

News Flash

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**Taxation of occupational pension fund
management services**

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In this News Flash, we would like to introduce you a case decided recently by the European Court of Justice (ECJ) that concerns **applying of VAT on occupational pension fund management services**. In the judgment of the Court No. C-235/19 of October 8th 2020, the ECJ dealt with the question if providing of management services of pension funds could be considered as „insurance transaction“ that should be VAT exempted in accordance with the Council Directive 2006/112/EC on the common system of value added tax (further referred to as “Directive”).

Case circumstances

This judgment refers to British companies United Biscuits (Pensions Trustees) Ltd. and United Biscuits Pension Investments Ltd. that administrate occupational pension scheme established for employees of United Biscuits (UK) Ltd. Both these companies **used services of investment managers when administrating pension funds, who had a status of „insurers“ and „non-insurers“ as well**. The status of insurers belongs to subjects, which provided management services of pension funds based on the license granted in accordance with the British Insurance Companies Act. On the other hand, non-insurers were subjects that provided the same services but based on the license granted in accordance with different law.

In line with the local legislation, VAT exempted were that services provided by insurers, based on the conclusion that they carried out the activity falling within a sector of insurance when executed in accordance with the Insurance Companies Act. On the other side, services provided by non-insurers could not be VAT exempted.

Companies United Biscuits (Pensions Trustees) Ltd. and United Biscuits Pension Investments Ltd. complained and unsuccessfully asked the United Kingdom tax authority for reimbursement of the VAT at issue which they paid. Later they brought an action before the High Court of Justice, which rejected their action; consequently the Court of Appeal decided to stay the proceedings and to refer the question to the ECJ whether the supplies of pension fund management services

provided by (a) insurers and (b) non-insurers were “insurance transactions” within the meaning of Article 135(l)(a) of the Directive.

Insurance transactions

The ECJ in this case said, as generally understood and according to settled case-law that a term insurance transactions requires that **the insurer undertakes, in return for prior payment of a premium, to provide the insured, in the event of materialisation of the risk covered, with the service agreed when the contract was concluded**.

In this case under consideration it was approved that services provided based on the concluded contract only consisted of investment management services solely, to the exclusion of any indemnity from risk. Further, the ECJ added to this that no other criterion connected with the concept of ‘insurance transactions’ may be derived from the case-law of the Court or EU law in the matter of insurance, except that above mentioned.

ECJ Judgment

The ECJ came to a conclusion that **investment fund management services supplied for an occupational pension scheme, which do not provide any indemnity from risk, cannot be classified as ‘insurance transactions’**, within the meaning of the provision of Article 135(1)(a) of the Directive, and thus do not fall within the VAT exemption laid down in that provision.

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