

VAT Treatment of the management of defined benefit pension schemes: Revenue's position following the decision of Court of Justice of the European Union in Wheels (Case C-424/11)

This document should be read in conjunction with paragraph 6 of Schedule 1 to the VAT Consolidation Act 2010 (VATCA 2010)

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Introduction

This manual sets out the VAT treatment of the management of a defined benefit pension scheme following the decision of the Court of Justice of the European Union (CJEU) in *Wheels Common Investment Fund Trustees Ltd (Wheels)*¹

1. Background

Wheels was one of a number of trustees of a fund pooling the assets of occupational pension schemes established by the Ford Motor Company in order to meet its obligations under national legislation and collective agreements. Each of those schemes provide pensions to former employees, calculated by reference to the final salary of the members of the scheme and their length of service with the company. Capital International Ltd (CIL) provided fund management services to Wheels and charged VAT on those services. CIL claimed a repayment of VAT from the Commissioners on the basis that it was providing management services to a special investment fund. The claim was refused and the First-Tier Tribunal referred the matter to the CJEU.

2. Judgment of the CJEU

The CJEU defined “special investment funds” as funds which constitute undertakings for collective investment in transferable securities within the meaning of the UCITS Directive. Furthermore, the Court was of the view that funds which display characteristics identical to collective investment undertakings and thus carry out the same transactions or display features that are sufficiently comparable for them to be in competition with such undertakings must also be regarded as “special investment funds”.

The CJEU observed that a number of characteristics differentiate a defined benefit scheme from a collective investment undertaking:

- A defined benefit scheme is not open to the public but constitutes an employment-related benefit which employers grant only to their employees
- Members of a defined benefit scheme do not bear the risk arising from the management of the investment funds in which the scheme’s assets are pooled, unlike private investors with assets in a collective investment undertaking.

The CJEU went on to further explain that such a fund also differs from a collective investment undertaking from the employer’s point of view. It held that the employer is not in a situation comparable to that of an investor since although the employer must bear the financial consequences of the investments made by the scheme’s

¹ *Wheels Common Investment Fund Trustees Ltd & Others v Commissioners for Her Majesty’s Revenue and Customs*

managers, the contributions paid are a means by which the employer complies with its legal obligations towards its employees.

Having regard to these considerations, the CJEU concluded that defined benefit schemes cannot be regarded as a “special investment fund” within the meaning of Article 135(1)(g) of Council Directive 2006/112/EC.

3. Application of the CJEU decision to Ireland

The judgment in *Wheels* confirmed the current treatment in Ireland. Consequently, fund managers should continue to charge VAT on services to defined benefit pensions schemes. Management services are subject to VAT at the [standard rate](#).