

## Pension funds and VAT

A pension fund is a VAT taxable person. This status involves certain obligations. A pension fund must register with the Dutch Tax and Customs Administration and file VAT returns, for example. This does not necessarily mean that a pension fund must pay VAT. Because the services provided by pension funds are usually VAT exempt, they do not have to pay VAT on, for example, their pension premiums. However, pension funds do have to pay VAT in certain cases, for example when services are provided to them by foreign service providers.

The status of 'VAT taxable person' not only involves obligations, but also rights. For example, a pension fund is entitled to a partial refund of the VAT paid if part of its portfolio is invested outside the European Union. The entitlement to a refund of VAT is something that many pension funds do not initially consider. To be eligible for a refund, the pension fund must be able to determine how much VAT has been paid by means of its accounts.

### **VAT exemption for collective asset management**

During the last two years, the Court of Justice of the European Union ("CJEU") has rendered a number of judgments on the VAT treatment of asset management services to pension funds. For example, in 2013 the CJEU concluded in the *Wheels* Common case (C-424/11) that a pension fund with a defined benefit plan cannot be regarded as a common investment fund. This means that the asset management of such pension funds is, in principle, subject to VAT. A similar position was taken in the Netherlands by the Court of Appeals in the Hague when it ruled on the application of the VAT exemption to the management of a sectoral pension fund with a defined benefit plan (December 5, 2014, case no. 11/00508). This judgment is being appealed before the Supreme Court so it is now up to the Supreme Court to rule on this matter. On March 13, 2014 the CJEU concluded in the *ATP Pension Service A/S* case (C-464/12) that a pension fund with a defined contribution plan can be regarded as a common investment fund. This means that certain services (such as asset management services or pension administration services) provided to such pension funds may be exempt from VAT. This presents opportunities for pension funds to make savings on their current VAT costs. Furthermore, in the latter case the CJEU formulated the conditions for the

application of the VAT exemption in such a way that it nevertheless appears possible for pension funds with another type of plan to also claim the exemption. This could involve, for example, certain types of collective defined contribution and defined benefit plans.

We believe that the exemption does not only apply to asset management services. Investment advisory services, pension administration services, services related to the collection of premiums and other services related to the management of pension funds may qualify as 'management' within the meaning of the exemption. This means that such services may perhaps also be VAT exempt (depending on whether the pension fund qualifies as a common investment fund).

### **Cancellation of the VAT exemption for cost-sharing groups as it relates to pension administration services**

As of January 1, 2015 the VAT exemption for cost-sharing groups as it relates to pension administration services has been canceled. This means that as of January 1, 2015 pension administrators must charge 21% VAT on the pension administration services they provide to pension funds. However, such services are still VAT exempt if the pension fund involved qualifies as a common investment fund. In this respect it is also important for pension funds to determine whether they qualify as a common investment fund. The previous also applies for pension insurance companies that transfer their pension obligations to a general pension fund (in Dutch: *algemeen pensioenfond* ('APF')) and continue to provide only pension administration services to the APF.

## Are you sufficiently aware of the opportunities and risks?

Given a potential VAT burden of 21%, it is worthwhile investigating whether a pension fund can reclaim VAT or apply an exemption. In addition to these possibilities, it appears that many pension funds are not fully aware of all the risks involved with VAT. Consequently, the risk of additional VAT assessments and penalties being imposed has often not been entirely eliminated, and so it is important to examine the VAT position of pension funds in more detail.

## What you need to know

- Pension funds must be registered as a VAT taxable person.
- In principle, pension funds are responsible for paying the VAT on taxable services they procure from foreign service providers, such as asset managers, custodians, and advisors. Within the EU, this is regularly checked by the Dutch Tax and Customs Administration.
- If a pension fund is to safeguard its rights to possible exemptions, it must file a notice of objection against the payment of VAT, as court judgments do not have a retroactive effect.
- If VAT is charged by a Dutch asset manager, you should consult with this asset manager so it also files a notice of objection in good time and can reclaim VAT with retroactive effect. With regard to new agreements, particular attention must be paid to the VAT provisions in order to ensure that any VAT that is not payable can be subsequently reclaimed from your asset manager.
- Having regard to the recent judgments, it is advisable for pension funds to check whether they meet the conditions to be qualified as a common investment fund.
- Some pension funds incorrectly assume that they cannot reclaim VAT. It is usually possible for pension funds with part of their portfolio invested outside the European Union to obtain a refund of the VAT paid from the Dutch Tax and Customs Administration.
- To obtain a VAT refund, the accounts must show how much VAT has been paid. If the paid VAT is not reported separately or is not apparent from the accounts, then the accounting systems and processes must be modified as necessary. If the accounts and the systems are not organized properly, problems may arise when a refund of VAT is requested. It is therefore important to examine how a pension fund accounts for VAT.
- Pension funds run particular VAT risks in respect of the collective transfer of accrued pension rights (and/or liquidation or merger/transfer to a industry-wide pension fund/PPI/Civil Service Pension Fund). Insufficient attention to the consequences for VAT can result in the entire transfer value of the pension rights being subject to VAT. It may be wise to make clear agreements in advance with the Dutch Tax and Customs Administration in order to eliminate VAT risks.

## How can Meijburg & Co help you?

Meijburg & Co's Pension Group consists of advisors specialized in VAT as it relates to pension funds. Their extensive knowledge and experience of the pension sector means that they can quickly and efficiently provide you with a VAT analysis of your pension fund and its specific activities. Feel free to contact one of the advisors listed below if you would like a VAT quick scan. Our advisors can also assist you with specific issues, for example with regard to the abovementioned possibilities (such as applying a VAT exemption or reclaiming VAT) and risks (such as the remittance of VAT on foreign services and setting up the accounts / VAT systems).

If you would like to receive more information on our pension advisory services and how we can be of assistance to you, please contact one of our Pension Group advisors or your personal contact at Meijburg & Co.

### Jan Stigter

**T:** +31 (0)88 909 6862  
**M:** +31 (0) 6 5333 7119  
**E:** stigter.jan@kpmg.com

### Gert-Jan van Norden

**T:** +31 (0)88 909 1025  
**M:** + 31 (0) 6 2139 3138  
**E:** vannorden.gert-jan@kpmg.com

### Karim Hommen

**T:** +31 (0)88 909 6857  
**M:** +31 (0) 6 5244 2703  
**E:** hommen.karim@kpmg.com

### Dieuwertje Euser

**T:** +31 (0)88 909 2058  
**M:** +31 (0) 6 2180 7017  
**E:** euser.dieuwertje@kpmg.com

## [meijburg.com/pensions](https://meijburg.com/pensions)

## Tax is our business

The information contained in this publication is of a general nature and does not address the specific circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

© 2016 Meijburg & Co, Tax Lawyers, is an association of limited liability companies under Dutch law, registered under Chamber of Commerce registration number 53753348 and is a member of KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.