

Case alert

Fiscale Eenheid X NV – Case C-595/13

Court of Justice of the European Union (CJEU)

The CJEU released its judgement in the above case in December. This was a referral from the Dutch courts which sought guidance on a number of issues. Firstly, the CJEU was asked to rule on whether an investment fund, which invests solely in real estate, can be regarded for VAT purposes as a 'special investment fund'. If the answer to that question is yes, then supplies of management services provided to the fund could qualify for exemption from VAT. On the question of management, the CJEU was also asked to give guidance on what services are covered by that term and, in particular, whether the actual management of the property assets that were the subject of the investment could be regarded as the 'management of a special investment fund'.

The CJEU has confirmed that for VAT purposes, the nature of the underlying investment assets within the fund are irrelevant. There is no restriction in the VAT directive which limits the scope of the exemption only to funds that invest in transferable securities. The purpose of the VAT exemption for the management of special investment funds is to ensure equal treatment between direct investment (through a broker) and indirect investment through the pooling of funds. According to established case law, a fund will, therefore, be a special investment fund for VAT purposes if:

- a it pools the investments for the purpose of spreading risk;
- b that risk is borne by the investors; and
- c the fund is subject to comparable state supervision.

The fact that, as in this case, the underlying assets are properties makes no difference.

As far as 'management' is concerned, the CJEU has ruled that actual management of the properties themselves does not qualify as the management of a special investment fund. Activities relating to the selection, purchase and sale of the properties and any necessary administration and accounting tasks will qualify as 'management' but activities such as letting, management of existing tenancies and monitoring of maintenance works etc. are not 'management' services that qualify for VAT exemption.

Summary

This is the latest judgement from the CJEU in connection with what does and does not constitute a 'special investment fund' for VAT purposes.

The judgment will be of interest to funds invested in property. Provided that the fund is a pooled fund where the investors bear the investment risk and, provided the fund is subject to state supervision, it will be regarded as a special investment fund.

In such circumstances, the management of the fund is exempt from VAT. This includes the selection, purchase and sale of the fund's property assets.

The good news is that any funds that have met those conditions historically should consider seeking a refund of the VAT paid to the fund managers covering fees paid during the previous four years.

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