



Opinion of Advocate General in the European Court of Justice Case C-231/19

Issue N-4-2020, 13 April 2020

In brief

On 11 March 2020, the Advocate General (hereafter "AG") issued his opinion in the European Court of Justice (hereafter "ECJ") Case C-231/19 in relation to the application of the VAT exemption on the provision of management services by third party used for the management of both special investment funds and other funds.

In detail

Facts

BlackRock receives supplies of management services through an IT platform named Aladdin from BFMI, a company established in the United States. BlackRock uses those services to manage both special investment funds ('SIFs'), which are expressly exempted under Article 135(1)(g) of the VAT Directive, and other funds, which are subject to VAT.

The dispute in the present case is whether the supply of services made by the third-party provider, BFMI, to a fund manager, BlackRock, fall within in the exemption of Article 135(1)(g) of Directive 2006/112, where those services are intended to be used simultaneously to manage SIFs and other funds.

Opinion of the Advocate General

The AG decided that the exemption provided in Article 135(1)(g) of the VAT Directive is not applicable to management activities provided by an IT platform used for both SIFs and other funds. It follows that, in the present case, the exemption provided for the management of SIFs cannot be granted to the services provided by BFMI to BlackRock.

In rendering his opinion, the AG noted that:

1. The supply of these management services constitutes a single supply, comprising several elements placed on the same footing,
2. The application of a VAT rate on a pro rata basis for the services provided by BFMI is not possible since the distinct characteristics within the supply cannot be isolated in order to determine which share of services is intended to manage SIFs and which the other funds, and

3. In circumstances that it is possible to identify precisely and objectively the services provided specifically for SIFs, the exemption could possibly be granted to those services only.

The takeaway

The opinion of the AG sheds light on the application of the VAT exemption in relation to the management of special investment funds. According to the opinion, a fund manager company providing management services to both special investment funds as well as other funds, runs the risk of not being eligible for the VAT exemption for the services acquired and used for all funds.

Whilst the opinion of the Advocate General is not binding it does represent a position that may be accepted and followed by the ECJ. In practise the ECJ tends to follow more frequently than not the opinions published by the Advocate General. The Judgement of the ECJ is expected to be issued during 2020.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

Theo C Parperis, Nicosia
Partner
Head of Tax & Legal
theo.parperis@pwc.com

Marios S Andreou, Nicosia
Partner
In charge of Tax Advisory
marios.andreou@pwc.com

Chrysilios Pelekanos, Nicosia
Partner
In charge of Tax Reporting Strategy
chrysilios.pelekanos@pwc.com

Martha Lambrou, Limassol
Director
Tax Advisory
martha.lambrou@pwc.com

Michael Michael, Nicosia
Director
Tax Advisory
michael.michael@pwc.com

Or your usual PwC contact

PwC Cyprus
PwC Central
43 Demostheni Severi Avenue
CY-1080 Nicosia, Cyprus
P O Box 21612
CY-1591 Nicosia, Cyprus

www.pwc.com.cy



This content is for general information purposes only and should not be used as a substitute for consultation with professional advisors. © 2020 PricewaterhouseCoopers Ltd. All rights reserved. PwC refers to the Cyprus member firm and may sometimes refer to the PwC network. Each member firm is a separate legal entity. Please see www.pwc.com/structure for further details.