of this referral, this is likely to narrow the exemption for payment handling services. Earlier UK domestic cases, such as the earlier *Bookit* Court of Appeal decision [2006] and *Scottish Exhibition Centre* Court of Session [2006] both found for the taxpayer. HMRC had for many years sought to get a reference to the CJEU on this point.



In terms of wider application, a positive from the case is the CJEU's comments on single versus multiple supply. The judgments quote paragraphs 42 to 45 in *Newey* (C-653/11). These talk about following the contractual position unless this does not reflect the economic commercial reality, such as the case of purely artificial arrangements. This is supportive of genuine commercial arrangements involving two suppliers such as in *Telewest* Court of Appeal [2005] i.e. two suppliers equals two supplies.

## What now?

HMRC will no doubt now reconsider its guidance on payment handling services. [VATFIN2320](#) currently sets out four conditions for exemption based on previous UK cases on this issue (which HMRC lost), which the taxpayers in this case and those offering similar services would currently meet. It is expected that HMRC will issue a Brief in due course.

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