G CJEU in BlackRock VAT case: a single fund management service is ı principle not partially exempt from VAT

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ɴ 11 March 2020, Advocate General ('A-G') Pikamäe of the Court of Justice of the uropean Union ('CJEU') delivered his Opinion in BlackRock Investment Management JK) Limited ('BlackRock', Case C- 231/19).

he question in this case is whether a single service purchased by BlackRock can be ɔlit so that part of the fee for that service is exempt from VAT under the fund ıanagement exemption, while the other part is treated as VAT taxed. BlackRock rgues that such a split should be made based on whether the purchased service is sed to manage a mutual fund (VAT exempt) or a non-mutual fund (VAT tax).

he AG concludes that a single service can in principle only have one VAT treatment ınd that the fund management exemption does not apply to the service purchased by lackRock. This may be different if sufficient information is available to determine recisely and objectively what part of the fee relates to VAT-exempt services.

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. Background and legal questions

lackRock is part of a United Kingdom ('UK') tax entity, which includes a number of ɔmpanies that operate as fund managers. BlackRock purchases services from a group ɔmpany from the United States, BlackRock Financial Management Inc (' **BFMI** '). ecause the service is purchased from outside the UK, the taxation of this service - if

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lackRock uses this service both for mutual investment funds (' **GBFs** ', management xempt from VAT) and for other investment funds (' **non-GBFs** ', management taxed). FMI's services qualify as 'management' and are provided through a software platform alled Aladdin. The platform allows BlackRock portfolio managers to execute decisions elated to financial transactions.

 fact, the referring court asks whether a single repurchased dual-use fund anagement service may be partially exempted depending on the extent to which it is sed to manage FCPs or non-FCPs.

. Conclusion AG

G Pikamäe concludes that a single purchased fund management service cannot, in rinciple, be partially exempt from VAT. He motivates this as follows.

ccording to the referring court, it is common ground that the service provided by FMI to BlackRock is a single service. It has also been established that BFMI's service an be regarded as management within the meaning of the fund management xemption.

he AG concludes that it is not possible to consider one of the elements of this service s the main service and the others as ancillary services. According to the AG, the lements of the service must be placed at the same level.

he question that remains after this is what VAT treatment this composite service hould receive. BlackRock argues that part of the service is exempt from VAT and that art of it is taxable. According to BlackRock, the VAT exempt and VAT taxed portion hould be determined by the value of the assets under management managed by lackRock for the various funds.

he AG rejects that view. Although there are two cases in which the CJEU has ruled at a single benefit is subject to two different VAT treatments (Talacre Beach Caravan ales (C-251/05) and Commission-France (C-94/09) cases), that, according to the AG, xceptions to the main rule that one service can only have one VAT treatment. In the G's opinion, this main rule was confirmed not long ago by the CJEU in Stadion msterdam (C - 463/16). According to the AG, the exception that the CJEU holds in the vo aforementioned cases cannot be applied to the present BlackRock case.

ccording to the AG, it would be contrary to the objective of the fund management xemption to allow the exemption to be applied in this situation, because the service at BlackRock purchases also actually consists in part of the management of non-CPs. In addition, according to the AG, the text of the fund management exemption oes not allow the application of the exemption to be made dependent on the assets nder management. The AG also believes that the tax treatment proposed by lackRock would go against the nature of the VAT system and make it unworkable.

lackRock further appeals to the CJEU Commission-Luxembourg (C-274/15) on the so-alled umbrella exemption. In this case the ECJ ruled that the dome exemption *it* may ccur that a *portion*from a single service is exempt from VAT. The AG concludes that ou cannot infer from this a general rule that stipulates that a single service may be artially exempt. The fact that the umbrella exemption applies depends in part on the ctivities of the recipient of that service. If a service is used for multiple activities, the ervice may be partially exempt from VAT. The exception at issue in the case in uestion is based on the specific wording of the umbrella exemption. According to the G, the wording of the fund management exemption does not permit such a split.

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inally, the AG emphasizes that the fund management exemption could apply to utsourced fund management in other situations, if detailed information can be used precisely and objectively determine which services are specifically provided for CPs. In that case, the fund management exemption may be applied to the services rovided to the FCPs. The AG believes that such information is not available in this ase and therefore the fund management exemption cannot be applied.

. Impact of Dutch practice

he AG's conclusion is probably a disappointing position for various market parties. he question is, of course, whether the CJEU will follow the A-G's conclusion. The AG onsiders a split into a VAT-exempt and a VAT-taxed part conceivable in appropriate ases, namely when sufficient information is available to determine precisely and bjectively which part of the compensation relates to VAT-exempt services. It is still nclear when that is the case.

he AG does not discuss whether the IT services that BlackRock purchases can be egarded as management in the sense of the fund management exemption at all. This understandable in the present case, because the referring court takes this (after xtensive investigation) as a fact. This is a welcome confirmation, because in Dutch ractice it is often unclear which IT services can fall within the scope of a financial xemption. Practice would benefit if the CJEU showed support for this in its judgment.

inally, it should be noted that although this case concerns the fund management xemption, the final judgment of the CJEU may also have an impact on other types of omposite performance outside the financial sector. After all, the unbundling problem lso occurs in other industries.

. What can you do now?

ased on the conclusion, splitting one service into a VAT-exempt and a VAT-taxed part oes not seem easy. When sufficient information is available to determine precisely nd objectively which part of the compensation relates to VAT-exempt services, it can e split. We recommend taking a critical look at how asset management services are ontracted, administered and invoiced. A split may be possible on the basis of precise nd objective data. It can also be examined whether there are separate services nstead of one separate service. After all, in the case of separate services, it can etermined per service whether the VAT exemption applies. This is advantageous for e buyers of such services,

you would like to discuss this conclusion, please do not hesitate to contact the dvisors of the Indirect Tax Financial Services Group of Meijburg & Co or your usual dviser.

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