Reports of Cases

OPINION OF ADVOCATE GENERAL
PIKAMÄE
delivered on 11 March 2020[1]

Case C-231/19

BlackRock Investment Management (UK) Limited
v
Commissioners for Her Majesty's Revenue and Customs

(Request for a preliminary ruling from the Upper Tribunal (Tax and Chancery Chamber) (United Kingdom))

(Reference for a preliminary ruling — Value Added Tax (VAT) — Directive 2006/112/EC — Article 135(1)(g) — Exemptions for the management of special investment funds — Supply of a package of services using an IT platform — Single supply — Management company — Minority share of special investment funds)

1. The system of value added tax (VAT) is once again being tested by new technologies. At issue this time is artificial intelligence in the field of investment in the context of different types of investment funds.

2. The management of special investment funds ('SIFs') is expressly exempted under Article 135(1)(g) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.[2] By contrast, the management of investment funds that are not SIFs ('other funds') is subject to VAT.

3. BlackRock Investment Management (UK) Ltd ('BlackRock') manages both SIFs and other funds. To do this, it uses the services of BlackRock Financial Management Inc. ('BFMI'), a company established in the United States which belongs to the same group as BlackRock. BFMI uses an IT platform known as Aladdin which provides a broad range of investment management services, such as market analysis, monitoring performance, risk assessment, monitoring regulatory compliance and implementing transactions. Since BFMI is a company incorporated under US law, BlackRock must pay the VAT itself, under the reverse charge mechanism,[3] in respect of the services supplied by BFMI.

4. The dispute in the main proceedings is between BlackRock and the Commissioners for Her Majesty's Revenue and Customs (United Kingdom) ('the tax authority') and concerns the granting of the exemption provided for in Article 135(1)(g) of Directive 2006/112. In so far as BFMI provides management services using Aladdin, in the same way, to SIFs and to other funds, the question arises as to which tax scheme applies to those services, given that exemption.

1 Original language: French.

2 OJ 2006 L 347, p. 1.

3 Under that mechanism, the VAT is charged by the customer and not by the supplier, at the rate in force in its place of establishment.

5. The referring court, the Upper Tribunal (Tax and Chancery Chamber) (United Kingdom) asks the Court whether, and under what conditions, that exemption should be granted in view of the particular circumstances of the present case, namely the supply of management services to all types of funds taken together, using a single IT platform.

I. Legal framework

A. European Union legislation

6. In accordance with Article 2(1)(c) of Directive 2006/112, 'the supply of services for consideration within the territory of a Member State by a taxable person acting as such' is subject to VAT.

7. Article 132(1)(f) of that directive is worded as follows:

'Member States shall exempt the following transactions:

…

(f) 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, where those groups merely claim from their members exact reimbursement of their share of the joint expenses, provided that such exemption is not likely to cause distortion of competition'.

8. Article 135(1)(g) of that directive provides:

'Member States shall exempt the following transactions:

…

(g) the management of [SIFs] as defined by Member States'.

9. The wording of Article 135(1)(g) of Directive 2006/112, which repealed and replaced, from 1 January 2007, 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 Sixth Directive'), is, in essence, identical to that of Article 13B(d)(6) of the Sixth Directive.[4]

10. Under Article 194 of Directive 2006/112, in the event that the person supplying the services is not established in the Member State in which the VAT is due, Member States may provide for the application of a reverse charge mechanism.

B. United Kingdom legislation

11. Section 31(1) of the Value Added Tax Act 1994 provides, inter alia:

'A supply of goods or services is an exempt supply if it is of a description for the time being specified in Schedule 9 …'

4 The Court has already held that 'since the relevant provisions of Directive 2006/112 have essentially the same scope as the relevant provisions of the Sixth Directive 77/388, the Court's case-law on the latter directive is applicable also to Directive 2006/112' (judgment of 10 April 2019, *PSM 'K'*, C-214/18, EU:C:2019:301, paragraph 37).

12. Schedule 9 of that Act mentions, in Item 9 of Group 5, 'the management of' a number of specified investment bodies and types of funds. Those are the bodies and funds which, in the United Kingdom, must be regarded as SIFs.

II. The dispute in the main proceedings and the question referred for a preliminary ruling

13. BlackRock receives supplies of services from BFMI, a company established in the United States which is in the same group. BlackRock uses those services to manage both SIFs and other funds. Under the reverse charge mechanism, BlackRock pays the VAT that BFMI is liable to pay in respect of the services it has supplied to BlackRock.

14. On 2 May 2012, BlackRock requested a ruling from the tax authority on the question whether the recipients of services using Aladdin, in the context of the management of SIFs, may be exempt from VAT.

15. On 24 July 2013, BlackRock requested a refund of the VAT for the period from 1 January 2010 to 3 March 2013.

16. By letter of 30 August 2013, the tax authority rejected the application for exemption and the refund request.

17. BlackRock brought an action before the First-tier Tribunal (Tax Chamber) (United Kingdom), which, by judgment of 15 August 2017, dismissed the action. That court considered, inter alia, that the services provided by Aladdin were 'management' services which fell within the scope of the exemptions laid down in Article 135(1)(g) of Directive 2006/112. However, the application of a VAT rate on a pro rata basis for the services provided by BFMI for other funds only was not possible since those services constituted a single supply for both the SIFs and the other funds. Since the other funds represented the majority of the funds managed by BlackRock, both in terms of their number and value, a single rate had to be applied to those other funds and to the SIFs. In those circumstances, that company brought an appeal against that judgment before the referring court.

18. According to the referring court, a number of facts are established. Accordingly, it notes that, first, within BlackRock, the persons responsible for managing the funds are the portfolio managers. Investment management follows a cycle of analysis, decision making, trade execution and post-trade settlement and reconciliation. Secondly, BlackRock's fund management services are provided using Aladdin, a platform consisting of a combination of hardware, software and human input. In addition, Aladdin's functions span the whole of the investment cycle. In general terms, Aladdin provides the portfolio managers with performance and risk analysis and monitoring to assist them in making investment decisions, monitors regulatory compliance and enables BlackRock's portfolio managers to implement trading decisions. Thirdly, BlackRock manages both SIFs and other funds and uses the Aladdin management services to manage all of those funds. Fourthly, the majority of the funds to which BlackRock provides management services are other funds, both in terms of the number of funds and the value of the managed assets. Fifthly, BFMI provides management services to fund managers other than BlackRock, some of which manage mainly SIFs.

19. The referring court observes that the question that arises is whether Article 135(1)(g) of Directive 2006/112 authorises the apportionment, on a pro rata basis, of the consideration for a single supply of management services, on the basis of its use. In that regard, it is faced with two opposing views. While the tax authority submits that all of the Aladdin services received by BlackRock are subject to VAT since that company manages mostly other funds, that company, for its part, considers that its use of Aladdin should, in any event, be exempt in respect of the services for SIFs, and the proportion of the amount of those funds within the total amount of funds managed enables their value to be estimated.

20. In that regard, in its judgment of 4 May 2017, *Commission* v *Luxembourg*,[5] concerning the exemption provided for in Article 132(1)(f) of Directive 2006/112, the Court, in principle, accepted apportionment on a pro rata basis based on the use of a single supply of services, that is to say, depending on whether it is intended to be used for elements that are exempt from or elements that are subject to VAT. Logically, the question therefore arises as to whether such apportionment also applies in connection with other exemptions, such as those provided for in Article 135(1)(g) of that directive. However, the referring court considers that that judgment does not provide clear information for the outcome of the present case since apportionment on a pro rata basis in relation to the cost-sharing exemption appears to be based on practical considerations and not on considerations of principle or teleological factors.

21. Accordingly, the referring court considers that, for the purposes of applying Article 135(1)(g) of Directive 2006/112, the approach consisting of authorising the apportionment on a pro rata basis of the consideration for a single supply of management services, between the services intended for the management of SIFs and those intended for the management of other funds, could be adopted. Nevertheless, it asks how that approach combines with the solution whereby single supplies must be taxed according to their intended predominant or principal use.

22. The referring court considers, therefore, that, in circumstances where services are used to manage both SIFs and other funds, it cannot determine with certainty the correct interpretation of Article 135(1)(g) of Directive 2006/112 which is necessary in order to resolve the dispute.

23. In that context, the Upper Tribunal (Tax and Chancery Chamber) decided to stay the proceedings and to refer the following question 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 [SIFs] and in the management of other 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 SIFs and [other funds] respectively) so as to treat part of the single supply as exempt and part as taxable?'

III. The procedure before the Court

24. BlackRock, the United Kingdom Government and the European Commission lodged written observations.

25. BlackRock, the United Kingdom Government and the Commission presented oral argument at the hearing on 18 December 2019.

5 C-274/15, EU:C:2017:333.

IV. Analysis

26. By its question, the referring court asks, in essence, whether, and how, supplies of services made by a third-party provider to a fund manager may be exempt under Article 135(1)(g) of Directive 2006/112 where those services are intended to be used simultaneously to manage SIFs and other funds.

27. In particular, that court seeks to ascertain whether the taxable amount of that supply can be apportioned according to the value of the assets in the funds. It is apparent from the request for a preliminary ruling that, in the case in the main proceedings, the services in question are provided for both SIFs, the management of which is exempt in principle, and for other funds, the management of which is subject to VAT. The fact that a single service has a dual use is at the root of the issue in the present case. Resolving the matter involves determining whether the taxable amount [6] must be reduced to the fee for the services provided by Aladdin for the management of other funds only.

28. While the case-law on the exemption of transactions connected with the management of investment funds, pursuant to Article 135(1)(g) of Directive 2006/112, is quite extensive, [7] to my knowledge, the Court has never given a ruling in respect of circumstances that are identical to those at issue in case in the main proceedings, namely services with a dual use which seek to ensure the management of both SIFs and other funds. Since the Court has already interpreted Article 135(1) of that directive and its predecessor on a number of occasions, I consider it necessary to recall certain principles relating to the exemptions laid down in that provision (Title A), in order then to discuss the limits, in the present case, of the debate as to the scope of the exemption laid down in that provision (Title B) and, finally, to determine the tax treatment which must be accorded to the services at issue (Title C).

A. Preliminary observations with regard to the exemptions provided for in Article 135(1) of Directive 2006/112

29. In the first place, it is settled case-law that the exemptions provided for in Article 135(1) of Directive 2006/112 are autonomous concepts of EU law whose purpose is to avoid divergences in the application of the VAT system from one Member State to another and which must be placed in the general context of the common system of VAT. [8]

30. In the second place, it should be noted that the terms used to specify the exemptions set out in Article 135(1) of Directive 2006/112 are to be interpreted strictly, since they constitute exceptions to the general principle that VAT is to be levied on all services supplied for consideration by a taxable person. [9] It follows that, where a supply of services does not fall within the exemptions provided for by Directive 2006/112, the supply is subject to VAT by virtue of Article 2(1)(c) of that directive. [10]

6 As regards determining the 'taxable amount' of the VAT due, it follows from Article 73 and Article 78(a) of Directive 2006/112 that, for a supply of services, the taxable amount includes everything which constitutes consideration obtained or to be obtained by the supplier in return for the supply in question from the customer or a third party, excluding the VAT itself.

7 Judgments of 4 May 2006, *Abbey National* (C-169/04, EU:C:2006:289); of 28 June 2007, *JP Morgan Fleming Claverhouse Investment Trust and The Association of Investment Trust Companies* (C-363/05, EU:C:2007:391); of 19 July 2012, *Deutsche Bank* (C-44/11, EU:C:2012:484); of 7 March 2013, *GfBk* (C-275/11, EU:C:2013:141); of 7 March 2013, *Wheels Common Investment Fund Trustees and Others* (C-424/11, EU:C:2013:144); of 13 March 2014, *ATP PensionService* (C-464/12, EU:C:2014:139); and of 9 December 2015, *Fiscale Eenheid X* (C-595/13, EU:C:2015:801).

8 See, inter alia, judgment of 9 December 2015, *Fiscale Eenheid X* (C-595/13, EU:C:2015:801, paragraph 30 and the case-law cited).

9 See, inter alia, judgments of 28 October 2010, *Axa UK* (C-175/09, EU:C:2010:646, paragraph 25); of 17 January 2013, *Woningstichting Maasdriel* (C-543/11, EU:C:2013:20, paragraph 25); of 12 June 2014, *Granton Advertising* (C-461/12, EU:C:2014:1745, paragraph 25 and the case-law cited); of 16 November 2017, *Kozuba Premium Selection* (C-308/16, EU:C:2017:869, paragraphs 39 and 45); of 25 July 2018, *DPAS* (C-5/17, EU:C:2018:592, paragraph 29); and of 19 December 2018, *Mailat* (C-17/18, EU:C:2018:1038, paragraph 37).

10 Judgment of 10 April 2019, *PSM 'K'* (C-214/18, EU:C:2019:301, paragraph 43).

31. That said, the interpretation of those terms must be consistent with the objectives pursued by the exemptions provided for in Article 135(1) of Directive 2006/112 and comply with the requirements of the principle of fiscal neutrality inherent in the common system of VAT. It follows from the principle of fiscal neutrality that operators must be able to choose the form of organisation which, from a strictly commercial point of view, best suits them, without running the risk of having their transactions excluded from the exemption under that provision. [11]

B. The limits of the debate as to the scope of Article 135(1)(g) of Directive 2006/112

32. Article 135(1)(g) of Directive 2006/112 exempts from VAT 'the management of [SIFs] as defined by Member States'. It follows from the wording of that provision that, first, it does not apply to all funds, but solely to those classified as SIFs. Secondly, those activities which constitute 'management' fall within the scope of that exemption. [12] For an activity to be classifiable as the 'management of a SIF' and to be eligible for that exemption, it must satisfy those two conditions.

33. In particular, it follows from the case-law concerning the exemption provided for in Article 135(1)(g) of Directive 2006/112 that, in respect of the concept of 'SIFs', that provision covers SIFs whatever their legal form. [13] Thus, undertakings for collective investment constituted under the law of contract or trust law and those constituted under statute both come within the scope of that provision. [14] Moreover, it follows from the settled case-law that that provision confers upon the Member States the task of defining the meaning of SIFs, [15] a power which 'is, however, limited by the prohibition on undermining the very terms of the exemption that are employed by the European Union legislature'. [16] In the present case, in the light of the evidence contained in the file, there is little doubt and the parties agree that the recipient funds of BFMI's services are, inter alia, SIFs. [17]

34. By contrast, as regards the question of whether the services of BFMI fall within the scope of the *management* of SIFs, the Court confirmed from the outset, in its judgment of 4 May 2006, *Abbey National*, in respect of the meaning of 'management', that this is governed exclusively by EU law and Member States have no discretion whatsoever in that field. [18]

35. With regard to the content of the concept of 'management', it should be recalled that its boundaries have been defined in several judgments of the Court. Thus, first of all the Court ruled that, apart from tasks of portfolio management, those of administering undertakings for collective investment themselves come within the scope of Article 135(1)(g) of Directive 2006/112. [19] However, the functions of depositary of undertakings for collective investment are excluded from that scope. [20] In addition, in its judgment in *GfBk*, [21] the Court held that services such as computing the amount of

11 Judgments of 4 May 2006, *Abbey National* (C-169/04, EU:C:2006:289, paragraph 68), and of 7 March 2013, *GfBk* (C-275/11, EU:C:2013:141, paragraph 31).

12 In respect of the dichotomy between 'SIFs' and 'management', see Opinion of Advocate General Kokott in *Fiscale Eenheid X* (C-595/13, EU:C:2015:327, points 16 to 57).

13 Judgment of 4 May 2006, *Abbey National* (C-169/04, EU:C:2006:289, paragraph 53).

14 Judgment of 4 May 2006, *Abbey National* (C-169/04, EU:C:2006:289, paragraph 53).

15 Judgment of 7 March 2013, *Wheels Common Investment Fund Trustees and Others* (C-424/11, EU:C:2013:144, paragraph 16 and the case-law cited).

16 Judgment of 7 March 2013, *Wheels Common Investment Fund Trustees and Others* (C-424/11, EU:C:2013:144, paragraph 17 and the case-law cited). According to the Court, 'a Member State cannot in particular, without negating the very terms "[SIFs]", select from among [SIFs] those which are eligible for the exemption and those which are not'.

17 I note that, in its request for a preliminary ruling, the referring court states that it '[has] concluded that the services received are supplies of "management" in accordance with the meaning of that term in Article 135(1)(g) [of Directive 2006/112]'.

18 Judgment of 4 May 2006, *Abbey National* (C-169/04, EU:C:2006:289, paragraphs 40 to 43), and Opinion of Advocate General Kokott in *Fiscale Eenheid X* (C-595/13, EU:C:2015:327, point 48).

19 Judgment of 4 May 2006, *Abbey National* (C-169/04, EU:C:2006:289, paragraph 64).

20 Judgment of 4 May 2006, *Abbey National* (C-169/04, EU:C:2006:289, paragraph 65).

21 Judgment of 7 March 2013, *GfBk* (C-275/11, EU:C:2013:141).

income and the price of units or shares, the valuation of assets, accounting, the preparation of statements for the distribution of income, the provision of information and documentation for periodic accounts and for tax, statistical and VAT returns, and the preparation of income forecasts fall within the concept of 'management' of a SIF.[22]

36. Furthermore, the Court confirmed that the management of SIFs, within the meaning of Article 135(1)(g) of Directive 2006/112, is defined according to the *nature* of the services provided and not according to the person supplying or receiving the services.[23] It therefore held that, in order for funds to be able to fall within the meaning of 'SIFs', nothing precludes the management of investment funds from being broken down into a number of separate services and that some are provided by a third-party manager.[24]

37. Finally and in particular, the Court has developed criteria pursuant to which, in order to be characterised as exempt transactions within the meaning of Article 135(1)(g) of Directive 2006/112, 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 SIFs.[25] It follows that, in accordance with that case-law, the exemption at issue does not cover all forms of the management of SIFs, but solely the management of SIFs that meets those criteria. In its written observations, the Commission expresses doubts as to the classification of the service provided by BFMI and, in particular, its specific nature.

38. In the present case, it is clear from the documents before the Court that BlackRock receives supplies of services by BFMI using the Aladdin platform, which it uses to manage both SIFs and other funds. In particular, the referring court states that, first, Aladdin provides market analyses, performance monitoring and risk analysis to assist portfolio managers in making investment decisions. Secondly, Aladdin monitors regulatory compliance. Thirdly, the referring court explains that Aladdin enables the implementation of trading decisions. Thus, Aladdin's functions span the whole of the investment cycle by assisting portfolio managers in making investment decisions, in compliance with the legislation, and in implementing trading decisions. Both the referring court and the First-tier Tribunal (Tax Chamber) have concluded that the services provided by BFMI, using the Aladdin platform, meet the criteria that the Court has developed in order to determine whether supplies of services made by a third-party provider to a fund manager may be exempt under Article 135(1)(g) of Directive 2006/112, namely whether, viewed broadly, they form a *distinct whole* and are *specific* to, and *essential* for, the management of SIFs.[26]

39. Even though the circumstances of the main proceedings could offer an excellent opportunity to review the criteria that a supply of services must meet in order to fall within the scope of the 'management of [SIFs]' within the meaning of Article 135(1)(g) of Directive 2006/112 where that service is provided by a third party using an IT platform, I take the view that that debate is not possible in the context of the present case. In that regard, it must be recalled, first, that, in the context of the judicial cooperation introduced by Article 267 TFEU, the national court has sole jurisdiction to determine both the need for a preliminary ruling and the relevance of the questions which it submits to the Court.[27] Secondly, in the context of that cooperation, it is for the national courts to analyse the transactions at issue, although it is for the Court to provide those national

22 Judgment of 7 March 2013, *GfBk* (C-275/11, EU:C:2013:141, paragraph 27).

23 Judgment of 4 May 2006, *Abbey National* (C-169/04, EU:C:2006:289, paragraph 66). That conclusion has since been reiterated in the judgment of 7 March 2013, *GfBk* (C-275/11, EU:C:2013:141, paragraph 20). See, also, Opinion of Advocate General Cruz Villalón in *GfBk* (C-275/11, EU:C:2012:697, point 25).

24 See, to that effect, judgment of 4 May 2006, *Abbey National* (C-169/04, EU:C:2006:289, paragraph 67). That conclusion has been reiterated in paragraph 63 of the judgment of 13 March 2014, *ATP PensionService* (C-464/12, EU:C:2014:139).

25 See, to that effect, judgments of 5 June 1997, *SDC* (C-2/95, EU:C:1997:278, paragraph 66); of 4 May 2006, *Abbey National*, (C-169/04, EU:C:2006:289, paragraphs 70 to 72); and of 7 March 2013, *GfBk* (C-275/11, EU:C:2013:141, paragraph 21).

26 See, to that effect, judgment of 13 March 2014, *ATP PensionService* (C-464/12, EU:C:2014:139, paragraphs 65 and 75).

27 See, inter alia, judgment of 8 September 2011, *Rosado Santana* (C-177/10, EU:C:2011:557, paragraph 32), and order of 24 October 2019, *Topaz* (C-211/17, not published, EU:C:2019:906).

courts with all the guidance as to the interpretation of EU law which may be of assistance in adjudicating on the case pending before them.[28] In particular, it is the referring court, which has before it all the information it needs to analyse each of the transactions at issue in the main proceedings, which must assess whether the services are covered by the term 'management of [SIFs]', within the meaning of Article 135(1)(g) of Directive 2006/112.[29]

40. In the present case, there is little doubt that the referring court has examined the abovementioned criteria of application in the light of the Court's case-law relating to the exemption at issue. Following a detailed analysis, that court reached the conclusion that the supplies to third parties provided by BFMI using Aladdin to manage SIFs met those criteria.[30] Thus, by the present request for a preliminary ruling, the referring court asks the Court whether a single supply must be subject to a single rate of tax and whether the consideration for that supply must be determined specifically in accordance with the intended use of the management services.

41. Consequently, it is not possible, in the present case, to return to the question of whether, in the modern world, where more and more services are provided digitally, it is necessary to specify the criteria established by the case-law with regard to the supply of management services by third parties, where those services are provided using an electronic platform. In that regard, it should be noted that the case in the main proceedings raises a broader question, which is whether the condition of specificity which third-party service providers must satisfy is met in a context in which those services are provided by an IT platform which functions in the same way for all funds.[31] Nevertheless, in the light of the finding in point 38 of this Opinion, it suffices to start the analysis of the question referred for a preliminary ruling from the premiss that the services provided by BFMI, using its Aladdin platform ('the Aladdin services'), are, in addition to their intended use of managing other funds, specific to, and essential for, the management of SIFs and form a distinct whole.

C. The tax treatment of a single supply

42. From the outset, it should be observed that single supply[32] may cover two types of situation.[33] In the judgment in *Deutsche Bank*,[34] the Court held that there is a single supply, particularly, where one element is to be regarded as constituting the principal service or where two or more elements or acts supplied by the taxable person to the customer, being a typical consumer, are so closely linked that they form, objectively, a single, indivisible economic supply, which it would be artificial to split.[35] Moreover, in that judgment,[36] the Court held that those elements may be 'not only inseparable', but also placed 'on the same footing' if they are 'both indispensable in carrying out the service as a whole, with the result that it is not possible to take the view that one must be regarded as the principal service

28 See, to that effect, judgments of 27 October 2005, *Levob Verzekeringen and OV Bank* (C-41/04, EU:C:2005:649, paragraph 23); of 27 September 2012, *Field Fisher Waterhouse* (C-392/11, EU:C:2012:597, paragraph 20); and of 21 February 2013, *Žamberk* (C-18/12, EU:C:2013:95, paragraph 31).

29 Judgment of 13 March 2014, *ATP PensionService* (C-464/12, EU:C:2014:139, paragraph 75).

30 It is apparent from the documents before the Court that the court at first instance, the First-tier Tribunal (Tax Chamber), reached the same conclusion.

31 In its written observations, the Commission expresses doubts as to the classification of the service provided by BFMI and, in particular, its specific nature for the purposes of classifying the 'management of a SIF'.

32 I note that, in the case-law of the Court, single supply is sometimes referred to as 'single complex transaction' (see, inter alia, judgments of 17 January 2013, *BGŻ Leasing*, C-224/11, EU:C:2013:15, and of 16 July 2015, *Mapfre asistencia and Mapfre warranty*, C-584/13, EU:C:2015:488) or 'single, complex supply' (see, inter alia, judgment of 8 December 2016, *Stock '94*, C-208/15, EU:C:2016:936). For the purposes of this Opinion, I shall refer to 'single supply'.

33 As Advocate General Sharpston emphasised in her Opinion in *Deutsche Bank* (C-44/11, EU:C:2012:276, point 24), 'there is a single supply (i) where two or more elements supplied are so closely linked that they form a single, indivisible economic supply which it would be artificial to split, or (ii) where one or more elements constitute a principal supply, while others are ancillary'.

34 Judgment of 19 July 2012, *Deutsche Bank* (C-44/11, EU:C:2012:484).

35 See, to that effect, judgment of 19 July 2012, *Deutsche Bank* (C-44/11, EU:C:2012:484, paragraphs 19 to 21 and the case-law cited).

36 Judgment of 19 July 2012, *Deutsche Bank* (C-44/11, EU:C:2012:484).

and the other as the ancillary service'.[37] Furthermore, it follows from the case-law of the Court that the predominant element of the single supply must be determined, in an overall assessment, following the qualitative and quantitative importance of the elements falling within the exemption at issue in relation to those not falling within that exemption.[38]

43. Assuming that the Aladdin services are, in addition to their intended use of the management of other funds, specific to, and essential for, the management of SIFs and form a distinct whole, it must be examined whether they constitute a single, indivisible economic supply (1). Then, the question of tax treatment arises; while there are judgments that permit distinct transactions to be treated differently, in those judgments the Court has departed from its classic line of case-law (2). Finally, it is necessary to examine the specific case of an investment fund company where a minority share of that company is composed of SIFs (3).

1. The classification of a supply as a single supply

44. It is clear from the request for a preliminary ruling and the decisions annexed to it[39] that the national courts have classified the Aladdin services as a single supply. Where that single supply is used by BlackRock for the management of both SIFs and other funds, the positions of the parties differ as to whether, in an arrangement such as that in the present case, the supply of services constitutes a 'single and indivisible supply' or whether it may constitute a principal supply, namely the management of other funds which form the majority of the funds managed by BlackRock, accompanied by an ancillary supply, namely the management of SIFs, which form the minority of the funds managed by BlackRock. The question referred by the national court appears to be based on the premiss that the Aladdin services constitute a single supply comprising several elements.

45. According to the Commission, there is, in the present case, no single supply that is divided into a principal supply accompanied by one or more secondary supplies.[40] The United Kingdom Government considers, however, that the supply at issue constitutes a single supply comprising several elements, the management of the other funds being, from a qualitative and quantitative point of view, the predominant element of that supply. It follows that the whole of the single supply must be taxed. In order to address that issue and to classify the supply at issue, I shall focus on the case-law which concerns the single complex supply.

46. First of all, it must be recalled that, for VAT purposes, every supply must normally be regarded as distinct and independent, as follows from the second subparagraph of Article 1(2) of Directive 2006/112. That means that a transaction which comprises a single service from an economic point of view should not be artificially split, so as not to distort the functioning of the VAT system.[41] At the same time, it cannot be ruled out that, because of its complexity, a supply comprises elements which, taken separately, would be taxed differently. In that regard, according to the case-law, where a supply comprises a principal element and an ancillary element, the latter is subject to the same regime as the principal element. That case-law implements the maxim '*accessorium sequitur principale*'.

47. The case-law enshrining that approach has emerged in particular since the judgment in *CPP*.[42] In the case giving rise to that judgment, the Court was called upon to determine whether the various services supplied in the context of a plan designed to offer holders of credit cards, on payment of a certain sum, the supply of an insurance service and a card registration service, could benefit from the

37 See, to that effect, judgment of 19 July 2012, *Deutsche Bank* (C-44/11, EU:C:2012:484, paragraphs 26 and 27).

38 See, to that effect, judgment of 21 February 2013, *Žamberk* (C-18/12, EU:C:2013:95, paragraph 30 and the case-law cited).

39 Decisions of the referring court and the First-tier Tribunal (Tax Chamber).

40 I note that, at the hearing, the Commission classified the services at issue as an 'undifferentiated supply with no inherent distinction [with regard to the recipient]'.

41 See, to that effect, judgment of 25 February 1999, *CPP* (C-349/96, EU:C:1999:93, paragraph 29).

42 Judgment of 25 February 1999, *CPP* (C-349/96, EU:C:1999:93).

exemption for insurance transactions provided for in Article 13B(a) of the Sixth Directive.[43] The Court recalled the principle that 'a supply which comprises a single service from an economic point of view should not be artificially split, so as not to distort the functioning of the VAT system'.[44] There is a single supply where one or more elements are to be regarded as constituting the principal service, whilst one or more elements are to be regarded, by contrast, as ancillary services which share the tax treatment of the principal service.[45] The Court also stipulated that a supply must be regarded as ancillary to a principal supply if it does not constitute for customers an aim in itself, but a means of better enjoying the principal service supplied.[46]

48. Furthermore, the maxim *accessorium sequitur principale* has been recently confirmed in other cases.

49. Thus, in the case which gave rise to the judgment in *Žamberk*,[47] the Court examined the question as to whether access to an aquatic park which offers visitors not only facilities for engaging in sporting activities but also other types of amusement or rest fell within the scope of Article 132(1)(m) of Directive 2006/112. In that regard, the Court took the view that the fact that the aquatic park offered only a single entrance ticket giving entitlement to use all of the facilities, without any distinction according to the type of facility actually used and to the manner and the duration of its use during the period of the entrance ticket's validity, constitutes a strong indication of the existence of a single supply.[48] It follows that, where several elements are offered as a complete package, without any distinction as to the elements actually used, they must be given a single treatment.

50. The same approach was also adopted in the judgment in *Stadion Amsterdam*.[49] In the case that gave rise to that judgment, the Court had to rule on the tax treatment of a ticket allowing a visitor to enjoy a guided tour of the stadium of AFC Ajax and a visit to the football club's museum. The Court classified those transactions as a single supply, which was composed of a guided tour of the stadium, as the principal element, and the visit to the AFC Ajax museum, as the ancillary element. The Court was asked to examine inter alia which rate of VAT was applicable to that single supply. In that regard, it expressly stated that 'it follows from the characterisation of an operation comprising several elements as a single supply that that operation will be subject to *one and the same rate of VAT*', on the ground that 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'.[50] In my view, it clearly follows from this that a transaction comprising several elements must be treated uniformly.[51]

43 Now Article 135(1)(a) of Directive 2006/112.

44 Judgment of 25 February 1999, *CPP* (C-349/96, EU:C:1999:93, paragraph 29). See, in that regard, Opinion of Advocate General Fennelly in *CPP* (C-349/96, EU:C:1998:281, point 26).

45 Judgment of 25 February 1999, *CPP* (C-349/96, EU:C:1999:93, paragraph 30). Those conclusions were repeated in the judgment of 19 July 2012, *Deutsche Bank* (C-44/11 (EU:C:2012:484), in which the Court held, inter alia, that a portfolio management service, namely where a taxable person for remuneration and on the basis of his or her own discretion takes decisions on the purchase and sale of securities and implements those decisions by buying and selling the securities, consists of two elements which are so closely linked that they form, objectively, a single economic supply. After having categorised the supply at issue as a single supply in paragraphs 22 to 29 of that judgment, the Court, however, took the view that portfolio activity carried out by Deutsche Bank could not fall within the scope of the concept of 'management of [SIFs]' within the meaning of Article 135(1)(g) of Directive 2006/112, since it consisted in managing the assets of a single person, which must be of relatively high overall value in order to be dealt with profitably in such a way.

46 See, to that effect, the judgment of 18 January 2018, *Stadion Amsterdam*, (C-463/16, EU:C:2018:22, paragraph 23 and the case-law cited).

47 Judgment of 21 February 2013 (C-18/12, EU:C:2013:95).

48 Judgment of 21 February 2013, *Žamberk* (C-18/12, EU:C:2013:95, paragraph 32).

49 Judgment of 18 January 2018 (C-463/16, EU:C:2018:22).

50 Judgment of 18 January 2018, *Stadion Amsterdam* (C-463/16, EU:C:2018:22, paragraph 26 and the case-law cited). Emphasis added. In addition to the judgments cited above, the maxim *accessorium sequitur principale* was confirmed in the order of 19 January 2012, *Purple Parking and Airparks Services* (C-117/11, not published, EU:C:2012:29, paragraph 31), in which the Court stated that 'the fact that, in other circumstances, the elements in issue can be or are supplied separately is of no importance, given that that possibility is inherent in the concept of a single composite transaction'. In paragraph 39 of that order, the Court stated that 'the treatment of several services as a single supply for the purposes of VAT necessarily leads to tax treatment different from that that those services would have received if they had been supplied separately'.

51 Judgment of 18 January 2018, *Stadion Amsterdam* (C-463/16, EU:C:2018:22, paragraph 26 and the case-law cited).

51. Finally, in the light of the factual circumstances of the present case, as described by the referring court, I take the view that the situation here does not fall under the hypothesis '*accessorium sequitur principale*'. It is clear from the documents before the Court that the BlackRock managers have varied information, including the different steps of the investment activity, but which, taken as a whole, may be regarded as a single stream of information based on the Aladdin Licence and Services Agreement dated 1 January 2010.[52] While it cannot be ruled out that all of the abovementioned services may be provided separately, it would appear to follow from the information given at the hearing and in the file submitted to the Court[53] that portfolio managers seek a combination of those elements, and therefore it is conceivable that those elements are regarded as being so closely linked that they form, objectively, a single, indivisible economic supply. Therefore, as is clear from the request for a preliminary ruling, the value of the supply of services at issue is, from the point of view of the recipient of that supply, in the combined use of the IT platform at issue during the different investment cycles. In particular, the services of market analysis, monitoring performance, risk assessment, monitoring regulatory compliance and implementing transactions may be provided together, in a complementary fashion, and placed on the same footing. Accordingly, it would appear that the supply at issue constitutes a single supply, comprising several elements placed on the same footing.[54]

52. Consequently, from an economic point of view, at issue is a supply that BlackRock purchases for the purposes of managing the investment activity of its funds. Since the same elements of the Aladdin services are used for both the management of SIFs, which are transactions that fall within the scope of the exemption provided for in Article 135(1)(g) of Directive 2006/112, and the management of other funds, which are transactions that cannot benefit from that exemption, the question arises as to which tax treatment those services should receive.

2. The different treatment of distinct transactions

53. BlackRock submits, in essence, that Article 135(1)(g) of Directive 2006/112 may be interpreted as meaning that it permits the differentiated determination of the tax base with respect to a single supply of management services in such a way that only those transactions carried out for the benefit of a fund, the management of which is not exempt, fall under that basis of assessment. It submits that, where the recipient of the services in question holds SIFs and other funds, a pro rata calculation must be applied to the consideration, according to the 'value of assets under [the] management' of the recipient of those services.

54. Both the United Kingdom Government and the Commission submit, by contrast, that a single composite supply, which is used predominantly for the taxable management of funds other than SIFs, cannot be subject to such determination and therefore the whole of the supply is taxable.

(a) The exceptions recognised in the case-law are not applicable in the present case

55. As is clear from the documents before the Court and the observations of the parties, the case-law of the Court has already recognised situations in which the elements of a single supply are given separate VAT treatments. Of the judgments cited in the request for a preliminary ruling, as the United Kingdom Government noted, the judgments in *Talacre Beach Caravan Sales*[55] and

52 Request for a preliminary ruling, Annex 1, point 9.

53 The First-tier Tribunal (Tax Chamber), referring to the judgment of 7 March 2013, *GfBk* (C-275/11, EU:C:2013:141), states, in paragraph 184 of its decision, that 'the Aladdin Services were intrinsically connected … to the Aladdin Recipients' businesses as fund managers', adding that 'the analytical and monitoring functions, for example, were clearly entirely directed towards efficient fund management'.

54 I note that, at the hearing, the Commission classified the services at issue as an 'undifferentiated supply with no inherent distinction [with regard to the recipient]'.

55 Judgment of 6 July 2006 (C-251/05, EU:C:2006:451).

Commission v *France*[56] are the only cases in which the Court authorised that the different elements of a single supply are subject to two separate VAT treatments.[57] Nevertheless, despite the national court's reference to those exceptional judgments,[58] I take the view that, since they do not lay down general principles, they do not apply in the present case.

56. In the first place, the case which gave rise to the judgment in *Talacre Beach Caravan Sales*[59] concerned the question of whether the contents of caravans had to be taxed in the same way as the caravans themselves. United Kingdom legislation[60] limited the application of the zero rate to the caravans themselves and expressly excluded their contents. The Court held that, where the principal element of a single supply is zero-rated (exemption with refund of the tax), the other ancillary elements are nevertheless still taxable. Thus, the concept of a single composite transaction did not require the Member State to accord the same treatment to other elements.

57. However, it is important to point out that the circumstances characterising that case were very specific, since the case concerned the option left to the Member States, under Article 28(2) of the Sixth Directive,[61] to apply exemptions with refund of the tax paid, like a standstill clause and constituting a derogation from the provision laying down the standard rate of VAT.[62] Moreover, the Court expressly acknowledged that the case at issue was an exception when it stated that 'while it follows, admittedly, from [the] case-law that a single supply is, as a rule, subject to a single rate of VAT, the case-law does not preclude some elements of that supply from being taxed separately where only such taxation complies with the conditions imposed by Article 28(2)(a) of the Sixth Directive on the application of exemptions with refund of the tax paid'.[63]

58. In the second place, in the case which gave rise to the judgment in *Commission* v *France*,[64] concerning the tax treatment applicable to the transportation of a body in the context of services supplied by undertakers,[65] the Court had to determine whether the French Republic had failed to fulfil its obligations under Articles 96 to 98 and Article 99(1) of Directive 2006/112. The Commission considered that artificially splitting the service of transporting a body by vehicle from the whole consisting of the supply of services by undertakers led that Member State to apply two different rates of VAT to two components of a supply which had to be regarded as a single supply. The Court concluded that the French legislation did not infringe Article 98(1) of Directive 2006/112, which gave the Member States the option to apply a reduced rate of VAT to a category of supply in Annex III to that directive, namely, inter alia, the supply of services by undertakers. The Court held that the transportation of a body by vehicle constituted a concrete and specific element in the supply of

56 Judgment of 6 May 2010 (C-94/09, EU:C:2010:253).

57 For a full examination of the different rate of tax, see Opinion of Advocate General Szpunar in *Regards Photographiques* (C-145/18, EU:C:2019:184, point 30).

58 Paragraph 22 of the request for a preliminary ruling.

59 Judgment of 6 July 2006 (C-251/05, EU:C:2006:451).

60 The favourable tax treatment (zero rate) of caravans resulted from the exercise, by the United Kingdom, of an option available during the transitional period under Article 28(2) of the Sixth Directive. That option was a mechanism allowing certain derogations from the common system of VAT in force on 1 January 1991 to be maintained.

61 Now Article 110 of Directive 2006/112.

62 Judgment of 6 July 2006, *Talacre Beach Caravan Sales* (C-251/05, EU:C:2006:451).

63 Judgment of 6 July 2006, *Talacre Beach Caravan Sales* (C-251/05, EU:C:2006:451, paragraph 24).

64 Judgment of 6 May 2010 (C-94/09, EU:C:2010:253).

65 Annex III, point 16, to Directive 2006/112 authorises the application of a reduced rate to the supply of services by undertakers.

services by undertakers.[66] In those proceedings for failure to fulfil obligations, the Court took the view that there was no need to examine the question as to whether the supplies of services by such undertakings constituted single supplies,[67] or the question regarding the different treatment of such services.

59. Consequently, I consider that the circumstances of the cases which gave rise to the abovementioned judgments explain why those judgments depart from the line of case-law on the subject. The present case does not concern either of the two exceptions to the general principle that a single treatment must be applied to a single supply. However, in support of its argument in favour of a pro rata application according to the intended use of the services, BlackRock relies on the judgment in *Commission* v *Luxembourg*[68] which, in my view, cannot be transposed to the present case.

(b) The judgment in Commission *v* Luxembourg *is not applicable in the present case*

60. That judgment[69] was delivered in proceedings for failure to fulfil obligations concerning the manner in which the Grand Duchy of Luxembourg had applied the exemption for independent groups of persons ('IGPs') set out in Article 132(1)(f) of the Directive 2006/112. The Court addressed, inter alia, the issue of whether, and how, the exemption laid down in that provision could apply to supplies by an independent group in relation to its members who had carried out the activities.[70] The Court held that that provision did not provide for an exemption for the supply of services which are not directly necessary for the exercise of an IGP's members' exempt activities or those in relation to which they are not taxable persons.

61. The passages of the judgment in *Commission* v *Luxembourg*[71] on which BlackRock relies are paragraphs 53 and 53, which form the Court's response to the arguments put forward by the defendant Member State. Accordingly, in paragraph 53 of that judgment, the Court clarified that 'the services rendered by an IGP whose members also carry out taxable activities may qualify for that exemption, but only in so far as those services are directly necessary for those members' exempt activities or activities in relation to which they are not taxable persons'. In paragraph 54 of that judgment, the Court held inter alia that the defendant Member State 'has not shown why, if at all, it might be excessively difficult for the IGP to invoice its services excluding VAT, *according to the share* of its members' activities in their totality represented by the activities which are exempt from that tax or in relation to which they are not taxable persons'.[72]

62. I take the view that the judgment in *Commission* v *Luxembourg*[73] cannot serve as a reference for the present case. In that regard, it is true that it is clear from that judgment that, in principle, the exemption may be calculated on a pro rata basis in order to preserve its effect. Nevertheless, such consideration appears, in that judgment, to be based on the wording of Article 132(1)(f) of Directive 2006/112 which expressly mentions the 'share' of the expenses for which members of IGPs are liable. However, it must be noted that Article 135(1)(g) of that directive does not mention such a share.

66 Judgment of 6 May 2010, *Commission* v *France* (C-94/09, EU:C:2010:253, paragraph 39). The Commission had submitted that that transport formed part of a single service composed of several elements supplied by undertakers.

67 In paragraph 34 of that judgment, the Court held that, 'in order to rule on the merits of this action, it is not necessary to examine whether, as the Commission maintains, the supply of services by undertakers must be regarded as a single transaction from the point of view of the expectations of a typical consumer'.

68 Judgment of 4 May 2017 (C-274/15, EU:C:2017:333).

69 Judgment of 4 May 2017 (C-274/15, EU:C:2017:333).

70 The argument put forward by the Commission concerned the fact that Luxembourg legislation did not limit the possibility of exemption to services used for exempt supplies on a downstream market or for activities that did not fall within the scope of the tax. Those practices permitted the exemption of services used for taxed supplies where the turnover of the recipient of the taxed services did not exceed 30% (or 45% in some cases) of its overall turnover.

71 Judgment of 4 May 2017 (C-274/15, EU:C:2017:333).

72 Judgment of 4 May 2017, *Commission* v *Luxembourg* (C-274/15, EU:C:2017:333, paragraph 54). Emphasis added.

73 Judgment of 4 May 2017 (C-274/15, EU:C:2017:333).

Therefore, it is clear from comparing the wording of those two provisions in question that the determination of the 'shares' which may be authorised by Article 132(1)(f) of that directive cannot be transposed to Article 135(1)(g) of the same directive, particularly since the examination of the grounds of the judgment in *Commission* v *Luxembourg*,[74] in particular those in paragraphs 51 and 53, reveals that, in its analysis, the Court gives particular weight to the wording of Article 132(1)(f) of Directive 2006/112.

63. Moreover, whilst the grounds contained in the judgments of the Court should, in principle, be given equal weight irrespective of the nature of the action, namely an action for failure to fulfil obligations governed by Articles 258 to 260 TFEU or a reference for a preliminary ruling provided for in Article 267 TFEU, the fact remains that it is risky to apply the considerations related to those judgments automatically to other cases without taking into account the factual, legal and contextual circumstances of those cases. As already stated, first, the wording of the provision that was applied in the judgment in *Commission* v *Luxembourg*[75] differs from the wording of the provision that the Court has been called upon to interpret in the present case. Secondly, the Court examined a limited question, namely whether the Member State at issue had transposed Article 132(1)(f) of Directive 2006/112 correctly. In the light of those observations, I take the view that, by that judgment, the Court did not seek to vary its well-established case-law on a single supply comprising several elements.[76] The reasoning developed, and the case-law contained in that judgment, cannot amount to support for an opposite conclusion. In the light of those considerations, I take the view that the judgment in *Commission* v *Luxembourg*[77] does not constitute a judgment that establishes a principle which may serve as a reference for the present case.

3. The specific case of a company formed of a minority share of SIFs

64. After having established, first, the premiss that the Aladdin services are specific to, and essential for, the management of SIFs and other funds, and form a distinct whole and, secondly, that they constitute a single supply which forms a single, indivisible economic supply, it must be examined whether the tax base corresponding to that supply should be split, on the ground that one part of that supply is used for the management of SIFs and that, if it was used for SIFs, considered separately, it would be exempt from VAT. In other words, should the existence of a minority of SIFs, the management of which should be exempt, within a company that holds different funds, call for the tax base to be split? In my opinion, that question should be answered in the negative for a number of reasons.

65. First of all, it must be pointed out that the exemptions laid down in Article 135(1)(g) of Directive 2006/112 have certain objectives, including '[facilitating] investment in securities by means of investment undertakings by excluding the cost of VAT'.[78] By that provision, the EU legislature seeks, therefore, to ensure that the common system of VAT is neutral as regards the choice between direct investment in securities and investment through undertakings for collective investment.[79] If the Court were to answer the question referred for a preliminary ruling in the same way as proposed by

74 Judgment of 4 May 2017 (C-274/15, EU:C:2017:333).

75 Judgment of 4 May 2017 (C-274/15, EU:C:2017:333).

76 See points 46 and 47 of this Opinion.

77 Judgment of 4 May 2017 (C-274/15, EU:C:2017:333).

78 See judgment of 28 June 2007, *JP Morgan Fleming Claverhouse Investment Trust and The Association of Investment Trust Companies* (C-363/05, EU:C:2007:391, paragraph 45).

79 See judgments of 28 June 2007, *JP Morgan Fleming Claverhouse Investment Trust and The Association of Investment Trust Companies* (C-363/05, EU:C:2007:391, paragraph 45); of 7 March 2013, *Wheels Common Investment Fund Trustees and Others* (C-424/11, EU:C:2013:144, paragraph 19); of 13 March 2014, *ATP PensionService* (C-464/12, EU:C:2014:139, paragraph 43); and of 9 December 2015, *Fiscale Eenheid X* (C-595/13, EU:C:2015:801, paragraph 34). See, in respect of the purpose of the exemption, Opinion of Advocate General Kokott in *Abbey National* (C-169/04, EU:C:2005:523, points 28 and 29), in accordance with which the management of SIFs must be exempt on account of the small volume of investment available to small investors since those investors have only a restricted opportunity of investing their money directly in a wide spread of securities. Advocate General Kokott adds that they often do not have the necessary knowledge for comparing and selecting securities.

BlackRock, that objective would risk being compromised. Since there is no question that the Aladdin services are a supply that BlackRock uses for the management of both SIFs and other funds, the exemption at issue is sought for services which do are not used *solely* for the management of SIFs. Since the management of the other funds does not fall within the scope of the exemption provided for in Article 135(1)(g) of Directive 2006/112, an exemption, even if partial, for a supply of that kind, which mostly benefits other funds, is not consistent with the objective that that exemption seeks to attain. Moreover, granting the exemption to a supply of services which are used for both other funds and SIFs would have the effect of departing from the case-law mentioned in points 36 and 37 of this Opinion which, having regard to the same objective, requires that the management services provided by a third-party manager, viewed broadly, form a distinct whole and are specific to, and essential for, the management of SIFs.

66. In addition to the fact that the exemption at issue, in the circumstances of the case in the main proceedings, would not be consistent with the objective sought by that exemption, practical arguments contradict the approach advocated by BlackRock. As regards the Aladdin services, it is not possible to isolate a distinct characteristic within that supply in order to determine which share of services is intended to manage SIFs and other funds. In that regard, BlackRock proposes that 'the fee for the management services [be], in the main, based pro rata on the value of assets under management'. I can only express my reservations with regard to that proposal. It should be noted that the wording of Article 135(1)(g) of Directive 2006/112 relates to the exemption of 'transactions' consisting in the 'management of [SIFs]' and not an exemption according to 'the assets of the SIFs under management'. Furthermore, as the United Kingdom Government rightly submits, such a mechanism would be contrary to the nature of the VAT system and would make it unworkable.[80] The VAT applicable to the single supply would vary continuously depending on the value of the SIFs and the other funds in which the platform in question plays a role in the management. Therefore, the question arises as to when that value must be determined. It follows that the apportionment of the VAT due according to the value of the funds managed may result in extending the benefit of that exemption to other funds the management of which may not be exempt. That outcome would not be effective in attaining the abovementioned objective.

67. That view is supported by the case-law in accordance with which 'splitting a [single] comprehensive supply into too many separately classified individual supplies would overcomplicate the application of the rules on value added tax', the Court even having decided to 'give precedence to practicability over accuracy'.[81] Therefore, if it were to be assumed that there was one supply, but the taxable amount were nevertheless to be split for the application of several rates of VAT, this would be contrary to the aim of the case-law on composite supplies, namely to maintain the functioning of the VAT system.[82] That case-law highlights the problem with regard to criteria related to determining the single supply according to the recipient, namely that there is no objective, transparent and foreseeable criterion in order to make such a determination. In the circumstances of the case in the main proceedings, as BlackRock acknowledged at the hearing, it is either impossible, or otherwise very difficult, to determine the proportion in which BlackRock uses the Aladdin services for the management of SIFs.

68. I accept that the situation would be different if the Aladdin services were used by a company which manages SIFs only. In that case, the question arises as to the principle of fiscal neutrality, according to which operators must be able to choose the form of organisation which, from a strictly commercial point of view, best suits them, without running the risk of having their transactions excluded from the

80 Nevertheless, I do not concur with the United Kingdom Government's argument that the third party providing the service of managing the fund at issue does not know the value of that fund, which would be problematic where the manager itself pays the VAT due. Logically, it can be assumed that the third party that provides that type of service knows the value of the fund.

81 See Opinion of Advocate General Kokott in *Levob Verzekeringen and OV Bank* (C-41/04, EU:C:2005:292, point 66 and footnote 23).

82 See Opinion of Advocate General Kokott in *Talacre Beach Caravan Sales* (C-251/05, EU:C:2006:295, point 32).

exemption.[83] However, as the Court has already specified, that principle is not a rule of primary law which can condition the validity of an exemption, but a principle of interpretation, to be applied concurrently with the principle of strict interpretation of exemptions.[84] Therefore, that same principle cannot extend the scope of an exemption in the absence of clear wording to that effect.[85] In the present case, it is clear that, if the exemption on account of the value of the funds was accepted, the benefit of the exemption would be extended to other funds which normally must not be entitled to it. A different interpretation of the principle of neutrality would run counter to the solution adopted in the case-law cited in points 46 to 50 of this Opinion, in which the Court concluded that a single supply comprised of two distinct elements, one principal, the other ancillary, which, if they were supplied separately, would be subject to different rates of VAT, must be taxed solely at the rate of VAT applicable to that single supply, that rate being determined according to the principal element.[86]

69. Finally, I take the view that, for the abovementioned reasons, to tax the single supply formed by the Aladdin services other than in its entirety would infringe the requirement that the exemptions provided for in Article 135(1) of Directive 2006/112 must be interpreted strictly. That requirement reflects the EU legislature's intention to exempt the management of SIFs from VAT and not to extend that exemption to other types of funds or to activities other than management. In my view, that is how the criteria relating to the management of SIFs should be understood.[87] A contrary approach cannot be adopted from reading the other provisions of Directive 2006/112 cited by BlackRock.[88] It must be concluded that the provision that forms the subject matter of the present request for a preliminary ruling, Article 135(1) of Directive 2006/112, seeks to exempt the management of SIFs only, as is confirmed by its objective of facilitating investment in securities for small investors by means of investment undertakings.

70. In the light of the foregoing considerations, I consider that the purpose of the exemption provided for in Article 135(1)(g) of Directive 2006/112 is not to grant that exemption to management activities provided by an IT platform used for both SIFs and other funds. It follows that, in the present case, the exemption provided for the management of SIFs cannot be granted to the services provided by BFMI to BlackRock.

71. Nevertheless, I wish to stress that, in circumstances other than those presented to the Court in the present case, that exemption could possibly be granted to services provided by a third party to a fund manager, provided that the supplier of the services provides detailed data which enable the tax authority to identify precisely and objectively the services provided specifically for SIFs. In that event, the services provided solely for SIFs may be exempt under Article 135(1) of Directive 2006/112, provided that the supplier of the fund management services (or the recipient of those services in the case of a reverse charge) is able to provide the tax authority with those data, which would have the effect, for tax purposes, of treating similar situations objectively. Since such data are lacking in the present case, no such case arises and the exemption provided for in Article 135(1)(g) of Directive 2006/112 cannot be granted.

83 See point 31 of this Opinion.

84 See, to that effect, judgment of 19 July 2012, *Deutsche Bank* (C-44/11, EU:C:2012:484, paragraph 45).

85 See, to that effect, judgment of 19 July 2012, *Deutsche Bank* (C-44/11, EU:C:2012:484, paragraph 45), and Opinion of Advocate General Sharpston in *Deutsche Bank* (C-44/11, EU:C:2012:276, point 60).

86 Judgment of 18 January 2018, *Stadion Amsterdam* (C-463/16, EU:C:2018:22, paragraph 36).

87 See points 36 and 37 of this Opinion.

88 In its observations, BlackRock mentions Articles 136 and Article 168(a) of Directive 2006/112.

V. Conclusion

72. Having regard to the foregoing considerations, I propose that the Court should reply to the question referred for a preliminary ruling by the Upper Tribunal (Tax and Chancery Chamber) (United Kingdom) as follows:

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, such as that at issue in the main proceedings, which is provided by an IT platform belonging to a third-party provider to a fund management company and includes both special investment funds and other funds, does not fall within the scope of the exemption laid down in that provision.