

## **Cases C-231/07 and C-232/07 Tierce' Ladbrokes SA & Derby SA v Belgium**

**(Judgment released 14 May 2008)**

**Article 13B(d)(3) of the Sixth Directive - Payment handling and other services provided by independent intermediary – Whether an exempt supply - Single or multiple supply**

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The European Court of Justice decided this case by way of an order, released on 14 May 2008, and without an opinion from the Advocate General. Despite the length of time since release of the Order, no English version of the order is yet available and only the French version can be found on the Court website.

The taxpayers were bookmakers established in Belgium and taking bets mainly in relation to horse races both in Belgium and abroad. They contended that certain supplies of services made to them by independent intermediaries ought to benefit from exemption pursuant to Article 13B(d)(3) as transactions or negotiations concerning deposits and/or concerning payments.

The services provided by the intermediaries engaged by the taxpayers consisted in the acceptance of bets in the name of the taxpayers, the confirmation of those bets with clients by the issuing of a betting slip, the collection of funds from the client and the paying out of any gains.

The argument put forward by Ladbrokes was that the principal service supplied by the intermediaries was the rendering of financial services and, in particular, the collection of funds and payment of gains.

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After citing well established case law on the interpretation of Article 13B(d)(3) and on the assessment of single and composite supplies, such as *CPP*, the Court had little difficulty in concluding, at paragraph 22, that the principal service was that of accepting bets in the name of the taxpayer, a taxable activity, and that the collection of funds was no more than an ancillary supply.

While the finding of the Court at paragraph 22 is largely unsurprising, the Court went on to hold, at paragraph 24, that even if the collection of funds had been the principal service, it would not have been eligible for the exemption under Article 13B(d)(3) as it did not fall within the purpose of that provision.

The Court held, relying on Case C-455/05 *Velvet & Steel*, that the purpose of the financial services transactions was that of alleviating the difficulties connected with determining the tax base and the amount of VAT deductible and to avoid an increase in the cost of consumer credit. It then concluded that, as VAT could easily be charged on the remuneration received by the intermediaries, those difficulties did not arise in relation to that remuneration and the exemption at Article 13B(d)(3) could not therefore apply to it.

It is this latter finding, which was largely unnecessary to the disposal of the case before it, which is less easy to reconcile with earlier judgments, such as *SDC*. It is somewhat difficult to discern what the Court actually meant by it as, taken at face value, it would lead to the conclusion that whenever the remuneration of an economic operator is easily identifiable and the tax base therefore clear, the exemption ought not to apply. If that is correct, then a number of UK cases on financial services, not least *Bookit*, would sit ill at ease with this latest pronouncement from the ECJ. The writer somehow doubts that the ECJ really meant to reach such a radical position but it remains to be seen how this passage will be applied in future cases before the ECJ.

Indeed, the writer understands that the Commissioners are now seeking to rely on this dictum in order to defeat the taxpayers' claims in *AXA v HMRC* [2008] EWHC 1137 (Ch) (now pending in the Court of Appeal on appeal by the Commissioners), *T-Mobile v HMRC* [VAT Decision 20521] (now pending in the High Court on appeal by the taxpayer) and, no doubt, any other payment processing cases in which taxpayers are seeking to rely on the *Bookit* judgment. Both the judgment in *AXA* and the decision in *T-Mobile* did not consider this case as the order of the ECJ had not yet been released by the time either hearing took place. It will be interesting to see how the UK courts hearing those appeals will treat paragraph 24 of this Order, though it appears likely that a reference may well have to be made in order to clarify what the ECJ really meant by it.

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