

Indirect Tax Services

Newsletter



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On 9 December 2015 the European Court of Justice delivered its Judgement in case C-595/13 "*Fiscale Eenheid X NV*", which concerned whether the management of Real-Estate Investment Companies can benefit from the exemption applicable for the Management of Special Investment Funds and whether the actual management of the immovable property falls under the definition of the term "Management".

1. Summary of the Case

The significance of this case is two fold as the ECJ in summary clarified that:

- Investment companies in which capital is pooled by several investors bearing the relevant risk, which invest in immovable property can, provided certain conditions are met, be regarded as 'special investment funds' and therefore benefit from the VAT exemption for the management services received.
- The term 'management' of special investment funds, which is exempt from VAT, does not cover the actual management of the immovable property which includes administration, letting, management of existing tenancies and monitoring of maintenance works.

2. Facts of the Case and questions referred to the ECJ

The case concerns a real-estate fund management company which provided services to three companies investing in real estate. The services provided included portfolio management, property management, administration services, directorship services and management of investor relations.

The management company considered the services provided as VAT exempt under the exemption for the management of special investment funds. The VAT authorities of the Netherlands argued that the services provided cannot benefit from the VAT exemption. Further to local litigation, the Dutch Supreme Court referred the following two questions to the ECJ:

- whether a company which has been set up by more than one investor for the sole purpose of investing in immovable property may be regarded as a special investment fund for which the management services are VAT exempt, and
- whether the term "management" also covers the actual management of the immovable property.

3. Ruling of the ECJ

3.1. On the qualification as a special investment fund

The ECJ ruled that the fact that the company invests in real-estate does not preclude qualification as a special investment fund.

According to the ECJ, provided that such real-estate funds have the essential characteristics of qualified special investment funds, such as asset pooling, risk spreading and being subject to supervision, such real-estate funds can qualify as special investment funds and therefore their management will be VAT exempt.

3.2. On the meaning of the term "management"

Regarding the scope of the term 'management' the ECJ decided that term "management" may include selection, purchase and sale of immovable property, as well as administration and accounting tasks, valuation of assets, the distribution of the profits and the preparation of forecasts.

However, according to the ECJ the actual property management, which includes administration, letting, management of existing tenancies and monitoring of maintenance works, cannot benefit from the VAT exemption.

4. Significance of the case and other considerations

This case clarifies the scope of the VAT exemption for management of special investment funds. Funds investing in real estate and fund managers providing services to such real-estate funds must reassess their VAT position further to this ECJ decision.

The impact this case will have may be either positive or negative depending on the merits of each specific case, which must be viewed in isolation. Persons affected must seek guidance on how this decision affects their VAT position and assess the optimum way forward so as to minimise any negative impact and utilise any VAT saving opportunity that arise as a result of this case.

Way forward: how PwC can help you

The dedicated team of VAT professionals at PwC is ready to assist you with potential obligations and VAT saving opportunities arising from the above case, including reviewing in detail the facts of each relevant case in order to assess the impact of this decision and examining whether and how any identified risks can be avoided and opportunities can be seized.

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