

VAT treatment of the management of a defined contribution occupational pension scheme: Revenue's position following the decision of the Court of Justice of the European Union in ATP (Case C-464/12)

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 contribution occupational pension scheme following the decision of the Court of Justice of the European Union (CJEU) in ATP Pension Service A/S v Skatteministeriet (ATP).

1. Background

ATP provides services to occupational pension funds including administrative services and services relating to payments into and disbursement out of retirement schemes. The services consist of the opening of accounts in the pension funds system and the crediting to those accounts of the contributions paid. ATP also initiates the withdrawal of amounts from the accounts of pension customers by issuing instructions to financial institutions. ATP is not involved in the investment of the contributions paid into the retirement schemes (this task is handled by the pension funds themselves).

The questions before the CJEU arose as a result of a dispute between ATP and the Danish Ministry of Taxation over the VAT treatment of ATP's services and mainly related to:

- i) the meaning of "special investment funds as defined by Member States" in the context of occupational retirement schemes; and
- ii) the notion of "management" of such funds.

2. Judgment of the CJEU

i) Special Investment Fund

The first question before the Court was whether defined contribution occupational pension funds constitute a "special investment fund" within the meaning of Article 135(1)(g) of the VAT Directive. The CJEU observed that **"the essential characteristic of a special investment fund is the pooling of assets of several beneficiaries, enabling the risk borne by those beneficiaries to be spread over a range of securities"**. The CJEU held that contribution pension funds may be treated as special investment funds if:

- they are funded by the persons to whom the retirement benefit is to be paid
- the savings are to be invested using a risk spreading principle; and
- the pension customers bear the investment risk.

i) Management of Special Investment Funds

The second question before the Court concerned the “management” of special investment funds. The CJEU has consistently stated that the aim of the exemption in Article 135(1)(g) is to facilitate investment in securities through investment undertakings. In order to come within the ambit of the exemption the CJEU has also consistently held that the 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 special investment funds.

In ATP the CJEU was of the view that through the opening of accounts in the pension funds system and the crediting to those accounts of the contributions paid, the rights of the pension customers vis-à-vis the pension funds are established. In those circumstances, the CJEU held that transactions crediting contributions to such accounts are essential to the “management of a special investment” fund. Accordingly, such services come within Article 135(1)(g) of the VAT Directive and are exempt.

3. Application of the CJEU decision

Revenue accepts as a consequence of the judgment that defined contribution occupational pension funds may be treated as special investment funds where each of the conditions at paragraph (2)(i) above are met. In order to ensure Irish VAT legislation complies with the judgment, Section 71(1)(c) of the Finance Act 2014 amended the VAT Consolidation Act 2010 to provide that a defined contribution scheme (within the meaning of the Pensions Act 1990) is regarded as a specified fund with effect from 1 March 2015. One-Member arrangements do not come within the scope of the exemption.

The management of defined contribution occupational pension funds are therefore exempt from VAT with effect from 1 March 2015. Pension fund managers will no longer have an entitlement to a credit for VAT incurred on their inputs in relation to supplies to such pension schemes and input credits should be adjusted accordingly.

4. Retrospective application of the CJEU decision

The decision of the CJEU may be relied on by pension fund managers that have accounted for VAT on management services provided to defined contribution occupational pension schemes for past VAT periods, subject to the 4-year time limit. Adjustments should be made for any claimed inputs that related to previously taxable income.