

Confirmation by CJEU in BlackRock case: a single management service is not partly VAT-exempt

On July 2, 2020 the Court of Justice of the European Union (hereinafter: 'CJEU') rendered judgment in the BlackRock Investment Management (UK) Limited case ('BlackRock UK', case no. C-231/19). In this case the CJEU addressed whether a purchased single service can, for VAT purposes, be split in such a way that part of the payment for that service is VAT-exempt under the exemption for the management of special investment funds, while the other part is treated as VAT-taxed. BlackRock UK argued that it should be possible to make such a split, because the purchased service was used for, on the one hand, the management of special investment funds (VAT-exempt) and, on the other, for funds that are not special investment funds (VAT-taxed).

The CJEU did not agree with this position and concluded that a single fund management service cannot be partly VAT-exempt. The outcome of this judgment is not only important for taxpayers that are involved with investment funds, but also for providers and purchasers of other types of composite services.

1. Background and points of law

BlackRock UK is a member of a VAT group in the United Kingdom ('UK'). For the purposes of its activities, BlackRock UK purchases services from an affiliated entity in the United States. This entity, BlackRock Financial Management Inc ('BFMI'), is a member of the same group as BlackRock UK. The VAT on the services BlackRock UK purchases from BFMI, are paid by BlackRock UK under the reverse-charge mechanism. BlackRock UK uses the services it purchases for two types of investment funds, i.e. special investment funds ('SIF's': VAT-exempt) and other investment funds ('non-SIFs': VAT-taxed).

BFMI performs its services via a software platform (Aladdin) and allows the managers of BlackRock UK to take decisions about performing financial transactions. BlackRock UK asked the UK tax authorities whether the purchased services could be VAT-exempt insofar as they were used for the management of SIFs. However, this request was refused. The referring court thus asked the CJEU to answer the question to what extent is it possible to split a single payment for a single management service in accordance with its use for VAT-exempt SIFs and VAT-taxed non-SIFs.

2. Considerations and CJEU ruling

The starting point for the CJEU is that there is a single service, whereby it is not possible to distinguish a principal service and ancillary services. The CJEU subsequently confirmed that a single service can only have one VAT treatment, as was last confirmed in the judgment in the Amsterdam Stadium case (C-436/16).

BlackRock UK also invoked the CJEU Commission vs Luxembourg case (C-274/15) concerning the VAT exemption for cost-sharing groups, in which the CJEU ruled that under the VAT exemption for cost-sharing groups it *is* possible for *part* of a single service to be VAT-exempt. The CJEU noted that the scope of the VAT exemption for cost-sharing groups is determined on the basis of the *use* of the relevant services. The VAT exemption for cost-sharing groups thus provides for a differentiated VAT treatment of a service, depending on how it is used. On the other hand, the exemption for the management of special investment funds is solely defined on the basis of the *nature* of the service, i.e.

whether the nature of that service qualifies as the management of SIFs. According to the CJEU, the wording of the exemption for the management of special investment funds therefore does not allow such a split.

The referring court also considered the possibility that all the services that BlackRock UK receives via the Aladdin platform must be regarded as VAT-taxed, because the majority of those services are used to manage non-SIFs. Conversely, according to this same logic, these services must then be VAT-exempt if the majority of the funds are SIFs. According to the CJEU, that solution cannot be applied. The CJEU emphasized that the scope of the exemption for the management of special investment funds is defined on the basis of the nature of the service and not on the basis of who provides or receives the service.

According to the CJEU, if the VAT treatment of the fund management service had to be determined on the basis of the use of that service, this could result in the exemption for the management of special investment funds also being applied to the management of non-SIFs. Such an outcome would be contrary to the strict nature of the interpretation that must be given to the exemption for the management of special investment funds.

Furthermore, the CJEU emphasized that management services can only be regarded as VAT-exempt if the service is *specific and essential* to the management of SIFs. The Aladdin platform was specifically designed for managing various kinds of investment funds and not only SIFs. According to the CJEU, the service therefore cannot be regarded as *specific* to the management of SIFs.

In light of the above, the CJEU ruled that a single supply of management services, which are used to manage both SIFs and non-SIFs, is not VAT-exempt under the exemption for the management of special investment funds.

3. Impact on Dutch practice

The CJEU judgment is in line with the Advocate General's Opinion (we refer to our [alert](#) of March 12, 2020). For many market parties, the judgment will be disappointing. In his Opinion, the Advocate General indicated that he believed that a split into a VAT-exempt and a VAT-taxed part was conceivable in some cases, i.e. where sufficient information is available to precisely and objectively determine which part of the payment relates to the VAT-exempt services. However, the CJEU did not address this point, so that it remains unclear whether a split is indeed impossible in all cases.

Although not explicitly addressed by the CJEU, its starting point is that the IT services that BlackRock UK purchases can, in principle, be regarded as management within the meaning of the exemption for the management of special investment funds. That the service cannot be (partly) VAT-exempt in the case at hand is only because the services are not just used for SIFs. This is a welcome confirmation, because in the Dutch practice it is often unclear which IT service could fall within the scope of a financial exemption. We therefore recommend that you take another look at any services purchased that are performed on a technological basis, and critically evaluate them.

4. What can you do now?

The CJEU judgment shows that splitting a single fund management service into a VAT-exempt and VAT-taxed part is not possible in situations such as in the BlackRock UK case. The judgment makes clear that it is even more important than ever to determine whether it is possible to split activities into separate services beforehand. Those separate services will then receive their own VAT treatment. In such cases, that requires changes to the services, the contracts and the invoices. We would be happy to discuss this with you.

Finally, we would like to point out that although this case dealt with the exemption for the management of special investment funds, the judgment by the CJEU could also impact other types of composite services outside the financial sector. After all, the splitting issue also occurs in other sectors.

If you would like to discuss this judgment, feel free to contact the advisors of Meijburg & Co's Indirect Tax Financial Services Group or your usual advisor. They can help you further with this issue.

Meijburg & Co
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