

Legal Updates / 23.05.2016

Management of unregulated investment funds does not qualify for VAT exemption

The Finnish Supreme Administrative Court ruled on 18 May 2016 that the management of an unregulated Finnish investment fund does not qualify for VAT exemption. This is yet another case on the meaning of the VAT exemption which applies to the management of special investment funds.

In practice, funds which constitute undertakings for collective investments in transferable securities within the meaning of the UCITS Directive are always deemed as "special investment funds". However, funds which, without being collective investment undertakings, display features that are sufficiently comparable to theirs may also be regarded as special investment funds.

In the case at hand, the Court noted that the fund did not qualify as a collective investment undertaking as defined by the UCITS Directive, nor did the fund possess characteristics typical for or identical to collective investment undertakings. In addition, the activities of the fund were neither that of a regulated alternative investment fund, but instead the activities fell within the explicit exemptions included in the AIFM Directive and it did not, accordingly, qualify as an AIF. No other specific legislation on investment funds was applicable and the fund was also not subject to supervision by the Finnish Financial Supervisory Authority. Based on the foregoing, the Court referred to the decision of the ECJ in case *Fiscale Eenheid X* (C-595/13) and reiterated that the key to the VAT exemption connected with special investment funds is that the activities of the fund are subject to a domestic or EU regulatory regime and supervision.

This case has in practice effectively settled the position regarding unregulated investment funds. Accordingly, the management of any unregulated investment fund is, in essence, a service subject to VAT, regardless of the type of investments or activities of the fund in question. Fund managers may therefore wish to renegotiate contracts, if they cannot pass on irrecoverable VAT to the investment fund.

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