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Management charges to employer pension funds not free of VAT

The ECJ has held that an employer pension fund is not a “special investment fund” within the meaning of the VAT Directive; thus management charges to it are subject to VAT as an ordinary service.

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A UK car manufacturer operated a contributory pension scheme for its employees. The contributions were defined in terms of present salary level and the benefits were defined in terms of length of service and final salary level. The contributions were paid into a fund governed by trustees but managed by a professional investment manager. The employer also paid an annual contribution to the fund. The employer's contribution was the shortfall, by which the employee contributions in total failed to provide adequate cover for the additional liabilities of the fund accumulated during the year. All investment and other risks associated with the fund were thus ultimately borne by the employer. The management company claimed that its charges were free of VAT as it was managing a special fund within the meaning of the VAT directive. The English tax authorities (HMRC) claimed that this was not so and that the management fee was taxable as a service rendered to a non-exempt organisation.

The ECJ has now decided in favour of the tax office. The fund was open to present and former employees of the company only. The members bore no risk, as the results of the fund's investments – good or bad – fell to the employer through their equal and opposite effect on his contribution. On the other hand, whilst it was up to each member state to define for itself the "special investment fund" entitled to receive VAT management services, that definition had to meet the purpose of the exemption. That purpose was to allow members of the public to combine their investments without suffering a VAT disadvantage over their position as individuals taking the advice of a stockbroker. However the staff members joining the employer pension fund were not in a comparable position to members of the public. Accordingly, their fund could not claim any right to VAT exemption on its management charges borne.

The ECJ case reference is C-424/11 *Wheels*, judgment of March 7, 2013.

Schlagwörter

pension fund