Luxembourg Tax Update - 6 July 2020

The BlackRock VAT case: an impossible combination of artificial intelligence and the VAT exemption?

On 2 July 2020, the Court of Justice of the European Union ("CJEU") ruled in the case of BlackRock Investment Management (UK) Ltd (C-231/19) that a "single supply" of management services, provided by a third-party supplier via a software platform for the benefit of a fund management company managing both special investment funds and other funds, does not fall within the VAT exemption provision.

Background

BlackRock Investment Management (UK) Ltd ("BlackRock") was a company responsible for the management of funds: mainly non-special investment funds ("non-SIFs"), but also special investment funds ("SIFs"). In this context, BlackRock used the services of BlackRock Financial Management Inc. in the US ("BFMI") through an IT platform. These services spanned the entire investment cycle (performance and risk analysis as well as monitoring to enable the portfolio managers to make investment and trading decisions, alongside the monitoring of regulatory compliance). UK VAT was self-assessed on the full remuneration paid to BFMI.

As a portion of the services received from BFMI went to manage SIFs, BlackRock claimed the application of the VAT exemption for that portion of the services, requesting a corresponding VAT refund. After being rejected by the UK tax authorities, the case was brought before the CJEU, raising the issue that a single service having a dual use would imply two different VAT treatments.

CJEU judgment

To put the ruling in context, note that the CJEU follows the approach of the Advocate General ("AG") held in its Opinion dated 11 March 2020 regarding the notion of a single supply, and confirms that the relevant supply of services via the software platform (constituted by the combined use of various functions of the platform) must be seen "as forming a single indivisible economic supply".

As regards the VAT treatment applicable to such single supply, the CJEU held that a single supply must necessarily be subject to one and the same VAT treatment.

In this respect, the CJEU stated that the decision of whether to apply the specific VAT exemption provision for fund management must be based solely on the nature of the services supplied (and not on their uses, or on the nature of the majority of the managed funds). Furthermore, based on settled case law, the CJEU recalled that in order to be VAT-exempt, "the services provided by a third-party manager must, viewed broadly, form a distinct whole fulfilling in effect the specific, essential functions of the management of SIFs". It stated that this condition is not met in the case at hand because the software services may be used in the same way for the management of SIFs and non-SIFs.

The CJEU has thus concluded that the services provided by BFMI via the software platform for SIFs and non-SIFs constitute a single service for VAT purposes, and one which does not benefit from the VAT exemption for investment fund management services.

As this outcome may have a direct impact on Luxembourg fund managers and their relations with third-party suppliers, it is advisable to review existing structuring in light of the above judgment.

The Arendt VAT team remains at your disposal should you require any further information in this respect.

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