



# KMLZ VAT NEWSLETTER

## VAT exemption for operation of ATMs

### 1. Background

In 2016, the ECJ decided, in the legal case *Bookit*, that when purchasing a cinema ticket, the processing of debit or credit card payments cannot be classified as a VAT exempt transaction concerning payments and transfer. This case concerned a customer who bought a cinema ticket using a debit or credit card. *Bookit*, requested the authorization of payment electronically via two intermediary companies at the customer's bank and subsequently received an authorisation code from the bank. Furthermore, *Bookit* transmitted daily logs to the responsible bank for settlement. Now, on the basis of the ECJ's principles, the question is whether the operating of an ATM, by a service provider for a bank, is VAT exempt.

### 2. Facts

The Plaintiff installs ATMs, on behalf of a bank, with the bank's logo on them and also operates the ATMs on behalf of the bank. In order to do so, the plaintiff stocks the ATMs

### German Federal Fiscal Court presents ECJ question regarding subcontracting of banks

Many banks outsource single tasks to external providers. Banks are only partly entitled to deduct input VAT. Therefore, banks are interested in the fact that the outsourced services are VAT exempt. The ECJ has already decided that, when purchasing cinema tickets, the processing of debit or credit card payments is not VAT exempt. Now, the German Federal Fiscal Court would like to know if this also applies to the operation of ATMs.

with cash owned by the bank. Moreover, the plaintiff ensures that the ATM's software is working. If a customer withdraws money, the software reads certain data off the money card used. The Plaintiff checks the data and forwards a self-generated authorisation request via the "Bankverlag" as well as the relevant banking group to the card issuing bank. The card issuing bank returns an approval (or a refusal) in response to the request, via the same chain, to the Plaintiff. After a few seconds, the Plaintiff is able to pay out the money. The plaintiff generates a data set via the transaction, which it forwards to the engaging bank. At the end of the day, the Plaintiff additionally sends a data carrier, recording all of the daily transactions to the engaging bank. The engaging bank brings together both data sets within the system of the Deutsche Bundesbank in order to process the transaction between the involved banks.

### 3. Question of the German Federal Fiscal Court

The Court has posed the question whether the principles developed by the ECJ, in the case *Bookit*, will lead to the conclusion that the operation of an ATM by a service provider for a bank is not VAT exempt. According to the Ger-



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man Federal Fiscal Court, the technical and administrative steps can, in general, be compared to those in the *Bookit* case. According to the Court, there is a difference between the facts in the two cases. On the one hand, it is about acquiring a ticket and on the other hand, it is about cash dispensing. Furthermore, the Court poses the question whether it makes a difference if the customer, who withdraws money from his bank account, does not conclude a separate purchase contract. It emphasizes that the fee can easily be determined and that the Plaintiff is only processing data. Referring to the further supply of the Plaintiff (e.g. installation and filling of the ATM), the Court is of the view that these are probably support services of a technical nature.

#### 4. Impact on the practice

The subject matter of the case is an activity outsourced from a bank to a service provider. The tax exemption of this outsourced activity is important because the bank, being the beneficiary, is not entitled to an input VAT deduction. Following the former German Federal Fiscal Court's principles, these outsourced activities can be classified as VAT exempt transactions concerning payments and transfer. The services at issue must, viewed broadly, form a distinct whole, fulfilling in effect the specific, essential functions of a financial service. The German Federal Fiscal Court decided that running an Automated Transfer system could therefore be VAT exempt.

In our opinion, due to the cash dispensing, another legal assessment compared with the case of card payment may indeed occur. Due to the Plaintiff's activity, the money is immediately transferred, i.e. paid. Thus, the sum of money

is transferred, which was an element demanded by the ECJ. By sending data sets in the course of processing card payments, such an immediate transfer did not occur. Perhaps a distinction between the payment and transfer elements of a transaction should be drawn. However, it is questionable whether this is sufficient for a specific and essential function of the financial supply. The service provider has to bear responsibility for the essential steps of the overall process, which lead to the transfer of the money. It does not merely have to be a physical or technical service. The fact that a service is essential for an exempt transaction does not guarantee that the service itself is VAT exempt.

Depending on how the ECJ interprets the requirements of VAT exemption, it will enable or complicate the outsourcing of services in the banking sector. It is possible that the ECJ will ultimately provide substantial indications as to the conditions applicable to other services provided to banks in order for those services to be VAT exempt. This may be of interest for the following constellations:

- Different Computer Center supplies, which can be tax free, following the decision of the German Federal Fiscal Court.
- Call Center supplies (provided that the Center arranges transfers): The German Federal Fiscal Court has not yet decided on this.
- Data collection supplies. Hereto, the XI Senate of the Court recently decided that the automatic and partly manual recording of transfer forms is not VAT exempt.