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By PwC Deutschland | 24. Juli 2012

Portfolio management services not exempt as banking

The ECJ has held that portfolio management services provided by a bank do not fall under the investment dealing exemption, but are, as a financial service, taxable in the country of the non-business customer.

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A bank offered a portfolio management service to (mainly) its private customers. Each customer deposited an agreed amount, which the bank then invested at its discretion. It also sold or replaced investments on its own initiative. In doing so, it followed agreed policy guidelines, but did not refer back to the customer on specific transactions. Its fee was a fixed percentage of the total value of the customer's fund, split into two elements, asset management and dealing. It maintained that its charges were free of VAT as banking or investment dealing; the tax office saw the advisory or decision-taking aspects as predominate and the service as a whole therefore as taxable in Germany.

The ECJ has now held the service to be a single supply consisting of two elements, both of which carry equal weight. The two elements are dealing in securities and monitoring the market in order to come to an investment decision. Dealing would, on its own, be exempt whereas monitoring would be taxable as a general service. Since both are equally important to the single service as perceived by the customer, and given the need to keep exemptions to those clearly specified as such in the VAT Directive, the single supply is not exempt. It is, however, a financial service under the wider definition relevant to the place of performance and is therefore deemed to be performed in the country of residence of the non-EU private customer.

The ECJ case reference is C-44/11 *Deutsche Bank*, judgment of July 19, 2012.

Schlagwörter

portfolio management