Reports of Cases

OPINION OF ADVOCATE GENERAL
SAUGMANDSGAARD ØE
delivered on 21 March 2018 [1]

Case C-5/17

Commissioners for Her Majesty's Revenue and Customs
v
DPAS Limited

(Request for a preliminary ruling from the Upper Tribunal (Tax and Chancery Chamber, United Kingdom))

(Reference for a preliminary ruling — Common system of value added tax — Directive 2006/112/EC — Exemption — Article 135(1)(d) — Transactions concerning payments and transfers — Absence — Design and implementation of direct debit dental payment plans — Lack of a supply entailing the transfer of a sum of money — Debt collection — Principle of economic reality — The identity of the formal recipient of the supply is irrelevant)

I. Introduction

1. By decision of 28 November 2016, which was received at the Court on 6 January 2017, the Upper Tribunal (Tax and Chancery Chamber) (United Kingdom) submitted to the Court a request for a preliminary ruling on the interpretation of Article 135(1)(d) of Directive 2006/112/EC ('the VAT Directive'). [2]

2. This request was made in the course of proceedings between DPAS Limited and Commissioners for Her Majesty's Revenue and Customs ('the tax authority') concerning the refusal by the tax authority to exempt from value added tax (VAT) a supply of services made by DPAS.

3. DPAS provides practice-branded dental plans to dentists and supplies dental plan administration services to patients who subscribe to those plans. The question raised in the national proceedings is, in essence, whether the services provided to those patients constitute 'transactions concerning payments or transfers' which are exempt under Article 135(1)(d) of the VAT Directive.

4. I will propose that the Court answer that question in the negative since a supply of services such as that at issue in the dispute in the main proceedings does not, in itself, result in the legal and financial changes which are characteristic of the transfer of a sum of money. In practice, that response means that such a supply must be subject to VAT.

1 Original language: French.

2 Council Directive of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

II. Legal framework

A. EU law

5. In Chapter 3 of Title IX of the VAT Directive, Article 135(1) provides:

'Member States shall exempt the following transactions:

…

(d) transactions, including negotiation, concerning deposit and current accounts, payments, transfers, debts, cheques and other negotiable instruments, but excluding debt collection;

…'

B. United Kingdom law

6. Section 31 of the Value Added Tax Act 1994 provides that a supply of services is an exempt supply if it is of a description specified in Schedule 9 to that Act.

7. Schedule 9 provides, inter alia:

'GROUP 5 — FINANCE

[The following are exempt from VAT:]

1. The issue, transfer or receipt of, or any dealing with, money, any security for money or any note or order for the payment of money.

…

5. The provision of intermediary services in relation to any transaction comprised in item 1 … (whether or not any such transaction is finally concluded) by a person acting in an intermediary capacity.'

8. Note (1A) to Group 5 states:

'Item 1 does not include a supply of services which is preparatory to the carrying out of a transaction falling within that item.'

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

9. DPAS, which is the acronym for 'Dental Plan Administration Services', designs and implements dental plans in the United Kingdom.

10. DPAS provides practice-branded dental plans to dentists and supplies dental plan administration services to the patients of dentists. In the present case, a 'dental plan' refers to the arrangements between a dentist and his or her patient under which the dentist agrees to provide a certain level of dental care and, in return, the patient agrees to pay a specified amount monthly. That plan also includes other services, namely insurance and payment administration services which are provided by DPAS.

11. DPAS manages the administration, finance and insurance aspects of the dental plans. DPAS provides advice to dentists and their staff in particular in setting up the plan and provides marking materials such as brochures, leaflets and posters, registration forms, correspondence/headed notepaper and plan membership cards.

12. Those dental plans allow patients to spread the cost of dental care evenly over the whole year. Accordingly, patients make monthly payments to DPAS by means of a direct debit mandate. According to the referring court, the manner in which the direct debit operates is materially identical to that described in paragraphs 7 to 11 of the judgment in *AXA UK*.[3] When questioned by the Court on that subject, the referring court confirmed that the services provided by DPAS are 'the same or very similar' to those described in the judgment in *AXA UK*.

13. Until 1 January 2012, the dental plans had been structured by DPAS as services provided to dentists and the contractual arrangements implementing those plans were concluded between DPAS and the dentists. DPAS received a fixed charge from each dentist on a monthly basis, which, in the overwhelming majority of cases, amounted to GBP 366.66 (approximately EUR 415), and a 'per patient' charge ranging from GBP 0.94 to GBP 2.90 (approximately EUR 1.06 to EUR 3.28). DPAS received its charges by deducting them from the amounts collected by direct debit from patients.

14. In practice, DPAS requested, pursuant to a direct debit mandate, that the patient's bank transfer the agreed amount from the patient's bank account to its own bank account. DPAS then requested that its own bank transfer to the dentist's bank account the total amount due to that dentist, taking into account those patients who had paid their monthly charge by direct debit and deducting the amount charged by DPAS for its services.

15. The tax authority took the view that DPAS was carrying out transactions concerning payments or transfers which were exempt from VAT under Article 135(1)(d) of the VAT Directive or the equivalent provision of the Sixth Directive.[4]

16. On 28 October 2010, the Court gave its judgment in *AXA UK*[5] which concerned the liability to VAT of services provided by Denplan Ltd, a competitor of DPAS which also offers dental payment plans on behalf of dentists. In that judgment, the Court held that services such as those provided by Denplan constituted, 'as a matter of principle', transactions concerning payments, but had to be regarded as debt collection and factoring services and, accordingly, were not eligible for the abovementioned exemption.

17. Following that judgment, DPAS restructured the contractual aspects of its dental plans from 1 January 2012 so as to make supplies of services not only to dentists, but also to patients.

18. In a letter dated 8 September 2011 and addressed to its dentist clients, DPAS explained, in essence, that restructuring as follows:

– the practical effect of the judgment in *AXA UK*[6] was to make the services provided by DPAS to dentists subject to VAT, whereas the tax authority had previously regarded them as exempt, which would have led to an additional cost in the order of 20% which DPAS would have had to pass on to its customers;

3 Judgment of 28 October 2010 (C-175/09, EU:C:2010:646).

4 Article 13B(d)(3) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1).

5 Judgment of 28 October 2010 (C-175/09, EU:C:2010:646).

6 Judgment of 28 October 2010 (C-175/09, EU:C:2010:646).

– up to that time, the dental plans administered by DPAS included, first, a contract between DPAS and the dentist for the delivery of dental payment plan services and, secondly, a contract between DPAS and the patient for the supply of supplementary insurance cover;

– the proposed restructuring consisted in splitting the first of the abovementioned contracts into two, namely a contract between DPAS and the dentist concerning dental payment plan services and a contract between DPAS and the patient concerning dental payment plan facilities;

– DPAS stated that the amounts it charged would remain unchanged, since it would bear the VAT payable on the service supplied to the dentist, whilst the other services would remain exempt from VAT;

– DPAS emphasised that those changes were 'purely administrative' and that they made 'no practical difference to the current arrangements'.

19. DPAS also sent dentists a draft letter to be sent to patients who had taken out a dental plan. That letter stated that, up to that time, the dental practice had paid an administration charge to DPAS, which was deducted from the monthly direct debit payment made by each patient. That letter proposed that part of the total monthly amount paid by direct debit to DPAS would henceforth be retained by DPAS in respect of its obligation to the patient to manage and administer the dental payment plan, the supplementary insurance policy and the dental emergency helpline. That letter emphasised again that these were 'purely administrative changes [which did not affect] the cover provided under the dental plan or … the level of … total monthly payments'.

20. The referring court found that DPAS supplies services to patients in the context of the new contractual arrangements. Those arrangements create a legal relationship between DPAS and the patient under which the patient agrees that part of each monthly charge payable under the dental plan is consideration for the services provided by DPAS to the patient.

21. However, that court did not reach a conclusion as to whether the services provided by DPAS to patients are exempt [from VAT]. It notes that, to answer that question, it must be determined whether those services are transactions concerning payments or transfers within the meaning of Article 135(1)(d) of the VAT Directive and, if necessary, whether they constitute debt collection. In that regard, the referring court considers that the judgments in *Bookit*[7] and *National Exhibition Centre*[8] did not resolve those issues with sufficient clarity.

22. In that context, the Upper Tribunal (Tax and Chancery Chamber) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Is a service, such as that performed by the taxpayer in the [main proceedings], consisting of directing, pursuant to a direct debit mandate, that money is taken by direct debit from a patient's bank account and passed by the taxpayer, after deduction of the taxpayer's remuneration, to the patient's dentist and insurance provider, an exempt supply of transfer or payment services within Article 135(1)(d) of the Principal VAT Directive? In particular, do the decisions [of 26 May 2016, *Bookit* (C-607/14, EU:C:2016:355), and *National Exhibition Centre* (C-130/15, not published, EU:C:2016:357)] lead to the conclusion that the exemption from VAT in Article 135(l)(d) [of the VAT Directive] is not applicable to a service, such as that performed by the taxpayer in the present case, which does not involve the taxpayer itself debiting or crediting any accounts over

7 Judgment of 26 May 2016 (C-607/14, EU:C:2016:355).

8 Judgment of 26 May 2016 (C-130/15, not published, EU:C:2016:357).

which it has control but which, where a transfer of funds results, is essential to that transfer? Or does the decision [of 28 October 2010, *AXA UK* (C-175/09, EU:C:2010:646)] lead to the contrary conclusion?

(2) What are the relevant principles to be applied for determining whether or not a service such as that performed by the taxpayer in the present case falls within the scope of "debt collection" within Article 135(1)(d) [of the VAT Directive]? In particular, if (as the Court decided in [the judgment of 28 October 2010, *AXA UK* (C-175/09, EU:C:2010:646)] in relation to the same or a very similar service) such a service would constitute debt collection if provided to the person to whom the payment is due (i.e. the dentists in the present case and in [the case cited above]), does that service also constitute debt collection if such a service is provided to the person from whom the payment is due (i.e. the patients in the present case)?'

IV. The procedure before the Court

23. The request for a preliminary ruling was lodged at the Court Registry on 6 January 2017.

24. Written observations were submitted by the Government of the United Kingdom and the European Commission.

25. DPAS, the Government of the United Kingdom and the Commission attended the hearing of 24 January 2018 in order to make their oral observations.

V. Analysis

26. By its questions, the referring court seeks to ascertain, in essence, whether Article 135(1)(d) of the VAT Directive must be interpreted as meaning that the supply of a service such as that provided by DPAS to patients in the context of the dispute in the main proceedings benefits from the exemption provided for therein for 'transactions concerning payments or transfers'.

27. In order to answer those questions, I will begin by identifying the criterion established by the Court to identify a 'transaction concerning payments or transfers' within the meaning of Article 135(1)(d) of the VAT Directive. In my view, it is clear from the case-law that such a transaction must result in the legal and financial changes which are characteristic of the transfer of a sum of money. In accordance with that criterion, I do not consider it possible to categorise the supply of a service such as that at issue in the dispute in the main proceedings as a 'transaction concerning payments or transfers' (Section A).

28. Having regard to the referring court's questions, and for the sake of transparency, I would emphasise that, to me, that interpretation is not reconcilable with the solution adopted by the Court in the judgment in *AXA UK*[9] with regard to the classification of a 'transaction concerning payments or transfers' (Section B).

29. Finally, I should point out that the fact, raised in the second question, that a supply of services is formally provided by the taxable person (DPAS) to the person from whom the payment is due (the patient) and not the creditor of that payment (the dentist), following an amendment to the contractual arrangements between those parties, is irrelevant for the purposes of applying that exemption since the economic reality of that supply has remained unchanged (Section C).

9 Judgment of 28 October 2010 (C-175/09, EU:C:2010:646).

A. A supply of services such as that at issue in the dispute in the main proceedings does not constitute a 'transaction concerning payments or transfers' within the meaning of Article 135(1)(d) of the VAT Directive (first question)

30. By its first question, the referring court asks, in essence, whether Article 135(1)(d) of the VAT Directive must be interpreted as meaning that a supply of services such as that performed by the taxable person in the dispute in the main proceedings, consisting in requesting from the relevant financial institutions, first, that a sum of money be transferred from the patient's bank account to that of the taxable person pursuant to a direct debit mandate and, second, that that sum be subsequently transferred from the latter account, after deduction of the remuneration due to the taxable person, to the dentist's and the patient's insurer's respective bank accounts, constitutes a 'transaction concerning payments or transfers' which is exempt under that provision.

31. I share the view held by the Government of the United Kingdom and the Commission that that question should be answered in the negative. In other words, the service provided by DPAS to patients, in the circumstances of the dispute in the main proceedings, does not constitute a 'transaction concerning payments or transfers' which is exempt under the provision cited above, for the following reasons.

32. To my knowledge, in its judgment in *SDC*,[10] the Court defined the concept of a 'transaction concerning payments or transfers' in the context of the VAT system for the first time. In my opinion, it is clear from that definition that the decisive criterion which makes it possible to identify a transfer lies in the changes which take place in the legal and financial situation which are characteristic of the *transfer of a sum of money*.[11]

33. It is true that that definition refers strictly to the concept of a 'transfer' and not that of a 'transaction concerning transfers' within the meaning of Article 135(1)(d) of the VAT Directive.

34. In that last regard, the Court has stated that the wording of that provision does not preclude a transfer from being broken down into separate services which then constitute 'transactions concerning transfers' within the meaning of that provision. While it is not inconceivable that the exemption at issue may extend to services which are not transfers per se, the fact remains that that exemption can relate only to transactions which form a distinct whole, fulfilling in effect the specific, essential functions of such transfers.[12]

35. In other words, a complex supply of services may be regarded as 'transactions concerning transfers' only where it has the effect of making the legal and financial changes which are characteristic of the transfer of a sum of money.

10 Judgment of 5 June 1997 (C-2/95, EU:C:1997:278, paragraph 53): '[A] transfer is a transaction consisting of the execution of an order for the transfer of a sum of money from one bank account to another. It is characterised in particular by the fact that it involves a change in the legal and financial situation existing between the person giving the order and the recipient and between those parties and their respective banks and, in some cases, between the banks. Moreover, the transaction which produces this change is solely the transfer of funds between accounts, irrespective of its cause. Thus, a transfer being only a means of transmitting funds, the functional aspects are decisive for the purpose of determining whether a transaction constitutes a transfer for the purposes of the Sixth Directive [replaced by the VAT Directive].'

11 Moreover, that criterion corresponds with the usual definition of a 'transfer' and with the definition set out in Article 4(24) of Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ 2015 L 337, p. 35), in accordance with which credit transfer means 'a payment service for crediting a payee's payment account with a payment transaction or a series of payment transactions from a payer's payment account by the payment service provider which holds the payer's payment account, based on an instruction given by the payer'.

12 Judgments of 26 May 2016, *Bookit* (C-607/14, EU:C:2016:355, paragraph 39); of 26 May 2016, *National Exhibition Centre* (C-130/15, not published, EU:C:2016:357, paragraph 34); and, to that effect, of 5 June 1997, *SDC* (C-2/95, EU:C:1997:278, paragraphs 64 to 66).

36. With the notable exception of the judgment in *AXA UK*,[13] which I shall address in Section B below, the Court has always applied the criterion of the transfer of a sum of money for the purpose of determining the existence of 'transactions concerning transfers' within the meaning of Article 135(1)(d) of the VAT Directive.[14] More generally, the Court has made it clear that the transactions referred to in that provision concern services or instruments that operate as a way of transferring money.[15]

37. The Court has also stated in several judgments that the considerations relating to transactions concerning transfers are also applicable to transactions concerning payments. In other words, those two concepts are subject to the same treatment for the purposes of the exemption provided for in Article 135(1)(d) of the VAT Directive.[16] That common treatment does not seem to me to be open to criticism, since the transfer is one of the practical ways in which a payment may be made. In my opinion, that common treatment is also dictated by the principle of fiscal neutrality, which precludes treating comparable supplies of services, which are thus in competition with each other, differently for VAT purposes.[17]

38. I note that the fact that DPAS is not a financial institution is not sufficient to exclude the supply of services by DPAS from the scope of the exemption provided for in Article 135(1)(d) of the VAT Directive. According to settled case-law, the transactions covered by that exemption are defined according to the nature of the services provided and not according to the person supplying or receiving the services.[18] Accordingly, the Court has held, inter alia, that certain services supplied to occupational pension funds by an operator other than a financial institution involving, in particular, the management of workers' individual accounts and contributions paid by employers fell within the scope of that exemption.[19]

39. Nevertheless, it follows from the foregoing that the supply of a mere physical, technical or administrative service which does not result in the legal and financial changes which are characteristic of the transfer of a sum of money is *not covered* by the exemption provided for in the provision cited above.[20]

40. Yet, services such as those provided by DPAS in the circumstances of the main proceedings fall precisely, in my view, under that category of 'mere physical, technical or administrative services' which remain subject to VAT.

13 Judgment of 28 October 2010 (C-175/09, EU:C:2010:646).

14 Judgments of 5 June 1997, *SDC* (C-2/95, EU:C:1997:278, paragraph 53; of 28 July 2011, *Nordea Pankki Suomi* (C-350/10, EU:C:2011:532, paragraph 25); of 13 March 2014, *ATP PensionService* (C-464/12, EU:C:2014:139, paragraph 79); of 26 May 2016, *Bookit* (C-607/14, EU:C:2016:355, paragraph 38); and of 26 May 2016, *National Exhibition Centre* (C-130/15, not published, EU:C:2016:357, paragraph 33).

15 Judgments of 22 October 2015, *Hedqvist* (C-264/14, EU:C:2015:718, paragraph 40) and, to that effect, of 12 June 2014, *Granton Advertising* (C-461/12, EU:C:2014:1745, paragraphs 37 and 38).

16 See judgments of 5 June 1997, *SDC* (C-2/95, EU:C:1997:278, paragraph 50); of 28 July 2011, *Nordea Pankki Suomi* (C-350/10, EU:C:2011:532, paragraph 26); of 26 May 2016, *Bookit* (C-607/14, EU:C:2016:355, paragraph 43); and of 26 May 2016, *National Exhibition Centre* (C-130/15, not published, EU:C:2016:357, paragraph 38).

17 See, inter alia, judgment of 2 December 2010, *Everything Everywhere* (C-276/09, EU:C:2010:730, paragraph 31).

18 See, in particular, judgments of 5 June 1997, *SDC* (C-2/95, EU:C:1997:278, paragraph 32); of 26 June 2003, *MKG-Kraftfahrzeuge-Factoring* (C-305/01, EU:C:2003:377, paragraph 64); of 13 March 2014, *ATP PensionService* (C-464/12, EU:C:2014:139, paragraph 78); of 22 October 2015, *Hedqvist* (C-264/14, EU:C:2015:718, paragraph 39); of 26 May 2016, *Bookit* (C-607/14, EU:C:2016:355, paragraph 36); and of 26 May 2016, *National Exhibition Centre* (C-130/15, not published, EU:C:2016:357, paragraph 31).

19 Judgment of 13 March 2014, *ATP PensionService* (C-464/12, EU:C:2014:139, paragraphs 77 to 85). The Court stated that transactions establishing the rights of pension customers vis-à-vis pension funds by transforming the claim held by a worker vis-à-vis his employer into a claim held by that worker vis-à-vis the pension fund of which he is a member constituted 'transactions concerning payments or transfers' (paragraph 82 of that judgment).

20 See, to that effect, judgments of 5 June 1997, *SDC* (C-2/95, EU:C:1997:278, paragraph 66); of 13 December 2001, *CSC Financial Services* (C-235/00, EU:C:2001:696, paragraphs 26 to 28); of 28 July 2011, *Nordea Pankki Suomi* (C-350/10, EU:C:2011:532, paragraphs 24 and 28 to 39); of 13 March 2014, *ATP PensionService* (C-464/12, EU:C:2014:139, paragraph 79); of 26 May 2016, *Bookit* (C-607/14, EU:C:2016:355, paragraphs 40 and 51); and of 26 May 2016, *National Exhibition Centre* (C-130/15, not published, EU:C:2016:357, paragraphs 35 and 46).

41. According to the description provided by the referring court in its first question, the supply of services at issue in the dispute in the main proceedings consists in DPAS requesting from a financial institution, pursuant to a direct debit mandate, that a sum of money be collected from the patient's bank account and paid to DPAS, which then asks its bank to transfer that sum of money, after deduction of the remuneration due to it, to the dentist and patient's insurer.

42. I should point out that, having regard to the obligation to interpret strictly the exemption provided for in Article 135(1)(d) of the VAT Directive, the fact that the supply of services by DPAS is essential for completing the transfer or payment, in so far as it marks the patient's intention to transfer the sum of money from his account, is not sufficient to put it on the same footing as a 'transaction concerning payments or transfers' which is exempt under that provision. [21]

43. A supply of that kind does not, in itself, result in the legal and financial changes which are characteristic of the transfer of a sum of money, within the meaning of the case-law cited above.

44. In the context of that supply, DPAS does not carry out the transfer of the sums of money agreed in the context of the dental plans at issue in the dispute in the main proceedings itself, [22] but asks the relevant financial institutions to do so. Accordingly, DPAS's involvement is prior to the transfer transactions carried out by those institutions, with the latter, however, falling within the scope of the exemption provided for in Article 135(1)(d) of the VAT Directive.

45. Likewise, a patient who makes a transfer order to his dentist does not carry out the transfer of the sum of money agreed himself, but asks his bank to do so. The fact that DPAS obtained the authority to request the transfer of a sum of money in the name and on behalf of the patient, from the patient's bank, cannot have the effect of transforming that preliminary step into a 'transaction concerning payments or transfers' within the meaning of the provision cited above.

46. In other words, DPAS provides administrative management services the formal recipients of which are the patients, following the restructuring of the contractual arrangements initiated by DPAS, and it is the relevant financial institutions which carry out the financial transactions falling within the exemption provided for in Article 135(1)(d) of the VAT Directive. The administrative nature of the services provided by DPAS is supported, in my view, by the content of the letter for patients following the contractual restructuring of the dental payment plans. [23]

47. In my view, that interpretation is also confirmed by the judgments in *Bookit* [24] and *National Exhibition Centre*, [25] which were delivered after the judgment in *AXA UK* [26] and concerned the supply of services which were more closely linked to transfers than the supplies at issue in *AXA UK* and in the dispute in the main proceedings.

21 Judgments of 5 June 1997, *SDC* (C-2/95, EU:C:1997:278, paragraph 65; of 13 December 2001, *CSC Financial Services* (C-235/00, EU:C:2001:696, paragraph 32); of 28 July 2011, *Nordea Pankki Suomi* (C-350/10, EU:C:2011:532, paragraph 31); of 26 May 2016, *Bookit* (C-607/14, EU:C:2016:355, paragraph 45); and of 26 May 2016, *National Exhibition Centre* (C-130/15, not published, EU:C:2016:357, paragraph 40).

22 The circumstances of the dispute in the main proceedings must, therefore, be distinguished from those which gave rise to the judgment in *ATP PensionService* (C-464/12, EU:C:2014:139). See footnote 19 of the present Opinion.

23 It is clear from that letter, which is cited by the referring court and of which I have reproduced extracts below, that DPAS provides administrative management services: '[Your] monthly Direct Debit is paid through [DPAS], which *devised, provides and administers* your dental plan using its Direct Debit *administrator* status. Although in the past, of course, DPAS has had a relationship with you, we, the dental practice, have paid an *administration charge* to DPAS out of the Direct Debit payment that you made. … From now on, it is proposed … that part of the total monthly Direct Debit amount to be paid by you to DPAS will be retained by DPAS in respect of *its obligation to you to manage and administer* your dental plan payments and to manage and administer your Supplementary Insurance cover and dental emergency helpline' (emphasis added). See also points 17 to 19 of the present Opinion.

24 Judgment of 26 May 2016 (C-607/14, EU:C:2016:355).

25 Judgment of 26 May 2016 (C-130/15, not published, EU:C:2016:357).

26 Judgment of 28 October 2010 (C-175/09, EU:C:2010:646).

48. A card handling service, which was at issue in those judgments, included, in particular, the transmission of an end-of-day settlement file by the service provider to the merchant acquirer bank, since that transmission triggered the process of payment or transfer of the sums concerned from the card issuers to that merchant acquirer bank and, ultimately, to the account of that service provider, the only payments or transfers that were in fact made being those in respect of which the necessary information was included in that file. [27]

49. Yet, the Court has held that a service of that kind cannot be classed as a 'transaction concerning payments or transfers' which is exempt under Article 135(1)(d) of the VAT Directive, since it does not, in itself, result in the legal and financial changes characterising the transfer of a sum of money. [28]

50. The Court was right to point out that that service consisted, in essence, in an exchange of information between a trader and its merchant acquirer bank with a view to receiving payment for goods or services offered for sale and, therefore, did not constitute a financial transaction intended to fall within the exemption cited above. [29]

51. I see no reason not to extend that reasoning to a supply of services such as that at issue in the dispute in the main proceedings. A supply of that kind, like the supplies which formed the subject matter in the two judgments cited above, is merely a step prior to the transfer or payment transaction covered by that exemption and must, therefore, remain subject to VAT.

52. That conclusion is, in addition, confirmed by the objectives pursued by Article 135(1)(d) of the VAT Directive. First, according to settled case-law, the transactions exempted under Article 135(1)(d) to (f) of that directive are, by their nature, financial transactions even though they do not necessarily have to be carried out by a bank or a financial institution. [30]

53. In the present case, supplies such as those at issue in the dispute in the main proceedings are administrative in nature, as explained above. As the Government of the United Kingdom was right to point out, a large number of operators now accept payments by direct debit or by credit card. The management of the administrative aspects of those payment methods cannot, in my view, be treated as a financial transaction which is exempt under the abovementioned provisions.

54. Second, also according to settled case-law, the exemptions cited above seek, inter alia, to alleviate the difficulties connected with determining the taxable amount and the amount of VAT deductible. [31] In that regard, it is clear from the explanations provided by the referring court that the remuneration received by DPAS in respect of its services consists in the difference between the amounts collected from patients and the amounts transferred by DPAS to the dentist and the insurer. Therefore, the determination of the taxable amount does not present any particular difficulty and accordingly that transaction does not qualify for exemption under Article 135(1)(d) of the VAT Directive.

27 Judgments of 26 May 2016, *Bookit* (C-607/14, EU:C:2016:355, paragraph 44), and *National Exhibition Centre* (C-130/15, not published, EU:C:2016:357, paragraph 39).

28 See, to that effect, judgments of 26 May 2016, *Bookit* (C-607/14, EU:C:2016:355, paragraphs 45 to 51), and *National Exhibition Centre* (C-130/15, not published, EU:C:2016:357, paragraphs 40 to 46).

29 See, to that effect, judgments of 26 May 2016, *Bookit* (C-607/14, EU:C:2016:355, paragraphs 53 to 56), and *National Exhibition Centre* (C-130/15, not published, EU:C:2016:357, paragraphs 48 to 51).

30 Judgments of 19 April 2007, *Velvet & Steel Immobilien* (C-455/05, EU:C:2007:232, paragraph 22); of 22 October 2009, *Swiss Re Germany Holding* (C-242/08, EU:C:2009:647, paragraph 46); of 12 June 2014, *Granton Advertising* (C-461/12, EU:C:2014:1745, paragraph 29); of 13 March 2014, *ATP PensionService* (C-464/12, EU:C:2014:139, paragraph 78); of 22 October 2015, *Hedqvist* (C-264/14, EU:C:2015:718, paragraph 37); of 26 May 2016, *Bookit* (C-607/14, EU:C:2016:355, paragraph 36); and of 26 May 2016, *National Exhibition Centre* (C-130/15, not published, EU:C:2016:357, paragraph 31).

31 Judgments of 19 April 2007, *Velvet & Steel Immobilien* (C-455/05, EU:C:2007:232, paragraph 24); of 10 March 2011, *Skandinaviska Enskilda Banken* (C-540/09, EU:C:2011:137, paragraph 21); of 12 June 2014, *Granton Advertising* (C-461/12, EU:C:2014:1745, paragraph 30); of 22 October 2015, *Hedqvist* (C-264/14, EU:C:2015:718, paragraph 36); of 26 May 2016, *Bookit* (C-607/14, EU:C:2016:355, paragraph 55); and of 26 May 2016, *National Exhibition Centre* (C-130/15, not published, EU:C:2016:357, paragraph 50).

55. In the light of the foregoing, I propose that the Court should answer the first question referred as follows: Article 135(1)(d) of the VAT Directive must be interpreted as meaning that a supply of services such as that performed by the taxable person in the dispute in the main proceedings, consisting in requesting from the relevant financial institutions, first, that a sum of money be transferred from the patient's bank account to that of the taxable person pursuant to a direct debit mandate and, second, that that sum be subsequently transferred from the latter account, after deduction of the remuneration due to the taxable person, to the dentist's and the patient's insurer's respective bank accounts, does not constitute a 'transaction concerning payments or transfers' which is exempt under that provision since it does not, in itself, result in the legal and financial changes which characterise the transfer of a sum of money.

B. The categorisation of a 'transaction concerning payments or transfers' used in the judgment of 28 October 2010, AXA UK (C-175/09, EU:C:2010:646)

56. In order to fully answer the questions from the referring court, I must again mention the solution adopted by the Court in the judgment in *AXA UK*[32] with regard to the categorisation of a 'transaction concerning payments or transfers'. A careful reader will have already inferred from the foregoing that, in my view, that solution is hardly reconcilable with the case-law both before and after that judgment.

57. In that regard, it is clear from the order for reference and from the clarification provided by that court at the request of the Court of Justice that the service provided by DPAS, which is at issue in the dispute in the main proceedings, is 'the same or very similar' to that provided by Denplan, as described in paragraphs 7 to 11 of the judgment in *AXA UK*.[33] I see no reason to call into question that finding of facts, which is a matter for the national court. I note that DPAS has, at least implicitly, conceded that they are the same or very similar since it restructured the contractual arrangements implementing its services with a view to avoiding the consequences of that judgment.[34]

58. In Section A above, I stated that the supply of services such as that provided by DPAS in the dispute in the main proceedings does not constitute a 'transaction concerning payments or transfers' since it does not, in itself, result in the legal and financial changes which characterise the transfer of a sum of money.

59. By contrast, in paragraph 28 of the judgment in *AXA UK*,[35] the Court held that the supply of a service such as that provided by Denplan constituted, 'as a matter of principle', a transaction concerning payments which is exempt under Article 135(1)(d) of the VAT Directive. Nevertheless, it went on to hold that such a supply had to be categorised as debt collection and factoring and, therefore, had to be subject to VAT.

60. In so doing, the Court did not examine whether the supply of services by Denplan satisfied the criterion established by the previous case-law to identify a 'transaction concerning payments or transfers', namely the fact that it makes the legal and financial changes which characterise the *transfer of a sum of money*. Yet, there is little doubt in my mind that such a service, like the service provided by DPAS in the dispute in the main proceedings, does not satisfy that criterion.

61. Therefore, the question raised by the judgment in *AXA UK*[36] is whether the Court wished to broaden the concept of a 'transaction concerning payments or transfers' so as to include transactions which do not, in themselves, entail the transfer of a sum of money.

32 Judgment of 28 October 2010 (C-175/09, EU:C:2010:646).

33 See point 12 of the present Opinion.

34 See points 16 to 19 of the present Opinion.

35 Judgment of 28 October 2010 (C-175/09, EU:C:2010:646).

36 Judgment of 28 October 2010 (C-175/09, EU:C:2010:646).

62. I do not think that was the Court's intention, for the following reasons. First of all, the Court did not state that its intention was to depart from the case-law in that way in the judgment cited above, but it merely pointed out in summary that the supply at issue constituted, 'as a matter of principle', a transaction concerning payments which was exempt, unless it was debt collection or factoring.[37]

63. Subsequently, it did not establish new criteria by which to define the concept of a 'transaction concerning payments or transfers'.

64. Finally, in the judgments in *Bookit*[38] and *National Exhibition Centre*,[39] which were delivered after the judgment in *AXA UK*,[40] the Court confirmed its traditional case-law, based on the criterion of a transfer of a sum of money. As I pointed out in Section A above,[41] those two judgments are of even greater relevance since, in my view, they concerned the supply of services which were more closely linked to transfers than the supplies at issue in the judgment in *AXA UK* and in the dispute in main proceedings.

65. In the light of the foregoing, I propose that the Court should not apply the solution adopted in the judgment in *AXA UK*[42] to the present case and, therefore, it should hold that a supply of services such as that at issue in the dispute in the main proceedings does not constitute a 'transaction concerning payments or transfers' within the meaning of Article 135(1)(d) of the VAT Directive.

C. The identity of the formal recipient of the service is irrelevant for the purposes of applying Article 135(1)(d) of the VAT Directive (second question)

66. By its second question, the referring court asks, in essence, whether the supply of services at issue in the dispute in the main proceedings constitutes 'debt collection' within the meaning of Article 135(1)(d) of the VAT Directive.

67. In my view, there is no need to answer that question, in the light of my proposed answer to the first question referred. An answer is necessary only if the supply at issue falls, in principle, within the scope of the exemption provided for in Article 135(1)(d) of the VAT Directive in so far as it is a 'transaction concerning payments or transfers'. In those circumstances, the question that arises is whether that supply falls under the exception provided for in respect of debt collection activities.

68. Since I am proposing that the Court should answer the question to the effect that the supply at issue in the dispute in the main proceedings does not constitute a 'transaction concerning payments or transfers', it is no longer necessary to examine the scope of the exception to that exemption. From a practical point of view, given that my proposed answer to the first question means that that supply is subject to VAT, it is no longer necessary to ask whether it is subject to VAT as a debt collection.

69. Nevertheless, I would again mention the relevance, for the purposes of applying the abovementioned exemption, of the fact, set out in the second question referred, that the supply at issue in the dispute in the main proceedings is formally provided by the taxable person (DPAS) to the person from whom the payment is due (the patient) and not to the creditor of that payment (the dentist), following the amendment to the contractual arrangements between those parties.

37 Judgment of 28 October 2010, *AXA UK* (C-175/09, EU:C:2010:646, paragraph 28).

38 Judgment of 26 May 2016 (C-607/14, EU:C:2016:355).

39 Judgment of 26 May 2016 (C-130/15, not published, EU:C:2016:357).

40 Judgment of 28 October 2010 (C-175/09, EU:C:2010:646).

41 See points 47 to 51 of the present Opinion.

42 Judgment of 28 October 2010 (C-175/09, EU:C:2010:646).

70. I note, in that regard, that, according to settled case-law, consideration of the economic reality is a fundamental criterion for the application of the common system of VAT.[43] In that regard, the Court has expressly accepted the possibility that contractual provisions do not reflect the economic reality of the services performed, on which the application of the VAT system must be based.[44]

71. It is clear from the description of the facts provided by the referring court that DPAS carried out a restructuring of the contractual arrangements implementing its dental payment plans in order to also designate the patient, and not only the dentist, as the recipient of those services. The stated intention of that restructuring was to prevent the part of the services provided to patients from being regarded as 'debt collection and factoring' following the judgment in *AXA UK*[45], so that that part remains exempt from VAT.[46]

72. In the context of that restructuring, DPAS maintained, to both dentists and patients, that the economic reality of its supply of services would remain unchanged since the changes were 'purely administrative' and made 'no practical difference to the current arrangements'.[47]

73. In those circumstances, that restructuring of the contractual arrangements, which sought to also designate the patient and not only the dentist as being the recipient of those services, is irrelevant for the purposes of applying Article 135(1)(d) of the VAT Directive. That conclusion follows from the obligation to base the application of the VAT system on the economic reality of the services at issue, in accordance with the case-law cited above.

74. To me, that approach also seems to be dictated by Article 131 of the VAT Directive, under which the exemptions provided for, inter alia, in Article 135(1)(d) of that directive, are to apply 'in accordance with conditions which the Member States shall lay down for the purposes of ensuring the correct and straightforward application of those exemptions and of preventing any possible evasion, avoidance or abuse'. I would point out, in that regard, that it does not seem necessary to me to have recourse to the doctrine of abuse of rights, which is nevertheless well established in the area of VAT,[48] since the obligation to take as a basis the economic reality of the transactions in question enables the issue raised by the second question referred to be resolved.

75. In the light of the foregoing, I propose that the Court should answer that question as follows: Article 135(1)(d) of the VAT Directive must be interpreted as meaning that the fact that the supply at issue in the dispute in the main proceedings is formally provided by the taxable person to the person from whom the payment is due (the patient) and not to the creditor of that payment (the dentist), following an amendment to the contractual arrangements between those parties, is irrelevant for the purposes of applying the exemption provided for therein since the economic reality of that supply has remained unchanged.

76. I would point out that that answer is also relevant should the Court decide to apply the solution adopted in the judgment in *AXA UK*[49] to the present case, contrary to my proposals in Sections A and B above. In my view, should the Court find that a supply of services such as that at issue in the dispute in the main proceedings must be categorised as a 'debt collection' transaction (subject to VAT), it would be irrelevant, for the purposes of that categorisation, whether the contractual

43 Judgments of 20 February 1997, *DFDS* (C-260/95, EU:C:1997:77, paragraph 23); of 28 June 2007, *Planzer Luxembourg* (C-73/06, EU:C:2007:397, paragraph 43); of 7 October 2010, *Loyalty Management UK and Baxi Group* (C-53/09 and C-55/09, EU:C:2010:590, paragraph 39); and of 20 June 2013, *Newey* (C-653/11, EU:C:2013:409, paragraph 42).

44 See, in particular, judgment of 20 June 2013, *Newey* (C-653/11, EU:C:2013:409, paragraph 44).

45 Judgment of 28 October 2010 (C-175/09, EU:C:2010:646).

46 See points 16 to 19 of the present Opinion.

47 See points 18 and 19 of the present Opinion.

48 See, inter alia, judgments of 21 February 2006, *Halifax and Others* (C-255/02, EU:C:2006:121, paragraphs 74 and 75); of 17 December 2015, *WebMindLicenses* (C-419/14, EU:C:2015:832, paragraphs 35 and 36); and of 22 November 2017, *Cussens and Others* (C-251/16, EU:C:2017:881).

49 Judgment of 28 October 2010 (C-175/09, EU:C:2010:646).

arrangements at issue in the main proceedings designate the dentist or the patient as being the formal recipient of that supply. The obligation to take as a basis the economic reality of the transactions for the purposes of applying VAT would also preclude, in those circumstances, merely playing around with the wording of the contracts having the ability to change the categorisation of a supply of services even though the economic reality has remained unchanged. [50]

VI. Conclusion

77. In the light of the foregoing, I propose that the Court should answer the questions referred for a preliminary ruling by the Upper Tribunal (Tax and Chancery Chamber) (United Kingdom) as follows:

(1) Article 135(1)(d) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that a supply of services such as that performed by the taxable person in the dispute in the main proceedings, consisting in requesting from the relevant financial institutions, first, that a sum of money be transferred from the patient's bank account to that of the taxable person pursuant to a direct debit mandate and, second, that that sum be subsequently transferred from the latter account, after deduction of the remuneration due to the taxable person, to the dentist's and the patient's insurer's respective bank accounts, does not constitute a 'transaction concerning payments or transfers' which is exempt under that provision since it does not, in itself, result in the legal and financial changes which characterise the transfer of a sum of money.

(2) Article 135(1)(d) of Directive 2006/112 must be interpreted as meaning that the fact that the supply at issue in the dispute in the main proceedings is formally provided by the taxable person to the person from whom the payment is due (the patient) and not to the creditor of that payment (the dentist), following an amendment to the contractual arrangements between those parties, is irrelevant for the purposes of applying the exemption provided for therein since the economic reality of that supply has remained unchanged.

50 See point 72 of the present Opinion.