In two recent decisions\(^1\), the Court of Justice of the European Union has issued interesting developments regarding the conditions under which VAT exemption for fund management services could apply. These decisions concern tax services aimed at providing information legally required to ensure the correct taxation of investors, and the licensing of the right to access specialist risk management software specifically developed to run the risk management function of a fund management company.

We would like to emphasize that the Court did not explicitly rule that these two services could be VAT exempt; rather that the conditions of application could be. It is the responsibility of the Austrian Federal Tribunal, which referred these two cases to the Court, to verify that these conditions are met. All concerned service providers and their clients should consider how these developments may affect them.

Recently, the Court of Justice of the European Union ruled on the application of the exemption of fund management services foreseen by Article 135.1.g) of the EU VAT Directive (implemented in article 44.1.d) of the Luxembourg VAT law) in two cases referred by the Austrian Federal Tribunal.

The first case relates to the outsourcing of obligations imposed by Austrian tax law to funds and their management companies to compute and provide data to investors in order for them to comply with their own tax obligations.

The second case relates to the licensing of the right to access software specifically developed for a fund management company, enabling it to perform its risk management obligations in an automated manner and with minimal intervention from its employees who are limited to providing market information only. This software runs within the infrastructure of the fund management company.

The Austrian tax authorities have challenged the application of the fund management exemption to these two services and the disputes were brought to the Austrian Federal Tribunal which, in turn, referred the two cases to the Court of Justice of the European Union.

The Court examined two different criteria that the services must meet to benefit from the VAT exemption. Firstly, the services must, viewed broadly, form a distinct, complete service, although they are not required to be wholly outsourced. For example, in the case of the tax services, the fund or management company retains the ultimate responsibility for reviewing and acting on the information provided while the
delegation is limited to the computation provision of data. In the case of the software, the management company’s employees must provide the market information.

Secondly, the services must qualify as specific and essential ones (i.e. they must fulfil functions specific and essential to the management of funds) and have an intrinsic link with the fund management activity. Regarding the tax services, the Court emphasized that services necessary for any type of investment would not fall under the exemption. With respect to the risk management software, the Court stated that the sole circumstance that a service is fully performed in an electronic manner does not preclude the application of an exemption.²

We would like to emphasize that, despite the Court’s decision providing an interesting development regarding the conditions of exemption, the Court did not explicitly rule that these services would be VAT exempt. It is the responsibility of the Austrian Federal Tribunal to verify that these conditions are met. All concerned persons, services providers, and clients should consider how these new developments may affect the VAT treatment currently applied to their services or purchases.

The Deloitte Luxembourg indirect tax team remains at your disposal to discuss the potential impacts on your organization.

¹ Joined decisions C-58/20, “K” and X-59/20 “DBKAG”, 17 June 2021

² C-2/95, “SDC”, 5 June 1997
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