Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

2 July 2020 *

(Reference for a preliminary ruling — Taxation — Value added tax (VAT) — Directive 2006/112/EC — Exemptions — Article 135(1)(g) — Exemption of transactions for the management of special investment funds — Single supply used for the management of special investment funds and for other funds)

In Case C-231/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Upper Tribunal (Tax and Chancery Chamber) (United Kingdom), made by decision of 15 March 2019, received at the Court on 15 March 2019, in the proceedings

BlackRock Investment Management (UK) Ltd

v

Commissioners for Her Majesty's Revenue & Customs,

THE COURT (First Chamber),

composed of J.-C. Bonichot (Rapporteur), President of the Chamber, M. Safjan, L. Bay Larsen, C. Toader and N. Jääskinen, Judges,

Advocate General: P. Pikamäe,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 18 December 2019,

after considering the observations submitted on behalf of:

– BlackRock Investment Management (UK) Ltd, by N. Skerrett, Solicitor, L. Poots, Barrister, and A. Hitchmough QC,

– the United Kingdom Government, by Z. Lavery and F. Shibli, acting as Agents, and by R. Hill, Barrister,

– the European Commission, by L. Lozano Palacios and R. Lyal, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 11 March 2020,

gives the following

* Language of the case: English.

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 135(1)(g) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1; 'the VAT Directive').

2 The request has been made in proceedings between BlackRock Investment Management (UK) Ltd ('BlackRock') and the Commissioners for Her Majesty's Revenue and Customs (United Kingdom) ('the tax authority') concerning that tax authority's refusal to grant BlackRock the benefit of the exemption from value added tax (VAT) provided for in Article 135(1)(g) of the VAT Directive.

Legal context

European Union law

3 The second subparagraph of Article 1(2) of the VAT Directive provides:

'On each transaction, VAT, calculated on the price of the goods or services at the rate applicable to such goods or services, shall be chargeable after deduction of the amount of VAT borne directly by the various cost components.'

4 Article 2(1) of that directive provides:

'The following transactions shall be subject to VAT:

…

(c) the supply of services for consideration within the territory of a Member State by a taxable person acting as such;

…'

5 Title IX of that directive, headed 'Exemptions', contains Articles 131 to 166 thereof.

6 Article 131 of the VAT Directive, which is within Chapter 1 of that title, headed 'General provisions', provides:

'The exemptions provided for in Chapters 2 to 9 shall apply without prejudice to other Community provisions and in accordance with conditions which the Member States shall lay down for the purposes of ensuring the correct and straightforward application of those exemptions and of preventing any possible evasion, avoidance or abuse.'

7 Article 135(1) of that directive, within Chapter 3 of that title, headed 'Exemptions for other activities', provides:

'Member States shall exempt the following transactions:

…

(g) the management of special investment funds as defined by Member States;

…'

8 Article 196 of that directive, as amended by Council Directive 2008/8/EC of 12 February 2008 (OJ 2008 L 44, p. 11), provides:

'VAT shall be payable by any taxable person, or non-taxable legal person identified for VAT purposes, to whom the services referred to in Article 44 are supplied, if the services are supplied by a taxable person not established within the territory of the Member State.'

United Kingdom law

9 Section 31(1) of the Value Added Tax Act 1994 provides that 'a supply of goods or services is an exempt supply if it is of a description for the time being specified in Schedule 9'.

10 Group 5 of that schedule, which concerns finance, provides for the exemption, in particular, of services for the management of a list of specified investment entities and types of funds. According to the explanation given by the referring court, those are the entities and types of funds which, in the United Kingdom, must be considered to be special investment funds.

The facts in the main proceedings and the question referred for a preliminary ruling

11 BlackRock is a member of a VAT group established in the United Kingdom, of which it is the representative and which includes a number of companies that carry on business as fund managers.

12 BlackRock manages special investment funds and other funds, the first of which do not represent, either by number or by value of the assets managed, the majority of the funds managed.

13 For the management of all its funds, BlackRock receives supplies of services from BlackRock Financial Management Inc. ('BFMI'), a company incorporated in the United States, in the same commercial group. Those services are provided through a software platform named Aladdin and comprise a combination of hardware, software and human resources. Aladdin provides portfolio managers with market analysis and monitoring to assist in the making of investment decisions; it monitors regulatory compliance and enables portfolio managers to implement trading decisions. According to the order for reference, those services constitute a single supply, whichever funds are being managed.

14 As BFMI is not established in the United Kingdom, BlackRock accounts for VAT under the reverse charge mechanism, in accordance with Article 196 of the VAT Directive.

15 In respect of the period between 1 January 2010 and 31 January 2013, BlackRock considered that the services used for the management of special investment funds should be exempt from VAT pursuant to Article 135(1)(g) of that directive, with the result that it accounted for the tax only on services used for the other funds, the value of those services being calculated pro rata in accordance with the amount of those funds within the total funds managed.

16 Disagreeing with that approach, the tax authority issued recovery notices covering that period. BlackRock contested those notices before the First-tier Tribunal (Tax Chamber) (United Kingdom), which dismissed its action.

17 BlackRock appealed against that judgment to the referring court.

18 Before that court, BlackRock submitted that the use it made of Aladdin should in any event be exempt for management services used for special investment funds, and that it was possible to determine the value of those services according to their share of the total amount of funds managed. Conversely, the

tax authority contends that all of the services that BlackRock benefits from by means of the Aladdin platform must be taxed, since the majority of funds that that company manages are not special investment funds.

19 It is in those circumstances that the Upper Tribunal (Tax and Chancery Chamber) (United Kingdom) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'On the proper interpretation of Article 135(1)(g) of [Directive 2006/112], where a single supply of management services 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 and in the management of other funds that are not special investment funds:

(a) Is that single supply to be subject to a single rate of tax? If so, how is that single rate to be determined? or

(b) Is the consideration for that single supply to be apportioned in accordance with the use of the management services (for example, by reference to the amounts of the funds under management in the special investment funds and other funds respectively) so as to treat part of the single supply as exempt and part as taxable?'

Consideration of the question referred

20 By its question, the referring court asks, in essence, whether Article 135(1)(g) of the VAT Directive must be interpreted as meaning that 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 special investment funds and other funds, comes within the exemption from VAT laid down in that provision and, if so, what are the detailed rules for the application of that exemption.

21 It should be recalled that, in accordance with the Court's settled case-law, the exemptions laid down in Article 135(1) of the VAT Directive constitute independent concepts of EU law whose purpose is to avoid divergences in the application of the VAT system as between one Member State and another (judgment of 25 July 2018, *DPAS*, C-5/17, EU:C:2018:592, paragraph 28 and the case-law cited).

22 Furthermore, the terms used to designate the exemptions covered by Article 135(1) of the VAT Directive are to be interpreted strictly since these exemptions constitute exceptions to the general principle that VAT is to be levied on all services supplied for consideration by a taxable person (see, to that effect, the judgment of 19 December 2018, *Mailat*, C-17/18, EU:C:2018:1038, paragraph 37). It follows that, where a supply of services does not fall within the exemptions provided for by the VAT Directive, the supply is subject to VAT by virtue of Article 2(1)(c) of that directive (judgment of 10 April 2019, *PSM 'K'*, C-214/18, EU:C:2019:301, paragraph 43).

23 As a preliminary matter, as regards whether the supply of services provided by BFMI to BlackRock by means of the Aladdin platform must be regarded as being a single supply, it should be recalled, as is clear from the settled case-law, that while each transaction must normally be regarded as being distinct and independent, as is clear from the second subparagraph of Article 1(2) of the VAT Directive, a transaction which comprises a single supply from an economic point of view should not be artificially split, so as not to distort the functioning of the VAT system. That is why there is a single supply where two or more elements or acts supplied by the taxable person to the customer are so closely linked that they form, objectively, a single, indivisible economic supply, which it would be artificial to split (judgment of 18 January 2018, *Stadion Amsterdam*, C-463/16, EU:C:2018:22, paragraph 22 and the case-law cited).

24 In the present case, as the Advocate General observed in point 51 of his Opinion, it is clear from the information provided to the Court, in particular at the hearing, that, from the point of view of the recipients, the value of the supply of services at issue in the main proceedings rests in the combined use of various functionalities of the Aladdin software platform, such that it appears that, notwithstanding the plurality of elements and documents provided to those recipients, that supply of services must be regarded as forming a single indivisible economic supply.

25 It is not however for the Court, giving a ruling under Article 267 TFEU, to classify the facts of the dispute in the main proceedings, as such classification falls within the jurisdiction of the national court alone. The Court's role is confined to providing the national court with an interpretation of EU law which will be useful for the decision which it has to take in the dispute before it (judgments of 13 October 2005, *Parking Brixen*, C-458/03, EU:C:2005:605, paragraph 32, and of 21 May 2015, *Kansaneläkelaitos*, C-269/14, not published, EU:C:2015:329, paragraph 25).

26 In the present case, it is clear from the wording of the question referred for a preliminary ruling that the referring court regards the supply of services at issue in the main proceedings as being a 'single supply'.

27 Therefore, that supply of services must be understood as being a single supply for the purpose of answering the question referred.

28 In the first place, it is appropriate to have regard to the fact that, in the Court's case-law, the concept of a 'single supply' may cover two types of situation, as the Advocate General observed in point 42 of his Opinion.

29 On the one hand, there is a single supply where one or more elements are to be regarded as constituting the principal supply, while other elements are to be regarded, by contrast, as one or more ancillary supplies which share the tax treatment of the principal supply. In particular, a service must be regarded as ancillary to a principal service if it does not constitute for customers an aim in itself, but a means of better enjoying the principal service supplied (judgments of 25 February 1999, *CPP*, C-349/96, EU:C:1999:93, paragraph 30, and of 18 January 2018, *Stadion Amsterdam*, C-463/16, EU:C:2018:22, paragraph 23 and the case-law cited).

30 On the other hand, inseparable elements of a single supply may also be placed on the same footing, with the result that it is not possible to take the view that one must be regarded as the principal service and the other as the ancillary service (see, to that effect, the judgment of 19 July 2012, *Deutsche Bank*, C-44/11, EU:C:2012:484, paragraph 27).

31 According to the United Kingdom of Great Britain and Northern Ireland, the supply at issue in the main proceedings comprises two elements: an ancillary supply of services being for the management of special investment funds and a principal supply of services being for the management of other funds. That State concludes that the ancillary element must follow the tax treatment of the principal element and, therefore, be taxed in the same way as services for the management of other funds are taxed, without the benefit of the exemption provided for in Article 135(1)(g) of the VAT Directive.

32 However, it must be observed that, in fact, the United Kingdom does not distinguish a principal element from an ancillary element in the supply at issue in the main proceedings, but merely distinguishes two uses of the set of services provided by the Aladdin platform, namely one consisting of the management of special investment funds and the other consisting of the management of other funds.

33 Furthermore, it is not clear from the order for reference that it is possible to distinguish within the supply provided by a platform, such as that at issue in the main proceedings, principal and ancillary supplies. The services 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, such a supply must be regarded as a single supply comprising various elements of equal importance.

34 The Court has also already held that the management of an investment portfolio is 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 (see, to that effect, the judgment of 19 July 2012, *Deutsche Bank*, C-44/11, EU:C:2012:484, paragraph 26 and 27).

35 In the second place, it follows from the very classification of an operation composed of several elements as a single supply that that operation must be subject to one and the same rate of VAT. The option left to the Member States to subject the various elements comprising a single supply to the various rates of VAT applicable to those elements would mean artificially splitting that supply and risk distorting the functioning of the VAT system (judgment of 18 January 2018, *Stadion Amsterdam*, C-463/16, EU:C:2018:22, paragraph 26 and the case-law cited).

36 BlackRock disputes however that that general rule is applicable in the case in the main proceedings. According to that company, while that rule precludes the various elements of a single supply being the subject of a separate tax treatment, it does not however prevent the tax treatment of a single supply from differing depending on the use made of it. A separate tax treatment depending on the destination of the supply of services was moreover accepted by the Court in paragraphs 53 and 54 of the judgment of 4 May 2017, *Commission* v *Luxembourg*, (C-274/15, EU:C:2017:333).

37 However, that judgment is irrelevant to the case in the main proceedings.

38 In that judgment, the Court gave a ruling on a complaint alleging an infringement of Article 132(1)(f) of the VAT Directive. That provision exempts 'the supply of services by independent groups of persons, who are carrying on an activity which is exempt from VAT or in relation to which they are not taxable persons, for the purpose of rendering their members the services directly necessary for the exercise of that activity'. That provision thus defines the scope of application of the exemption from VAT that it lays down in accordance with the destination of the supplies of services concerned. It thus provides for a differentiated tax treatment depending on that destination, as the Court held in the aforementioned judgment.

39 By contrast, the exemption provided for in Article 135(1)(g) of the VAT Directive is defined exclusively in relation to the nature of the supply in question, in the present case operations for the management of special investment funds. The wording of that provision does not therefore permit the tax treatment of a single supply to be dissociated according to its uses.

40 It follows from the foregoing that, in application of the rule recalled in paragraph 35 above, a single supply, such as that at issue in the main proceedings, must be the subject of a single tax treatment.

41 In the third place, it is necessary to assess whether the single tax treatment of such a supply must be determined according to the nature of the majority of the funds managed. The referring court envisages the possibility that all of the supplies that BlackRock receives by means of the Aladdin platform should be taxed because the majority of those services are used for the management of funds which are not special investment funds. Conversely, following the same logic, if the majority of the funds managed by BlackRock are special investment funds, all of those supplies should be exempt from VAT.

42 However, first, that solution cannot rely on the case-law relating to complex supplies that are composed of a principal element, which determines the tax treatment of the supply, and an ancillary element, which is treated fiscally in the same way as the principal element. As has been set out in paragraph 32 above, there is not, in the present case, a principal supply combined with a secondary supply.

43 Second, the Court held, in relation to point 6 of Article 13B(d) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p.1), the wording of which was reproduced without substantial modification in Article 135(1)(g) of the VAT Directive, that the management of special investment funds, within the meaning of that provision, is defined according to the nature of the services provided and not according to the person supplying or receiving the services (judgment of 4 May 2006, *Abbey National*, C-169/04, EU:C:2006:289, paragraph 66).

44 To apply a single rate according to the principal destination of the services provided by means of a platform such as the Aladdin platform could lead to the benefit of the exemption for the management of special investment funds being accorded to other funds. Under that hypothesis, a manager who principally manages special investment funds could benefit from the exemption of those supplies for the whole of his or her fund management business, including for funds other than special investment funds.

45 Such an outcome would be contrary to the strict nature of the interpretation given to the exemption provided for in Article 135(1)(g) of the VAT Directive, as for other exemptions referred to in the same paragraph of that article, and as recalled in paragraph 22 above.

46 Therefore, in circumstances such as those in the main proceedings, the tax treatment of the supply of services cannot be determined according to the nature of the majority of the funds managed by the company concerned.

47 In the fourth place, it must be recalled that the Court held that, in order to be classified as exempt transactions within the meaning of those provisions, the 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 special investment funds (see, to that effect, the judgments of 4 May 2006, *Abbey National*, C-169/04, EU:C:2006:289, paragraphs 70 and 71, and of 7 March 2013, *GfBk*, C-275/11, EU:C:2013:141, paragraph 21).

48 In the present case, the parties to the main proceedings are in agreement that the service at issue was designed for the purpose of managing investments of various kinds and that, in particular, it may be used in the same way for the management of special investment funds as for the management of other funds. Therefore, that service cannot be regarded as specifically for the management of special investment funds.

49 Consequently, a supply of services such as that at issue in the main proceedings does not meet the conditions to benefit from the exemption provided for in Article 135(1)(g) of the VAT Directive.

50 Such a conclusion cannot be called into question by the argument advanced by BlackRock based on the principle of fiscal neutrality, by virtue of which 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 operations excluded from the exemption laid down in Article 135(1)(g) of the VAT Directive (see, to that effect, the judgment of 4 May 2006, *Abbey National*, C-169/04, EU:C:2006:289, paragraph 68).

51 Since the principle of fiscal neutrality is a principle of interpretation of the VAT Directive and not a rule that is hierarchically superior to the provisions of that directive, it does not permit the scope of an exemption to be extended (see, to that effect, the judgment of 19 July 2012, *Deutsche Bank*, C-44/11, EU:C:2012:484, paragraph 45) and therefore cannot render Article 135(1)(g) of the VAT Directive applicable to a supply, such as that at issue in the main proceedings, which does not meet those conditions.

52 Having regard to all the foregoing considerations the answer to the question referred is that Article 135(1)(g) of Directive 2006/112 must be interpreted as meaning that 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 special investment funds and other funds, does not fall within the exemption provided for in that provision.

Costs

53 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

Article 135(1)(g) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that 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 special investment funds and other funds, does not fall within the exemption provided for in that provision.

Bonichot Safjan Bay Larsen

Toader Jääskinen

Delivered in open court in Luxembourg on 2 July 2020.

A. Calot Escobar
Registrar

J.-C. Bonichot
President of the First Chamber