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By PwC Deutschland | 07 March 2013

Investment consultancy to retail investment fund free of VAT

The ECJ has held that investment consultancy services to an investment management company operating a retail investment trust fund are free of VAT as investment fund management services.

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An investment consultant undertook the regular provision of buy/sell suggestions to an investment management company in Germany in respect of its retail investment trust fund open to members of the public. The consultant did not take any formal responsibility for success of its suggestions even though the investment management company generally followed them, pausing only to check whether the suggested trade was still within the limits set by the law and by its own statutes. The consultant charged a periodic fee based on the value of the fund's assets. The consultant claimed that its services were effectively fund management and should therefore be free of VAT as the fund, itself, qualified as a "special investment fund" under German law. The tax office took the view that consultancy was not management and refused the application.

The ECJ has held that the consultancy services in these circumstances essentially fell within the context of management. At least they were part of the managerial activity and the fee paid for them should be free of VAT in the interests of the neutrality of the system. If the advice had been provided internally – by the fund's own staff – no VAT would have been due. It was also necessary to bear in mind the reason for the exemption – not to burden private investors would chose to pool their resources with the VAT that they would not have borne had they continued to manage their asserts privately.

The ECJ case reference is C-275/11 *GfBk*, judgment of March 7, 2013.

Keywords

Investment Management, investment consultancy, investment funds