



NEWS FLASH

VAT treatment - Management services of investment funds performed by a third party manager

On 30 April 2010, the Luxembourg VAT administration releases a Circular confirming its interpretation on how applying the VAT exemption granted to management services of investment funds when these services are performed by a third party manager.

Pursuant to article 44.1.d) of the Luxembourg VAT law (implementing article 135.1.g) of the EU VAT Directive 2006/112), management services of investment funds could benefit from a VAT exemption. In Luxembourg, investment funds under the supervision of the CSSF (Luxembourg regulator) as well as Luxembourg pension funds, SICAR (investment company in risk capital) and securitisation vehicles could benefit from this exemption.

The European Court of Justice clarified in its Abbey National case (C-169/04 of 4 May 2006) which services could benefit from the exemption. This decision was implemented in Luxembourg by the Circular n° 723 issued by the Luxembourg VAT administration on 29 December 2006.

The European Court of Justice in its Abbey National Case decided that management services should cover services aimed by the second subparagraph of Article 5(2) of Directive 85/611 and its Annex II which mentions the following functions:

- Investment management
- Administration:
 - (a) legal and fund management accounting services;
 - (b) customer inquiries;
 - (c) valuation and pricing (including tax returns);
 - (d) regulatory compliance monitoring;
 - (e) maintenance of unit-holder register;
 - (f) distribution of income;
 - (g) unit issues and redemptions;
 - (h) contract settlements (including certificate dispatch);
 - (i) record keeping.
- Marketing.

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This list is non exhaustive.

In Luxembourg, the exemption is, thus, available for services rendered directly to the investment funds such as administrative services, portfolio management services and custody bank services except the “control and supervision” services liable to VAT at 12%.

The question of “delegated” or “outsourced” services has always been more delicate. The Circular released on 30 April 2010 by the Luxembourg VAT administration reminds the principles applicable in this respect (circular n°723 bis). The Circular confirms that the exemption is available for management services performed **by a third party manager when these services if, viewed broadly, form a distinct whole, and are specific to, and essential for**, the management of those funds. The exemption is however not available for purely material or technical services such as the put at disposal of an IT system. The Circular states also that the exemption is not applicable to the furniture of an isolated service.

The Circular refers only to “manager” (*gestionnaire*). However, it is reasonable to assume that the principles of the Circular are also applicable to other third party service providers (providers of administrative type of services; custody bank).

At last, the Circular reminds that the exemptions granted to financial services, including management services of investment funds, are currently under review at the European level. In other words, the Circular is based on the current legislation but could be impacted by the potential changes of European rules.

The Circular 723 bis refers expressly to the principles of the Circular 723 of 29 December 2006 and those of the European Jurisprudence and thus confirms the principles of this Jurisprudence and the Circular n° 723. The new Circular is thus consistent with a long standing approach of the Luxembourg VAT administration. The principles are thus quite clear even if their practical application could sometimes be difficult.

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