

Wheels - Reclaiming VAT on investment management fees

November 2011

Pension briefing

HIGHLIGHTS

A dispute over whether defined benefit (DB) occupational pension schemes should have to pay VAT on investment management services has been referred to the European Court of Justice (ECJ). The challenge against HM Revenue & Customs (HMRC) has been jointly brought by Wheels Common Investment Fund and the National Association of Pension Funds. A decision on the case is not expected for some time, but DB pension schemes should take action now.



BACKGROUND

Under UK law at present, UK investment managers are obliged to charge VAT at 20% on the supply of management services to pension schemes in the UK. *Wheels* is arguing that, under EU VAT law, these investment management services should be exempt from VAT. If the case is successful, then DB pension schemes would no longer have to pay an estimated £100 million a year in VAT.

Reclaiming VAT

It also means that such schemes may have historically overpaid VAT on investment management fees, and this presents an opportunity for them to ask their investment managers to submit claims to HMRC for overpaid VAT and interest on their behalf going back a number of years (if the managers have not already done so). The amounts involved may be substantial.

If the claims are rejected then the managers or the pension schemes may preserve the claims pending the outcome of the *Wheels* case by filing an appeal with the Tax Tribunal and then applying to stand over the appeal until *Wheels* has been resolved. Claims for overpaid VAT may normally only be made in respect of the four year period preceding the date when the claim is made, and so it is advisable to make a claim now and then preserve this by making an appeal, rather than waiting to see the outcome of the *Wheels* case (not expected until 2013) before taking any action. In addition, some advisers have suggested that HMRC may seek to change the law to further restrict the period for which claims may be made.

A recent decision of the ECJ (*Sauer-Danfoss*) suggests that pension schemes may also be entitled to bring a claim against HMRC directly where the investment manager refuses to make a claim and the scheme is unable to recover the overpaid VAT from the manager. However, despite the *Sauer-Danfoss* case, the first step is to ask the manager to make a claim to HMRC on behalf of the scheme.

In addition, when entering into new investment management arrangements, pension schemes will wish to consider how they can protect their position and ensure that they can recover any overpaid VAT from the investment manager.

Overseas investment managers

Where a UK pension scheme receives management services from an investment manager based outside the UK, it will not pay any UK VAT to the investment manager, but will be required (under current law) to account for UK VAT at 20% on the amount of the fees directly to HMRC. In such cases, it is the pension scheme itself that should make any claim for repayment of the overpaid VAT and interest to HMRC, rather than the investment manager. Pension schemes would be advised to make such claims to HMRC as soon as possible, and if they are rejected, preserve them pending the outcome of the *Wheels* case by filing an appeal with the Tax Tribunal as described above.

Defined contribution schemes

The *Wheels* case only deals with DB pension schemes, but there is no clear reason, in our view, why the same principles should not apply to defined contribution (DC) schemes. Another test case may emerge in relation to these schemes, but in the meantime, there is no reason why DC schemes should not take the same action recommended for DB schemes described above and apply to stand over any appeals to the Tribunal behind the *Wheels* case.

How can we assist pension schemes?

We are able to assist in determining what claims are available, making claims to HMRC and protecting those claims by filing appeals where necessary.

To find out more

To discuss how we can help your scheme to protect its right to claim repayment of overpaid VAT, contact Lee Squires on 020 7296 2789.

This note is written as a general guide only. It should not be relied upon as a substitute for specific legal advice.

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