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Indirect Tax Conference
VAT and Pensions

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Agenda

1. Introduction
2. Liability
    - *Wheels*
    - *ATP Pension Service*
    - *United Biscuits*
3. Employer/Scheme Arrangements
4. Alternative Arrangements
5. Looking Ahead…

Introduction

- Ongoing litigation - significant moves over the last twelve months.

- Most litigation taken place at the Court of Justice of the European Union (“CJEU”).

- Litigation concerned:

    i. the liability of supplies to pension schemes; and

    ii. whether the employer or the scheme has the right to recover input tax incurred.

Liability

Liability

Wheels Common Investment Fund Limited and Ors ("Wheels")

- *Wheels* case was decided by the CJEU in March 2013.
- The case concerned whether the supply of the management of a defined benefit pension scheme should be exempt from VAT.
- The CJEU decided that a defined benefit pension scheme is not a special investment fund.
- Key point – whether the members of the scheme bear the "risk".
- Therefore, the CJEU determined that the VAT exemption should not be applied to the management of defined benefit pension schemes.

Liability

ATP Pension Service A/S (“ATP”)

- ATP performed administration of schemes, scheme maintenance and payment transfers.
- UK’s view was that DC pension schemes are not special investment funds.
- Numerous questions were referred to the CJEU.
- CJEU decided that a DC scheme is a SIF where:

  1. It’s funded by the employees;
  2. The risk is spread; and
  3. The risk is borne by the employee.

- The CJEU also confirmed that the services provided by ATP fell within the scope of “management” in accordance with *Abbey* and *GfBk*.

Liability
ATP Pension Service A/S ("ATP")

- Potentially the end of the road for DB schemes?
- Greater impact on services received by DC scheme managers than on the actual management of the schemes?
- Next steps:

  - DC schemes to contact suppliers;
  - IMs and administrators to review services and submit claims; and
  - Potential application to other collective investment schemes.
- HMRC seeking advice on the implications for UK taxpayers.
- Expecting an HMRC Brief shortly.

Liability

United Biscuits

- Main argument is that fund management should be exempt as managers of insurance backed schemes are able to benefit from the insurance exemption for identical services.
- Application of fiscal neutrality.
- Expected to be heard in the High Court in 2015.
- Remedy and restitution arguments.

Employer/Scheme Arrangements

Employer/Scheme Arrangements
Background

- Mandates typically between the pension scheme(s) and the relevant service provider(s) (pensions regulations govern which party can engage with which service provider).
- Invoices from fund managers were typically split 30/70 to reflect the administrative and investment services being provided.
- The employer recovered VAT on the administrative charges it received, but blocked the 70% investment element on fund manager charges.
- The pension scheme(s) recovered VAT (to the extent that it could) on the 70% of VAT blocked by the employer.

Employer/Scheme Arrangements
PPG Holdings

- The *PPG* case concerned whether an employer could recover input tax relating to the management of its pension fund, when it was obliged to operate it by law.
- PPG (the employer) had set up a legally and fiscally separate DB pension scheme.
- It had contracted and paid for services relating to the management and operation of the PF.
- The CJEU decided that an employer was entitled to deduct input tax it paid on services relating to the management of the assets of the pension scheme, provided:

  "*there is a direct and immediate link to the employer's activities*."

Employer/Scheme Arrangements
PPG Holdings

- Following the decision in *PPG*, HMRC notified their intention to withdraw the 30/70 split (initially under a six month transition period – this has since been extended).
- HMRC's Brief also stated:

  - HMRC looking to maintain the status quo;

  - Investment services should only be recovered by the scheme;

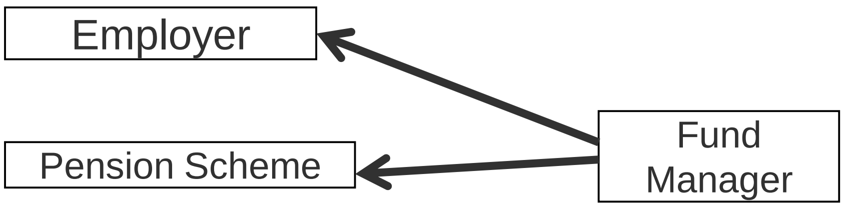
  - If costs incurred by employer but ultimately borne by the pension scheme, then output tax should be levied.

Employer/Scheme Arrangements
PPG Holdings

- Potential issues raised by the first Brief:

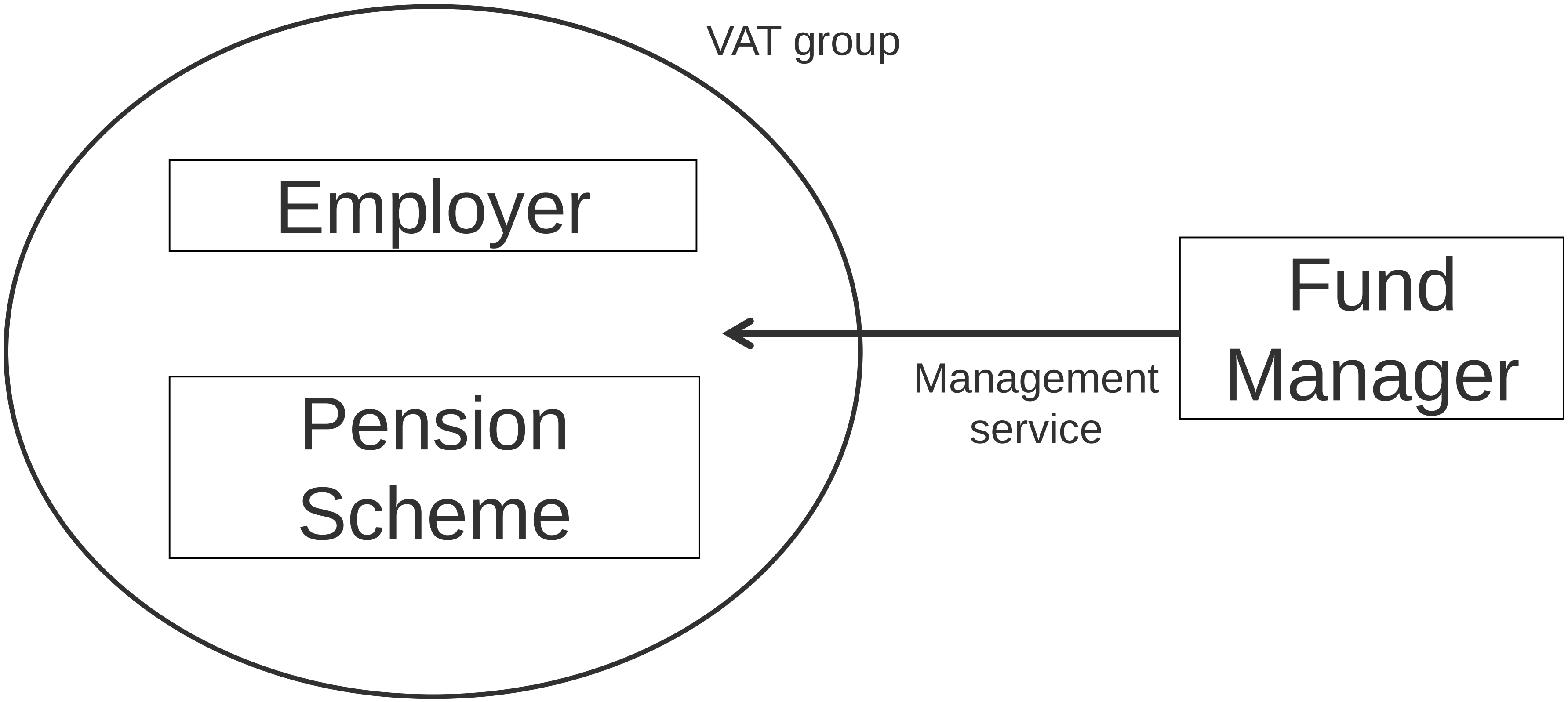
  - What does “commission and pay for services” mean?
  - What does “commissioned” mean?
  - *PPG* makes no distinction between administration and investment.
  - Legal and regulatory distinction for UK pension schemes.

- HMRC indicate that it is critical employer bears the cost and contracts directly – possibility of restructuring invoicing or entering into tripartite arrangements?



Employer/Scheme Arrangements

Alternative Option – VAT Grouping



Alternative Arrangements

Alternative Arrangements

Tax Transparent Funds ("TTFs")

- Fund structure introduced in the 2011 Budget.
- Classed as a "special investment fund" for VAT purposes so the management of a TTF is exempt from VAT.
- Option to wrap pension fund assets in a TTF structure and benefit from exemption.

Alternative Fund Structures

Looking Ahead…

Looking Ahead…

- End of the road for *Wheels* and Defined Benefit schemes?
- Defined Contribution – management charges exempt (*ATP*)?
- If VAT is charged, *PPG* could give employers the opportunity to recover but HMRC may resist.
- Awaiting final HMRC position on both cases, expected in its next pensions Brief, shortly.