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ECJ to rule on VAT on investment consultancy fees charged to fund

The Supreme Tax Court has asked the ECJ to rule on whether the fees charged to a fund by an investment consultant for specific disposition recommendations are free of VAT as fund management.

An investment fund effectively contracted out its investment management to an outside consultant. The consultant's task was to keep the capital market under close review and to submit specific recommendations for the purchase and sale of securities to the fund's management. These recommendations were input into an ordering system with various automated check routines. Order implementation was automatic on acceptance by the system. However, the ultimate responsibility for all investment decisions remained with the fund. The consultant company has now claimed that its charges to the fund should be free of VAT as investment management charges, whilst the tax office is claiming that they were formally described as consultancy and thus not exempt. Since the VAT Act is no more detailed than the VAT Directive, the Supreme Tax Court has stayed its case pending a decision of the ECJ on the position under community law. In its referral decision, the court points out, in particular, that the consultant effectively took the day-to-day investment decisions, that it did not submit strategic reports or market summaries, and that it had to describe its activities as consultancy because of a prohibition in force at the time on a fund's contracting out investment management decisions to an outside party. On the other hand, the court goes on to add, there was no difference in the way the consultant would have performed the same duties as (taxable) wealth management for a private individual.

Supreme Tax Court decision V R 51/10 of May 5, 2011 published on June 8

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