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Dear clients and co-operation partners, friends and other readers

10 years is not a long period of time in a person's life, but it is enough long period of time for people in a law firm in Latvia to experience and learn a lot. Since the begging of the Riga office in 1997 substantial changes have taken place both in legal environment and legal profession itself. To experience and learn is not possible without other people, and, therefore, we would like to thank all of you who have worked with us and from whom we have learned so much.

We do hope to cooperate with you also for at least another 10 years.

Thank you!

Enjoy the summer and hope to see you soon at our M&A conference or/and 10th anniversary party on 31 August 2007!

On behalf of the Sorainen Riga team,

Pekka Puolakka
Partner



EU NEWS

Anheuser-Busch's right to use Bud and Budweiser

The EU's second-highest court, the Court of First Instance, upheld Anheuser-Busch's right to use Budweiser and Bud brand names on merchandise like stationery and clothing. The court rejected Budjovický Budvar's opposition for goods other than beer.

The Czech brewer, Budjovický Budvar, had sought to prevent Anheuser-Busch, the largest U.S. brewer, from registering the brand names as trademarks for non-beer products in the EU, saying Budweiser comes from Budweis, the name its hometown of Ceske Budejovice went by for centuries.

Anheuser-Busch is selling beer under the Budweiser and Bud Light brands, competing with the Czech firm's Budweiser Budvar brand and Bud Super Strong brand.

The two brewers have fought over ownership of the "Budweiser" name since 1911. This decision is significant because it finally recognises Anheuser-Busch as the rightful owner of the Bud and Budweiser brand name and establishes trademark rights beyond the beer category.

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For other EU law matters of current interest, please see the article "Recent ECJ case law in taxation" written by Janis Taukacs on page 6.

ESTONIA

DISPUTE RESOLUTION

Estonian public procurement system is now more flexible and efficient

On 01.05.2007, the new Public Procurement Act entered into force. The act aims to harmonize public procurement in Estonia with EU requirements and make the rules for procurement unambiguous, flexible, and transparent.

The main changes as compared to previous regulation involve simplifying procurement procedures with respect to purchases below internationally established thresholds and within the utilities sector. For example, if the estimated value of a procurement contract falls below the threshold, then the supplier may now freely choose the procedure they wish to follow.

The companies in which a local government or other public partner owns a majority holding are now subject to less strict requirements with respect to public procurement. In most cases, these companies no longer need to organise a procurement procedure.

Estonia

Harmonization of public procurement act with EU requirements

Latvia

Tax Law changes part of campaign to reduce Latvian inflation

Lithuania

More favourable taxation for ships registered with the Lithuanian seagoing ship registry

Sorainen Law Offices

Riga office celebrates 10th anniversary

In cases involving highly complex procurements, suppliers can now use the new 'competitive dialogue' procurement procedure, aimed at ensuring greater procedural flexibility and effectiveness. The new act also introduces dynamic purchasing systems for concluding purchase contracts and electronic auctions as part of the open or restricted procurement procedure.

To improve transparency and controllability of public procurement, suppliers must now indicate the basis for termination as well as results of public procurement, including material amendments to contracts, on submission of a procurement report.

Additionally, the new act substantially changes review procedures. The aim is to increase efficiency of review of challenged decisions, with supervision focused on procurements in progress.

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COMPETITION AND REGULATORY LAW

Stricter cartel regulation

According to the previous version of the Estonian Penal Code valid until March 2007, only management and supervisory board members and a company itself could be punished for prohibited agreements. But as of March 2007, company employees are potentially responsible for cartel offences. For example, if two salesmen from competing companies enter into a price fixing or market sharing agreement, then according to the previous Penal Code they could only be punished if they were also management or supervisory board members. However, under the current Penal Code, they could be sentenced to three years imprisonment or fined 500 times their daily rate of pay, while companies could be fined up to EEK 250 million. So, it is now very important that both board members and company employees pay very careful attention to competition law rules.

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COMMERCIAL CONTRACTS

Supreme Court clarifies issues on the right to file an action in trade mark disputes

The 30.05.2007 decision of the Civil Chamber of the Supreme Court clarifies some issues related to a trade mark proprietor's refusal to file an action to protect its exclusive rights. The court specified who may file an action against infringement of an exclusive right.

Under the former Trade Marks Act (in force until 01.05.2004), a licensee only assumed the right to file an action to protect an exclusive right if the proprietor of the trade mark had refused to file an action. However, the act did not specify in what form the proprietor had to communicate its refusal.

The Supreme Court held that a trade mark proprietor's refusal to file an action may take any form, and may be substantiated by means of any proof. Thus, even inactivity by a trade mark proprietor may be considered as refusal to file an action because otherwise the right of the licensee would be left unprotected.

The current Trade Marks Act explains the issue more clearly, stating that a licensee may file an action without permission after sending a notice of an infringement of an exclusive right to the proprietor of a trade mark if the proprietor fails to file an action within a reasonable time.

Moreover, the previous Trade Marks Act did not specify which trade mark proprietor (the proprietor at the time of infringement or at the time of filing the action) could file an action to protect infringed rights. The Civil Chamber of the Supreme Court held that the right lies with the person registered as proprietor of the trade mark at the time the action is filed. Hence, the licensee must prove that the registered proprietor, not the proprietor at the time of the infringement, has refused to file an action. This interpretation is further supported by § 4 (1) and (2) of the current Trade Marks Act.

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LATVIA

TAX

Tax law changes part of campaign to reduce Latvian inflation

On 17.05.2007 the Latvian parliament passed amendments to various tax laws as part of a campaign to reduce the current rate of inflation. The amendments became effective on 12.06.2007, except the provision for sale of real estate, where a transitional period is granted up to 01.07.2010, as explained below.

Personal income tax

Income from the disposal of real estate is now exempt if the owner has owned it for 60 months since registration of ownership in the Land Book and has declared it as their primary place of residence for the 12 months prior to the agreement under which the real estate is disposed of. This is later referred to as the "5+1 rule".

Note: the Parliament replaced the word "sale" in the previously used phrase "income from the sale of real estate" with the word "disposal". As a consequence, not only the sale of real estate triggers personal income tax consequences but so do gifts and other types of transaction involving change of real estate ownership.

Moreover, due to changes in the law the disposal of real estate is now defined to include sale of shares in a company with more than 50% of its assets directly or indirectly consisting of real estate located in Latvia in the year of disposal or the previous year. This definition applies to qualifying share sales by both resident and non-resident taxpayers. As of the end of last year, sale of real estate already included sale of those shares where real estate was contributed to the share capital of the company whose shares are sold.

The changes to the law also provide for transitional provisions that will allow certain real estate to be sold up to 01.07.2010 (generally, if ownership of a property was registered with the Land Book Register by 12.06.2007) and still be treated as exempt in accordance with the law existing prior to the changes (the 12 months rule).

State duty on real estate disposal registration

From 16.04.2007 stamp duty applicable to registration of change of ownership of real estate with the Land Book has been increased from the previous 2% capped at LVL 30,000.00 (EUR 43,000.00).

Duty of 4% without a cap applies to individuals who have already registered ownership of two properties with the Land book and wish to register a third or more.

Duty of 3% capped at LVL 50,000.00 applies to registration of the first two properties received by an individual as a gift. Registration of subsequent gifted properties is subject to 6% duty.

Corporate income tax

Under the Corporate Income Tax Law, non-residents who sell Latvian real estate remain subject to a 2% withholding tax on the total value of the sale proceeds. The 2% withholding tax now also applies to the sale of shares in a company with more than 50% of its assets directly or indirectly consisting of real estate in Latvia in the year of disposal or the previous year.

Apart from real estate, new provisions in corporate income tax regulation also target luxury motor vehicles. The type of passenger vehicle that can be used by a company in its business and qualify for tax deductions has now been restricted. Luxury cars in most cases no longer qualify as company vehicles (unless purchased before 12.06.2007, in which case the new provisions do not apply).

Latvia

A vehicle will not qualify for tax deductions if it meets the following criteria:

(a) it has less than 8 seats excluding the driver,

(b) its value including VAT, exceeds LVL 30,000.00 (EUR 43,000.00),

(c) it is not designed for use as a specialised transport vehicle or has not been modified to operate as such, or

(d) it is not a demonstration vehicle used by a dealer of the particular vehicle make.

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BANKING AND FINANCE

Listed companies now under increased transparency requirements

On 01.05.2007 a number of significant amendments to the Financial Instrument Market Law came into force. The purpose of the amendments is to transpose the provisions of Directive 2004/109/EC relating to the requirements for disclosure of information on issuers (annual and periodic reports) whose securities are traded on a regulated market, as well as to reflect amendments made to another Directive.

One of the amendments provides for stricter notification requirements in respect of shareholders who acquire or dispose of shares of an issuer whose shares are traded on the Latvian regulated market (even if the issuer is registered abroad). As of 01.05.2007, persons whose voting rights have decreased or increased above or below 5%, 10%, 15%, 20%, 25%, 30%, 50% and 75% either by directly or indirectly acquiring or disposing of shares or otherwise, must inform the company and the Financial and Capital Market Commission about changes in voting right stakes. If the state of origin of the issuer is Latvia, then the obligation to inform also extends to an increase above, or decrease below, a 95% holding. The information must be submitted to the Company and the Commission by special form no later than four days after the person knows or ought to have known that he has (directly or indirectly) acquired or disposed of voting rights in a company or the possibility to use those rights.

Although these and other amendments to the law are significant, even more substantial amendments to the law, relating to implementation of the Markets in Financial Instruments Directive (MiFID), are currently being reviewed in the parliament, with the aim of adopting them in the second half of 2007.

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DISPUTE RESOLUTION

Reform of the Administrative Violations Code

On 21.06.2007, amendments to the Administrative Violations Code entered into force. The amendments introduce comprehensive changes in various spheres. For example, they clarify the procedure for examining administrative violation cases in a state institution, terms for appeal, the procedure for issuance of administrative violation protocols, including the possibility to issue an administrative violation protocol without the presence of the person involved. In order to facilitate the effectiveness of the court, the amendments stipulate reduction of those cases falling within the competence of district (city) courts.

The amendments also provide for competence of the Competition Council to impose administrative penalties for violations of the Advertising Law along with the same decision establishing a breach.

The amendments also increase the administrative penalty for different administrative violations. These include violation of the regime of electricity network protective zones, refusal to negotiate for a collective agreement, or violation of a collective agreement. Based on previous amendments to the Administrative Violations Code, an administrative penalty for different violations is also applicable to legal persons.

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LITHUANIA

TAX

More favourable taxation for ships registered with the Lithuanian Seagoing Ship Registry

Amendments directly related to international carriage by ships and taxation thereof were recently incorporated into the Lithuanian Law on Corporate income tax. Under the law, fixed profit tax (tonnage fee) is introduced as an alternative to a usual profit tax. Shipping companies are entitled to choose whether to pay a profit tax from income or to pay a fixed profit tax calculated according to the functional tonnage of the ship. 15% profit tax rate applies to the base of a fixed profit tax without deductions.

Notably, a fixed profit tax is applicable only to income received from international carriage by ship and other related activities, e.g. administration,

exploitation, and maintenance of ship, insurance services, loading and unloading, container lease for carriage of goods by sea etc. A fixed profit tax applies until 31.12.2016 for shipping entities that comply with the legal requirements set forth in the law.

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REAL ESTATE AND CONSTRUCTION

Powers of State supervision of construction officers regarding unauthorised constructions has been clarified

On 03.05.2007 the Lithuanian Ministry of Environment issued an order "Approval of Construction Technical Regulation STR 1.09.06:2007 "Construction Suspension. Liquidation of Consequences of Unauthorised Construction" ("the Order"). The new legislation was adopted in order to fight with illegal constructions more effectively. The regulation approved by the Order elaborates on provisions for suspending construction of a building as well as provisions for liquidating consequences of unauthorised construction set out in the Law on Construction. The Order replaces the former order of the Minister of Environment on unauthorised construction and establishes the following new provisions establishes:

(i) if the court decision to demolish an unauthorised structure is not fulfilled, an institution exercising State supervision of construction could be required by the court to demolish the structure and to clear the construction site as well as to reimburse from the builder its expenses incurred,

(ii) the duty of the officer drawing up a construction suspension act to perform periodical inspections regarding termination of construction works not less than once a month,

(iii) clearer procedure for demolition, in accordance with a court decision, of unauthorised construction, reconstruction or repair, when the court requires the institution exercising State supervision of construction to demolish the respective structure.

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INSURANCE LAW

Harmonization of insurance law

On 11.06.2007 the new Law on Compulsory Insurance against Civil Liability in Respect of the Use of Motor Vehicles came in force. The main purpose of the law is to harmonize with European Union insurance law.

The new law significantly increases sums insured for personal injury (up to EUR 5 million) and for damage to property (up to EUR 1 million). The increase will take place progressively by establishing transitional periods of 2.5 and 5 years.

In order to expand the validity of insurance policies in territory and time, the new law lays down that once an insurance premium has been paid, the insurance contract should ensure insurable protection in every Member State of the European Union during the validity of the policy, including periods when the vehicle is in another EU Member State.

Recent amendments to the new law also lay down, for example, conditions when traffic police need not be called to a road accident, possibilities to conclude an insurance contract at the frontier, the insured's right to receive information from the insurer regarding insured events involving the insured during the past five years. Moreover, the recent amendments define matters such as the owner of an insured motor vehicle, and appointment of an insurance company claims inspector.

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e-mail: tomas.kontautas@sorainen.ltNEWS IN SORAINEN
LAW OFFICES

Recent deals

Advising on the largest real estate transaction in the Baltics

Sorainen Law Offices advised SEB Group in a landmark transaction involving sale and lease-back of the entire property portfolio of SEB in the Baltics. The transaction involved a total of 47 real estate objects in Lithuania, Latvia, and Estonia. With a value of approx. EUR 200 million, this is the largest and probably most complex real estate transaction in the Baltics to date. The Sorainen Law Offices team was led by partner Kestutis Adamonis and senior associate Rita Svedaite in Vilnius, partner Girts Ruda and senior associate Lelde Lavina in Riga, and partner Kaido Loor and senior associate Triin Toomemets in Tallinn.

Mercuria acquisition of Eurodek

Tallinn office advised Mercuria Energy Holding B.V., the member of the international group of energy companies Mercuria, in the acquisition of Eurodek oil terminal in Estonia. The terminal has currently storage place for approx. 305,000 cubic metres of oil or products. The transaction was handled by partner Toomas Prangli, senior associate Kristi Lehtis and associate Stefano Grace.

Sale of Auto24

Tallinn office advised 24 Holding OÜ in the sale of shareholding in Auto24 (Autoportaal OÜ), the leading web portal for sale and purchase of used and new cars in Estonia, to Sanoma Corporation. Auto24 also publishes Estonia's largest second-hand car magazine, which is freely available in 30 locations throughout the country. The seller's legal team was headed by partner Toomas Prangli and senior associate Paul Künnap.

Advising in acquisition of major shopping center in Lithuania

Vilnius office advised Deka Immobilien GmbH, the world's leading manager of open-ended property funds, in its acquisition of the "BIG" shopping center for approx. EUR 37 million. This is one of the biggest shopping centers in Vilnius with a total area of approx. 26,000 sq.m. Our team was led by partner Tomas Milasauskas and senior associate Rita Svedaite.

Assistance in starting a construction of a new modular system production plant in Ventspils

Riga office has recently assisted Norwegian company "Heimdal Byggsystem International AS" in starting a construction of a new modular system production plant in Ventspils, Latvia. Our team led by partner Girts Ruda and senior associate Lelde Lavina helped to establish a Latvian subsidiary and conclude construction and loan agreements with a Latvian commercial bank. "Heimdal Byggsystem International AS" plans to invest approx. EUR 15 million and create 120 skilled work positions in this project. Girts Ruda noted: "It is good to see that Norwegian investors find the financial advantages of locating new factory in the Special Economic Zone in Ventspils, which would allow them to become more competitive in the Norwegian market while at the same time give them significant returns on their investment".

Assistance in purchase of two major mixed use construction projects in Riga

In March 2007, AFI Europe N.V., a company forming part of Africa Israel Group, an international holding and investment company, closed the transaction for purchase in Riga of two major mixed use construction projects with a gross area of approximately 127,000 sq. m. Our Riga office acted as local counsel for AFI Europe N.V., carrying out legal due diligence of the two projects and assisting in drafting and negotiating the transaction documents. Our team was led by partner Girts Ruda and senior associate Eva Berlaus-Gulbe. The size and complexity of the real estate development projects in this assignment, as well as the very limited time available for completion of the transaction, offered a special challenge to our team.

Assistance to largest mobile phone operator in Latvia

Riga office assisted Latvijas Mobilais Telefons SIA, the largest mobile phone operator in Latvia, in its acquisition of SIA ZetCom, a provider of virtual mobile phone communication services. We assisted in legal due diligence of the target company, transaction document drafting and merger notification matters. The project was of particular interest due to its competition law aspects.

Contributed by Tiina Erik, Estonia; Gita Rivdike, Latvia; Neringa Petrauskaite, Lithuania. Editor: Toomas Prangli, Estonia.

Within a week Vilnius office closed four transactions valued over LTL 1.050 billion in total

During the first week of May alone, our Vilnius office assisted in signing or closing four real estate transactions with the total value of LTL 1.050 billion. The huge investment in Lithuanian real estate market was made by a few international real estate investment management firms.

● Employees

New partner for Sorainen Law Offices in Tallinn

Reimo Hammerberg, Attorney-at-Law, senior associate at Tallinn office, has become a partner in Sorainen Law Offices. Reimo joined the firm in June 2001 and now heads the Banking & Finance and Commercial Contracts teams at our Tallinn office. Reimo is one of the most experienced financing experts in the office. His key areas of expertise are banking, securities and capital markets, project finance and PPP as well as trade finance, and public procurement. He is also one of the leading construction law specialists in the office.

Risto Agur, senior associate and Attorney-at-Law heading the Corporate Advisory Team of our Tallinn office, has been selected for a Fulbright Student Award to the United States, and has been admitted to the LLM program on Securities & Financial Regulations Law at Georgetown University Law Center in Washington D.C., beginning Fall 2007. As a Fulbrighter, Risto will join the ranks of more than 279,500 alumni of the program. Fulbright alumni have become heads of state, judges, CEOs, and they have been awarded thirty-six Nobel Prizes. Georgetown's graduate law programs are among the most highly regarded throughout the U.S. and the world.

Dr. Tomas Kontautas has joined Common Principles of European Contract Law (CoPECL) Economic Impact Group

Dr. Tomas Kontautas, head of Pan-Baltic Insurance team, has joined Common Principles of European Contract Law (CoPECL) Economic Impact Group to perform the economic assessment of the European rules on insurance contracts. CoPECL network of excellence has been established under the auspices of the European Commission's Sixth Framework Programme to deliver Common Frame of Reference, containing principles of European Contract Law that will serve as a model law for national and European authorities as well as for private parties. Members of the Economic Impact Group are leading European academics in the law and economics field. The work of Economic Impact Group is coordinated by Tilburg University.

Four new lawyers and four new administrative staff at your service in our Riga office

Riga office legal team has been joined by four new lawyers: senior associate **Renate Purvinska** and associates **Inese Rendeniece**, **Alisa Surko**, and **Inga Kvesko**. Renata previously worked for seven years as senior legal counsel at Deloitte Latvia. Her key areas of specialization are M&A and corporate law. Inese's key areas of expertise are finance & securities and intellectual property law. Before joining Sorainen Law Offices, she worked as an associate in the law firm Loze, Grunte & Cers. Alisa is strengthening our firm's tax team. Inga will support our M&A and Commercial contacts teams.

Roberts Prusis, **Ieva Balcere** and **Kristine Novicka** have joined the Riga office as general assistants and **Martins Stanguts** will support the accountancy team with invoicing issues.

● Seminars

Associate Regina Derkintyte presents at TransBaltica2007 conference

Associate Regina Derkintyte from Vilnius office delivered a presentation at the 10th annual international conference TransBaltica 2007 which took place in Riga on 15 June. Ms. Regina Derkintyte reviewed regulatory framework for transport and its recent developments in the Baltics.

● Other

The European Legal 500 and Chambers Europe highly recommend our offices

Sorainen Law Offices is regularly ranked in the top tier of researches carried out by the leading legal directories. Quality of our work has again been recognized by the 2007/2008 edition of The European Legal 500 and Chambers Europe 2007. A selection of what has been said about us along with our awards is below:

- Clients commend Sorainen for its extraordinary service – pragmatic, transaction-focused, insistent and highly reliable
- Met with considerable success as an international brand and a pan-Baltic leader
- Propelled itself into the leading pack, the result of key hires and a growing profile on headline matters
- Clients laud the 'speedy feedback and communication'
- Wise opinions, high quality and diligent attitude
- Offers service-oriented attitude, precise documentation and highly qualified lawyers
- Strong business thinking, professionalism and a nature of fiercely protecting the client

Tallinn office ranked high in employee- and family-friendly companies contest

Business newspaper *Äripäev* and family magazine *Pere ja Kodu* organised a contest to find the most employee- and family-friendly companies in Estonia. It was the second time Tallinn office participated in the contest, receiving a high 4th ranking among family-friendly companies and ranking 8th on the overall chart.

Sorainen Law Offices Riga office in cooperation with Dianas Bizness invites you to the 10th anniversary M&A focused conference

“HOW TO MAKE THE MOST SUCCESSFUL DEALS?”
to take place on 31 August 2007 at the Reval Hotel Latvia in Riga, Latvia.

For more detailed information please visit www.db.lv/konferences or our website: www.sorainen.com or contact Ms. Gita Rivdike (phone: +371 6 7365000 or email: gita.rivdike@sorainen.lv).

RECENT ECJ CASE LAW IN TAXATION

We believe the European Court of Justice case law is an important tool in establishing the meaning of EC regulations and directives also directly or through the national law applicable in the Baltic States, especially regarding the indirect tax. In the below cases the ECJ has recently decided that:

1) even when a registered VAT payer requests an input VAT refund it has paid in another EU Member State it must be ready to prove that it is not just a "letter box" or "brass plate" company;

2) VAT applicable to closed-ended investment funds should be equally treated to open-ended investment funds that were exempted from VAT.

Input VAT recovery restricted for "letter box" companies
ECJ, 28.06.2007, Case C-73/06, *Pnazer Luxemburg Sarl v. Bundeszentralamt für Steuern*

Summary

The applicant had certificate regarding its VAT registration in Luxembourg. The applicant applied for refund of a VAT paid in Germany. Having been informed that applicant have no telephone line at the address stated in the certificate in Luxembourg, the German tax authority took the view that the applicant had not established that the place of its management was in Luxembourg, and respectively rejected the applicant's applications for refund.

Issues:

1) whether the certificate according to the specimen form in Annex B to the 8th VAT Directive necessarily proves that the taxable person is established in the issuing Member State;

2) interpretation of the term "business" used in Article 1(1) of the 13th VAT Directive

Court:

If the person has certificate in accordance with the specimen in Annex B, it should be presumed that the person is not only subject to VAT in the Member State whose tax authorities issued it (Luxembourg), but also that he is established in that Member State.

Authorities of the Member State in which refund of input VAT is applied for (Germany) are not prohibited, where they have doubts as to the economic reality of the company whose address is given in that certificate, from verifying that reality. BUT, still, they cannot, given the presumption which attaches to that certificate (fraud, etc), refuse the taxable person a refund without any further prior verification.

"Company's place of business" requires a series of factors to be taken into consideration, foremost amongst which are its registered office, the place of its central administration, the place where its directors meet and the place, usually identical, where the general policy of that company is determined, etc. Fictitious presence such as that of "letter box" or "brass plate" company, cannot be described as a place of business for the purpose of Article 1(1) of the 13th Directive.

VAT treatment should be equal to all types of investment funds

ECJ, 28. June 2007, Case C-363/05, *JP Morgan Fleming Claverhouse Investment Trust plc, The Association of Investment Trust Companies v. The Commissioners of HM Revenue and Customs*

Summary:

Dispute arose from the fact that Member State concerned interpreted Article 13B(d)(6) of the 6th Directive (Member States shall exempt management of special investment funds as defined by Member States) in such a way that open-ended investment funds were exempted from VAT, whereas closed-ended funds were not.

Issues

1) Whether the term „special investment funds" in Article 13B(d)(6) of the 6th Directive is capable of including closed-ended investment funds, such as investment trust company's (ITCs)?

2) The scope of the phrase „as defined by Member States" in Article 13B(d)(6) of the 6th Directive.

3) Whether Article 13B(d)(6) of the 6th Directive has direct effect?

Court:

1) Defining meaning of the words „special investment funds" does not permit the Member States to select certain funds located on their territory and grant them exemption and exclude other funds from that exemption. Consequently, closed-ended funds may also be excluded;

2) Article 13B(d)(6) (that Member States shall exempt management of special investment funds as defined by them) has direct effect.

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