



Reports of Cases

Case C-275/11

GfBk Gesellschaft für Börsenkommunikation mbH

v

Finanzamt Bayreuth

(Request for a preliminary ruling from the Bundesfinanzhof)

(Taxation — Value added tax — Directive 77/388/EEC — Exemption of the management of special investment funds — Scope)

Summary — Judgment of the Court (First Chamber), 7 March 2013

1. *Harmonisation of fiscal legislation — Common system of value added tax — Exemptions — Management of special investment funds — Meaning — Management services provided by a third-party manager — Included*

(Council Directive 77/388, Art. 13B(d)(6))

2. *Harmonisation of fiscal legislation — Common system of value added tax — Exemptions — Management of special investment funds — Meaning — Advisory services concerning investment in transferable securities, provided by a third party to an investment management company which is the manager of a special investment fund — Included — Conditions*

(Council Directives 77/388, Art. 13B(d)(6), and 85/611, as amended by Directive 2001/107, Art. 5g)

3. *Harmonisation of fiscal legislation — Common system of value added tax — Exemptions — Management of special investment funds — Purpose — Observance of the principle of fiscal neutrality*

(Council Directive 77/388, Art. 13B(d)(6))

1. See the text of the decision.

(see para. 20)

2. Article 13B(d)(6) of Sixth Directive 77/388 on the harmonisation of the laws of the Member States relating to turnover taxes must be interpreted as meaning that advisory services concerning investment in transferable securities, provided by a third party to an investment management company which is the manager of a special investment fund, fall within the concept of ‘management of special investment funds’ for the purposes of the exemption laid down in that provision, even if the third party has not acted on the basis of a mandate within the meaning of Article 5g of Directive 85/611 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as amended by Directive 2001/107.

In order to be regarded as ‘exempt transactions’ for the purposes of Article 13B(d)(6) of the Sixth Directive, management services provided by a third-party manager must, viewed broadly, form a distinct whole and be specific to, and essential for, the management of special investment funds.

(see paras 21, 33, operative part)

3. The purpose of the exemption, under Article 13B(d)(6) of Sixth Directive 77/388 on the harmonisation of the laws of the Member States relating to turnover taxes, of transactions connected with the management of special investment funds is to facilitate investment in securities for small investors by means of collective investment undertakings by excluding the cost of value added tax, in order to ensure that the common system of value added tax is neutral as regards the choice between direct investment in securities and investment through collective investment undertakings.

It follows from the principle of fiscal neutrality that operators must be able to choose the form of organisation which, from the strictly commercial point of view, best suits them, without running the risk of having their transactions excluded from the exemption under Article 13B(d)(6) of the Sixth Directive.

(see paras 30, 31)