

Indirect Tax Services

Newsletter



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EJC case - C-44/11 (Deutsche Bank AG)

In the case of Deutsche Bank (Case C-44/11), the European Court of Justice (ECJ) decided that transactions relating to management of asset based securities (discretionary portfolio management) including execution of transactions in shares, are subject to VAT.

This judgement has important implications on the portfolio management industry within the EU and will impact both the providers and the recipients of these services.

Case Facts

Deutsche Bank provided, either itself or through subsidiaries, portfolio management services to investors. In accordance with predefined investment strategies chosen by the investors, Deutsche Bank was instructed to manage securities at its own discretion as well as to take all measures which seemed appropriate for those purposes including acquisition and disposal of the securities in the name and on behalf of the investors. The services consisted of a combination of a service of analysing and monitoring the assets of the client investors on the one hand, and of a service of actually purchasing and selling securities on the other. In exchange for its services, Deutsche Bank charged an annual fee of 1.8% of the value of the managed assets. This consisted of a fee for asset management amounting to 1.2% of the value of the assets under management and a fee for buying and selling securities of 0.6% of the value of the assets under management.

Deutsche Bank reported its income as VAT exempt in its German VAT returns. The German authorities challenged the exemption and considered that the services were taxable.

The questions which were referred to the Court for Judgement were:

- 1) whether the services offered by Deutsche Bank consisted of a single indivisible supply for VAT purposes or two separate supplies of advice and execution
- 2) whether the services are exempt from VAT
- 3) whether for the purposes of determining the place of supply, the services should be regarded as financial services

ECJ Ruling

The ECJ ruled that the services of discretionary portfolio management consists of two elements (analysing and monitoring the assets on the one hand and actually purchasing and selling the securities on the other) but that those two elements are inseparable and should be placed in the same footing as they are indispensable in carrying out the services as a whole and thus they form a single supply of services.

The ECJ also ruled that the single supply of discretionary portfolio management services is not exempt from VAT and that for the purposes of determining the place of supply, the services should be regarded as financial services.

PwC comments:

The ECJ ruling will be of interest to anyone providing portfolio management services where VAT exemption has been applied to all or part of the service. The case will also be relevant to business persons who receive services of this nature, as it could result in additional VAT costs if such services are received from abroad and these persons will have to self account for VAT on the full amount of the service fee.

Way forward: how PwC can help you

Our teams are ready to discuss the impact of the above case for your business and offer support with respect to the wider commercial impact of the decision on the pricing, structuring and content of the relevant agreements.

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