

## **Judgment of the Court of Justice of the EU Rules that Investment Fund Advisory Services may be VAT Exempt**

On 7th March 2013, the Court of Justice of the European Union (the “EU Court”) ruled on an important issue by confirming that investment fund advisory services may be exempt from the scope of VAT, even if provided by a third party to an Investment Management Company (“IMC”). In this case, a preliminary ruling was sought in order to determine whether the exemption from VAT on management of special investment funds also included advisory services for the management of a special investment fund which were outsourced to an undertaking.

In reaching its conclusion that advisory services provided by a third party to an IMC (being the manager of a special investment fund) fall within the concept of ‘management of special investment funds’ for the scope of the exemption, the Court considered various fundamental concepts. One of the main issues which the Court considered related to the fact that in principle, the wording of Article 13B(d)(6) of the Sixth Directive *“does not preclude the management of special investment funds from being broken down into a number of separate services which may then fall within the meaning of ‘special investment funds’ in that provision”*. Furthermore, in this regard, the Court continued that such separate services *“may benefit from the exemption under it, even when they are provided by a third-party manager, so long as each of those services has the effect of performing the specific and essential functions of management of a special investment fund.”* The Court continued by applying this principle to recommendations which were provided by a third party to an IMC in terms of the purchase and sale of assets.

Other factors considered by the Court in arriving at its conclusion include:

- The list of activities in Annex II to Directive 85/611 EEC which includes specific activities falling within the management of a special investment fund is “not exhaustive”;
- Article 13B(d)(6) of the Sixth Directive defines management of special investment funds according to the nature of the services provided and not according to the person supplying or receiving the service;
- The provision of recommendations to an IMC to purchase and sell assets are intrinsically connected to the activity of an IMC, which consists in the collective investment in transferable securities of capital raised from the public;

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- Directive 85/611 EEC, by virtue of Article 5g(1), introduced the possibility for Member States to “*permit management companies to delegate to third parties for the purpose of a more efficient conduct of the companies’ business*” provided that such mandate is in compliance with the conditions which are included in the provisions of Article 5g(1)(a) to (i);
- Furthermore, excluding third party advisors from the scope of this exemption would in effect discriminate in favour of larger IMCs which may have their own in-house investment advisors.

Undoubtedly, this judgment also provides much needed certainty and clarity to firms and practitioners operating in the local financial services industry, particularly the clear and specific conditions and criteria which must be satisfied by such firms to qualify for this VAT exemption. In this sense, the extended scope of this exemption is also beneficial to smaller IMCs which may not have their own in-house investment advisors.

If you require advice on any of the matters raised in this document, please contact

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