Neutral Citation Number: [2017] EWCA Civ 2111

Case No: A3/2016/3645

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM
UPPER TRIBUNAL (Tax and Chancery Chamber)
MR JUSTICE MORGAN AND JUDGE FALK
[2016] UKUT 298 (TCC)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13/12/2017

Before :

LADY JUSTICE ARDEN
LORD JUSTICE KITCHIN
and
LORD JUSTICE FLOYD

- -

Between :

ING Intermediate Holdings Limited	**Appellant**
- and -	
The Commissioners for Her Majesty's Revenue and Customs	**Respondents**

- -
- -

Kevin Prosser QC and James Rivett (instructed by **PricewaterhouseCoopers Legal LLP**) for the **Appellant**
Kieron Beal QC and Peter Mantle (instructed by **HMRC**) for the **Respondents**

Hearing dates : 10-11 October 2017

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Approved Judgment

LADY JUSTICE ARDEN :

1. ISSUES ON THIS APPEAL ARISE FROM CLAIM TO RECOVER VAT

1. This appeal essentially concerns the recoverability of VAT. The appellant wishes to recover (via deduction against the outputs of a separate investment business) a proportion of VAT expenses incurred in connection with a deposit-taking business. It contends that this did not involve any VATable supply at all. HMRC contend, and did so successfully before both tribunals, that it is more than a deposit-taking business and involved the provision of banking services.

2. Questions also arise as to whether the banking services were provided for consideration and, if so, how that consideration ought to be monetised for VAT purposes. This is because the public were not charged any or any separate fee for the banking services.

3. The appellant is the representative member of a VAT group. It did not itself carry on the deposit-taking business. Two members of its VAT group did so in succession. I will refer to them simply as "IDUK".

4. This is an appeal from orders of the Upper Tribunal (Morgan J and Judge Falk) dated 18 May 2016, dismissing an appeal from the First-Tier Tribunal ("FTT") (Judge Mosedale) dated 7 October 2014.

2. ISSUES TO BE DETERMINED BY THIS COURT

5. There are three issues:

   Issue 1: Did IDUK in law supply services or do the facilities it provided fall to be treated in law for VAT purposes simply as the receipt of deposits made by the public in return for interest?

   Issue 2: if the answer to Issue 1 is yes, were the services provided for consideration?

   Issue 3: if the answer to Issue 3 is yes, can that consideration be expressed in a monetary form?

6. We have already informed the parties that we intend to dismiss the appeal. In my judgment, the tribunals were correct to hold that IDUK provided banking services. Moreover, consideration was implicitly given by the depositors in the form of their agreement to IDUK's terms and conditions, including the interest rate which served both as a return on the deposit and as a payment for the banking services, and that consideration was capable of being expressed in a monetary form. It is common ground that this Court need not prescribe the precise method of valuation.

3. BACKGROUND FACTS

7. There is no dispute about the background facts in this case, and in appendix 1 to this judgment I set out the overview of the facts from the judgment of the Upper Tribunal. We were taken to the terms and conditions that the customers signed, and I have summarised the key elements of those terms and conditions in appendix 2 to this judgment.

4. BASIC PRINCIPLES OF VAT

8. There is little dispute about the basic principles of VAT, and, like counsel, I will use the EU measure now in force, that is, the Principal VAT Directive 2006/112/EC ("the PVD").

9. VAT is charged on a "supply", which may be of goods or services (Article 2). Supplies must be effected "for consideration" (Article 2), which has an autonomous meaning in EU law. Non-monetary consideration must be capable of being expressed in a monetary form. The value of the consideration is based on its value to the supplier, to be determined on a subjective basis.

10. A supply of goods is the transfer of the right to dispose of tangible property as owner (Article 14(1)). The supply of services is residually defined as any transaction which does not constitute a supply of goods (Article 24).

11. In C-4/94 *BLP Group v Customs and Excise Commissioners* [1995] STC 424 at [47], the Court of Justice of the European Union ("the CJEU") held that to take out a loan does not involve a VATable transaction by the borrower at all, even if he pays interest: he is the mere recipient of a service provided by the lender:

> 47. The objectives of the common system of VAT do not by any means require all forms of raising money to be treated alike. If the harmonisation introduced with that system is intended to prevent distortion of conditions of competition, as is expressed in the recitals to the First Directive, that can only mean that operations of the same type are to be treated in the same way. The taking up of a loan and the selling of an interest in a company are not, however, operations of the same type for the purposes of the VAT system — nor are they, moreover, for an undertaking's operational purposes, since the income from the sale of shares is part of the undertaking's own resources, whereas the loan is part of its borrowed resources — because that system focuses on transactions and makes a clear distinction between taxable and exempt transactions. If a taxable person sells an interest in a company, he is effecting an (independent) transaction within the meaning of the common VAT rules which, being an exempt transaction, excludes deduction of the incident input tax. If, by contrast, he takes up a loan, he does not himself thereby effect a transaction within the meaning of those rules. Instead he is the recipient of a service, which is the subject of a *transaction by a third party.* Under those circumstances the input tax charged on the advisory services supplied in connection with taking up the loan may be deducted, if it is attributable to taxable transactions. (Emphasis added)

12. By contrast, banking business is an exempt business. Article 135 PVD provides that member states must exempt (among other matters) "(b) the granting and the negotiation of credit and the management of credit by the person granting it;" and "(d) transactions, including negotiation, concerning deposit and current accounts,

payments, transfers, debts, cheques and other negotiable instruments, but excluding debt collection;…". It follows that inputs are irrecoverable.

13. There are rules ("the single and multiple supply rules") which apply to the case where there is a supply of more than one thing, or service, and they are VATable at different rates, or some are exempt and some not. VAT law requires there to be determined whether there is a single composite supply or two or more supplies. If the latter, there is a single VAT rate, being that applicable to the principal supply. In determining whether various supplies are each a separate supply, or whether they form a single composite supply, the court will look at all the circumstances of the transaction. The supply of a single service should not be artificially split. A service is ancillary if it does not constitute an aim in itself but simply a means of better enjoying the principal service.

14. One authority cited on these issues was C- 208/15 *Szolgáltató Zrt. V Nemzeti Adó- és Vámhivatal Dél-dunántúli Regionális Adó Főigazgatósága* ("*Stock 94*"), where the CJEU held:

> 26. In that regard, it must be recalled that, for VAT purposes, every supply must normally be regarded as distinct and independent, as follows from the second subparagraph of Article 1(2) of the VAT Directive (judgment of 16 April 2015, *Wojskowa Agencja Mieszkaniowa w Warszawie*, C-42/14, EU:C:2015:229, paragraph 30 and the case-law cited).
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> 27. Nevertheless, in certain circumstances, several formally distinct services, which could be supplied separately and thus give rise, in turn, to taxation or exemption, must be considered to be a single transaction when they are not independent. There is a single supply where two or more elements or acts supplied by the taxable person to the customer are so closely linked that they form, objectively, a single, indivisible economic supply, which it would be artificial to split. That is also the case where one or more supplies constitute a principal supply and the other supply or supplies constitute one or more ancillary supplies which share the tax treatment of the principal supply. In particular, a supply must be regarded as ancillary to a principal supply if it does not constitute for customers an end in itself but a means of better enjoying the principal service supplied (judgment of 16 April 2015, *Wojskowa Agencja Mieszkaniowa w Warszawie*, C-42/14, EU:C:2015:229, paragraph 31 and the case-law cited).
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> 28. In order to determine whether the services supplied constitute independent services or a single service it is necessary to examine the characteristic elements of the transaction concerned (judgments of 17 January 2013, *BGŻ Leasing*, C-224/11, EU:C:2013:15, paragraph 32, and of 16 April 2015, *Wojskowa Agencja Mieszkaniowa w Warszawie*, C-42/14, EU:C:2015:229, paragraph 32).

> 29. In that regard, it should be noted, first, that, in order to determine whether a transaction that comprises several supplies constitutes a single transaction for the purposes of VAT, the Court takes into account the economic objective of that transaction (see, to that effect, judgments of 19 November 2009, *Don Bosco Onroerend Goed*, C-461/08, EU:C:2009:722, paragraph 39; of 28 October 2010, *Axa UK*, C-175/09, EU:C:2010:646, paragraph 23; and of 27 September 2012, *Field Fisher Waterhouse*, C-392/11, EU:C:2012:597, paragraph 23). In its analysis, the Court also takes into account the interests of the recipients of the supplies (see, to that effect, judgment of 16 April 2015, *Wojskowa Agencja Mieszkaniowa w Warszawie*, C-42/14, EU: C:2015:229, paragraph 35).
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> 30. Second, it is important to recall that, in the context of the cooperation established by Article 267 TFEU, it is for the national courts to determine whether the taxable person makes a single supply in a particular case and to make all definitive findings of fact in that regard. However, it is for the Court to provide the national courts with all the guidance as to the interpretation of European Union law which may be of assistance in adjudicating on the case pending before them (judgment of 17 January 2013, *BGŻ Leasing*, C-224/11, EU:C:2013:15, paragraph 33 and the case-law cited).

15. In the context of single or multiple supplies, as the CJEU makes clear in *Stock 94*, it will in some circumstances be appropriate to consider the economic objective of the parties.

16. However, in general, in determining liability to VAT, the court must have regard to the terms of the transaction agreed between the parties: see eg Case C-320/88 *Staatssecretaris van Financien v Shipping and Forwarding Enterprise Safe BV* ("*SAFE*") (supply of goods). This is a matter for the national court in accordance with the applicable law. In C-108/99 *Customs and Excise Commissioners v Cantor Fitzgerald International* [2001] STC 1453, the CJEU rejected the proposition of the Advocate General in that case that it should have regard to the economic purpose of the parties' arrangements. It held:

> 31. It is true that Wako could have remained a tenant and sub-let the property to CFI for a lower rent than that which it had to pay the landlord or that it could have paid compensation to the landlord so that the latter would accept early termination of the lease. In both cases, the economic impact would have been comparable to that of the transaction at issue in the main proceedings, without the parties concerned having to pay VAT.
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> 32. However, that does not justify interpreting Article 13B(b) of the Sixth Directive so as to mean that it also applies to a supply of services that does not include the assignment of a right to occupy property.

> 33. An approach of that kind would be contrary to the VAT system's objectives of ensuring legal certainty and a correct and coherent application of the exemptions provided for in Article 13 of the Sixth Directive. The Court observes in that connection that, to facilitate the application of VAT, it is necessary to have regard, save in exceptional cases, to the objective character of the transaction in question (see Case C-4/94 *BLP Group* [1995] ECR I-983, paragraph 24). A taxable person who, for the purposes of achieving a particular economic goal, has a choice between exempt transactions and taxable transactions must therefore, in his own interest, duly take his decision while bearing in mind the neutral system of VAT (see, to that effect, *BLP Group*, cited above, paragraphs 25 and 26). The principle of the neutrality of VAT does not mean that a taxable person with a choice between two transactions may choose one of them and avail himself of the effects of the other.

17. There must be a direct link between the consideration and the supply in question: C-16/93 *Tolsma v. Inspecteur der Omzetbelasting* [1994] I-ECR 2129 (donations to a busker were not VATable).

5. ISSUE 1: DID IDUK SUPPLY SERVICES OR SIMPLY RECEIVE DEPOSITS?

A. Decisions of the Tribunals

18. In the FTT, Judge Mosedale made clear findings that IDUK provided banking services. She specifically held that the banking services were not peripheral to its deposit-taking business. She made the following important findings:

> 89. The parties appeared agreed that providing a current account, even one that was constantly in credit, would involve a supply of a service by the bank to the depositor because of the extent of the facilities provided, such as debit cards and cheque books, 'holes in the wall' (ATMs) and so on. And I think that this is right. The provision of a current account is the provision of a banking service by a bank even if the current account is always in credit.
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> 90. The appellant's position was that its deposit accounts were very different. The methods of withdrawing money were very restricted and there were no walk-in branches, credit or debit cards, cheque books, or ATMs.
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> 91. I do not think the lack of walk-in branches is of any significance to the analysis of whether a service was provided. Branches are provided so that depositors can give instructions to the bank, normally as to paying money in or taking money out. IDUK provided its depositors with facilities to give it instructions but depositors could only access these facilities via the internet or the telephone. The method of delivery of the

service (electronic and telephonic rather than face-to-face through a walk-in branch or ATMs) makes no difference to the legal analysis of the facility. In other words, if the provision of walk-in branches is a service bank to customer, then the provision by IDUK of its telephone and internet interface would also be a service.

92. The methods of withdrawing money from the IDUK accounts were restricted, and more restricted than with 'high street' deposit accounts, from which cash could normally be withdrawn. With IDUK the depositor could only withdraw by transferring funds to another ING account or by transferring to a nominated linked account (an account with another bank but in the depositor's name).

93. The methods of paying in were slightly less restricted. As I have said, see [24], IDUK would not only accept transfers from accounts with other banks, but would accept any cheques drawn in favour of the depositor. (These would have to be posted to the bank.)

94. IDUK provided statements. These could be accessed online or (at the request of the depositor) sent by post: [30].

95. There were no restrictions on the depositor's access to his funds. While one account involved a penalty in the sense of reduced interest if money was withdrawn without notice, the terms of all accounts were that a depositor could withdraw all his money without notice: [30].

96. In conclusion, I find depositors could (subject to doing so in the right form) deposit and withdraw money at will; they were provided with an interface to give the bank instructions on withdrawals and deposits and could check their balance when they chose. Statements were provided.

97. I consider that these facilities were valued by depositors. Not only does it stand to reason that a failure to offer such facilities would make the bank's offering extremely unattractive, Mr McDaid's evidence was that the bank spent a very great deal of money in ensuring that its phone and internet platforms were efficient and reliably available to depositors around the clock, reflecting the bank's understanding of the importance to its customers of the facilities it was providing them and that it would not receive the deposits unless it provided these facilities.

98. I find that the provision of these facilities was a service provided by the bank to its depositors. The facilities go beyond what a mere borrower of money would provide to a mere lender. The bank provided more than a promise to repay the

lender. It provided the facility of easy-access deposit accounts. Depositors were able to (within generous restrictions) pay in and take out money at will, and check their balance and obtain statements. Via its online and telephone interface the bank facilitated this easy access. This was more than a mere receipt of loaned money by IDUK. Fundamentally, while the account could not be operated in exactly the same way as a deposit account with a 'high street' bank, it was very similar in essentials.

99. While I had no evidence from a depositor, the bank's own evidence of the importance it placed on a reliable, efficient and fast internet and telephone interface with its customers, and common sense, all indicate that the provision of this interface and the easy access to their money was crucial to and valued by the customers. It is relevant but not conclusive that the terms of the later written contracts, which all parties assumed were very similar to the ones in force at the relevant time, were ones of 'service' provided by the bank to its customers and the depositors were referred to as the bank's customers (see [31]). The contract assumed that the bank provided a service to its customers.

100. At the conclusion of the hearing the appellant accepted that the bank did provide services to its depositors, although it may not have accepted the extent to which it did provide facilities. Its position became that no consideration was provided for what it saw as peripheral services.

101. I do not find the services to be peripheral. I do accept that the facilities provided were less valuable than the service which the depositor provided to the bank, which was the service of the loan of money. This follows logically because the bank not only provided the banking facilities to its depositors, it paid interest on the money deposited too.

102. But the services were not peripheral. There was no suggestion, and indeed it would defy logic to suggest, that depositors would have been prepared to deposit their money with IDUK unless given the facility of an easy-access deposit account. To the extent that there was evidence, the evidence was that IDUK's strategy was to poach depositors from other banks by attracting them with a higher rate of interest. There was absolutely no suggestion that the many thousands of depositors who became IDUK's customers would have been prepared to move for any fewer facilities than IDUK provided. While they were clearly prepared to give up the right to a walk-in branch, instead the bank gave them a 'virtual' 24-hour bank via the internet and telephone. The appellant did not even seek, and certainly did not succeed, in any kind of a case that these services were 'peripheral' or of less than central importance to

> the depositor when depositing funds with a bank. Logic dictates that its customers were very unlikely to accept anything less. Mr McDaid's evidence emphasised the importance to the bank of providing very good facilities to its customers and the clear implication that it feared it would lose its customers if it provided less. I find the services provided by the bank were central to the customers' decision to deposit the monies with IDUK.
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> 103. It was not entirely clear whether the appellant's case was that its particular deposit accounts did not involve a supply (or only involved peripheral supplies) by the bank or whether it was its case that no deposit accounts involved supplies by any bank. This does not matter: the tribunal can only decide on the basis of the facts in front of it. Nevertheless, fundamentally, I did not consider the lack of walk-in branches (the main distinguishing feature with other deposit accounts) as relevant to the question of whether the bank provided a service, as it was clear in this case that alternative methods of access to the depositor's money were provided.
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> 104. I find that the bank provided a valuable service to its customers of an easy-access deposit account, with around-the-clock ability to pay in or withdraw from the account via the internet or telephone and to obtain balances and statements. It follows that I agree with the decision of Sir Stephen Oliver in *Bank of Scotland* (1995) VAT Decision 13854 that the provision by a bank of a deposit account is a service as well as the provision of a current account (although I do not entirely agree with all Sir Stephen's reasons given in support, as explained at [63]–[65] above).

19. The Upper Tribunal agreed with the FTT that IDUK provided banking services. It held that the terms and conditions used by IDUK in this business had to be considered objectively, and that, where the terms reflected this, it was not necessary to go further. The Upper Tribunal aligned the 'economic and commercial reality' of the latter test with the 'essential nature' of the transaction test advocated in *MBNA Europe Bank Ltd v Revenue and Customs Commissioners* [2006] STC 2089, and held that the tests were not in conflict (Judgment of the Upper Tribunal, [38]).

20. Applying the test to the facts, the Upper Tribunal upheld the decision of the FTT for the following reasons:

> [50] We have concluded that although, in legal terms, borrowing and lending was involved, the key characteristic of the transactions between IDUK and depositors was that IDUK was providing accounts with the features described by the FTT, and that this is qualitatively different to something that is only a borrowing and lending transaction. We do not think that those features are analogous to the provision of security by a borrower or the assignment of receivables in *MBNA Europe*.

The features were not just a precondition to loans being made, but determined the character of the transactions.

[51] In our view the features that support the conclusion that IDUK provided services to its depositors as customers or consumers, rather than merely borrowing from depositors, are:

> (a) IDUK undertook to accept deposits. Provided a depositor had opened an account with a minimum of £1, IDUK was contractually obliged to accept further deposits as the depositor wished. It would be very unusual for a mere borrowing transaction to be driven entirely by the lender's wish to lend a particular amount and for the borrower to be obliged to borrow at the lender's whim. It is however a key feature of a bank account.
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> (b) More generally, all activities on an account were at the depositor's instigation: he or she determined when either deposits or withdrawals were made. IDUK could not require any deposit to be made beyond the initial £1 and, short of closing the account (usually on two months' notice), IDUK could not compel any repayment. Again, this would be unusual for a mere borrowing transaction.
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> (c) A number of deposits and withdrawals could be made to and from the same account. Rather than being treated as individual borrowing transactions, they would have been treated as transactions affecting a single balance on the account. This feature describes the essential characteristic of a bank account. Although a similar result might be achieved under a 'revolving' loan agreement under which amounts can be drawn, repaid and redrawn, we would expect that to occur at the instigation of the borrower.
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> (d) IDUK set all the terms and conditions, including of course interest rates. The terms for any particular product would have been unaffected by the identity of the particular depositor and the product would have been available only on those standard terms. We would not expect a borrower in a lending transaction to set the terms in this way.
>
> (e) IDUK did all the work: it kept the records of how much it owed, produced statements and supplied information to the depositors. A lender would not ordinarily leave it to the borrower alone to determine what the lender was owed.

> (f) IDUK provided a cheque clearing facility in relation to third party cheques.

B. Parties' submissions

21. Mr Kevin Prosser QC, for IDUK, accepts that he must establish an error of law by the Upper Tribunal.

22. The thrust of Mr Prosser's argument is that in *MBNA* Briggs J considered that it was necessary to understand the commercial purpose of the various steps in the relevant transaction, and he submits that this is the approach which the Upper Tribunal should have adopted in this case. *MBNA* is at the centre of IDUK's case because it is the only case that counsel can produce where the court has considered whether there can be transactions ancillary to another transaction which falls outside VAT (because it is not a supply for VAT purposes) with the result that the ancillary transaction will, like the principal transaction, be treated as not involving a supply for those purposes, even if it would otherwise have been so treated.

23. In *MBNA* the taxpayer's principal business was as a credit card provider and this business was exempt from VAT. Its other business was not exempt, and so MBNA was a partially exempt trader. It contended that it could deduct some VAT as a result of an apportionment agreed with HMRC. It desired to raise working capital by securitising customers' debts, but not by directly borrowing or charging assets itself. So, the securitisation involved assigning customers' debts to trustees for MBNA and a special purpose vehicle (SPV), which charged them to raise money on the market. The transaction overall was complex and hence it was necessary for the court to understand the various steps involved in it (which were in part designed to meet regulatory requirements).

24. The issue was whether the assignments carried VAT. Briggs J held that they were not VATable on the footing that the transfer of receivables by the taxpayer to the trustees constituted a new exception to the general rule that any transaction whereby goods or services were transferred or provided for consideration was a supply. This was so even though the grant of security was by third parties (trustees), not the borrower, and resulted in the disposition of an interest in the charged property. The new exception was the transfer of receivables for the purpose of their being used in the provision of a securitisation service for the transferor. It was necessary to create a new exception because the overall transaction was simply a composite transaction and the provision of security was an ancillary matter. Therefore the assignments were not a supply for VAT purposes.

25. In *MBNA*, Briggs J considered that economic purpose fell to be considered in the process of determining whether a transaction was a supply for VAT purposes. He held:

> 35. By way of inevitable counterpoint to those principles, the court is not hidebound by the labels which the parties have chosen to apply to their transactions, but where it is necessary, must ascertain the essential character of the transaction in issue. This well-known principle of English law (cf *Street v Mountford* [1985] AC 809) is equally vigorously applied within

the EU-wide VAT system, as is illustrated by the following passage of the opinion of Advocate General Tizzano in *Customs and Excise Comrs v Mirror Group plc* (Case C-409/98) [2001] STC 1453, [2002] QB 546, where he said this:

> 27. In order to identify the key features of a contract, however, we must go beyond an abstract or purely formal analysis. It is necessary to find the contract's economic purpose, that is to say, the precise way in which performance satisfies the interests of the parties. In other words, we must identify the element which the legal traditions of various European countries term the cause of the contract and understand as the economic purpose, calculated to realise the parties' respected interests, lying at the heart of the contract. In the case of a lease, as noted above, this consists in the transfer by one party to another of an exclusive right to enjoy immovable property for an agreed period.
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> 28. It goes without saying that this purpose is the same for all the parties to the contract and thus determines its content. On the other hand, it has no connection with the subjective reasons which have led each of the parties to enter into the contract, and which obviously are not evident from its terms. I have drawn attention to this point because, in my view, failure to distinguish between the cause of the contract and the motivation of the parties has been the source of misunderstandings, even in the cases under consideration here, and has complicated the task of categorising the contracts at issue.

36. The identification of the 'cause' of a contractual transaction, where necessary to establish whether it constitutes a supply, and if so to categorise it as taxable, exempt or specified, may legitimately entail its interpretation by reference to the relevant matrix of background facts known to the parties of the type classically explained by Lord Hoffmann in *West Bromwich Building Society v Wilkinson* [2005] UKHL 44, [2005] 1 WLR 2303. Where the transaction under review forms part of a preordained chain or scheme of transactions, the other transactions in the chain and their objective purpose and effect may well be, and indeed will probably usually be, a centrally relevant part of that factual matrix. A domestic example of that process in action is to be found in *Customs and Excise Comrs v Pippa-Dee Parties Ltd* [1981] STC 495 per Ralph Gibson J, although the analysis there was more concerned with the need to examine, in parallel, all aspects of what was in truth a single transaction, rather than the ascertainment of the essential

character of one transaction, by reference to its place in a chain of transactions.

37. In my judgment the best summary of the combined effect of those principles, when used to perform the VAT analysis of a transaction for the purpose of answering the question who is making a supply of what to whom (and if necessary what kind of supply) is to be found in the following passage from the judgment of Jonathan Parker LJ in *Tesco plc v Customs and Excise Comrs* [2003] EWCA Civ 1367 at [159], [2003] STC 1561 at [159]:

> [159] So what is the correct approach in the instant case? There are number of pointers in the authorities referred to in Part 3 of this judgment, under heading (a) "Authorities as to the approach to be adopted in analysing the relevant transaction". The more significant of such pointers in the context of the instant case seem to me to be these: 1. The resolution of the issue as to the application of para 5 in the instant case depends upon the legal effect of the Clubcard scheme, considered in relation to the words of the paragraph (see British Railways Board especially [1977] STC 221 at 223, [1977] 1 WLR 588 at 591 per Lord Denning MR: see [34] above). 2. In considering its legal effect, the entire scheme must be examined (what is the "entire scheme" for this purpose being objectively determined by reference to the terms agreed) (see Pippa Dee especially [1981] STC 495 at 501 per Ralph Gibson J: see [33] above). 3. The terms contractually agreed may not be determinative as to the true nature and effect of the scheme (Reed, see [36] to [38] above): it is necessary to go behind the strictly contractual position and to consider what is the economic purpose of the scheme, that is to say "the precise way in which performance satisfies the interests of the parties" (see the Advocate General's opinion in Mirror Group, para 27: see [41] above). 4. Economic purpose is not the same as economic effect. The fact that two transactions have the same economic effect does not necessarily mean that they are to be treated in the same way for VAT purposes (see Littlewoods especially at para 84 per Chadwick LJ: see [42] above). 5. Equally, the economic purpose of a contract (what the Advocate General in Mirror Group called the "cause" of a contract: see para 27 of his opinion: at [41] above) is not to be confused with the subjective reasons which may have led the parties to enter into it (in so far as those subjective reasons are not obviously evident from its terms) (see Mirror

> Grouppara 28: at [41] above). The Advocate General went on to observe (an observation which seems to me to be particularly apt in the context of the tribunal's decision in the instant case):
>
> > "… failure to distinguish between the cause of a contract and the motivation of the parties has been the source of misunderstandings, … and has complicated the task of categorising the contracts at issue."

26. Mr Prosser submits that in *MBNA* the transfer of the receivables was not one of the economic purposes of the transaction. This appears from the reasons which Briggs J gave in the passage set out below. This was followed by a passage setting out his reasons for rejecting certain arguments against this interpretation, which I need not set out. The relevant passage was as follows:

> [101] I turn to my own reasons for concluding, in agreement with both tribunals, that the assignment of receivables by the banks to their respective receivables trustees did not constitute or involve the making a supply by the banks. For this purpose I exclude the consequential servicer function undertaken by the banks which, as is common ground, did amount to a supply of a service by the banks.
>
> [102] Put in bare outline, in my judgment the assignments were, viewed separately from the rest of the scheme, in theory capable of constituting supplies, but because they were no more than the necessary pre-condition to the supply of a securitisation service to the banks, by the SPVs set up to operate that service, they are thereby deprived of the character of a supply by the banks. They therefore constitute an addition to the exceptional class of transactions which look prima facie like a supply, but which lose that character when viewed in their context. Other examples are the sale of currency to a forex dealer to obtain an exchange service, the assignment of debts to a factor to obtain a factoring service, and the assignment of property to a lender as security for (ie to obtain) a loan.
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> [103] In more detail, the starting point is that the securitisation scheme as a whole plainly provided a service to the banks. The SPVs took over a selection of the banks' receivables on a rolling basis over a defined period, bundled up in a form suitable as first class security for a loan to them, and then made the consequential cash available to the banks for the same period in a manner which did not involve the banks either borrowing or granting security themselves, and at a more competitive cost than if the banks had done precisely that. For this purpose of deciding whether the banks made a supply it is irrelevant that the service was provided to the banks by more

> than one legal person, or by a series of interlinked contracts, rather than just one.
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> [104] Equally plainly, the service could not be provided at all unless the banks made available to the SPVs on a rolling basis a sufficient number and value of receivables, to enable the SPVs to use them as first class security. A car owner cannot obtain a repair service unless he bails his car to the mechanic. While there may be other reasons why the bailment is not a supply by the car owner, one of them is that the owner is not providing a service to the mechanic at all.
>
> [105] While it is strictly true that each individual receivable is assigned to the receivables trustee on terms that ensure that it will mature into a collection rather than be returned to the bank, the receivables as a revolving class are returned, or their proceeds are returned, at the end of the relevant period, once the borrowings by Deva One have been repaid in full, and the need for a security ceases. Neither CCSE nor Deva One have any reason to want the receivables for any purpose other than as the security for, and the means for the servicing of, their borrowings, in the course of their supply of a securitisation service to MBNA.
>
> [106] None of the above analysis requires the assignments to be forced into impossible or technical pigeon-holes, such as assignments by way of security or sales to oneself. Nor does it involve collapsing the links in a chain of supply, but rather a review of the whole chain so as to understand the essential characteristic and commercial purpose of each relevant link. It does involve acknowledging their status as a revolving class, and analysing them in the context of the scheme as a whole, but in my judgment that offends no VAT or other principle. On the contrary, it complies with the principles outlined earlier in this judgment.

27. Mr Prosser submits that the Upper Tribunal should in this case similarly have examined the arrangements from an economic point of view, that is, by finding the economic purpose which lay at the heart of the contract. As it was, the Upper Tribunal was wrong to distinguish *MBNA* from the present case by saying that the transfer was a precondition to the borrowing of money, whereas in this case the provision of banking services was not so expressed. The cases are, on his submission, indistinguishable: the point is that in both cases the additional service was not one of the economic purposes of the transaction and therefore was not a separate supply.

28. Mr Prosser submits that his approach is consistent with the CJEU jurisprudence on the interpretation of a contract for VAT purposes, and also with the single and multiple supply rules: see, for example, the passage cited at paragraph 14 above from *Stock 94*. In that case, the supplier supplied farmers with seeds and loans to buy what it needed from the supplier, and it also bought back the production and arranged for it to be sold. The question was whether there was a single supply or a series of supplies

including the provision of finance. The CJEU held that there was a single supply: the loans were integrated into the other supplies. This present case, submits Mr Prosser, is a stronger case. There is only a single transaction. It is not a supply. While *Stock 94* was in the context of a different question, it shows on Mr Prosser's submission, that economic reality is fundamental to VAT.

29. Accordingly, on Mr Prosser's submission, the Upper Tribunal erred in law in not seeking to determine and apply the economic purpose of the contract of deposit. Mr Prosser submits that the points made by the Upper Tribunal at [51] of its judgment (set out in paragraph 20 above) were either not inconsistent with the economic purpose or irrelevant to it.

30. Mr Prosser submits that the decision of the CJEU in C-653/11 *Revenue and Customs Commissioners v Newey* [2013] STC 2432, and that of the Supreme Court in *Secret Hotels 2 v HMRC* [2014] STC 937 support his submission that it is not enough to have regard to the contractual terms; it is also necessary to have regard to the economic reality. Although the depositor in this case receives other facilities as a result of the contract, they are not the supply of a service because they are merely ancillary to the primary thing, which is interest plus the promise to repay, which is not a supply.

31. It follows from Mr Prosser's approach that the banking services in this case were ancillary to the main transaction, which was that of lending by the customer. Mr Prosser submits that the ancillary supply is not an end in itself, but merely a means of better enjoying IDUK's holding of the deposit.

32. Furthermore, submits Mr Prosser, the fact that the terms and conditions referred to the arrangements as services could not affect the economic analysis. So, the Upper Tribunal were wrong to take the labels used by the parties into account. The Upper Tribunal was also wrong to take into account the fact that IDUK was contractually entitled to start charging for its services.

33. Mr Kieron Beal QC, for HMRC, submits that the correct approach is to start with the terms and conditions. The economic purpose of the arrangements has to be deduced through the terms and conditions.

34. The terms and conditions give the customer a number of rights, such as the ability to use his account on a 24-hour basis, to make transfers and to receive interest and to receive statements online. The bundle of rights makes it clear that he has a deposit account. It is not an account on which cheques can be drawn and there are no ATM services. But, from the prospective of both parties, the underlying product is the same. It follows that the consideration, so far as the customer is concerned, is not just the promise to pay interest. It is also the provision of a bank account.

35. Mr Beal submits that there is no separate test in *MBNA*. It is still necessary to look at the arrangements through the prism of the contractual arrangements.

36. Mr Beal also took the Court to *Bank of Scotland* (1995) VAT Decision 13854, which was cited by Judge Mosedale (above, paragraph 18 citing her judgment at [104]), but not considered by the Upper Tribunal. Mr Prosser submits that Mr Stephen Oliver QC, President of the VAT Tribunal, was wrong to conclude in that case, as he did,

that the provision of account facilities for no charge amounted to a supply for VAT purposes where the terms accepted by the customer included a term that the bank could decide to impose charges. Mr Oliver QC took the view that the customer's undertakings formed part of the consideration for the supply to him of banking services. I see no reason why those undertakings, including a promise to pay charges if imposed, should not form part of the consideration provided by the customer, but, on the FTT's findings of fact, this question does not arise.

C. My conclusion: purposes of contract to be found in the terms and conditions

37. I accept that, when determining the nature of a transaction for VAT purposes, the court must look at the economic purpose of the transaction. However, the starting point is to determine what the parties have agreed. In my judgment, the correct reading of *Newey* and *Secret Hotels2* is that the court only goes behind the contract if the contract does not reflect the true agreement between the parties.

38. In *Revenue and Customs Commissioners v Newey*, the taxpayer used Jersey companies to avoid having irrecoverable VAT. The details of the steps he took are not important. HMRC served him with an assessment, which he successfully appealed to the FTT. HMRC appealed to the Upper Tribunal which sought a preliminary ruling from the CJEU on the question of the extent to which the contractual position is determinative. The CJEU held that economic and commercial realities were fundamental in applying VAT, but the contract usually reflected these realities:

> 42. As regards in particular the importance of contractual terms in categorising a transaction as a taxable transaction, it is necessary to bear in mind the case law of the court according to which consideration of economic and commercial realities is a fundamental criterion for the application of the common system of VAT (see, to that effect, *Revenue and Customs Comrs v Loyalty Management UK Ltd, Baxi Group Ltd v Revenue and Customs Comrs* (Joined cases C-53/09 and C-55/09) [2010] STC 2651, [2010] ECR I-9187, paras 39 and 40 and the case law cited).
>
> 43. Given that the contractual position normally reflects the economic and commercial reality of the transactions and in order to satisfy the requirements of legal certainty, the relevant contractual terms constitute a factor to be taken into consideration when the supplier and the recipient in a 'supply of services' transaction within the meaning of arts 2(1) and 6(1) of the Sixth Directive have to be identified.

39. In *Secret Hotels2*, the Supreme Court had to consider whether the taxpayer was an intermediary or not. Lord Neuberger held that, to determine the nature of the parties' relationship for domestic law purposes, the correct approach was to interpret the parties' agreement in order to identify the parties' rights and obligations:

> 30 Where the question at issue involves more than one contractual arrangement between different parties, this Court has emphasised that, when assessing the issue of who supplies what services to whom for VAT

> purposes, "regard must be had to all the circumstances in which the transaction or combination of transactions takes place" – per Lord Reed in *Revenue and Customs Commissioners v Aimia Coalition Loyalty UK* Ltd [2013] 2 All ER 719, para 38. As he went on to explain, this requires the whole of the relationships between the various parties being considered.
>
> **The correct approach in domestic law**
>
> 31 Where parties have entered into a written agreement which appears on its face to be intended to govern the relationship between them, then, in order to determine the legal and commercial nature of that relationship, it is necessary to interpret the agreement in order to identify the parties' respective rights and obligations, unless it is established that it constitutes a sham.
>
> 32 When interpreting an agreement, the court must have regard to the words used, to the provisions of the agreement as whole, to the surrounding circumstances in so far as they were known to both parties, and to commercial common sense. When deciding on the categorisation of a relationship governed by a written agreement, the label or labels which the parties have used to describe their relationship cannot be conclusive, and may often be of little weight. As Lewison J said in *A1 Lofts Ltd v Revenue and Customs Commissioners* [2010] STC 214 , para 40, in a passage cited by Morgan J:
>
> The court is often called upon to decide whether a written contract falls within a particular legal description. In so doing the court will identify the rights and obligations of the parties as a matter of construction of the written agreement; but it will then go on to consider whether those obligations fall within the relevant legal description. Thus the question may be whether those rights and obligations are properly characterised as a licence or tenancy (as in *Street v Mountford* [1985] AC 809); or as a fixed or floating charge (as in *Agnew v IRC* [2001] 2 AC 710), or as a consumer hire agreement (as in *TRM Copy Centres (UK) Ltd v Lanwall Services Ltd* [2009] 1 WLR 1375). In all these cases the starting point is to identify the legal rights and obligations of the parties as a matter of contract before going on to classify them.

40. Lord Neuberger went on to hold, citing *Newey* and other cases, that there appeared to be little difference in the approach of the CJEU (see [48] to [50]).

41. Accordingly in my judgment, the Upper Tribunal did not err in its approach to economic purpose. Moreover, the FTT made clear findings as to the effect of the arrangements in this case (see paragraph 18 above). It was not suggested that the terms and conditions constituted a purely artificial arrangement.

42. I also agree with the Upper Tribunal that the facts in this case are materially different from those in *MBNA*. The transfer of securities in *MBNA* was an essential part of the transaction. Here they are not. The customer can only get the services if he makes a deposit, but he does not need to use the services provided by IDUK, and may not do so.

43. The fact that the terms and conditions use the word "service" does not of course bind the tribunals to find that there is a supply of services, but the parties' own description of the nature of a transaction is contemporaneous evidence as to what it really was and may sometimes throw light on that matter (see per Lord Neuberger in *Secret Hotels2* at [32], paragraph 39 above).

44. In my judgment, Mr Prosser's skilful argument falls down at the first stage. The terms and conditions set out what the parties have agreed. They also make it clear, as the Upper Tribunal held, that the deposit and banking services were not interdependent. A customer could deposit money without using many of the services which IDUK offers. The ability to place deposits is not dependent on his using the services whereas in *MBNA* the drawdown of the loan would certainly have been dependent on the grant of security.

6. ISSUE 2: WERE THE SERVICES PROVIDED FOR CONSIDERATION?

45. Mr Prosser contends that in any event there was no supply of banking services for VAT purposes because those services were not supplied for a consideration, but this argument is not open on the facts because the FTT found that the interest rate must in effect have contained some deduction for those services. The FTT held as a matter of fact that, when IDUK told customers "no fees, no exceptions" it was simply saying that there were no express fees. In fact the business was successful and so one would infer that IDUK must have been able, despite the expenses arising from the business, to offer a competitive rate.

46. In the FTT, Judge Mosedale held that the contract was one of barter. The bank provided the banking facilities and interest payments in exchange for the making of the loan. There was certainly consideration and all the contract meant when it said there were no fees was that there were no express fees. The provision by the customer of the loan was the consideration for both the payment of interest and the provision of the banking services.

47. Judge Mosedale further held that, even if the contract had purported to say that there was no consideration whatsoever, that term would be so clearly at odds with the actual agreement between the parties, that under *Newey* and *Secret Hotels2*, she would have to disregard it. I agree.

48. The next argument made by Mr Prosser is that the services were not "for" consideration. Mr Prosser's submission is that no charges meant no charges. In C-48/97 *Kuwait Petroleum (GB) Ltd v Customs and Excise Commissioners* [1999] STC 488, vouchers were provided free of charge when petrol was supplied. The customer could exchange the vouchers for other goods listed in a catalogue. The supply of the vouchers was not VATable. Judge Mosedale held that IDUK could have made it clear that the services were provided free of any charge, but again this was not her interpretation of the contract. On the facts, she found that it was "obvious" that IDUK had provided banking services as part of the consideration for the deposits (Judgment of the FTT, [135]).

49. In those circumstances I would reject Mr Prosser's argument that the deposits were not given "for" a consideration.

50. There cannot be any argument in these circumstances but that, the FTT having found that there was a link between the making of the deposits and the banking services, the requirement for a direct link was also satisfied.

51. Mr Prosser submits that we are not concerned with the decision of the FTT but only that of the Upper Tribunal as a result of the decision of the Supreme Court in *Pendragon plc v Revenue and Customs Commissioners* [2015] 1 WLR 2838. But my purpose in going to the decision of the FTT is not to ask whether the FTT made an error of law but to find out what its findings of facts were. There was no challenge to the FTT's findings of fact before the Upper Tribunal.

7. ISSUE 3: CAN IDUK'S CONSIDERATION BE EXPRESSED IN A MONETARY FORM?

52. Both tribunals dealt with this matter and it is only necessary to give a brief summary of the Upper Tribunal's judgment on the material points.

53. The Upper Tribunal considered four methodologies, including methodologies not put before the FTT:

i) The first approach was that the consideration had an equal value to what the supplier was prepared to spend on the goods, which is consistent with the subjective approach. Mr Prosser has repeated his submissions before the Upper Tribunal of this method.

ii) The second approach was called "gross margin" and was founded on that found in C-172/96 *Customs and Excise Commissioners v First National Bank of Chicago* [1998] STC 850 ("*FNBC*"). This was also advanced by the FTT. The value of the consideration could be determined by working out the value earned on the funds deployed and subtracting the interest. Mr Prosser criticises this also on the basis that it includes the value added by the bank's investment activities, which did not derive directly from the deposit-taking activity. It seems to me that this methodology does not accurately reflect *FNBC* since the CJEU referred to net, not gross, results.

iii) The third approach, put forward by HMRC was the economic cost of funds. T = the time value of money, which is an expression of the value of the deposits to the bank. The bank must have valued T in determining interest (I). The amount of non-monetary consideration for the services is the difference between T and I. It was argued by HMRC that T could be determined by producing a figure for the economic cost of securing the funds. As the Upper Tribunal explained, this method is not easily evaluated without evidence to support it, and at first sight it seems to be directed at stripping out all the bank's return. It seems to me that the depositor would expect the bank to be reasonably remunerated for providing the services.

iv) The fourth approach, also put forward by HMRC, was to compare deposits and alternative means of raising funds. If interest rates on deposits are lower than interest payable on other sources of funding, such as commercial loans, the differential is a value for the supply of services. The Upper Tribunal thought that this method might be the most appropriate.

54. Mr Prosser's case is that, if there was consideration for the banking services, it could not be expressed in a monetary form. I reject that submission. The court would have to value what the depositor by implication forwent in terms of interest rate in order to get IDUK's banking services. The courts are accustomed to finding the value of matters which have no ready market. It would be surprising if the courts could not find a monetary value in this situation, which is essentially a financial transaction.

55. The jurisprudence of the CJEU emphasises that the value of consideration for a supply is its value to the parties. No doubt that is because the imposition of VAT has to be fiscally neutral as between the transaction in issue and those in similar circumstances where the parties expressly agree the amount of the consideration. This makes valuation more difficult, but not impossible.

56. The Upper Tribunal considered various methods of valuation but in my judgment the final choice of method would depend on the evidence available to the court and its findings. In the circumstances, I consider that it would be undesirable to say which method it would apply, applying the principle of CJEU jurisprudence that I have identified. I am, however, as explained, entirely satisfied that it can be done.

57. The CJEU has had to consider the question whether the non-monetary consideration can be expressed in monetary form on a number of occasions. One of those was C-230-87, *Naturally Yours Cosmetics limited v HMRC* [1988] STC 879, where the manufacturer sold cosmetics at wholesale prices through beauty consultants, who sold products at private parties. The consultants encouraged others ("hostesses") to organise these events. To encourage the organisation of parties, the agents gave the hostesses a pot of cream as a "dating gift". The agent received this gift from the manufacturer at a considerable discount to the normal wholesale price ("the discounted price"). The CJEU considered that this was non-monetary consideration for the services of the consultants and that the monetary value of that consideration was the difference between the normal wholesale price (which they would otherwise have paid) and the discounted price.

58. By contrast, in this case there is no benchmark available to the parties as there was in *Naturally Yours* (in the form of the wholesaler's price) which could be used as a point of reference. But the CJEU has made it clear that even where there is no benchmark of that kind the non-monetary consideration can be monetised for VAT purposes. This was the case in *FNBC*, where the CJEU had to find the non-monetary value of foreign currency services provided by a bank, which did not charge fees but offered different exchange rates to buyers and sellers and so obtained a spread. The CJEU made it clear that the absence of what I have called a benchmark did not prevent the court from establishing a non-monetary value: [31].The CJEU held that the consideration was the amount, net of expenses, which the bank could use for its purposes ([32]).

59. If the approach in FNBC were applied in this case, it would mean that the consideration should be valued at the net amount of the return which the bank could earn on the funds after payment of the costs of providing the banking services. The circumstances of the two cases are different, and it may be that the return would be taken by reference to a market rate available to IDUK, such as LIBOR. In this case, as opposed to transactions in foreign currency, the depositors would not necessarily have expected IDUK alternatively to raise funds in any other way. There is also the

possibility that in the present case there were further benefits to the bank from raising money in the way which it did which are not reflected by the approach to valuation in *FNBC*.

60. As I have said, I do not propose to select any of the methods put to us. As explained I consider it unnecessary to do so. I am, however, satisfied that an appropriate method of the non-monetary element of the consideration in this case could be found.

8. OVERALL CONCLUSION

61. For the reasons given above, I would dismiss this appeal. IDUK's deposit-taking business constituted the exempt business of banking services. I echo Lord Neuberger's caution near the end of his judgment in *Secret Hotels2*:

> [O]ne must be careful before stigmatising the contractual documentation as being 'artificial', bearing in mind that EU law, like English law, treats parties as free to arrange or structure their relationship so as to maximise its commercial attraction, including the incidence of taxation--see *RBS Deutschland*, cited in para [24], above. ([57])

62. IDUK was similarly free to structure the deposits in the way it thought fit and so it is in principle appropriate for the courts to determine whether there was a supply for VAT purposes by reference to the documentation it chose to use.

LORD JUSTICE KITCHIN

63. I agree.

LORD JUSTICE FLOYD

64. I also agree.

65. Appendix 1

Upper Tribunal's overview of the facts

THE FACTS

[8] The relevant facts are set out in the FTT decision. The description that follows is a summary of the salient points.

The banking trade

[9] The ING Direct business was a retail banking trade which was established in about May 2003. The trade comprised taking cash deposits from private individuals and using the funds to acquire bonds and securities as described further below. Deposits were on terms that they could be withdrawn without notice.

[10] The FTT found that the retail banking operations involved a 'normal retail banking service' but with two distinctions. These were that IDUK only offered deposit accounts and that it had no walk-in branches. Instead it offered a 24-hour telephone and internet banking service. It also attracted customers by offering higher interest rates than most or all of its competitors and by its marketing catchphrase of 'no fees, no exceptions'. Depositors were protected by the Dutch deposit guarantee scheme.

[11] With the exception of account opening and deposits made by cheque, depositors could only interact with the bank and undertake transactions on their accounts by telephone or on the internet. A limited number of facilities were made available. Depositors could not receive cheque books, debit or credit cards or overdraft facilities. Although transfers to the account could come from any other bank account, including by a cheque payable to a depositor which was drawn by a third party, there was no ability to make a payment from the account to a third party. Instead withdrawals had to be made via a transfer to another IDUK account or to a linked account held by the depositor at another bank. Depositors were required to have a current account with another UK bank or building society which acted as the linked account.

[12] Up to 31 December 2003 the vast majority of the cash received was loaned by ING Direct (UK) NV to the Spanish branch of its parent company ING Direct NV. This branch was referred to by the acronym EICC. EICC was responsible for investing the funds. EICC continued to do this from 1 January 2004 but no loan was required since the banking operations were then carried on in the same legal entity. Investment strategy became increasingly controlled by IDUK during the period in dispute. The FTT found that oversight of the investment activity included monthly strategy meetings, weekly operational meetings and daily phone contact with EICC.

[13] EICC invested the funds in debt instruments. The bonds and securities acquired were low risk fixed-term securities. The FTT found that the majority of these were acquired by subscription with the rest purchased in the secondary market, and that they were normally retained until maturity. A small percentage of the funds was held in short-term deposits to meet liquidity needs. Some of the issuers of the debt securities were based outside the EU. It is the acquisition of these instruments that IDUK maintains involved 'specified supplies'.

[14] From October 2006 some additional business lines were developed.

IDUK became an insurance intermediary and in addition started offering loans secured by mortgages. Funds used in the latter were obviously no longer available for placement by EICC.

The expenses

[15] IDUK incurred significant expense in its deposit taking activities. This included significant expenditure on advertising campaigns, construction of a head office and two call centres, IT systems and services and employment of staff, including recruitment costs. The FTT found at [26] that these expenses were incurred to attract the deposits. It is a proportion of the VAT incurred on these costs that is the subject of the dispute.

Appendix 2

Summary of the Terms and Conditions

References in the original document to 'we', 'us', 'our' etc have been replaced with 'ING'. References to 'you', 'your' etc have been replaced with 'the customer'.

1.1: This agreement relates to the customer's ING Direct Savings Account, an easy-access variable rate savings account.

2: 'linked account' is a personal current account in the customer's name with another UK organisation which is linked to the customer's customer number. It must have a Direct Debit facility and may also be required to have a chequebook.

3.1: The ING Direct Savings Account is an easy-access variable rate savings account. Money can be paid into the account in several different ways, including electronic transfer from another UK account. Money can be taken out by electronic transfer to another UK bank account set up as a linked account or to another savings or mortgage account held with ING.

3.2: The customer may hold up to 10 ING Direct Savings Accounts at any time.

6.3: if the customer has another savings account in the UK with ING, and opens an account online or by phone, the opening deposit must be transferred electronically from that other account or by direct debit.

9.6: ING will inform the account customer as soon as possible if it has refused or delayed carrying out a payment instruction and to provide reasons as to why, and how to correct any factual errors which led to the refusal or delay. Contact will be by phone or post if phone is not available.

9.7: ING may in some cases agree to accept instructions given by a person who has power of attorney. This is not available for attorneys appointed on a temporary basis.

9.8: Accounts can be accessed through the ING website.

9.10: ING can be contacted by phone or by post in order to get information on an account.

11.1: Once activated, payments can be made into an account by:

i) a regular savings plan transfer;
ii) transferring money from a linked account by Direct Debit;
iii) payment from another bank or building society ie by electronic transfer;
iv) transferring money from another savings account held with ING;
v) sending ING a cheque from a UK bank account

11.4.1: Any cheque paid into an ING Direct Savings Account must be made out to the customer. The customer number and Account number must be on the back of the cheque.

12.1.1: Withdrawals can be made by electronically transferring money from an account by using the ING website, by calling ING's customer service number, or by using ING's Interactive Telephone Banking Service.

12.1.2: The customer can inform ING when he wants the withdrawal payment to be made.

12.4: When ING receives an instruction from the customer to transfer money from his ING savings account to a linked account, payment will be taken on the day the customer's payment instruction is received unless it states a later date, in which case it will be transferred to the linked account on that date or the next business day.

12.5: When ING is instructed by the customer to transfer money from his ING Direct Savings Account to another savings or mortgage account held with ING in the UK, payment will be made on the date of instruction, or a later date if specified.

13.1: when instructions are given for transactions on the ING website, the customer should check the website for confirmation the instruction has been received.

14.1: A summary of electronic transactions both of payments into and withdrawals from an account is available on the ING website.

15: There are currently no fees or charges for the ING Direct Savings Account. However, ING may introduce or vary charges in line with Condition 16.

17.4: Any interest due to you will be paid as gross interest only when the form R85 has been registered. ING will not add the difference between gross interest and net interest paid in previous months to your account.

17.6.2: If advance notice of a change to the interest rate is given by ING to the customer, the customer can close his accounts at any time within the notice period. This is additional to the general right to close an account.

21.1: If a PIN or other security details to access an account are not used in three years, ING may restrict access to all of the savings accounts of the relevant customer. These restrictions can be removed if the customer contacts ING at any time.