[2016] UKFTT 0610 (TC)

TC05346

Appeal number: TC/2015/07182

VALUE ADDED TAX – kiosks at supermarkets exchanging coins for a voucher redeemable the same day in the supermarket for cash or against purchases – whether supply of financial services exempt from VAT – yes.

FIRST-TIER TRIBUNAL
TAX CHAMBER

COINSTAR LTD **Appellant**

- and -

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE & CUSTOMS **Respondents**

TRIBUNAL: JUDGE RICHARD THOMAS
ELIZABETH BRIDGE

Sitting in public at the Royal Courts of Justice, London on 20 June 2016

David Scorey QC, instructed by Baker & McKenzie LLP, for the Appellant

Hui Ling McCarthy, instructed by the General Counsel and Solicitor of HM Revenue & Customs, for the Respondents

DECISION

1. This was an appeal against a decision of the Commissioners for Her Majesty's Revenue and Customs ("HMRC") that the supplies made by the appellant were chargeable to Value Added Tax ("VAT") at the standard rate and were therefore not exempt from VAT, as had been the case up to the time of the making of that decision. The appeal is made under s 83(1)(b) Value Added Tax Act 1994 ("VATA").

2. The issue for our decision is therefore whether HMRC are right, or whether as the appellant contends, its supplies are exempt from VAT by virtue of Article 135 of Council Directive 2006/112/EC on the Common System of Value Added Tax ("Principal VAT Directive" or "PVD") given effect to in UK law by Items in Group 5 of Schedule 9 VATA.

The evidence

3. The evidence consisted of the correspondence between the parties; a number of screenshots of pages from the appellant's website; a "Walk through documents and photographs", being a step-by-step guide to the operation of the Coinstar Unit at Sainsbury's in the Cromwell Road in West London; photocopies of the vouchers issued by the Coinstar machines (supplemented by actual vouchers given to us at the hearing) and copies of two agreements for the operation of Coinstar machines, with Wm Morrison plc ("Morrisons") and J Sainsbury plc ("Sainsbury's").

4. We also had a witness statement by Mr Nick Harris, UK and Ireland Country Manager for the appellant. This was put forward as Mr Harris's evidence-in-chief, but Mr Harris briefly entered the witness box so that the Tribunal could ask him one or two questions to supplement his evidence. Ms McCarthy did not seek to cross-examine Mr Harris and we accept his evidence where it is of fact rather than opinion.

The primary facts

5. There was no dispute about the primary facts. We take what follows primarily from Mr Harris's unchallenged witness statement and supplementary answers, and from the "walk through". Later in this decision (see §§35 to 44) we make additional findings of fact drawing inferences from these primary facts.

(1) Coinstar Ltd is a subsidiary of a US corporation, Outerwall Inc. Coinstar has operated in the UK since 2000.

(2) Its only operations in the UK are of "self service coin kiosks", of which it has almost 2,000 located in supermarkets.

(3) Each kiosk is connected to a computer via a phone line. When a customer wishes to use the kiosk there will be a display asking if the customer wants a cash voucher or to donate to charity. Once the choice is made, the screen displays the commission to be charged (9.9% for a cash voucher). If the customer chooses to continue by accepting the terms and conditions they feed the coins into the kiosk which counts them as they pass through sensors that determine whether the coin is a valid UK coin or not. Invalid coins or objects

are rejected and may be retrieved by the customer from a tray in the machine (although the screen says that this is not guaranteed to happen). Valid coins drop into one large bin on wheels within the kiosk. They are not held in suspense for potential return to the customer, nor are they sorted by denomination.

(4) As the coins are passing through the sensors, the screen on the kiosk shows a tally of the numbers of coins of each denomination that have been detected and the total value of the coins.

(5) When that operation is complete a cash voucher is printed. The screen informs the customer that the voucher should be taken to a cashier in the supermarket and that it must be redeemed "today". The voucher shows the tally of coins that was shown on the screen, the fee retained by the appellant and the net value of the voucher.

(6) Once the coins have been inserted in the kiosk they cannot be returned and become the property of the appellant.

(7) The voucher is printed on sophisticated and expensive paper with security features, to make it difficult to forge. They do not show any name on them and if accidentally dropped or otherwise lost may be used by anyone who finds them.

(8) When the vouchers are presented to the cashier, the supermarket is obliged, under the terms of its agreement with the appellant, to validate them. If valid the supermarket is obliged to pay the face value in cash or to reduce a customer's checkout bill by that amount. Approximately 65% of vouchers presented are used to pay bills in the supermarket. Supermarkets have a discretion to honour vouchers presented late, ie after the day of issue.

(9) Coinstar is obliged to pay the supermarket the face value of the vouchers presented to it. Coinstar also pays a "revenue share" of its commission to the supermarkets.

(10) The coins inserted into the kiosks are collected by third parties who reconcile the amounts with Coinstar's internal accounts and deposit the coins into Coinstar's bank accounts.

(11) In the case of a donation to charity the customer receives a receipt from the charity showing the tally of coins and the processing fee and this receipt includes a Gift Aid Declaration with the name and other details of the donor to be entered.

6. There was appended to Mr Harris's witness statement a number of shots of advertising material on the kiosks and in handouts available to customers. These included the slogans and instructions:

"Cash your coins here"

"Full coin jar at home? Coins in. Spending money out. It's quick and easy! 1 Press the start button. 2 Pour your coins into the tray. 3 Collect your voucher to use in-store or exchange for cash at customer service."

"Turn your coins into spending money at Coinstar!

…. Coinstar will count your coins for you. You won't even have to sort them. Our tried and tested machines count up to 10 coins a second, so you can get back to shopping in just a few minutes.

Redeem your voucher. After your coins are counted take your printed voucher and you're ready to go.

A small service fee is charges at all our Coinstar machines."

7. Mr Harris also exhibited screen shots from the appellant's Facebook and Twitter pages. Those pages showed a "short description" of the appellant's business as "You bring us your coins. We give you cash. No sorting or counting required."

8. In the "Long description" the words "We're there to count your coins" are included, and in the Products section it says "We'll count your coins and give you a voucher to cash in …"

9. On the appellant's website under a tab called "Coins that count" the text includes:

"Coins to cash®

No sorting. No counting. No queuing at the bank. Let us turn your change into spending money.

…

All our machines count your coins in seconds …"

10. We should add that there is nothing in the papers to show that the various items we have described were as they were before HMRC informed the appellant that it no longer considered the supplies to be exempt, and that the website extracts are shown as ©2016. We mention this because HMRC drew our attention to a difference between the Sainsbury's agreement and the Morrisons agreement, both of which were in evidence.

11. The Morrisons contract is dated in 2013. The relevant passages of the contract are:

(1) In the "Background" section at B it says "We [Morrisons] have agreed to grant you a licence to install and operate certain coin counting machines …".

(2) At clause 3.2 it refers to the appellant "performing coin counting services in the Stores…", but goes on to say that Morrisons will not permit any other person to "process coins".

(3) Part 3 of the Schedule refers to "… provid[ing] self service coin counting to store customers …"

(4) Part 7 says that "The Equipment is designed to count loose sterling change for customers".

12. The Sainsbury's agreement is dated 2016, after the decision in this case. The relevant passages of the contract are:

(1) In the Background section at (A) (though there is no (B)) it relates that "Coinstar is engaged in the business of operating automated coin collection and exchange kiosks. These kiosks are capable of collecting a customer's coins and exchanging them for a printed voucher …"

(2) At 3.1 it states that "… Coinstar shall install and operate the Units …" ("Units' being defined as "the coin collection and exchange kiosks as described in more detail in Schedule 5" Schedule 5 merely consists of a photograph of a kiosk.

And as far as we can tell there is no reference in the Sainsburys agreement to the counting of coins. We consider whether we can give the differences any significance below (see §41).

13. The only evidence that needs to be mentioned from the inter-party correspondence is this:

(1) On 12 December 2000 HM Customs and Excise wrote to the appellant's accountants informing them that the supplies to be made by the appellant were exempt from VAT under Item 1 Group 5 Schedule 9 VATA where a voucher was issued, but that arranging for the charitable payments was taxable.

(2) On 12 June 2001 HM Customs and Excise confirmed their view of the issue of vouchers as within Item 1 Group 5, although they added that where the vouchers were used to pay for goods there could be a taxable supply within paragraph 5 Schedule 6 VATA. Since the appellant had no way of knowing whether the customer would redeem for cash or goods, the pragmatic approach was taken to exempt the whole commission. In addition the charitable payments were to be treated as exempt as coming within Item 1 Group 5.

(3) The next item of correspondence was a letter from HMRC of 24 July 2015 referring to a VAT Inspection in May that year. This contained the first decision that the supplies were not exempt, in the light of tribunal cases.

The law

14. We start with the Principal VAT Directive.

15. Article 135, contained in Chapter 3 (Exemptions for other activities) of Title IX (Exemptions) provides:

> "1. Member States shall exempt the following transactions:
>
> …
>
> (c) the negotiation of or any dealings in credit guarantees or any other security for money and the management of credit guarantees by the person who is granting the credit;

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

(e) transactions, including negotiation, concerning currency, bank notes and coins used as legal tender, with the exception of collectors' items, that is to say, gold, silver or other metal coins or bank notes which are not normally used as legal tender or coins of numismatic interest;

…"

16. This Article is reflected in Group 5 in Part 2 of Schedule 9 to VATA:

"Item No

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.

…

5A The underwriting of an issue within item 1 or any transaction within item 6.

6 The issue, transfer or receipt of, or any dealing with, any security or secondary security being—

…

(b) any document relating to money, in any currency, which has been deposited with the issuer or some other person, being a document which recognises an obligation to pay a stated amount to bearer or to order, with or without interest, and being a document by the delivery of which, with or without endorsement, the right to receive that stated amount, with or without interest, is transferable; or

(c) any bill, note or other obligation of the Treasury or of a Government in any part of the world, being a document by the delivery of which, with or without endorsement, title is transferable, and not being an obligation which is or has been legal tender in any part of the world; or

(d) any letter of allotment or rights, any warrant conferring an option to acquire a security included in this item, any renounceable or scrip certificates, rights coupons, coupons representing dividends or interest on such a security, bond mandates or other documents conferring or containing evidence of title to or rights in respect of such a security; or

(e) units or other documents conferring rights under any trust established for the purpose, or having the effect of providing, for persons having funds available for investment, facilities for the participation by them as beneficiaries under the trust, in any profits or income arising from the acquisition, holding, management or disposal of any property whatsoever.

…

8 The operation of any current, deposit or savings account.

…"

17. In addition we were given paragraph VATFIN2820 ("What is a Security for Money?") from HMRC's Guidance Manuals, and the relevant version of VAT Notice 701/40 (Finance). Neither has the force of law. Nor does Chapter 34 (Bills of Exchange and Banking) of *Chitty on Contracts* (32nd edition) which we were also supplied with. These documents are however informative and helpful.

18. We had no less than 31 case law authorities in the bundle, of which 16 were decisions of the Court of Justice of the European Communities or Union ("ECJ"), 8 were binding decisions of superior UK Courts and tribunals and the rest were decisions of this or the VAT Tribunal or VAT & Duties Tribunal and so not binding on us.

19. In order not to clutter up this decision with lengthy citations, we have put a table of case law authorities in the Appendix with the abbreviations we use in the body of the decision. This does not cover every case cited although we have considered all of them. The ones not mentioned were either given to as support for undisputed principles of VAT law, or as support for matters which were not developed sufficiently in oral arguments to enable us to come to a conclusion.

20. But there is one case that Mr Scorey mentioned which was not included in the bundle, although it was referred to in *Secrets* by Rose J at [30]. The case is *Board of Inland Revenue v Haddock* (Punch [1930] pp 652-654 *sub. nom.* "The negotiable cow"[1]; A P Herbert (with introduction by Lord Atkin): "Uncommon Law" pp 201-215 Methuen [1930]) to support the proposition that a security for money need not take any particular form.

The approach we should take

21. In both skeletons the parties set out principles that they said we should abide by. The principles are:

(1) The contract between the parties is a most useful starting point.

(2) In determining the nature of a supply, regard must be had to the "economic reality".

(3) The assessment of the nature of the supply should be made from the perspective of the customer, as a typical consumer, not the supplier

(4) There must be a direct and immediate link between the service provided and the consideration received.

(5) Exemptions from VAT are to be construed strictly, but not restrictively so as to deprive an exemption of its intended effect.

[1] We are indebted to Philip Ridd, former Solicitor of Inland Revenue, for this citation.

22. We add that some of these principles (certainly (2) and (3)) were, in the cases cited, expounded in the context of determining whether there was one supply or multiple supplies: whether they apply more generally is not entirely clear to us, but we have applied the principles generally where it seems to us relevant to do so.

Submissions by the appellant

Primary case – exchange of one form of money for another form of money

23. The appellant's primary case is that the service supplied by them is an exchange of money for another (more convenient and usable) form of money (the voucher) which involves a change in the legal and financial position of the parties. A supply of that service is an exempt supply.

Alternative case – supply of security for money

24. The appellant alternative case is that if the service provided by the appellant is not the exchange of money into a more convenient and usable form, it is the supply of a cash voucher which is an exempt security for money.

25. In support of this submission the appellant cites §§34-001 to 34-022 of *Chitty on Contract*s, *Secrets* and *Kingfisher* [2000] STC 992, as well as VAT Notice 701/49. It denies the HMRC argument that the voucher is an ancillary aspect of the service.

Submissions by HMRC

26. HMRC's position is that the appellant's customer is paying for his coins to be sorted and counted, to save the customer the time he would spend otherwise doing this task himself and taking the coins to the bank. HMRC point out that this position is consistent with Coinstar's advertising as shown in the documents in the bundle.

27. The consequence of this is that the appellant is, in HMRC's view, making an overarching taxable supply comprising two elements:

(1) Sorting and counting the coins accurately

(2) Issuing the customer with a voucher which can be redeemed for cash or goods in the supermarket in which the machine is located.

28. HMRC accept that the voucher in this case may be a security for money, but argue that that is insufficient in itself for the overall supply to come within the finance exemption in Art 135 and Group 5. The counting and sorting elements predominate (for which proposition HMRC cites *Secrets*).

Discussion: what is provided in return for the fee?

29. It is clear from the Upper Tribunal decision in *NEC UT* and elsewhere that in relation to a case of this sort the Tribunal should find as a fact what it is that is provided by the appellant to its customers in return for the consideration given. At [25] the Upper Tribunal said:

> "But the first question that needs to be addressed in the Supply issue is simply what was provided by NEC for the consideration which it received in the form of the booking fee. The answer to that question, which we consider is a purely factual one, assuming that the FTT has applied the correct legal test, may then lead to questions of law as to whether what was provided was a single or multiple supply and will then feed into the legal question to be addressed in the Exemption issue. But the conclusion of the FTT that what was provided by NEC in return for the booking fee was a card processing service was itself a finding of fact."

HMRC's contentions

30. HMRC's case is that what was provided by the appellant is a coin counting or sorting service.

31. In support of this contention HMRC point to the references in the leaflets, Facebook and website extracts which tell those looking at that material that Coinstar will count their coins (see §§6 to 9). This, they say, saves the customer the time they would spend doing this task themselves and then taking the coins to the bank. But it is not only HMRC who say this: they point to the "Coinstar Story" on its website where it explains that the founder of Coinstar devised machines to do the hard work of accurately sorting and counting the coins and they point further to the statement on the machines' screen which states that there is "[a] coin counting fee of 9.9 pence for every pound's worth of coins counted".

The appellant's contentions

32. The appellant disputes HMRC's approach to the question of what service is provided for the fee. In response to HMRC's characterisation of the appellant service as, or primarily as, "coin counting", the appellant accepts that the coins are counted by the machine in the sense that the machine identifies and recognises each coin and tallies the numbers and values of each. But it argues:

(1) If the service was coin counting the customer would be able to take their coins away, but this is not possible.

(2) If the service was counting, no secure voucher would be required, merely a receipt showing the results of the counting.

(3) The economic reality is that the contractual arrangements for the voucher and the level of commission charged is inconsistent with mere coin counting. The counting is simply an initial prerequisite to the customer's objective of obtaining money in a more convenient and usable form.

(4) That the customer is able to donate to charity as well as obtain a cash voucher is inconsistent with the notion of mere coin counting.

(5) The contracts with the supermarkets are irrelevant to the question of what the service to the customer is. Whatever the differences in wording, Coinstar's service remains the same.

33. HMRC, they say, are focussing only on the undisputed fact that coins are counted and are ignoring the economic reality: a conclusion that a "counting service" is supplied elevates a mechanical and at most ancillary aspect of the supply into the service itself.

34. The appellant says that the service provided is one of exchanging coins for a more convenient, more usable means of exchange.

Our analysis

35. We agree with the appellant, and find as a fact that the service provided is not a coin counting service, but a service of exchanging a less convenient means of exchange into a more convenient one.

36. Thus what the appellant provides in return for the 9.9% fee it retains is the facility for customers to exchange sterling coins for a more convenient, more usable form of money.

37. We reject the appellant's contention on the basis that a coin counting service would simply count coins, and having counted those coins, would return them, possibly after sorting into denominations. In such a service the coins would not be treated as money but as commodities.

38. There is, of course, a sense in which coins are counted by Coinstar. It is impossible to provide the service that appellant does without its machines calculating by using sensors the denomination of the coins and the number of each denomination. But what the machine does not do is to return either all the coins it has counted, or coins to the value of 90.1% of the total, to the customer. We do not think that any customer would pay 9.9% of the value of their coins just to have them counted and returned. Accordingly we agree with the appellant that the economic reality is that a 9.9% charge is far more than a true coin-counting service could bear.

39. And counting coins for its own sake is not something that we consider a typical customer of the Coinstar machines (or the supermarket) wants. The only type of person who might want such a service are the misers who featured in the biographies that Mr Nicodemus Boffin pretended to enjoy in *Our Mutual Friend*, or perhaps Ebenezer Scrooge.

40. We do not think it is relevant to our finding that there is marketing and advertising material available to customers which suggests that Coinstar will count their coins. There is other material available which stresses the convenience of the Coinstar service. If there are customers who think that the machines will simply count their coins and hand them back they will discover before using the machines that this is not so. But even if they ignore the messages on the screen, it is a fact that the machines do not simply count, and do not count and return.

41. We recognise that there may be some force in the point made by HMRC about the change is language and emphasis between the earlier and later supermarket contracts, and that we cannot tell from the evidence whether there has been a similar

change in the advertising material to de-emphasise the counting aspects. But whatever is the case, we do not think we should determine the nature of a transaction by how it is advertised or promoted.

42. Nor do we think it is relevant what is in the contracts between the appellant and the supermarkets. The supplies made as a result of those contracts are not in issue before us, and the contracts are not something that a typical customer of the appellant would have or want any knowledge of.

43. What we have said above applies however only to the exchange of coins for a voucher usable as money. Where a person wishes to use the coins to make a payment to a charity then that service is one of arranging for a payment to charity and the fee (a reduced fee) is charged for that service. There is an element of convenience here because it saves the customer having to either find a collecting box which would not involve laboriously inserting a few coins at a time or an office of the charity which would accept a large number of coins.

44. But the charity transaction does not constitute a coin-counting service either, for the reasons we have given in relation to the voucher case. In fact we consider it to be less of a coin counting service than in the voucher case. If a customer wishes to donate to a charity it is irrelevant to them what the value of the contents of the jar or other container they bring to the machine is.

Discussion: characterisation of the supply

45. We have determined as a fact what the service is that is given by the appellant in return for the fee. Now we have to, as a matter of law, determine what the VAT character of the supply (or supplies) involved in that service is. That also requires us to consider whether there is more than one element or feature of the service which might be regard as a separate supply, and if there is whether the separate supplies should be regarded as a single supply or a number of supplies.

46. Only after that exercise is complete is it possible to determine whether the entire transaction constitutes an exempt supply, a taxable supply or a mix.

47. It seems to us, in agreement with HMRC, that the two elements making up the service, and the only such elements, are the valuation of the coins (which involves counting the coins and expressing their value and type on the screen) and the issue of the voucher. The question then is whether these two elements should be regarded as making up what HMRC refer to, taking their cue from *CEM* (per Lord Rodger at [11]), as a "single overarching supply" or as two separate supplies.

The appellant's contentions

48. The appellant argues that the coin-counting element is at most an ancillary aspect of the service. Thus it seems to us that it is saying that if it is not even ancillary then the supply is its alternative, a supply of a voucher: but if it is ancillary then there is a single overarching supply of an exchange of coins for a voucher.

HMRC's contentions

49. HMRC by contrast argue that it is the voucher that is the ancillary element. HMRC accept that the voucher issued by the machines "may be" a security for money (and thus an exempt supply). But, they submit, the relevant supply is an overarching supply of counting and sorting, analogous with the supply in *Byrom* at [70] and *Ladbroke* which applied the principles in *CPP ECJ*.

50. HMRC say that from the customer's perspective their intention is not the commercially pointless one of putting cash into a machine to get a less valuable voucher. It is the sorting and counting of their money, as the machine tells them when they deposit the coins.

Our analysis

51. In *CPP HL* Lord Slynn said at [22]:

> "It is clear from the European Court of Justice's judgment that the national court's task is to have regard to the "essential features of the transaction" to see whether it is "several distinct principal services" or a single service and that what from an economic point of view is in reality a single service should not be "artificially split". It seems that an overall view should be taken and over-zealous dissecting and analysis of particular clauses should be avoided."

and at [25]

> "If one asks what is the essential feature of the scheme or its dominant purpose, perhaps why objectively people are likely to want to join it, I have no doubt it is to obtain a provision of insurance cover against loss arising from the misuse of credit cards or other documents. That is why CPP is obliged to, and does, arrange, through brokers, with an insurance company like Continental for that cover to be available."

52. In our view it is not arguable that what Coinstar supplies is not, from an economic point of view, a single service. The essential features of the transaction from the point of view of the typical consumer are that they are changing inconveniently large numbers of coins into a more convenient voucher and that this is a single, overcharging supply of that exchanging. And the same applies to the charity payment case.

53. That is essentially the primary submission of the appellant. We do not therefore need to consider its alternative submission, that the supply is of a voucher to which the coin counting or valuation is ancillary. But we say this. In *CPP* Lord Slynn quoted [30] of the decision of the ECJ in that case:

> "There is a single supply in particular in cases where one or more elements are to be regarded as constituting the principal service, whilst one or more elements are to be regarded, by contrast, as ancillary services which share the tax treatment of the principal service. A service must be regarded as ancillary to a principal service if it does not constitute for customers an aim in itself, but a means of better

enjoying the principal service supplied (Joined Cases C-308/96 and C-94/97 *Commissioners of Customs and Excise v Madgett and Baldwin* [1998] ECR I-6229, paragraph 24) "

54. We think that it could reasonably be argued that obtaining the voucher could be regarded as "an aim in itself" as that is what the customer wished to obtain and use and we would certainly not accept that the voucher can be treated as merely ancillary to the coin-counting. Thus we would probably accept the appellant's alternative submission if it were necessary to do so, if we are wrong about our conclusion in §52.

55. On the other hand we do consider that coin-counting is not an aim in itself. We have found as a fact that the appellant's customers are not seeking (or getting) a coin-counting service and so it is impossible to say that the coin counting is an aim in itself or a principal service to which the voucher is ancillary.

56. HMRC strongly pressed on us the relevance of *Secrets*. There the First-tier Tribunal identified a variety of services provided by the dancer so that the overall or overarching supply was not exempt even though the voucher given to the dancer was a security money. In the Upper Tribunal Rose J found that they were entitled to come to that view on the facts. She contrasted the case with *Kingfisher* where there was also a voucher which was security for money but where the supply was held, on its facts, to be exempt. We think this case is closer to *Kingfisher* than to *Secrets* but we have cone to our view on the basis of the facts in this case.

Discussion: the finance exemption

57. We now turn to the question whether the finance exemption applies to the supply we have identified.

The appellant's contentions

58. Changing money into different denominations or currencies at a bank is, the appellant says, an exempt service as is the purchase of travellers' cheques. What is more HMRC also say this in VAT Notice 701/49 (and said it for 15 years following their initial ruling in 2000). The appellant's service is directly analogous to these activities and thus clearly meets the tests to be a financial transaction within the scope of exemption.

59. The appellant stresses that it takes ownership of the coins so the customer obtains a right to a value, not to the return of some or all of the coins themselves.

60. Because the supermarkets have agreed with the appellant to issue cash or accept the vouchers as payment for goods (Coinstar machines not having facilities for issuing cash themselves) the practical effect is that coins are exchanged for a different monetary denomination.

61. The purpose of the transaction from the customer's viewpoint is the ability to have a form of money which is more convenient than a lot of coins in a jar etc and which may not be accepted by the supermarkets given the rules on legal tender (which we were given). This analysis of the purpose is consistent with much of the

appellant's advertising shown in the bundle. The appellant also points to the HMRC Review of the decision in 2015 in which the description of the customer's purpose was endorsed.

62. It is clear that a transfer of money such as an ATM withdrawal or the transfer from one account to another is exempt, and it is submitted that the appellant's service is fiscally equivalent to an ATM withdrawal. An ATM withdrawal is exempt because the legal and financial position of the parties has changed, citing *SDC* at [66]. This is the position with Coinstar's service.

63. Correspondingly this is not, as HMRC contend, simply "counting" or the physical supply or movement of money as occurred in *Williams & Glyn's* or *Nationwide Anglia*.

64. It is also clear that where sterling is exchanged for another currency that transaction is exempt. The exchange of sterling for bitcoins is also exempt (*Hedqvist*). But nothing in the PVD or VATA limits the exempt treatment to exchanges of different currencies, and *Secrets* makes clear that an exchange of sterling for a sterling value is exempt.

65. Not to exempt such a sterling/sterling exchange would be a breach of fiscal neutrality or equal treatment, and the appellant cites in support three ECJ cases, *M&S*, *Kipgen* and *Idéal*.

HMRC's contentions

66. HMRC argues that for a supply to fall within the finance exemption it must be consistent with the purpose of that exemption, as explained in *Velvet & Steel*, that purpose being to "alleviate 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".

67. Correspondingly where such difficulties were absent the availability of the exemption would be in doubt (*Ladbroke*, reaffirmed in *NEC EU* and *Bookit*).

68. To fall within the finance exemption the services must fit the generic profile of transactions intended to fall within it (*EDS*).

69. It would be possible for the customer to sort their loose change, count the coins, bag them up and to obtain cash in larger denominations without any fee being charged. The reason a customer goes to Coinstar is because they are willing to pay a fee not to have to spend time on those steps. That does not make it a finance transaction within the exemption.

70. Nor, they say, is the appellant's service analogous to an ATM. Coinstar is not operating an account for the customer.

71. In response to the appellant's contentions HMRC deny that the transaction is analogous to a foreign exchange ("FX") transaction. That allows access to the global

market for trading currencies where the customer can buy and sell on the basis of an exchange rate, a bidirectional flow the presence of which meant that *Hedqvist* was decided as it was.

72. FX transactions fully meet the requirements of the finance exemption as the consideration is inherently difficult to calculate.

Our analysis

73. The battleground here is Item 1 of Group 5 in Schedule 9 VATA which we repeat here:

> "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."

74. Although we should also consider the relevant part of the PVD, neither party suggested that there was anything in the PVD which rendered Item 1 Group 5 inappropriate as the place to start.

75. We accept the appellant's submission that there is a "change in the legal and financial situation of the parties" when a customer puts their coins in the machine. It is not disputed that the customer loses ownership of the coins which become the property of Coinstar. The customer has instead of ownership of the coins a voucher which can be redeemed for cash (in larger denominations than the coins) or used to pay the supermarket's bill. Coinstar has no liability to the customer but has a liability to the supermarket to reimburse it.

76. The term "change in the legal and financial situation of the parties" derives from *SDC*. In that case SDC was an association whose members were banks and to which it provided services relating to transfers, advice on, and trade in, securities, and management of deposits, purchase contracts and loans. SDC also offered services relating to its members' administrative affairs. In its judgment the ECJ said at [53]:

> "… it must be noted first of all that 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 characterized 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."

77. We also accept that what happens in this case is not the mere physical dealing in money as a commodity as was the case in *Williams & Glyn's*, one of the two VAT Tribunal cases cited by the appellant in this connection.

78. In *Williams & Glyn's* the issue was whether Securicor's transporting bags of money to and from branches was within the scope of "making of arrangements for the issue, transfer or receipt of, or any dealing with, money or for the making of any advance" (the predecessor in Finance Act 1972 of Group 5 Schedule 9 VATA). It was held by the VAT Tribunal that it was not, as it was not sufficiently close to the notion of a financial transaction to fall within those words.

79. But the idea of a distinction between dealing with money as money and dealing with it as a commodity comes from *Nationwide Anglia*. There the services were also supplied by Securicor and consisted in the stocking of the society's ATMs with cassettes of banknotes. The Chairman of the VAT Tribunal, Dr John Avery Jones said:

> "In the *Barclays Bank* case Securicor was dealing with money, as money, in the same way as the bank would do. The financial position of the parties was different after the dealing; the balance on the customer's account changed as a result of Securicor's services. In the *Williams & Glyn's Bank* case the services provided by Securicor were normal carriage services moving goods, which happened to be money belonging to the bank, between its branches. The principle I derive from these cases is that for there to be a dealing with money the money must be used as money and not merely as goods. Support is given for this interpretation from article 13B(d) of the Sixth Directive where the transactions exempted are financial in nature. For example, transactions in collectors' items, defined to exclude money not normally used as legal tender, are excluded in item 4."

80. Further we do not consider relevant HMRC's point that there is here no operation of an account for the customer as there is when an ATM is used. We agree there is some difference between the operations is this case and an ATM, in that Coinstar changes coins for cash whereas an ATM exchanges part of the customer's credit balance at the bank for cash, but it is not a difference that we find material or reflected in the PVD, the VATA or case law.

81. There is also a difference between the appellant's transactions and FX transactions – FX transactions involve an exchange of money denominated in one currency for money denominated in another. But we agree with the appellant that there is nothing in PVD or VATA to show that that difference is relevant.

82. *Hedqvist* shows that an exchange of one currency for units of a virtual currency (such as in that case Bitcoin) is exempt as analogous to an FX transaction. We accept that in *FNBC* and *Hedqvist* the reference to "currency" in the PVD is taken to be a reference to a different currency from the one that is used to pay for the items being acquired. But that is we think a function of the question that the ECJ was being asked. It was not being asked to decide the question whether an exchange of coins in a particular currency for a money voucher also denominated in that currency is within the exemption.

83. The appellant points to two matters which they say support the proposition that a same currency exchange is within the exemption. First, Notice 701/49 published by HMRC says at 3.4:

> "The issue or encashment of travellers' cheques is exempt. Un-issued or unsigned travellers' cheques are neither securities for money nor notes for the payment of money, and their supply to or importation by the issuing bank is taxable on their value as stationery."

84. Mr Scorey pointed out that travellers' cheques are not necessarily denominated in a different currency from that with which they are bought.

85. The second argument was that in *Secrets* this is exactly what happened. In that case a "punter" wishing to engage the services of a self-employed table dancer could pay cash to the dancer, or if short of cash, could acquire "Secrets money" from the club by using a credit or debit card. The "Secrets money" was a voucher denominated in either £10, £20 or £250 which the punter would give to the dancer in exchange for her services to that value. When acquiring a voucher the punter was charged an extra 20% over the face value. The dancer could redeem the vouchers for cash at the end of the evening, but a further 20% commission would be charged to the dancer. The vouchers were not made out to a specific dancer, and it was found that other club staff who came into possession of vouchers could redeem them.

86. The Upper Tribunal (Rose J) held that the voucher was a "security for money" [26] and [27]. Although she went on to find for other reasons that the redemption commission paid by the dancer was not exempt, it is clear that a transaction involving an exchange of one currency (in this case a sterling credit balance) for the same currency (the security for money) is not excluded for that reason alone from the finance exemption.

87. HMRC say that what the appellant does is *not* analogous to FX transactions as such a transaction allows the customer access to the global market for trading currencies where a customer can buy and sell. There is, they say, no different market for sterling in small denominations and the appellant's customers are not seeking to take advantage of different rates.

88. We consider that this difference may be a valid consideration where, as in *FNBC*, it is global dealers in both spot and forward currencies who are involved. It is, we suggest, not a valid objection where the comparison would be with an individual who wanted to obtain euros before going on holiday. There is no access to global markets here: the customer pays what they are charged. They are not seeking arbitrage opportunities or trying to spot bargains. Like a Coinstar customer such a holidaymaker is exchanging a relatively small amount of currency that is not readily usable in a particular place for a currency that will be acceptable.

89. But in any event neither VATA nor PVD have any qualifications based on the motive of the customer or whether the exchange allows access to global markets.

90. We also agree that to exclude "same currency" exchanges from the exemption could on its face (for the reasons given in §88) be a breach of fiscal neutrality and equal treatment. But we did not have any argument on this beyond the citation of passages from three ECJ cases (see §65), none of which we were taken to or given argument on, and we would have required that to come to a proper conclusion on that issue.

91. Subject to the further point we consider below, we hold that for the reasons given above, the supply made by the appellant is an exempt supply as falling within Item 1 of Group 5.

92. That further point is one put at the start of HMRC's skeleton on the finance exemption, and is also used as their response to the appellant's analogy between their transactions and FX transactions. It is they say necessary to consider the purpose of the finance exemption, so as to construe it strictly, and, they say, when cases on the purposes are considered it can be seen that the appellant's supplies are not within it.

93. HMRC point to *Velvet & Steel* as explaining the purpose of the exemption. In that case vendors of real estate assumed obligations to carry out repair works. The question for the ECJ was whether such obligations fell within what was then Art. 13B(d)(2) of the Sixth VAT Directive (now Art. 135(1)(c)):

> "the negotiation of or any dealings in credit guarantees or any other security for money and the management of credit guarantees by the person who is granting the credit"

94. The Belgian law in question referred, in its transposition of this part of Art. 13B, to "the assumption of obligations", and the question asked was whether such obligations were confined to pecuniary ones (which those of *Velvet & Steel* were not). The passage in the decision to which HMRC specifically drew our attention was:

> "23 In the present case, the assumption of the obligation to renovate a building is not, by its nature, a financial transaction within the meaning of Article 13B(d) of the Sixth Directive and therefore it does not come within the scope of that provision.
>
> 24 That interpretation is, moreover, supported by the purpose of the exemption for financial transactions, which, as the Commission of the European Communities explains in its written observations, is to alleviate 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. Since subjecting the assumption of an obligation to renovate a property to VAT does not present such difficulties, that transaction cannot be exempted.
>
> 25. Consequently, the conclusion that it was the intention of the Community legislature to exempt from VAT the assumption of non-pecuniary obligations is not supported by the wording, context or purpose of Article 13B(d)(2) of the Sixth Directive. It follows that the assumption of such obligations is subject to VAT."

95. The explanation by the Commission is not shown in the decision, which was also one which was given without an opinion of the Advocate-General. Similar remarks to those in [24] of *Velvet & Steel* have however been repeated in subsequent decisions of the Court, including in *Ladbroke*, *Bookit ECJ* and *NEC ECJ*, as justification for finding that the exemption does not apply, thereby, we assume, applying a strict interpretation to the exemption, without unduly restricting it.

96. But in all these cases the Court has found, before making the *Velvet & Steel* [24] point, that the transactions are of their nature not what would be regarded as a financial service. They are companies which operate in other fields such a bookmaking or as agencies for entertainment venues.

97. It is clear to us is that in all of these cases the transactions entered into were found by the ECJ to have failed to qualify for the exemption on the basis that they were not financial transactions within the wording of the exemption. This was the reason for the decision.

98. In this case we have held that the transactions were of their nature financial transactions and we consider the ECJ decisions in those cases to be irrelevant.

Decision

99. We allow the appeal and hold that the supplies made by Coinstar fall within the exemption in Item 1 Group 5 Schedule 9 VATA 1994.

100. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

RICHARD THOMAS
TRIBUNAL JUDGE

RELEASE DATE: 2 SEPTEMBER 2016

APPENDIX

ECJ cases

Bookit	Bookit Ltd v HMRC C-607-14 [2016] EU:C:2016:355
CPP ECJ	Card Protection Plan v CCE C-349/96 [1999] ECR I-9734
EDS	CCE v Electronic Data Systems Ltd C-36/99 [2000] ECR I-6049
FNBC	CCE v First National Bank of Chicago C-172/96 [1998] ECR I-4387
Hedqvist	Skatteverket v David Hedqvist C-264/14 [2015] EU:C:2015:718
Idéal	Idéal Tourisme v Belgium C-36/99 [2000] ECR I-6049
Kipgen	Kipgen and others v Secrétaire d'État à l'Agriculture et à la Viticulture (C-201/85, C-202/85) [1986] ECR 3477
Ladbroke	Tiercé Ladbroke SA and Derby SA v L'État Belge C-231/07 & C-232/07 (unreported)
M&S	Marks & Spencer plc v HMRC C-36/99 [2008] ECR I-2283
NEC ECJ	National Exhibition Centre Ltd v HMRC C-36/99 [2016] EU:C:2016:357
SDC	Sparekassernes Datacenter v Skatteministeriet C-2/95 [1997] ECR I-3017
Velvet & Steel	Velvet and Steel Immobilien und Handels GmbH v Finanzamt Hamburg-Eimsbüttel C-455/05 [2007] ECR I-3225

Higher UK Tribunals and Courts

Byrom	Byrom & others (t/a Salon 24) v Commissioners for Her Majesty's Revenue and Customs (("HMRC")
CEM	College of Estate Management v CCE [2005] UKHL 62
CPP HL	Card Protection Plan v CCE 2001 [UKHL] 4
EWI	Expert Witness Institute v CCE C-36/99 [2001] EWCA Civ 1882
NEC UT	National Exhibition Centre Ltd v HMRC [2015] UKUT 0023 (TCC)
Secrets	Wilton Park Ltd and others v HMRC

	2015 [UKUT] 343 (TCC)

VAT, VAT & Duties or First-tier Tribunal

Barclays	Barclay Bank plc v HMRC [2008] UKVAT V20528
Kingfisher	Kingfisher plc v CCE [2000] STC 992
Nationwide	Nationwide Anglia Building Society v CCE [1994] VATTR 30
Williams & Glyn's	William's & Glyn's Bank Ltd v Commissioners of Customs & Excise ("CCE") [1994] VATTR 262 (VTD118)