

Mixed supplies

[DPAS Ltd - Dental plan](#)

Background

DPAS administered dental plans, whereby a patient paid DPAS a fixed sum each month by direct debit to cover the costs of their dental maintenance and insurance for emergency treatment. After deducting its fee and the insurance premium, DPAS paid the rest of the money collected over to the dentists. A £10 registration fee was added to the first payment. As a result of the ECJ decision in Axa UK (C-175/09), DPAS's supplies would have been wholly standard rated with effect from 1 January 2012 as debt collection services supplied to the dentists. To avoid this VAT treatment, DPAS restructured its supplies. It changed the contracts in January 2012 to create a taxable contract with the dentist and an exempt payment handling contract with the patient. Payments stayed the same and it was publicised as a purely administrative change. The £10 registration fee was treated by DPAS as a VAT exempt supply, being ancillary to the main exempt supply. The FTT decided that the arrangements worked technically and were not abusive. HMRC appealed.

Decision

Existing patients were informed of the changes and requested to agree to them, but if they did not return the acceptance form but just continued to make the payments, the FTT concluded that they had accepted the new structure by way of their conduct. New patients had to complete a DPAS authorisation form.

In a decision which could potentially make life very complex for DPAS the UT has decided:-

- The authorisation form created a legal relationship between DPAS and the patient
- There is also a legal relationship between those patients that signed and returned the acceptance form and
- DPAS is therefore making supplies to patients in both of these categories.

It did not matter that the patient only knew that 'no more than £3' of his monthly payment would be retained by DPAS for its services and did not know the exact amount. The liability of those supplies is to be stayed behind the ECJ referral in Bookit and NEC, which examines the

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meaning of payment processing services and the scope of that exemption and whether debt collection services can be supplied to a payer. However, there is no relationship between DPAS and the patients that did not sign and return the acceptance form. In respect of those patients, DPAS is only making taxable supplies to the dentist. The £10 fee is payment for a separate taxable supply of being put on the plan.

If the ECJ decides in Bookit (C-607/14) and NEC (C-130/15) that the services were taxable, the question of abuse will fall away as DPAS's services would also be taxable. If the ECJ decide they were exempt, the UT was strongly suggestive of the conclusion that restructuring to achieve exemption was not abusive.

HMRC argued that the DPAS structure went against the purpose of the 135(1)(d) exemption, split a single supply artificially, and breached neutrality and hence was abusive. The UT did not, however, accept any of these assertions. The purpose of 135(1)(d) was not immediately clear. It went beyond just exempting consumer credit. There were two services as DPAS made supplies to the dentists and to those patients it had a legal relationship with. That was not artificial.

The supplies by DPAS under the old arrangements were not similar, from the point of view of the consumer, to the supplies under the new arrangements, as the consumers under the old arrangements (dentists only) and the new arrangements (dentists and patients) were not the same. So neutrality was not relevant.

Comment

It is helpful that the UT rejected the abuse arguments.

Only 30% of the existing patients returned the acceptance form. This decision therefore casts doubt on the validity of any restructuring which takes customer silence as assent to the new terms. Even where DPAS has a relationship with the patient, exemption of its services to the patient has not been confirmed, and must await an ECJ decision, though we would anticipate the ECJ deciding that debt collection services can only be supplied to the person who is owed the "debt".

The UT was not concerned that the patients who did have a relationship with DPAS, and so received supplies from DPAS, did not know how exactly how their payment would be split between the services by DPAS and the services by the dentist.

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