



## **PRESS SUMMARY**

**11 October 2023**

**Target Group Ltd (Appellant) v Commissioners for His Majesty's Revenue and Customs (Respondent)**

**[2023] UKSC 35**

**On Appeal From: [2021] EWCA Civ 1043**

**JUSTICES:** Lord Reed (President), Lord Lloyd-Jones, Lord Sales, Lord Hamblen, Lady Rose

### **BACKGROUND TO THE APPEAL**

Value added tax (“VAT”) is paid on all services supplied for consideration by a taxable person and its application is governed by the Council Directive 2006/112/EC (the “**Principal VAT Directive**”). The Principal VAT Directive exempts specified supplies from VAT under article 135(1)(d). This ‘financial services exemption’ applies to “*transactions...concerning payments, transfers, debts, but excluding debt collection.*”

Shawbrook Bank Limited (‘Shawbrook’) is a provider of mortgages and loans. The appellant (“**Target**”) administers loans made by Shawbrook, including by operating individual loan accounts and instigating and processing payments due from borrowers. This appeal concerns whether the outsourced loan administration services provided by Target to customers on behalf of Shawbrook fall within the financial services 135(1)(d) exemption.

The First Tier Tribunal (“**FTT**”) found that Target’s supply included transactions concerning payments or transfers within the financial services exemption but that the predominant nature of the supply was debt collection, therefore excluded from the exemption and taxable.

The Upper Tribunal (“**UT**”) held that the services supplied by Target to Shawbrook were not exempt but were standard rated supplies for VAT purposes. The UT further

held that Target's inputting of accounting entries in the loan account did not fall within the exemption as it did not change any party's legal and financial position.

Target appealed to the Court of Appeal. The Court of Appeal, unanimously, dismissed the appeal.

Target now appeals to the Supreme Court.

## **JUDGMENT**

The Supreme Court dismisses the appeal, unanimously holding that the financial services exemption did not apply to Target's loan administration services.

Lord Hamblen gives the judgment, with which all the other Justices agree.

## **REASONS FOR THE JUDGMENT**

Target contends that its services fall under the financial services exemption for two reasons: (1) by giving instructions which automatically and inevitably resulted in payment from the borrower's bank accounts to Shawbrook's bank accounts via the Bankers' Automated Clearing System ("**BACS**") (the "**payments/transfers issue**"); and/or (2) by the inputting of entries into the borrower's loan accounts with Shawbrook (the "**loan accounts issue**").

### The payments/transfers issue

The proper interpretation of the case law of the Court of Justice of the European Union ("CJEU") case law is critical to the resolution of the payments/transfers issue [20].

In *Sparekassernes Datacenter ('SDC') v Skatteministeriet* (Case C-2/95) [1997] ECR I-3017, [1997] STC 932, ("**SDC**") it was held that "*viewed broadly*" and as "*a distinct whole*, to be exempt, the services must: (i) have the effect of transferring funds and, (ii) change the legal and financial situation of the relevant parties [53, **SDC**] [28].

This left open the question of whether the services must in themselves have that effect and make that change ("**the narrow interpretation**") or whether it was sufficient for them to have that causal effect ("**the wider interpretation**") [28]. In the Court of Appeal decision of *Customs and Excise Commissioners v FDR Limited* [2000] EWCA Civ 216, [2000] STC 672 ("**FDR**") it was held that the wider interpretation is appropriate. Target contended that later CJEU case law had re-affirmed the correctness of that interpretation.

The judgment considers the CJEU case law since **SDC** in detail and concludes that it makes it clear that the narrow interpretation is the correct one. This is established in

particular by the cases of *Bookit Ltd v Revenue and Customs Comrs* (Case C-607/14) EU:C:2016:355 (26 May 2016) (“**Bookit II**”); *National Exhibition Centre Ltd v Revenue and Customs Comrs* (Case C-130/15) [2016] STC 2132 (26 May 2016) (“**NEC**”), and *HMRC v DPAS Ltd* (Case C-5/17) [2018] STC 1615 (25 July 2018) (“**DPAS**”) [55].

The narrow interpretation accords with the rationale of the exemption to apply to situations where there are difficulties determining the consideration of financial services and therefore the tax base for VAT liability [19]. It seeks to exempt services that themselves effect the transfer of funds and change the legal and financial situations of the relevant parties. The exemption must also be interpreted strictly [55]. It follows that the giving of instructions is not enough even if that inevitably results in a payment or transfer [65]. It is necessary to be involved in the carrying out or execution of the transfer or payment – its “*materialisation*”. This requires functional participation and performance [55].

Given this conclusion, it is apparent that domestic law took a wrong turn in **FDR** and the Court of Appeal’s conclusion, as set out in paragraph 42 of its judgment in **FDR**, must be overruled [64].

#### The loan accounts issue

Target submits that the making of accounting entries is the standard modern means of effecting movements of value and that unilateral accounting entries may be sufficient to effect a transfer of payment [68]. Target characterises its role as debiting and crediting the borrower loan accounts with Shawbrook and thereby making changes to the financial and legal situation of the parties so as to fall within the exemption [68].

This position however is undermined by the FTT’s factual findings that the entries in the ledgers were of “*expected payments*” which were “*assumed to be made*” [73]. On any view such an entry cannot effect a payment or transfer or result in a change of the legal position of the parties [74]. The loan account was no more than a ledger, recording the effect of payments made by customers to Shawbrook but not effecting such payments.

#### Conclusion

For these reasons, the Court rejects Target’s two grounds for contending that its services fall within the financial services exemption. It is therefore unnecessary for the Court to consider any further issues which arise.

*References in square brackets are to paragraphs in the judgment*

#### **NOTE**

**This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:**  
<https://www.supremecourt.uk/decided-cases/index.html>