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Dollar Financial UK Ltd v HMRC: When Must a Financial Intermediary Charge VAT?

Executive Summary

The decision in *Dollar Financial UK Ltd v HMRC* [2016] UKFTT 598 will likely be of interest to a range of participants in the lending market, and the financial services sector more generally, because it confirmed a number of helpful principles in terms of the scope of the ‘financial intermediary exemption’ from value added tax (VAT). In particular, it determined that an exempt intermediary, which electronically provides potentially eligible borrower profiles to a lender (in this case, a pay-day lender), could fall within the VAT exemption. The case also provides a reminder of whether a business is an intermediary or merely a conduit and/or merely providing services akin to advertising.

Dollar Financial: The Facts

Dollar Financial UK Limited (Dollar Financial) is a pay-day loan provider which received information from overseas companies (Lead Generators) regarding potential new borrowers. Individuals who visited a Lead Generator’s website would enter basic personal details into an online form, with a view to determining whether they met the basic lending criteria of a number of pay-day loan providers (including Dollar Financial). The Lead Generator would then match each potential borrower with a pay-day lender. Typically, the matched lender would be one which was willing to pay the largest commission to the Lead Generator if the introduction were to lead to a loan offer being made to the borrower. The case is interesting for its discussion of the VAT treatment of these services.

Where Dollar Financial made an offer to a potential borrower, a different company, Allsec, might then be contracted to try to engage with the borrower using certain “live chat” services.

Dollar Financial: When Is an Intermediary an Exempt Intermediary?

Dollar Financial successfully argued that the Lead Generator services to Dollar Financial were VAT-exempt on the basis that they fell within the intermediary exemption (specifically here in respect of the potential granting and negotiation of credit). The Lead Generators were found to have acted as exempt intermediaries, as they introduced people seeking a financial product with a relevant provider of the product and they went beyond merely advertising or acting as a conduit because they assessed the suitability of potential borrowers (by using criteria unique to each lender). Crucially, the Lead Generators were not ‘selling’ Dollar Financial unfiltered leads—they carried out a complete assessment, except for a credit check (which the lender was required to carry out for financial regulatory reasons). Additionally, the court helpfully restated the principle that an exempt intermediary does not need to have a contractual relationship

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with both parties to the underlying financial product. Accordingly, it was sufficient for the Lead Generator to have a contract in place with the lender.

In respect of the live chat services provided by Allsec, unsurprisingly, the court found that these services were not introductions (as the borrower in each case was already known to Dollar Financial) and could not be seen as the negotiation of contracts. Instead, Allsec was regarded as merely seeking to convince the borrower of the benefits of accepting an existing offer and therefore its services fell outside the intermediary exemption and its fees were subject to VAT.

Brexit

As an EU Member State, the UK has been bound by the VAT rules set out in the EU VAT directives and regulations. Following Brexit, the future direction and scope of UK VAT will need to be determined. Accordingly, while an entire repeal of UK VAT seems unlikely, the future application of the judgment in cases like *Dollar Financial* will inevitably be tied to the UK's determination regarding post-Brexit VAT more generally.

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