

## **VAT Treatment of Portfolio Management Services: Revenue's position following the decision of the Court of Justice of the European Union in Deutsche Bank AG (Case C-44/11)**

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 Revenue's position on the VAT treatment of portfolio management services following the decision of the Court of Justice of the European Union (CJEU) in the Deutsche Bank<sup>1</sup> case.

### 1. Background

Deutsche Bank provided discretionary portfolio management services to client investors established within and outside the EU. Those client investors instructed Deutsche Bank to manage securities, at its own discretion and without obtaining prior instruction from them, in accordance with their chosen investment strategies. The service provided by Deutsche Bank consisted of analysing and monitoring assets of client investors, on the one hand, and purchasing and selling securities on the other.

The client investors paid a single annual fee to Deutsche Bank. The annual fee comprised of a separate identified charge for (i) asset management and (ii) buying and selling of securities. The fee also covered account and portfolio administration and front-end fees for the acquisition of shares, including units in funds that were managed by undertakings belonging to Deutsche Bank.

The main issue before the CJEU was whether such supplies came within the exemption under the provisions of Article 135(1)(f) of Council Directive 2006/112/EC (VAT Directive).

### 2. Judgment of the CJEU

The CJEU observed at the outset that a portfolio management activity such as that carried out by Deutsche Bank basically consists of (i) analysing and monitoring the assets of client investors and (ii) actually purchasing and selling securities. Having regard to all the circumstances in which that portfolio management service took place, the CJEU was of the view that the elements are not only inseparable, but must also be placed on the same footing. Consequently, those elements must be considered to be so closely linked that they form, objectively, a single economic supply, which it would be artificial to split. The CJEU ruling sets out that in such circumstances the entire fee is chargeable to VAT.

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<sup>1</sup> Finanzamt Frankfurt am Main V-Höchst v Deutsche Bank AG

### 3. Application of the CJEU decision

The CJEU held that portfolio management services such as those provided by Deutsche Bank should be treated as a single service and subject to VAT. Prior to the decision of the CJEU, Revenue understood that portfolio management services were comprised of several separate elements. Accordingly, where separately identifiable activities were engaged in by the portfolio manager, it was accepted Revenue practice that each activity could be treated separately for VAT purposes provided there was a legal management services agreement in place and that:

- (i) the separate elements were clearly identifiable in the services agreement
- (ii) the basis for apportionment of the fee was realistic, and
- (iii) the activities in question were actually undertaken.

Revenue accepts that this treatment can no longer apply where a fee is charged on a periodic basis for a single supply of a service consisting of (i) analysing and monitoring the assets of client investors and (ii) of purchasing and selling securities. The judgment clearly provides that the entire fee is subject to VAT.

In circumstances where fees are charged strictly for the purchase or sale of shares or securities on a transaction by transaction basis, exemption continues to apply where each of the following criteria are met:

- a) the contractual arrangements reflect that fees are being charged on a transaction by transaction basis and
- b) the arrangements are correctly reflected on the invoices.

The Court also held that the portfolio management activity carried out by Deutsche Bank does not correspond to the concept of “management of a special investment fund” within the meaning of Article 135(1)(g) of the VAT Directive. The Court stated that the transactions covered by that exemption are those which are specific to the business of undertakings for collective investment.

By contrast, services such as those performed by Deutsche Bank generally concern the assets of a single person. The portfolio manager buys and sells investments in the name, and on behalf of the client investor, who retains ownership of the investments throughout.

### 4. Retrospective Application of the CJEU decision

Revenue does not propose to review past VAT periods where portfolio managers disaggregated their services in circumstances where Revenue practice, as described above, was followed.