

Investment management services for DC pension schemes: exempt from VAT

On 13 March 2014, the Court of Justice of the European Union (the “CJEU”) released its decision in the “ATP” case, which was about the VAT treatment of investment management services provided to defined contribution (“DC”) occupational pension schemes. The CJEU decided that investment management services supplied to DC schemes that satisfy certain criteria are exempt from VAT.

Background

Under the terms of the EU VAT Directive, the “management of special investment funds as defined by member states” is a VAT-exempt supply of services. In 2013, the CJEU decided in the *Wheels* case that defined benefit (“DB”) occupational pension schemes were not special investment funds. It had two main reasons for this decision. First, occupational pension schemes are not open to the public and are an “employment-related benefit which employers grant only to their employees”. Second, members of DB schemes “do not bear the risk arising from the management of the investment fund in which the scheme’s assets are pooled”. (See our [March 2013](#) legal update for more information on the *Wheels* case.)

ATP PensionService (“ATP”) provided a range of management services to PensionDanmark, a large Danish multi-employer DC occupational pension scheme. A dispute arose between ATP and the Danish tax authorities as to whether ATP should charge VAT on these services. ATP argued that PensionDanmark was a special investment fund and that the services ATP provided were therefore exempt from VAT. The Danish tax authorities, however, disagreed. The Danish courts referred a number of questions to the CJEU, including whether or not pension schemes like PensionDanmark were “special investment funds”.

Decision

The CJEU decided that the “essential characteristic of a special investment fund is the pooling of assets of several beneficiaries, enabling the risk borne by those beneficiaries to be spread over a range of securities”. The CJEU therefore drew a distinction between DB pension schemes, where the members receive a pension promise and as such do not bear the investment risk of the scheme, and DC pension schemes where members do bear the investment risk. It concluded that DC pension schemes can fall within the definition of “special investment fund” if:

- the scheme’s funds are invested using a risk-spreading principle; and
- the members bear the investment risk.

Comment

The impact of the CJEU’s decision for DC schemes in the UK will depend on the extent to which they are currently charged VAT on investment management services. Many DC schemes invest through an insurance wrapper and therefore benefit from a separate VAT exemption. For those schemes that do pay VAT on investment management services, the decision will give them grounds to argue that they should not pay VAT on those services in future, and to try and reclaim VAT paid in the past on those services (any such claims would be limited to the past four years). However, much may depend on how HMRC interprets the CJEU’s decision, and we will need to await guidance from HMRC on any policy changes in light of the decision.

Employers and trustees of DB pension schemes are likely to feel aggrieved by the CJEU’s decision in this case as they will feel that there is no longer a level playing field between DB and DC schemes as regards the charging of VAT on services provided to the scheme.

If you have any questions about this update, please get in touch with your usual Mayer Brown contact.

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