



FSI tax alert Belgium

Management of 'alternative' investment funds remains covered by VAT exemption

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The VAT Administration confirmed that, despite not being explicitly mentioned in the relevant provision, the management of alternative investment funds remains covered by the VAT exemption for the management of collective investment funds. This position applies until the relevant provision of the VAT Code is changed and explicitly extended to cover alternative investment fund management (Decision n° 127.885 dd. 30 March 2015).

'Alternative' funds excluded from exemption?

The management of "collective investment funds" is exempt from VAT. As such funds are themselves also exempt from VAT, the VAT exemption for their management is crucial to avoid a VAT cost for funds.

However, this VAT exemption only applies to the management of eligible "collective investment funds" as defined in the relevant provision of the VAT Code. This provision was last changed in May 2014. This amendment extended the application scope of the exemption for the qualifying management services to the newly created Belgian Real Estate Investment Trusts (REITs). At the same time, the reference to the Law governing regulated collective investment funds was also updated: the former text of the VAT provision referred to the former Law of 2004 and was now changed by a reference to the Law of 3 August 2012.

Following the transposition of the 'alternative investment funds management' Directive in Belgian legislation, several regulated funds ('alternative funds') are now covered by a new law (of 19 April 2014) and no longer by the Law of 3 August 2012. However, this 'AIFM' law is not literally mentioned in the VAT provision, meaning that the management of these funds was not explicitly covered by the VAT exemption. As a result, the management of funds that do not qualify as UCITS with a European passport was, strictly speaking, no longer covered by the VAT exemption.

VAT exemption maintained

The VAT Administration have now confirmed however that the VAT exemption for qualifying fund management services applies to all investment funds that were regulated by the Law of 3 August 2012, as this stood on the date of 27 March 2014 (the draft Law on Belgian REITs' date of introduction). This entails that alternative investment funds management is still covered by the VAT exemption.

The decision also anticipates a change in text for the provision in the VAT Code; this omission will be resolved by legislation so that the management of these funds will be explicitly covered by the relevant provision's text in the VAT Code.

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