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By PwC Deutschland | 16 July 2014

Country agent not free of VAT

The Supreme Tax Court has held that a country distribution agent for a US fund selling shares through a network of independent agents rendered a VAT-able service rather than acting as a VAT-free agent.

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A US fund appointed an AG as country distributor in Germany. The main task of the AG was to sell shares in the fund through a network of several thousand independent agents. For this it received a commission of 4% of the sales proceeds. However it had to meet the commission entitlement of the agents (sub-agents) from this 4%. Its main task was the selection and supervision of the agents and to support them with information, promotional materials and advertising. It received all orders, reviewed them for completeness – including signature – and forwarded them to the fund. It informed applicants of refusals. It was permitted but not required to sell fund shares on its own account without the services of an agent. The tax office, and now the Supreme Tax Court saw the distributor as a service provider of administrative services with the consequence that its turnover, the 4% commission should be subject (at the time – now the service may well be seen as having been carried out in the USA) to standard rate VAT (19%).

The main argument of the Supreme Tax Court was that tax-free agency services had to be separable and separated from taxable activities. Most of the distributor's duties involve the support and supervision of independent agents on behalf of the fund. Its own sales were incidental to its main task, but could not be separated therefrom. Accordingly, its entire turnover charged to the fund was taxable.

Supreme Tax Court judgment XI R 13/11 of May 14, 2014 published on July 16

Keywords

US fund, agents, country agent, country distributor