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Opinion of the Advocate General in Case C-8/03

Banque Bruxelles Lambert SA (BBL) v Belgian State

**FOR THE FIRST TIME, THE COURT HAS BEEN REQUESTED TO RULE
ON THE QUESTION OF THE APPLICATION OF THE COMMON SYSTEM
OF VAT TO SOCIÉTÉS D'INVESTISSEMENT À CAPITAL VARIABLE
(OPEN-ENDED INVESTMENT COMPANIES) (SICAV)**

According to the Advocate General, SICAVs are, in principle, taxable persons for the purpose of VAT under Community law but services supplied to them are exempt provided they are linked to fund management.

Banque Bruxelles Lambert SA (BBL) provided assistance, information and consultancy services to sociétés d'investissement à capital variable (open-ended investment companies) (SICAVs) established in Luxembourg in respect of which it paid no VAT since Luxembourg exempts SICAVs from the application of VAT. In 1998, the Belgian tax authority ordered BBL to recover the VAT due in respect of the services supplied to SICAVs from 1993 to 1997 and found that, under Belgian law, there was no such exemption and that the place in which the service was provided was the decisive factor when calculating VAT.

According to BBL, that interpretation is contrary to the Sixth VAT Directive¹ in that, first, SICAVs are taxable persons for the purpose of VAT irrespective of their classification under national law and, secondly, the services supplied in the present case are exempt from VAT. It challenged the order to recover VAT before the Court of First Instance, Brussels, which referred a question to the Court of Justice of the European Communities on two points:

¹ Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes.

- Are SICAVs established in a Member State taxable persons for the purpose of VAT and, if so, where must the services supplied to them be deemed to be provided?
- If not, what kind of services supplied to SICAVs is exempt from VAT: assistance and management consultancy services or management services in the strict sense?

Advocate General M. Poiares Maduro delivered his Opinion in this case today.

The Advocate General pointed out first of all that SICAVs are taxable persons under Community law since, irrespective of the legal form chosen for the management of their activities, they are economic in nature and therefore fall within the scope of the common system of VAT.

He next considered the matter of the place where services are supplied to SICAVs. The directive lays down the principle that the place of supply of services is the place where the supplier is established but makes it subject to a number of exceptions, including that the place of supply of consultancy services and banking and financial transactions performed for taxable persons established in the Community but not in the same country as the supplier is the place where the customer has established his business. Accordingly, he took the view that the management activities in issue, since they fall within the framework of financial transactions, must be deemed to be supplied at the place where SICAVs have established their business.

Although answering the first question in the affirmative renders the second question unnecessary, the Advocate General considered it useful to analyse it since it was appropriate to define the exemption granted by Member States to “management of special investment funds” and the specific meaning to be given to the concept of management. Mr Poiares Maduro took the view that the fact that the Sixth Directive refers to the laws of the Member States does not mean that it is for the various national legislatures to determine the scope of that exemption. The latter must be extended to SICAVs on the same conditions as special investment funds which does not, however, mean that all services are exempt. In order to determine the scope of such exemption, it is appropriate to define the meaning of “management”, which is not defined either by the directive or by the case-law of the Court of Justice which has, however, defined a number of the activities exempted from VAT.

The Advocate General considered that although the exemption is not restricted solely to decision-making, it does not cover all services supplied to collective investment undertakings which are in the position of special investment funds. It must cover all transactions directly linked to the management system and which are linked to the operation of the fund, that is to determining policies regarding investment and the buying and selling of shares.

Do the services at issue have a direct effect on the financial position of the fund to the extent of having a decisive influence on the assessment of financial risks or on the decisions to be taken as to investments? The information provided by the referring court did not make it possible to conclude whether those services were dissociable from management of the SICAV. It is for the national court to rule, if necessary, on the precise nature of the services provided.

Important: The Opinion of the Advocate General is not binding on the Court. His role is to suggest to the Court, in complete independence, a legal solution to the case pending before it. The Court of Justice will now deliberate upon this case. Judgment will be delivered at a later date.

Unofficial document, for media use only, which does not bind the Court of Justice.

Available languages: English and French.

*The full text of the opinion can be found on the internet (www.curia.eu.int).
In principle it will be available from midday GMT on the day of delivery.*

*For additional information please contact Christopher Fretwell.
Tel: (00352) 4303 3355 Fax: (00352) 4303 2731*