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By PwC Deutschland | 14 November 2012

# Bank investment management for EU-resident private clients subject to VAT

**The Supreme Tax Court has followed an ECJ decision in holding the fees of a bank for managing the investments of private clients to be subject to VAT. However, these services for non-residents of the EU/EEA are chargeable in the country of residence, not in Germany.**

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A bank offered its private clients an investment management service. This involved holding client investments in its own name and dealing on the client's behalf following an agreed strategy, but without reference back to the client on specific transactions. It charged an annual fee of 1.8% of the value of the portfolio, regardless of the volume of the transactions. This fee was presented as being 1.2% for holding the securities and 0.6%for dealing, although the split was meaningless as no client could enjoy one part of the service without the other. The bank maintained that the entire service was free of VAT as dealing in securities; the tax office maintained that it was fully taxable in Germany as general asset management. The Supreme Tax Court referred the case to the ECJ.

The ECJ held that the entire service was a single supply. At least one major portion was not exempt under the VAT Directive; thus the supply as a whole was taxable. However, asset management fell under the broader definition of financial services when determining the place of supply. These services were thus deemed to have been performed in the country of residence of a private banking customer from outside the EU/EEA. Charges to those customers were not subject to German VAT under the directive. The Supreme Tax Court has followed this ruling in both respects. The place of supply provisions of the directive were more favourable to the customer than those of the German VAT Act. Customers could therefore call on the directive directly as being the higher law.

Supreme Tax Court judgment V R 9/10 of October 11, 2012, published on November 14

ECJ judgment C-44/11 *Deutsche Bank* of July 19, 2012

**Keywords**

Investment Management, private clients