



# 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

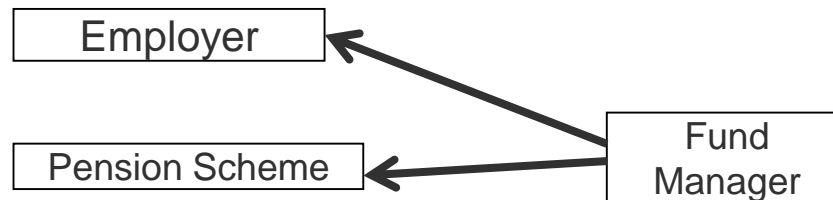
## *PPG Holdings*

- 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

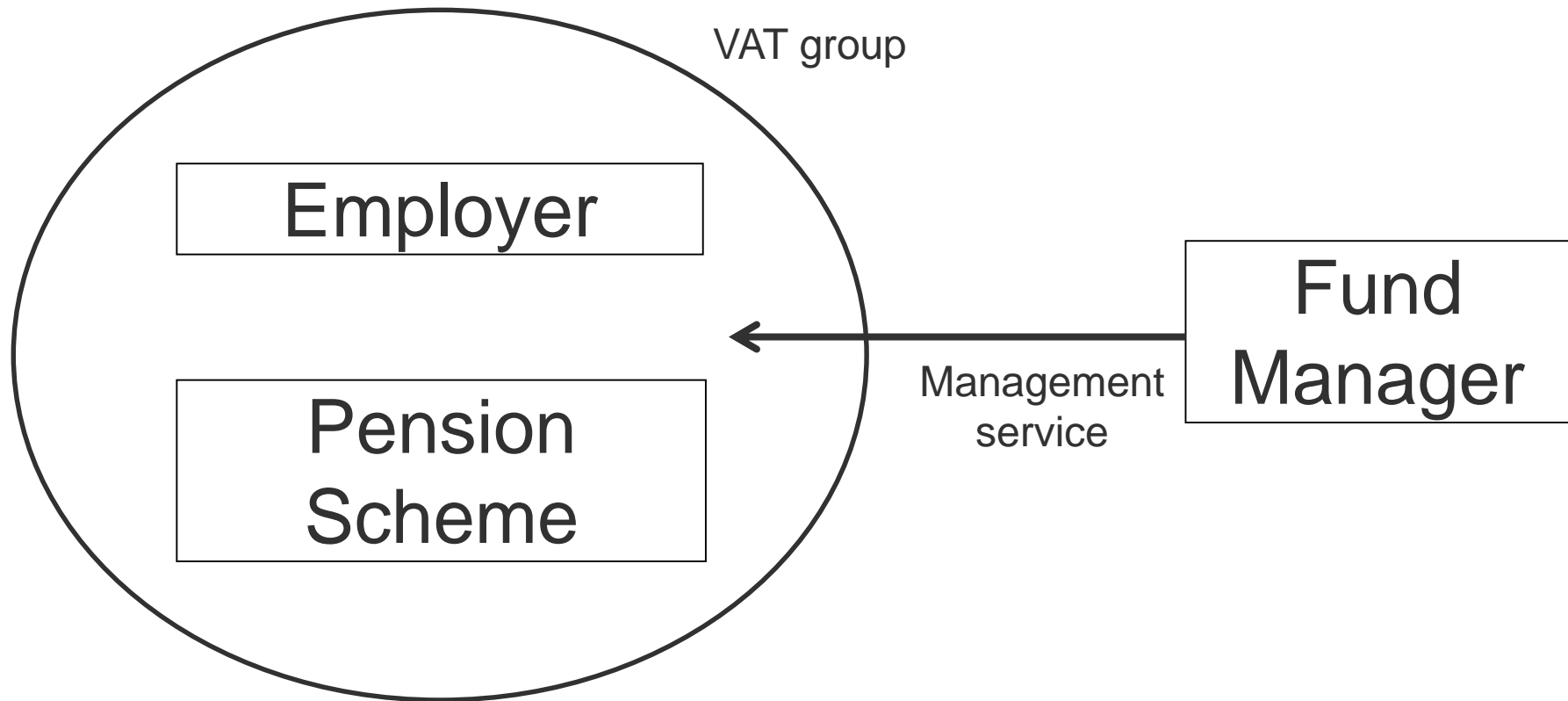
## *PPG Holdings*

- 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.



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