

Input VAT newsletter



March 2014 – Special edition

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**ECJ Case : C-464/12 – ATP PensionServices A/S
Defined-contribution pension funds benefit from the VAT exemption on management services**

ECJ Case : C-464/12 – ATP PensionServices A/S Defined-contribution pension funds benefit from the VAT exemption on management services

On 13 March 2014, the Court of Justice of the European Union (“CJEU”) published its judgment in the case C – 464/12 ATP PensionServices A/S

In your diary

Final deadline for submitting your return for:

January 2014:
15 April 2014

Dispute

In the case at hand, ATP PensionServices, established in Denmark, was providing services to PensionDanmark, an occupational pension fund administering various employment pension schemes in Denmark. This occupational pension scheme was administering pension schemes, set up under collective agreements and company agreements, on behalf of trade unions and employers organisation. This pension fund was a defined-contribution (“DC”), i.e. a fund whose yield depends on its investment strategy and where the employer does not need to make any extra payments to secure a particular return for the beneficiary/employee.

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In this context, based on the information received from employers, ATP was opening accounts for each pension customer who was a member of the pension scheme managed by ATP. The employer informed ATP of the pension contributions payable for all its employees and transferred a single amount, representing the total sum of those contributions, to the pension fund’s account at a bank. The amount payable to each individual employee by the employer under the collective agreement or company agreement was then credited by ATP to the employee’s account in the pension scheme system managed by ATP.

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The pension customers had on-line access to their pension accounts. ATP updated all accounts regularly with the amounts to be credited and the amounts to be withdrawn, so that the balance of any account is equal to the amount of retirement benefit accumulated (excluding income earned but not yet credited).

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The Danish VAT authorities have challenged the application of VAT exemption applied on such services by ATP.

Questions referred to the CJEU

With regard to the above mentioned the CJEU was mainly asked whether:

- The DC pension scheme could be regarded as a “*special investment fund*” for VAT purposes?
- Does the term “*fund management*” include for VAT purposes the services provided by ATP?
- Could the services performed by ATP benefit from the VAT exemption for “*transactions concerning payments and transfers*”?

Judgment

Question 1

In order to answer to the first question, the CJEU noted that it is important to establish whether such DC pension schemes are comparable to undertakings which fall within the scope of “*special investment fund*” for VAT purposes. It follows a previous CJEU judgment that funds which constitute undertakings for collective investment in transferable securities (UCITS) within the meaning of the UCITS Directive are “special investment funds” for VAT purposes. As such, funds which display characteristics identical to those of UCITS and thus carry out the same transactions, or at least, display features that are sufficiently comparable for them to be in competition with such undertakings must also be regarded as special investment funds.

Based on this, the CJEU has concluded that the DC pension scheme should be treated on a par with other collective investment schemes for the purpose of the VAT exemption as long as the scheme:

- Is funded by the persons to whom the retirement benefit is to be paid;
- Savings are invested using a risk-spreading principle;
- Pension customers bear the investment risk.

CJEU added that it was of little consequence in determining whether it is on a par with other collective investment schemes that the employer makes the contributions, how and when the pensions are paid to contributors, what are the national income tax provisions and whether there is an ancillary insurance element.

Question 2

With regard to the second question, the CJEU has unexpectedly set out a potentially wide-ranging interpretation of services that could constitute “*fund management*” for VAT purposes and thus benefit from the corresponding VAT exemption.

The CJEU noted that the opening of accounts in the pension fund system and the crediting to those accounts of the contributions paid are essential for the management of a special investment fund and thus such service could benefit from the fund management VAT exemption.

In addition, the CJEU also noted that fund management VAT exemption could cover

as well accounting services and accounting information services and this might include processing the necessary data provided by the employer performed by the entity holding pension customers' accounts, determining whether contributions are missing and sending statements relating to these accounts.

However, the final decision about whether the services performed by ATP should benefit from the fund management VAT exemption was left with the referring court.

Question 3

With regard to the third question, the CJEU has elaborated on the VAT exemption for “*transactions concerning payments and transfers*” but leaving the final decision on the application of VAT exemption on the concerned services to the referring court.

The CJEU has, however, made valuable comments by noting in terms of what services are falling within the scope of this VAT exemption. In its previous judgments, the CJEU has held that a VAT exempt transfer is a transaction consisting in the execution of an order for the transfer of a sum of money from one bank account to another and it is characterized that it involves a change in the legal and financial position of the concerned parties. In this judgment, the CJEU has added that services covered by this VAT exemption include transfers carried out by means of a physical transfer or by means of accounting entries (e.g. in cases of transfers between two accounts belonging to the same account holder).

Implications

From a practical point of view, the CJEU confirmed the application of the fund management VAT exemption for management services provided to assimilated Luxembourg DC pension schemes.

In addition, the CJEU gave further guidance on what other services might be VAT exempt either under the fund management VAT exemption or under the “*transaction concerning payments and transfers*” VAT exemption.

As such, the judgment might have VAT consequences for a range of market participants including funds, fund managers, banks and other financial institutions and general outsourcers.

The monthly VAT Newsletter is designed to keep readers abreast of current developments, but is not intended to be a comprehensive statement of the law. No Liability is accepted for errors, omissions, or opinions it contains or generally for any reliance placed on this newsletter.

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