

By PwC Deutschland | 02. Februar 2011

VAT on investment portfolio management?

The Supreme Tax Court has asked the ECJ to rule on the VAT liability of a bank in respect of its investment portfolio management services for private individuals.

A bank offered private customers an investment portfolio management service in return for an annual fee of 1.8% of the assets managed. The bank dealt in securities on behalf of a customer at its own discretion, though keeping to an agreed strategy. It offered customers regular reports on activity and performance of their investments, but did not seek specific approval for each transaction. It split its fee into 1.2% of portfolio value for managing the assets and 0.6% for trading. These proportions were unaffected by the number of transactions or the amount of management work involved. The bank saw the services as VAT-free banking services, largely following a Supreme Tax Court case holding that the investment funds exemption could be extended to a fund created from the assets of a single individual. The tax office saw the activity as asset management, taxable as a service other than banking, on the basis that the customer was only interested in the overall results and not in specific transactions. The Supreme Tax Court has now reconsidered its earlier case, which turned on the place of performance for the management of funds held by a bank on behalf of non-residents, and has now expressed its doubts as to whether its then conclusions can be validly applied to the circumstances now before it. Accordingly, it has turned to the ECJ for guidance.

Its first question is simply whether the management of a portfolio on behalf of a single individual can be equated with the management of a fund on behalf of many individuals. If it can, the fees charged by the bank would be VAT-free. The court then asks for a ruling on the relationship between the main and its ancillary service in circumstances where each is necessary for the enjoyment of the other, but where it would be possible to receive them from different providers. In particular, the court asks whether the trading can be seen as ancillary to the portfolio management, or, its final question, whether the management can be seen as ancillary to the trading.

Supreme Tax Court decision V R 9/10 of October 10, 2010 published on February 2, 2011

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