

*PwC Nordic*  
FS Tax & VAT Event

---

OSLO, 25-26 OCTOBER 2017



---

# *VAT exemption of supplies to funds*

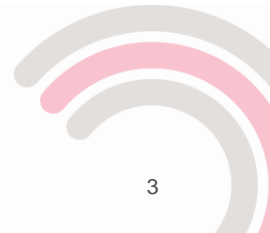


## ***Management of investment funds***

### Legal basis

- Article 135(1)(g) of the EC VAT Directive 2006/112/EC

***”... management of special investment funds as defined by the Member States.”***





## *Management of investment funds*

### Purpose

- ECJ C-363/05 JP Morgan

*”... provision is intended to ensure that the common system of VAT is **fiscally neutral** as regards the choice between direct investment in securities and investment through undertakings for collective investment ... .”*



## ***Management of investment funds***

VAT exemption: Two conditions

**1**

***Fund*** needs to qualify as a *special investment fund*; and

**2**

***Services*** provided need to qualify as *management of fund*

## ***Management of investment funds***

Concept of 'special investment fund' based on ECJ



# 1

***Fund*** needs to qualify as a special investment fund;

- Can be of any legal form (**Abbey National**)
- Can include closed-ended investment funds (**JP Morgan**)
- Does NOT include defined benefit pension funds (**Wheels**)
- Can include defined contribution pension funds (**ATP**)
- Needs to be subject to specific State supervision (**Fiscale Eenheid**)
- Can include a real estate fund (**Fiscale Eenheid**)

## *Management of investment funds*

### Concept of 'special investment fund' based on ECJ

- Can be broken down into number of separate services
- If form a distinct whole, and are specific to and essential for the management
- Portfolio management and administering undertakings for collective investment (ref. Annex II UCITS Directive 85/611) (**Abbey National**)
- Recommendations to a fund manager to purchase and sell assets (**GfBk**)

2

*Services provided need to qualify as management of fund*

### ***Not exempt fund management***

- Mere material and technical supplies
- Functions of a depository considered as control and supervision (**Abbey National**)
- Does not cover the actual management of the immovable property of a special investment fund (**Fiscale Eenheid**)



---

## ***Country updates***



---

## *Sweden*

- **The Swedish Tax Agency (STA)** published two new guidelines on April 21 regarding which types of funds and services that are covered by the exemption
- Motivated by the developments in later *case law from the ECJ*
- With regard to types of funds covered, the *STA expands the application of the exemption via a VAT directive conform interpretation of the Swedish VAT law*, which goes beyond the wording of the exemption for management of special investment funds
- A debate right now whether this is possible



---

## ***Denmark***

- **In 2015**, guidelines were issued in relation to ***reclaim of VAT following the ATP case***
  - Approx. 550 reclaims against the Danish tax authorities
  - Approx. DKK 2.5b
- **In 2016 and 2017**, dialogue with the Danish tax authorities
- **In 2017**, draft guidelines on the definition of "management"
- **In 2017**, working paper (not published) on the definition of "special investment fund" (relevant for, inter alia, private equity funds and real estate funds)



---

## ***Finland***

- ***Tax Authority Guideline 2016***
- ***Qualifying funds:***  
***State supervision? Which state?***
- ***More than one investor required***
- ***Custody services:***  
***cases in Supreme Administrative Court***



# Norway

## *Private equity – new guidelines (1:2)*

- In 2016, new guidelines on the VAT exemption for management of investment companies (funds)
- **Effective from January 1st 2017**
- The guidelines seems to presuppose that many managers/advisors to PE-funds are rendering both VAT exempted services (fund management) and services subject to VAT (advisory)
- **Bundled services – restricting the “main service” principle** - must distinguish between VATable and exempt services
- The VAT authorities opinion is that many manager/advisory companies to the PE-sector (only) partly can deduct input VAT



---

# Norway

## *Private equity – new guidelines (2:2)*

- Fund management in chain – **not only one manager**
- Not applicable with the AIF rules (alternative investment fund) – only one manager
- The guidelines have created uncertainty as to whether advisors to PE-funds and their services would still be considered as subject to VAT
- Several suppliers of services to PE-funds abroad have asked the VAT authorities for an guiding ruling - the answers are not consistent – **the wording in the agreement is important**
- Based on this, the *uncertainty* of the VAT handling of these issues remains

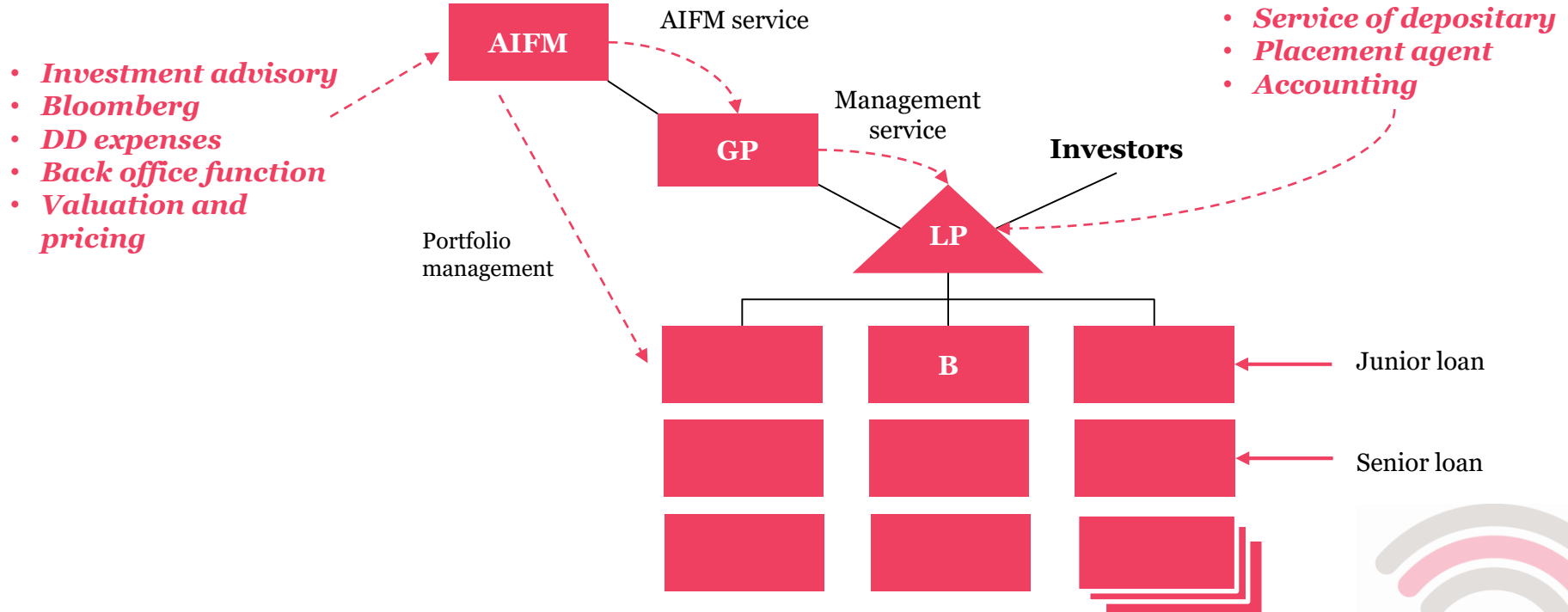




---

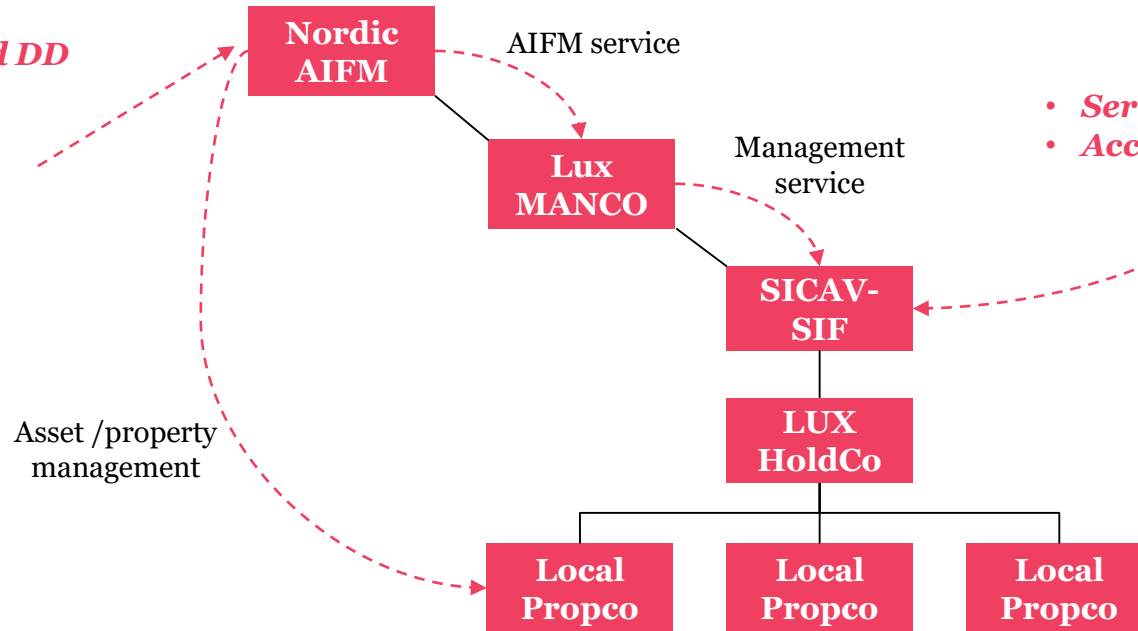
## *Case studies*

# Case study 1 – Private equity fund



## Case study 2 – Real estate fund

- *Transaction related DD expenses*
- *Development and planning*
- *Marketing*
- *Tax consulting*
- *Legal services*



- *Service of depositary*
- *Accounting*



## Case study 3 – Pension fund

### Pension Fund

#### Defined Contribution

#### *Management?*

- Investment advisory?
- Administrative services?
- Internal control functions?
- DD expenses?
- Market data?
- Tailormade IT system?

#### *Considerations*

- *Purchases from abroad?*
  - VAT deduction right in the country of supplier;
- DK: Special payroll tax (“lønsomsafgift”).