Provisional text

JUDGMENT OF THE COURT (First Chamber)

17 June 2021 (*)

(References for a preliminary ruling – Value added tax (VAT) – Directive 2006/112/EC – Article 135(1) – Exemptions – Management of special investment funds – Outsourcing – Services provided by a third party)

In Joined Cases C?58/20 and C?59/20,

TWO REQUESTS for a preliminary ruling under Article 267 TFEU from the Bundesfinanzgericht (Federal Finance Court, Austria), made by decisions of 29 January 2020 (C?59/20) and 30 January 2020 (C?58/20), received at the Court on 4 February 2020, in the proceedings

K (C?58/20),

DBKAG (C?59/20)

v

Finanzamt Österreich, formerly Finanzamt Linz,

THE COURT (First Chamber),

composed of J.?C. Bonichot (Rapporteur), President of the Chamber, R. Silva de Lapuerta, Vice-President of the Court, acting as Judge of the First Chamber, L. Bay Larsen, C. Toader and N. Jääskinen, Judges,

Advocate General: P. Pikamäe,

Registrar: D. Dittert, Head of Unit,

having regard to the written procedure and further to the hearing on 3 February 2021,

after considering the observations submitted on behalf of:

– K and DBKAG, by G. Aigner, Steuerberater,

– the Austrian Government, by A. Posch and F. Koppensteiner, and by J. Schmoll and S. Zolles, acting as Agents,

– the Greek Government, by K. Georgiadis and by A. Dimitrakopoulou and M. Tassopoulou, acting as Agents,

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

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 The requests for a preliminary ruling concern 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 These requests have been made in proceedings between K (Case C?58/20) and DBKAG (Case C?59/20) and the Finanzamt Österreich, formerly Finanzamt Linz (Tax Office, Austria, formerly, Tax Office, Linz, Austria) (‘the tax authorities’) concerning the refusal of those authorities to grant them the benefit of the exemption from value added tax (VAT) provided for in Article 135(1)(g) of the VAT Directive.

Legal context

EU law

The VAT directive

3 Article 135(1)(g) of the VAT Directive provides, in substantially identical terms, for the exemption previously provided for in Article 13B(d)(6) 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 Sixth Directive’).

4 Under Article 135(1) of the VAT Directive:

‘Member States shall exempt the following transactions:

…

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

…’

UCITS Directive

5 Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ 2009 L 302, p. 32; ‘the UCITS Directive’) recast and repealed Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ 1985 L 375, p. 3), as amended, inter alia, by Directive 2001/107/EC of the European Parliament and of the Council of 21 January 2002 (OJ 2002 L 41, p. 20) (‘Directive 85/611’).

6 Article 2 of the UCITS Directive provides:

‘1. For the purposes of this Directive, the following definitions apply:

…

(b) “management company” means a company, the regular business of which is the

management of UCITS in the form of common funds or of investment companies (collective portfolio management of UCITS);

…

2. For the purposes of paragraph 1(b), the regular business of a management company shall include the functions referred to in Annex II.

…’

7 Annex II to the UCITS Directive contains a non-exhaustive list of functions included in the activity of collective portfolio management. That list, which is identical to that contained in Annex II to Directive 85/611, sets out the following functions:

‘ – Investment management.

– Administration:

(a) legal and fund management accounting services;

(b) customer inquiries;

(c) valuation and pricing (including tax returns);

(d) regulatory compliance monitoring;

(e) maintenance of unit-holder register;

(f) distribution of income;

(g) unit issues and redemptions;

(h) contract settlements (including certificate dispatch);

(i) record keeping.

– Marketing.’

Austrian law

8 Article 6(1).8(i) of the Umsatzsteuergesetz 1994 (Law on VAT, BGBI 663/1994), in the version applicable to the facts in the main proceedings, provides that revenue from the ‘management of special investment funds’, the ‘management of holdings in the context of the business of providing capital … by undertakings holding a concession for this purpose’, as well as from the ‘management of special investment funds as defined by the other Member States’ is exempt from VAT.

The dispute in the main proceedings and the questions referred for a preliminary ruling

Case C?58/20

9 Between 2008 and 2014, various management companies (called investment management companies or ‘IMCs’ before 2011) outsourced to K, a third party, certain services for the calculation of the taxable income of unit-holders from the funds, such as tax statements. In order to provide those services, K had to rely on the calculation of income at the level of the funds as

determined by the management companies on the basis of the overall funds balance and accounts provided by the depositary bank. K reproduced the values indicated in the overall balance and in the calculation of income at the level of the funds after a simple plausibility check (without verification of accuracy). Then, in order to draw up the tax statement at the level of the unit-holders, K had to take into account, inter alia, the specific characteristics of the various types of investors but also draw up its own statement of charges, comply with an independent allocation order and a calculation of the specific losses.

10 During the period at issue in the main proceedings, the management companies which appointed K remained the tax representatives responsible for communicating the relevant calculations for the taxable income of unit-holders from the funds, by means of a standardised declaration, to the reporting office. The management companies thus reproduced the relevant values calculated by K without amending them and forwarded them to the reporting office. The management companies were nevertheless liable for the accuracy of the amounts declared to the reporting office, in particular in respect of tax on capital income. K was liable to those companies under civil law in the event of damage caused by the wrongful inaccuracy of the declaration of the relevant calculations for tax purposes.

11 K invoiced, without VAT, for the services which it provided to the management companies. K submits that those services benefit from the exemption relating to the management of special investment funds provided for in Article 135(1)(g) of the VAT Directive, since they satisfy the conditions laid down by the case-law of the Court, in particular those set out in paragraph 72 of the judgment of 4 May 2006, *Abbey National* (C?169/04, EU:C:2006:289), according to which, in order to be covered by that exemption, the services provided by a third party must, viewed broadly, form a distinct whole, fulfilling the specific and essential functions for the management of those special investment funds. According to K, the services for calculating the relevant values for the purposes of taxing the income of the unit-holders in the funds, for which it is responsible, exist only in the field of special investment funds, with the result that they are specific administrative services essential for the management of those funds. In addition, K submits that, in order to benefit from the exemption, it is not necessary for all those services to be outsourced.

12 However, according to the tax authorities, the services provided by K to the management companies cannot be covered by that exemption. First, those authorities consider that the service provided by K which consists in the calculation the relevant values for the purposes of taxing the income of participants in the funds is not specific to and essential for the management of special investment funds. Rather, it is a service specific to the profession of tax adviser or auditor. Second, according to the tax authorities, the provision of that service is not sufficiently autonomous to come within the scope of the VAT exemption.

13 K brought actions against the decisions of the tax authorities of 9 September 2014 concerning VAT for the years 2008 to 2012, of 25 September 2015 concerning VAT for 2013, and of 23 January 2019 concerning VAT for 2014 before the referring court, which considers that there are doubts as to the interpretation of the concept of ‘management of special investment funds’ within the meaning of Article 135(1)(g) of the VAT Directive.

14 It is in that context that the Bundesfinanzgericht (Federal Finance Court) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

‘Must Article 135(1)(g) of [the VAT Directive] be interpreted as meaning that the term ‘management of special investment funds’ also covers the tax-related responsibilities entrusted by the management company to a third party, consisting of ensuring that the income received by unit-holders from investment funds is taxed in accordance with the law?’

15 By a licence agreement dated 11 December 2008, DBKAG, which manages special investment funds, was granted a right by SC GmbH, established in Germany, to use software which was essential to risk management and performance measurement in return for the payment of a fee (‘the SC software’).

16 The SC software is specifically tailored to the activity of investment funds and to the complex requirements set by the legislature in those areas. SC is responsible for the correct calculations of risk and performance indicators.

17 The SC software can only be used in conjunction with DBKAG’s other software. DBKAG was required to adapt its information technology environment to the needs of the SC software and set the parameters (in particular the methods of calculation) which that software should use. Through interfaces with other DBKAG programmes, the price and market value data entered by DBKAG and which are required for the calculations made by SC are automatically entered into the SC software programme on a daily basis. Thus, that software performs the calculations of risk and performance indicators based on data entered by DBKAG. Next, the risk and performance indicators calculated by the SC software are used by DBKAG to draw up reports in order to comply with legal obligations to provide information to the authorities and investors in relation to risk management and performance.

18 Pursuant to other contracts dated 11 December 2008, it was agreed that SC would provide various support services to DBKAG. In particular, SC undertook to train DBKAG’s staff in the tasks involved in configuring the SC software and in manually entering the data necessary for its operation. SC further undertook to carry out updates of that software to remedy any deficiencies in the latter.

19 SC invoiced for the grant of the licence and other services as taxable services subject to VAT in the State of destination, Austria, without including VAT but with reference to the transfer of the tax debt to DBKAG under the reverse charge mechanism.

20 However, DBKAG is of the view that the services provided by SC should be covered by the exemption provided for in Article 135(1)(g) of the VAT Directive. DBKAG submits that the SC software provides services for calculating risk and performance indicators which are specific to and essential for the management of special investment funds. According to DBKAG, the fact that it itself provides certain input data to the SC software should not affect the classification of those services as exempt transactions.

21 The tax authorities, for their part, consider that the grant of the right to use the SC software is a service subject to VAT. According to the tax authorities, SC provides mere technical assistance which is neither specific to nor essential for the management of special investment funds. In addition, the tax authorities argue that, given that the SC software cannot carry out the calculations at issue without DBKAG’s participation, SC’s service is not sufficiently autonomous to fall within the VAT exemption.

22 DBKAG brought an action before the referring court against the decisions of the tax authorities of 24 October 2014 concerning the reopening of the VAT procedure for 2009 and 2010 and the VAT assessment notices for 2009 and 2010.

23 As in Case C?58/20, the referring court finds that there are doubts as to the interpretation of the concept of ‘management of special investment funds’ within the meaning of Article 135(1)(g) of

the VAT Directive. Admittedly, the referring court takes the view that risk management and performance measurement services are activities specific to the management of special investment funds. However, the referring court is uncertain as to whether SC's liability in the present case is sufficient for SC's service to benefit from the exemption provided for by that provision.

24 It is in that context that the Bundesfinanzgericht (Federal Finance Court) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Must Article 135(1)(g) of [the VAT Directive] be interpreted as meaning that, for the purposes of the tax exemption provided for by that provision, the term "management of special investment funds" also includes the granting by a third-party licensor to an investment management company ('IMC') of a right to use specialist software specifically designed for the management of special investment funds where, as in the case in the main proceedings, that specialist software is intended exclusively to perform specific and essential activities in connection with the management of the special investment funds but runs on the technical infrastructure of the IMC and can perform its functions only subject to the minor participation of the IMC and subject to ongoing recourse to market data provided by the IMC?'

25 By order of the President of the Court of 3 March 2020, Cases C?58/20 and C?59/20 were joined for the purposes of the written and oral procedure and the judgment.

Consideration of the questions referred

26 By its questions, the referring court asks, in essence, whether Article 135(1)(g) of the VAT Directive must be interpreted as meaning that the provision of services by third parties to management companies of special investment funds, such as tax-related responsibilities consisting in ensuring that the income received from the fund by unit-holders is taxed in accordance with national law and whether the grant of a right to use software which is used to make calculations essential to risk management and performance measurement, fall within the exemption provided for in that provision.

27 As a preliminary point, it should be noted that, in so far as the VAT Directive repeals and replaces the Sixth Directive, the Court's interpretation of the provisions of the latter directive also applies to those of the VAT Directive where the provisions of those two instruments of EU law may be regarded as equivalent.

28 Consequently, the Court's interpretation of Article 13B(d)(6) of the Sixth Directive also applies to Article 135(1)(g) of the VAT Directive, since, as has already been stated in paragraph 3 of the present judgment, those provisions are worded in substantially identical terms and may, therefore, be regarded as equivalent.

29 In that regard, 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 2 July 2020, *Blackrock Investment Management (UK)*, C?231/19, EU:C:2020:513, paragraph 21 and the case-law cited).

30 Furthermore, it is apparent from the case-law of the Court that 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 (judgment of 2 July 2020, *Blackrock Investment Management (UK)*, C?231/19, EU:C:2020:513, paragraph 22 and the case-law cited).

31 Furthermore, under the principle of fiscal neutrality, 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 (judgment of 2 July 2020, *Blackrock Investment Management (UK)*, C?231/19, EU:C:2020:513, paragraph 50 and the case-law cited).

32 Thus, management services performed by a third-party manager come, generally, within the scope of Article 135(1)(g) of the VAT Directive (judgment of 4 May 2006, *Abbey National*, C?169/04, EU:C:2006:289, paragraph 69).

33 However, in order to be classified as exempt transactions within the meaning of Article 135(1)(g) of the VAT Directive, 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 (judgment of 2 July 2020, *Blackrock Investment Management (UK)*, C?231/19, EU:C:2020:513, paragraph 47 and the case-law cited).

34 It is in the light of the case-law referred to in paragraphs 29 to 33 above that the questions referred for a preliminary ruling by the referring court must be examined.

The condition relating to the distinct or autonomous character

35 In the first place, in order to determine whether services provided by third parties to management companies of special investment funds are covered by the exemption provided for in Article 135(1)(g) of the VAT Directive, it is necessary to assess whether those services, viewed broadly, form a distinct whole.

36 In that regard, it should be noted that the condition relating to ‘distinct’ character can only be interpreted as meaning that, in order to be covered by the exemption provided for in Article 135(1)(g) of the VAT Directive, the provision of a service which is specific to and essential for the management of special investment funds must be outsourced in its entirety.

37 It should be borne in mind that, in accordance with the case-law of the Court, the purpose of the exemption referred to in that provision is to promote the access of small investors to the securities market. The joint management of investments within special investment funds affords them the possibility of holding, despite a modest investment, a diversified portfolio which protects them against the risks inherent in the fluctuation of the value of the securities and allows them to share the cost of expert management. In the absence of an exemption, unit-holders in collective investment undertakings would be taxed more heavily than the a priori larger investors who invest their money directly in securities and who do not use fund management services. The principle of fiscal neutrality precludes economic operators carrying out the same transactions from being treated differently in relation to the levying of VAT (see, to that effect, judgment of 13 March 2014, *ATP PensionService*, C?464/12, EU:C:2014:139, paragraphs 43 and 44 and the case-law cited).

38 Thus, even if the exemption provided for in Article 135(1)(g) of the VAT Directive must be interpreted strictly, the principle of fiscal neutrality and the objectives of that exemption militate in favour of an interpretation which does not deprive it of its effect (see, to that effect, judgment of 9

December 2015, *Fiscale Eenheid X*, C?595/13, EU:C:2015:801, paragraph 68).

39 If a service which is specific to and essential for the management of special investment funds were to be subject to VAT simply because it is not outsourced in its entirety, that would favour management companies which themselves supply that service and investors who place their money directly in securities and who do not use fund management services (see, to that effect, judgment of 13 March 2014, *ATP PensionService*, C?464/12, EU:C:2014:139, paragraph 72, and the case-law cited).

40 Thus, an interpretation of the condition of ‘distinct’ character which consists in taking the view that, in order to benefit from the exemption provided for in Article 135(1)(g) of the VAT Directive, a service which is specific to and essential for the management of special investment funds be outsourced in its entirety would lead to a limitation of the practical effect of the possibility for such a service to benefit from that exemption when it is provided by a third party.

41 Moreover, the Court has held that advisory services concerning investment in transferable securities and recommendations for the purchase and sale of assets provided by a third party to a management company of special investment funds, which were specific to and essential for the management of those funds, could be covered by the exemption provided for in Article 135(1)(g) of the VAT Directive (see, to that effect, judgment of 7 March 2013, *GfBk*, C?275/11, EU:C:2013:141, paragraph 33).

42 The Court held that it was of little importance that it was for that management company to implement those recommendations after having verified that they did not infringe any statutory investment restriction applicable to special investment funds and that that management company thus retains ultimate decision-making power and responsibility (see, to that effect, judgment of 7 March 2013, *GfBk*, C?275/11, EU:C:2013:141, paragraph 27).

43 In the present case, as regards Case C?58/20, in order to determine whether the services provided by K to the management companies concerned, such as the services of calculating the relevant taxable income of unit-holders from the funds, come within the exemption provided for in Article 135(1)(g) of the VAT Directive, it is for the referring court to assess whether those services must be regarded as being specific to and essential for the activity of managing special investment funds. The fact that it is for the management companies to draw up standardised declarations on the basis of calculations made by a third party and to forward those declarations to the reporting office is not in itself decisive for the purpose of deciding whether such services are covered by that exemption.

44 Similarly, as regards Case C?59/20, in order to determine whether the services provided by SC to DBKAG, such as the grant of the right to use the SC software, fall within the exemption provided for in Article 135(1)(g) of the VAT Directive, it is for the referring court to assess whether those services must be regarded as being specific to and essential for the activity of managing special investment funds. The fact that the software at issue runs only on the technical infrastructure of the management company concerned and can fulfil its functions only in conjunction with the minor involvement of that company through ongoing recourse to market data provided by that company is not in itself decisive for the purpose of deciding whether such services are covered by that exemption.

The condition relating to the specific and essential character of the service

45 In the second place, in order to ascertain whether services provided by third parties to management companies of special investment funds, such as tax-related responsibilities consisting of ensuring that the income received by the unit-holders is taxed in accordance with

national law and the grant of a right to use software which is used to carry out calculations essential to risk management and performance measurement, fall within the exemption provided for in Article 135(1) of the VAT Directive, it is necessary to assess whether those services are specific to and essential for the management of special investment funds.

46 First, as regards tax-related responsibilities, it should be recalled that the Court has held that, apart from tasks of portfolio management, those of administering undertakings for collective investment themselves, such as those set out in Annex II to the UCITS Directive, come within the scope of Article 135(1)(g) of the VAT Directive (judgment of 4 May 2006, *Abbey National*, C?169/04, EU:C:2006:289, paragraph 64).

47 Annex II to the UCITS Directive provides that collective portfolio management includes administrative functions such as legal and fund management accounting services and valuation and pricing (including tax returns).

48 Furthermore, the fact that certain services are not listed in Annex II to the UCITS Directive does not preclude their inclusion in the category of specific services falling within activities for ‘management’ of a special investment fund within the meaning of Article 135(1)(g) of the VAT Directive (judgment of 7 March 2013, *GfBk*, C?275/11, EU:C:2013:141, paragraph 25).

49 In order to determine whether the services provided by a third party to a management company fall within the exemption provided for in Article 135(1)(g) of the VAT Directive, it is necessary to examine whether the service provided by that third party is intrinsically connected to the activity characteristic of a management company, so that it has the effect of performing the specific and essential functions of management of a special investment fund (see, to that effect, judgment of 7 March 2013, *GfBk*, C?275/11, EU:C:2013:141, paragraph 23).

50 In that regard, the concept of ‘management’ of a special investment fund within the meaning of Article 135(1)(g) of the VAT Directive covers not only investment management, involving the selection and disposal of assets under management, but also administrative and accounting services – such as computing the amount of 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 (see, to that effect, judgment of 7 March 2013, *GfBk*, C?275/11, EU:C:2013:141, paragraph 27).

51 By contrast, services which are not specific to the activity of a special investment fund but inherent in any type of investment do not fall within the scope of that concept of ‘management’ of a special investment fund (see, to that effect, judgment of 9 December 2015, *Fiscale Eenheid X*, C?595/13, EU:C:2015:8011, paragraph 78).

52 Thus, in so far as administrative and accounting services provided by a third party to a management company, such as tax-related responsibilities consisting of ensuring that the income received from the fund by the unit-holders is taxed in accordance with national law, are intrinsically connected to the activity of managing special investment funds, those services fall within the exemption provided for in Article 135(1)(g) of the VAT Directive.

53 Second, as regards the grant of a right to use software, it is true that, in paragraph 71 of the judgment of 4 May 2006, *Abbey National* (C?169/04, EU:C:2006:289), the Court relied on the judgment of 5 June 1997, *SDC* (C?2/95, EU:C:1997:278), in order to hold that mere material or technical supplies, such as the making available of a system of information technology, were not covered by the exemption provided for in Article 13B(d)(6) of the Sixth Directive which was replaced by Article 135(1)(g) of the VAT Directive (judgment of 9 December 2015, *Fiscale Eenheid X*

, C?595/13, EU:C:2015:801, paragraph 74).

54 However, that case-law cannot be read as meaning that any service provided by a third party to a management company via a system of information technology must be excluded from the outset from the scope of the exemption provided for in Article 135(1)(g) of the VAT Directive.

55 The Court stated, in paragraph 37 of the judgment of 5 June 1997, *SDC* (C?2/95, EU:C:1997:278), that the mere fact that a service is performed entirely by electronic means does not in itself preclude the application of the exemption to that service.

56 More specifically, in the judgment of 2 July 2020, *Blackrock Investment Management (UK)* (C?231/19, EU:C:2020:513), although what was at issue was services, in particular performance and risk monitoring, provided by a third party to fund management companies via an information technology platform, the Court did not automatically exclude those services from the scope of the exemption provided for in Article 135(1)(g) of the VAT Directive. By contrast, the Court held that those services could not benefit from that exemption by relying, in paragraphs 48 and 49 of that judgment, on the fact that those services were not specific to the management of special investment funds since they had been designed for the management of various types of investments and could be used without distinction for the management of special investment funds and for that of other funds.

57 Thus, where a service such as the grant of a right to use software is provided exclusively for the purposes of managing special investment funds, and not to other funds, it may be considered to be ‘specific’ for that purpose.

58 Therefore, it follows from the foregoing that the provision of services, such as tax-related responsibilities consisting of ensuring that the income received from the fund by unit-holders is taxed in accordance with national law and the grant of a right to use software used to perform calculations essential to risk management and performance measurement, fall within the exemption provided for in Article 135(1)(g) of the VAT Directive if they are intrinsically connected to the management of special investment funds and if they are provided exclusively for the purposes of managing such funds.

59 In the present case, it is for the referring court to determine whether the services provided by K and SC to the management companies at issue in the main proceedings satisfy those conditions.

60 In particular, in Case C?58/20, the referring court will have to examine inter alia whether the tax-related services performed by K comply with the obligations laid down by Austrian law which are specific to special investment funds and which are therefore distinct to the obligations laid down for other types of investment fund.

61 In Case C?59/20, it is apparent from the order for reference that the referring court finds that risk management and performance measurement services are activities specific to the management of such funds. That court also states that the software calculations at issue in the main proceedings constitute an essential basis for DBKAG to fulfil the risk management and performance measurement functions required by Austrian law. Therefore, the fact that that software is used to carry out calculations essential for the administrative services of risk management and performance measurement of the fund in question could lead to the conclusion that that software is essential for the management of that fund. It will nevertheless be for the referring court to determine whether the conditions referred to in paragraph 58 of the present judgment are met.

62 In the light of the foregoing considerations, the answer to the questions referred is that Article 135(1)(g) of the VAT Directive must be interpreted as meaning that the provision of services by third parties to management companies of special investment funds, such as tax-related services consisting in ensuring that the income received from the fund by the unit-holders is taxed in accordance with national law and the grant of a right to use software which is used exclusively to carry out calculations which are essential for risk management and performance measurement, fall within the scope of the exemption provided for in that provision if they are intrinsically connected to the management of such funds and if they are provided exclusively for the purpose of managing such funds, even if those services are not outsourced in their entirety.

Costs

63 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 the provision of services by third parties to management companies of special investment funds, such as tax-related responsibilities consisting in ensuring that the income received from the fund by the unit-holders is taxed in accordance with national law and the grant of a right to use software which is used exclusively to carry out calculations which are essential for risk management and performance measurement, fall within the scope of the exemption provided for in that provision if they are intrinsically connected to the management of such funds and if they are provided exclusively for the purpose of managing such funds, even if those services are not outsourced in their entirety.

[Signatures]

* Language of the case: German.