

VAT: More changes for fund managers

Fund management services are normally taxable when supplied to a UK fund, or outside the scope of VAT when supplied to a fund established outside the UK. In either case, a UK fund manager is entitled to be VAT registered and reclaim the VAT incurred on its business expenditure.

Special investment funds

The exception to the above rule is the management of 'special investment funds' in the UK which is an exempt supply. Whilst this means that no VAT has to be charged on the fund management services, fund managers cannot reclaim related VAT incurred on expenditure.

Until recently, HM Revenue and Customs (HMRC) took the view that 'special investment funds' only included Open Ended Investment Companies (OEICs), Authorised Unit Trusts (AUTs) and Trust Based Schemes (TBSs). However, following the conclusion of the litigation in HMRC v JP Morgan Fleming Claverhouse last year, HMRC conceded that the management of Investment Trust Companies (ITCs) also falls within the exemption.

The 2008 budget announced that the exemption for fund management services will be extended to include closed-ended investment entities, which invest in securities and whose shares are included in the UK Listing Authority main Official List. This will formalise the exemption for ITCs and will also bring Venture Capital Trusts (VCTs) within the exemption. The new legislation will take effect from 1 October 2008. In the meantime, HMRC have accepted that the exemption can be applied to the management of ITCs.

The exemption for the management of TBSs is to be withdrawn with effect from 1 October 2008, although this is likely to affect very few businesses.

Recognised overseas funds

The Budget also included an unexpected announcement that fund management services supplied to certain 'recognised overseas schemes' will also become exempt with effect from 1 October 2008. This could have serious VAT consequences for fund managers.

To date, HMRC have provided only limited details concerning the proposed changes. Draft legislation and guidance was due to be published in April 2008. However, it is understood that the publication of these documents has been postponed for several weeks while HMRC work on a number of changes to the proposed rules following representations from fund managers. It is therefore unlikely that detailed guidance will be available until June 2008 at the earliest. This leaves fund managers little time to prepare for the implementation of the new rules.

At present, it seems that the management of funds falling within the Financial Services & Markets Act 2000, Sections 264, 270, and 272 will become exempt. VAT incurred on business expenditure relating to exempt supplies is not recoverable. Therefore businesses supplying fund management to funds falling within these categories are likely to suffer a restriction on the amount of VAT that can be recovered on business expenditure. In some circumstances, fund managers may lose their entitlement to be VAT registered.

The full impact of the proposed changes will not be known until the detailed guidance and draft legislation has been published. In the meantime, fund managers should consider the extent to which they manage funds falling within Sections 264, 270 and 272, so that they will be in a position to act quickly once the detail of the new rules is known.

Pension funds

Since the publication of the judgment in the JP Morgan Fleming Claverhouse case, there has been much discussion concerning the possibility that investment management services supplied to occupational pension funds will become exempt for VAT purposes. HMRC maintain that standard rate VAT should apply.



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The National Association of Pension Funds has announced that a test case is to be heard in the VAT tribunal on this issue. This litigation is likely to take some time to conclude and it is likely that whatever the outcome in the VAT tribunal, the appeal will pass through the higher courts and possibly all the way the European Court of Justice.

VAT claims

Many fund managers of ITCs have submitted claims to HMRC for overcharged VAT and it is possible that claims may also be accepted in respect of VCTs. Investment managers for pension funds are also submitting protective claims to HMRC, pending the outcome of the test case.

Claims are normally capped at three years. However, following the conclusion of litigation in *HMRC v Fleming and Conde Nast*, there is now an opportunity to submit claims for VAT overcharged before 4 December 1996. Affected businesses that have not already submitted a claim should do so as soon as possible, as this opportunity will end on 31 March 2009.

**The Moore Stephens VAT team will be happy to advise on the above issues.
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