



VAT exempt transactions concerning payments and transfers in the case of “stadium payment cards”

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1 Facts

The plaintiff operated an electronic card payment system for stadium visitors. In return for payment of a sum of money, the plaintiff issued stadium visitors with payment cards. The payment cards were loaded with the amount paid, minus a EUR 2 card deposit. For example, if a visitor paid EUR 50, he received, at the time of issue, a payment card with a card credit of EUR 48. If the visitor used the payment card to pay a caterer in the stadium, the card's credit balance was reduced by the price paid to the said seller. The visitor could return the card to the plaintiff and receive a refund of any remaining credit and the amount of the deposit.

The plaintiff provided card readers and had its own staff organise the distribution, loading and return of the cards within the stadium. For carrying out this work, the plaintiff received a commission from the stadium operator and the caterers, which it (undisputedly) treated as being subject to VAT. What was disputed between the parties was whether the proceeds from the card deposit (less repaid deposit amounts) were taxable.

2 Federal Fiscal Court decision

Firstly, the Federal Fiscal Court states in its judgment of 26 January 2022 (XI R 19/19) that the card deposit constitutes consideration, rather than lump sum indemnification. The Court found that there is a direct link between the deposit payment and the provision of the card, established by the contract between the plaintiff and the visitor. Furthermore, no damaging event occurred, as the cardholder was not obliged to return the card to the plaintiff. Contrary to the opinion of the previous



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fiscal court, the provision of the card did not constitute an independent supply but rather, was part of a single supply in the form of access to the cashless payment option. The reasoning for this is that the stadium visitor's interest is focused precisely on this access to cashless payment. The provision of the card and the payment option are so closely linked to each other that they constitute a single economic transaction.

However, this single supply is VAT exempt as a payment transaction (sec. 4 no. 8 lit. d of the German VAT Act). Following the ECJ's jurisprudence, the supply of services must, when viewed broadly, form a distinct whole. This distinct whole must fulfil the specific and essential functions of a payment. The supply of services must result in a transfer of a sum of money and entail changes in the legal and financial situation of the parties. When a payment was made by card, the plaintiff first checked the credit and then released the payment. After the release, each payment transaction immediately reduced the card's credit balance and the caterer received a commitment from the plaintiff to pay out the amount charged. The debit from the visitor's card and the credit to the caterer's account thus resulted in financial changes. In this respect, the Federal Fiscal Court refers to the ECJ judgment *Cardpoint* (C-42/18). Here, the ECJ considered authorisation, debiting of the account and direct payment of money in the case of cash withdrawals from ATMs, to be crucial for VAT exemption.

3 Consequences for the practice

The judgment once again shows the importance and, at the same time, the difficulty of demarcating single supplies from two separate supplies. In practice, this distinction should be made as carefully as possible. Only if this demarcation is made correctly can the further consequences, pursuant to VAT law, be drawn correctly. Thus, in the opinion of the previous fiscal court, the sole provision of the payment card, as the subject of the supply, would not have been VAT exempt. The problem here is that this demarcation is always also a matter of evaluation by the observer. Legal certainty - which is usually crucial for the taxable person - can often not be achieved in this way. However, arguments in one direction or the other can frequently be found through the contractual formulation and the use of comparative cases.

The fact that the payment of the deposit constitutes consideration, rather than non-taxable compensation, is not surprising. A contract (here between the plaintiff and the stadium visitor) establishes a direct link between a supply and the payment (of the deposit). The judgment thus confirms sec. 3.10 para.5a of the German VAT Circular, which considers the deposit for packing material to be consideration for a supply. Even in the case of an obligation to return the pledged item, a breach of this obligation and the resulting damage will therefore probably not lead to a different result.

In its comments on the VAT exemption of supplies of payment services, the Federal Fiscal Court closely follows the opinion of the ECJ. After the Federal Fiscal Court and the ECJ recently, in many cases, rejected that the conditions for VAT exemption provision were met, it is pleasing that it has now been positively established how the requirements can be fulfilled. In particular, the authorisation of a payment, as well as the debit within the scope of the supply, are crucial.