

## **National Association of Pension Funds announces it will participate in a lead VAT case on investment management fees**

The National Association of Pension Funds (NAPF) has announced that it will seek to join in an appeal to the VAT and Duties Tribunal lodged by Wheels Common Investment Fund Trustees Limited (WCIF) on whether investment management services provided to pension fund trustees are within the scope of the exemption set out in Group 5, Schedule 9 to the VAT Act 1994.

### **Background**

The recent European Court of Justice decision in JP Morgan Claverhouse (C-363/05) stated that Member States' ability to define 'special investment funds', for the purposes of Article 135(1)(g) of the recast VAT Directive, was limited by the principle of fiscal neutrality.

The NAPF has taken the position that the special investment funds exemption should also extend to the management of pension scheme assets and has consulted its members on an industry sponsored test case to claim VAT exemption.

As a result of the NAPF's stated position, a number of pension funds have requested that reclaims for overpaid output VAT be submitted to HM Revenue & Customs (HMRC) by their respective investment managers.

A number of claims have been rejected by HMRC on the basis that JP Morgan Claverhouse did not provide precedent in respect of investment management services provided to pension funds. In some cases, HMRC has also refused to allow the claims to stand as protective claims, in the absence of a lead litigant being announced by the NAPF.

### **Key implications**

The NAPF announcement that it will seek to join in the WCIF appeal could mean that HMRC's policy of refusing protective status for all pension fund claims becomes increasingly unsustainable.

Any fund managers and/or pension funds which have appealed HMRC's rejection of claims for the recovery of overpaid output VAT should now be able to stand their case behind the WCIF case, which has been lodged with the reference number LON/2008/0720.

Those who have had claims rejected by HMRC and have not appealed should now consider reopening those claims with HMRC as being entitled to protective status.

### **What should you do now?**

To the extent that fund managers and/or pension funds have not yet made claims for overpaid output VAT, action is required to quantify, prepare and file such claims with HMRC.

Such claims should be made for each of the following periods:

- three years prior to the date of the claim;
- following the House of Lords decision in Fleming/Conde Nast ([2008] UKHL 4) - 1 January 1990 to 4 December 1996 (or 1 May 1997 as appropriate).

Please note that any claims for the period 1 January 1990 to 4 December 1996 will have to be made no later than 31 March 2009.

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