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## Editorial

We are pleased to present you the PricewaterhouseCoopers Financial Services VAT Alert containing the latest European VAT news in the sector. This Alert is intended as an easy tool for you to keep track of the ever changing VAT in the Financial Services Sector. If you have any queries or need assistance, please contact us.

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## ECJ extends scope of investment management exemption

*ECJ, JP Morgan Fleming Claverhouse Investment Trust plc & the AITC, 28 June 2007, C-363/05*

*The ECJ has delivered a robust judgment in the JP Morgan case, which concerns the scope of the VAT exemption for the “management of special investment funds”. The ECJ has clearly indicated that VAT exemption extends to the management of all investment funds that compete with UCITS funds, not just Investment Trust Companies (ITCs).*

### Background

The case arose from a challenge made by JP Morgan Fleming Claverhouse Investment Trust (JP Morgan) to the VAT on fees charged to it by third party asset managers.

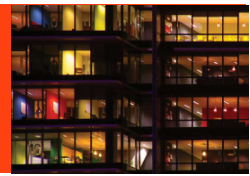
JP Morgan argued that the services fell within the fund management exemption in article 13B(d)(6) of the EC Sixth VAT Directive (now Article 135(1)(g) of the EC VAT Directive).

The UK VAT legislation currently limits the exemption to the management of specified funds, namely Authorised Unit Trusts (AUTs), Open-Ended Investment Companies (OEICs) and Trust-based Schemes.

### Ruling ECJ

The ECJ has gone further than the Advocate-General in restricting the discretion of Member States to limit the scope of the fund management exemption.





The ECJ makes clear that the purpose of the exemption is to promote investment in collective funds as an alternative to direct stock market investment. Any investment fund that is in competition with UCITS funds (which appear to the ECJ to be VAT exempt by definition) should therefore also qualify for VAT exemption.

The ECJ has rejected any argument that the VAT exemption should be influenced by the legal characteristics of the fund, whether that fund is open or closed-ended or a trust-based scheme.

Furthermore, while the ECJ notes that it is not deciding whether the VAT exemption should apply to funds other than ITCs in this case, it makes it clear that what determines classification as a 'special investment fund' is the definition of that term in the context of the objectives of the EC Sixth VAT Directive and not distinctions of national law.

#### Key implications

This decision has clearly opened the door for the exemption to apply to other types of investment vehicle, which may not currently benefit from the exemption for "special investment funds". Provided these investment vehicles involve an investment in collective funds and are in competition with UCITS funds, according to the ECJ they should qualify for VAT exemption.

In particular, the decision may apply to the management of pension funds. Pension fund management is already VAT exempt in many member states and pension funds are included within the draft revised exemptions recently issued by the European Commission for consultation.

As the ECJ decided in *Abbey National* (Case C-169/04) that "management" includes outsourced fund administration that is specific and essential, the implications for fund managers are equally applicable to fund administrators.

#### What should you do now?

All taxpayers potentially affected by the decision, including investment funds, fund managers, and (following *Abbey National*) fund administrators, should act immediately in

making claims to their respective tax authorities, if they have not done so already.

Those who have filed protective claims should revisit them. All claimants (including funds) should consider the effects of the corresponding input tax adjustments which may be required as a result of claiming the exemption.

Asset managers should review their potential liabilities under all existing investment management agreements and service contracts for all types of investment funds, particularly segregated pension fund mandates, and consider making (or asking their suppliers to make) protective claims for repayment of VAT incorrectly paid to the respective tax authority.

A video is available in which Jamie Randell, PwC London financial services tax partner, explores the ruling and its implications. The video may be accessed via this [LINK](http://http-r0.vitalstreamcdn.com/pricewateruk_vitalstream_com/jpm_ruling_june_07/jpm_ruling_june_07.html) ([http://http-r0.vitalstreamcdn.com/pricewateruk\\_vitalstream\\_com/jpm\\_ruling\\_june\\_07/jpm\\_ruling\\_june\\_07.html](http://http-r0.vitalstreamcdn.com/pricewateruk_vitalstream_com/jpm_ruling_june_07/jpm_ruling_june_07.html)).

We recommend that all clients who may be affected in any way by this decision should get in touch with their local PwC FS VAT contact for specialist advice as soon as possible.

For further information, please call your usual PwC contact or any of the people listed below.

*For more information, please do not hesitate to contact your usual PwC Indirect Taxes specialist or any of the people listed below.*

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