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# Weekly VAT News

## Week to 6 July 2020

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Welcome to the latest edition of *EY VAT News,* which provides a roundup of indirect tax developments.

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If you would like to discuss any of the articles in more detail, please speak with your usual EY indirect tax contact, or one of the people below. If you have any feedback or comments on EY VAT News, please contact **Ian Pountney**.

## EY Events

### Webcast – Are you ready for a VAT rate change? – 14 July 2020

## COVID-19

EY Tax COVID-19 Stimulus Tracker – Stay up to date with COVID-19 stimulus responses

HMRC statistics – VAT payments deferral scheme

End of UK VAT payments deferral scheme

Update – Revenue and Customs Brief 4 (2020): temporary VAT zero rating of personal protective equipment (PPE) – Extension to 31 October 2020

## Brexit

## European Commission – Getting ready for the end of the transition period

## UK Government consultation on departure from retained EU case law by UK courts and tribunals

## Questionnaire for businesses which move goods between Great Britain and Northern Ireland

## Court of Justice of the European Union

## Judgment: The provision of cabinets and associated services for holding computer servers is not a supply of the 'leasing or letting of immoveable property' or connected services

## Judgment: In the absence of bad faith, an abuse of rights or fraud, a tax authority cannot prevent the correction of invoices and adjustment to VAT on the basis that the period in question has been subject to inspection and assessment

# Judgment: A single supply of management services to both special investment funds and other funds does not fall within the scope of the exemption

**C-231/19 Blackrock Investments Management (UK) Limited**

On 2 July, the CJEU released its decision in this UK referral asking whether, on a proper interpretation of Article 135(1)(g) of the VAT Directive, where a single supply of a management service within the meaning of that Article is made by a third-party provider to a fund manager and is used by that fund manager both in the management of special investment funds (SIFs) and in the management of other funds that are not SIFs: Is that single supply to be subject to a single rate of tax? If so, how is that single rate to be determined? Or is the consideration for that single supply to be apportioned in accordance with the use of the management services so as to treat part of the single supply as exempt and part as taxable?

BlackRock is the UK representative member of a UK VAT group that includes two other fund management companies (collectively referred to hereafter as The Aladdin Recipients). BlackRock received a supply of services from a US affiliated company called BlackRock Financial Management Inc (BFMI). The services in question were delivered in the form of an investment management computer platform called Aladdin which was used by the Aladdin Recipients in the day-to-day management of both SIFs and non-SIFs. The Portfolio Manager would use the sophisticated analysis provided by Aladdin to determine what action to take (if any).

There were two main issues in this appeal:

- Whether Blackrock needed to account for VAT under the reverse charge procedure on the services received from BFMI. Blackrock contended that the supplies received from BFMI were exempt from VAT in so far as they were used in the management of SIFs and it was not therefore required to account for VAT under the reverse charge mechanism.
- It was common ground that the Aladdin Services supplied constituted a single composite supply of services to BlackRock which were predominantly used for the management of non-SIFs (which would be standard rated). However, should the single supply be taxed at different rates such that the consideration be apportioned where the management related to SIFs

different rates such that the consideration be apportioned where the management related to SIFs.

In an earlier decision, the First-tier Tribunal (FTT) held that the Aladdin services provided by BFMI to BlackRock, when viewed in isolation, qualified for VAT exemption in so far as they were used for the management of SIFs. In line with previous case law, the FTT reached this conclusion on the basis that when viewed broadly, the management services supplied were 'specific and essential' to the management of those funds. The FTT confirmed that the general rule is that a single rate of tax should be applied to a single composite supply with the only exception to that rule where there is clear authority in EU legislation for a different treatment. With no specific EU legislation to that effect in this case, as there was a single composite supply mainly in relation to non-SIFs such that the predominant supply was taxable, the FTT dismissed BlackRock's appeal and held that the reverse charge was due. In agreement with the FTT, the Upper Tribunal (UT) did not accept the argument of HMRC that, to benefit from the exemption in Article 135(1)(g), significant aspects of management and administration must be outsourced and that each of those aspects needed to be sufficiently outsourced. However, the UT could not confidently determine the apportionment issue. It considered case law to be unclear in this area and consequently considered it necessary to seek the guidance of the CJEU.

The CJEU points out that the concept of a single supply cover two types of situation i) a single supply where one or more elements are to be regarded as constituting the principal supply, with one or more ancillary supplies which share the tax treatment of the principal supply (*CPP*) or ii) inseparable elements of a single supply placed such that it is not possible that one element is regarded as the principal service and the other as the ancillary service (*Deutsche Bank*).

The CJEU states that although it is not clear from the order for reference which type of single supply was at play here, services consisting of analysing markets, monitoring performance, evaluating risk, monitoring regulatory compliance and implementing transactions correspond to successive steps, all of which are equally necessary to allow investment transactions to be made under good conditions. Consequently, the single supply in question was comprised of various elements of equal importance. The CJEU found further support for this conclusion on the basis that the management of an investment portfolio has already been held by the Court to be a single supply, composed of the service of analysis and of monitoring the assets of the client investor and the service of purchasing and selling securities, and that both the first and the second are equally indispensable in carrying out the service as a whole (*Deutsche Bank*). Further, the CJEU held that a single supply composed of several elements must be subject to one and the same rate of VAT as subjecting various elements to different VAT rates would mean artificially splitting that supply and risk distorting the functioning of the VAT system (*Stadion Amsterdam*).

The CJEU disagreed with Blackrock's position that the tax treatment of a single supply can differ depending on the use made of it. Differentiating this case from the *Commission v Luxembourg* judgment, the CJEU held that the exemption provided for in Article 135(1)(g) is defined exclusively according to the nature of the supply, with that provision not permitting the tax treatment of a single supply to be dissociated according to its use. On the basis that there is no principal supply here, the CJEU held that the tax treatment cannot be determined according to the nature of the majority of the funds managed by the company concerned. This would lead to an unfair position where a fund manager principally manages special investment funds as that manager would also benefit from the exemption in relation to the supplies for the whole of its fund management business, including funds other than special investment funds. In order to be classified as

the supplies for the whole of its fund management business, including funds other than special investment funds. In order to be classified as exempt transactions within the meaning of those provisions, the CJEU held that services provided by a third-party manager must, viewed broadly, form a distinct whole fulfilling in effect the specific, essential functions of the management of SIFs. It was common ground that the service at issue was designed for the purpose of managing SIFs and non-SIFs. Accordingly, the CJEU held that the service cannot be regarded as specifically for the management of SIFs and therefore cannot be exempt from VAT. The CJEU further held that this conclusion cannot be called into question using principle of fiscal neutrality arguments, which it holds cannot be used to extend an exemption.

In conclusion, a single supply of management services, provided by a software platform belonging to a third-party supplier for the benefit of a fund management company, which manages both SIFs and non-SIFs, does not fall within the exemption.

*Comments: This is not an unexpected outcome. Businesses should consider their arrangements and fact pattern and the implications of this case including any arrangements regarding outsourced fund administration services.*

For further information please contact **Janet Waweru** or **Simon Harris**.

## Calendar update

## Court of Appeal

## Latest appeal update

## First-tier Tribunal

### The letting on hire of a car with a child car seat is two separate supplies, with the seat chargeable to VAT at the reduced rate

## HMRC Material

### Open Consultation – Draft legislation: The Value Added Tax (Refund of Tax to the Charter Trustees for Bournemouth and the Charter Trustees for Poole) Order 2020

### Check if you can use Transit to move goods to the EU and Common Transit countries

## Pay no import duty and VAT on importing commercial samples

## European Commission

## Single Market Scoreboard 2020

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