

## Tax & Legal Weekly Alert

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#### **CJEU rejects the VAT exemption for services rendered in connection with the operation of ATMs**

The Court of Justice of the European Union (CJEU) ruled, as per a decision of October 3, 2019 (Case C-42/18 - Cardpoint), that the VAT exemption for payment services is not applicable in the case of a supplier that provides ATM operating services to a bank.



## CJEU Decision on the VAT exemption for services rendered in connection with the operation of ATMs

On October 3, 2019, a decision has been issued by the Court of Justice of the European Union, C-42/18 - Cardpoint, on the interpretation of the provisions related to the VAT exemption regarding payments and transfers (exemption provided by the VAT Directive).

### The dispute in the main proceedings and the questions referred for a preliminary ruling

Cardpoint GmbH provided to its client, a bank, services in connection with the operation of ATMs. The services provided by the company consisted in the installation and maintenance of the ATMs, including the installation of equipment/ software for reading banking data, sending authorization requests to make a withdrawal and recording the withdrawal operations (through a non-editable list generated by Cardpoint).

In addition, Cardpoint was responsible for the transportation of banknotes, made available by the bank, and the replenishing of the ATMs. It also provided advice on the proper functioning of the ATMs.

The case reached the CJEU following a dispute between Cardpoint and the German tax authority regarding the classification of services as payment transactions (exempt from VAT under VAT law).

### Considerations and judgement of the CJEU

The ECJ decision is in line with the Opinion provided by the Advocate General, the Court concluding that the services in question **do not** represent transactions regarding VAT exempt payments, as Cardpoint actions are technical in nature, representing in fact the mere execution of some orders (of his client).

We have summarized below the main issues pointed out by the CJEU in its analysis:

- the services that allow *the withdrawal of cash from a payment account constitute payment services* and, consequently, *a withdrawal from the ATM is a payment*;
- in order to have them qualified *as transaction regarding payments, the services in question must fulfill the specific and essential functions that characterize a payment (to have the effect of carrying out the legal and financial changes that characterize the transfer of an amount of money)*;
- *the above condition can be fulfilled if the supplier debits or credits itself an account or that it intervenes through registration in the accounts of the card holder* (criteria / examples established in previously judged cases such as ATP Pension Service - C-464/12 or Bookit - C-607/14). The Court added that the exemption cannot be excluded if the service in question does not directly carry out such a function as long as the actions taken have the effect of transferring the amount of money (note: the Court, however, did not explain what situations other than direct debit / credit or registration can have the effect of a money transfer);
- analyzing the activities of Cardpoint, the Court concluded that the supplier did not approve the payments, or had any decision-making power regarding the payment in question (only transmitted data through a chain of intermediaries, respectively executed the instructions received). The Cardpoint's services *do not have the effect of a transfer of funds, meaning that they do not change the financial and legal situation of the parties*.

## **Implications for the suppliers of payment services**

The judgment of the court comes as no surprise, being in line with those issued in recent years for similar cases.

The fact that a service that is essential for a financial supply is insufficient in order to apply the VAT exemption, is now confirmed for a wide range of services, such as that provided by Cardpoint.

The decision of the CJEU will probably cause changes (amendments or clarifications) for the laws of the Member States. Moreover, we expect that the VAT treatment applied by the payment service providers will come under the scrutiny of the tax authorities during tax audits.

Thus, companies in the financial services field - i.e. cash processing and transport companies, online payment processors / integrators, bill payment companies, but also new players in the market as a result of the PSD2 Directive - will have to (re)analyze the applicable VAT treatment, respectively the exposure or the related impact. Otherwise, in the case where the companies will not voluntarily change their VAT treatment (if the provided services are classified as taxable), there is a risk that in the case of a VAT audit it will be imposed retroactively (together with late payment penalties and interest).

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