

VATR 37 (Govt Gazette No.105 of 13 November 2010)

Facts

P Ltd is licensed under the Financial Services Act to carry out the distribution of financial products, viz. the shares of F Ltd, which is an authorized mutual fund, listed (but not traded) on the Stock Exchange of Mauritius. P Ltd is the exclusive distributor of F Ltd.

In accordance with the terms and conditions of the distribution agreement with F Ltd, P Ltd markets, offers and sells shares to existing and new clients. It may also subcontract with intermediaries acting as introducers of clients to P Ltd. For its services, P Ltd charges F Ltd a commission in the form of a distribution fee (also referred to as an upfront fee or entry fee) amounting to 2% (net of VAT) on clients' gross subscription monies, i.e gross amount to be invested. The commission is incorporated in the offer price at the time of purchase of the shares, in much the same way as an investor would pay a brokerage fee to an investment dealer. Out of the distribution fee, P Ltd may in turn pay commissions to intermediaries in accordance with the terms of their respective agreements.

P Ltd is also licensed under the Securities Act 2005 to act as investment adviser (unrestricted category). In accordance with the discretionary investment management mandate, the company manages investment portfolios of securities for its clients. For its services, P Ltd charges an entry fee of up to 3% on the total value of the portfolio placed under its management, and a monthly management fee of the market value of the portfolio at the end of each month.

Currently, VAT is being levied by P Ltd on the distribution fee, the entry fee and the management fee.

Points in issue

Whether VAT must be levied by

- a) a licensed distributor of financial products on commission earned from the distribution of shares of an authorized mutual fund ?
- b) a licensed investment adviser on entry fees and management fees charged to clients for the provision of discretionary investment management services of investment portfolio?

Rulings

- a) The distribution of shares of an authorized mutual fund by a licensed distributor of financial products falls within the purview of item 50(c) of the First Schedule to the VAT Act 1998 which provides for "the issue, transfer or receipt of, or dealing with any stocks, bonds, shares, debentures and other securities, including the underwriting and the settlement and clearing of such securities. It is therefore an exempt supply;
- b) The entry fees and management fees earned by a licensed investment adviser falls within the purview of item 50 (e) of the above Schedule and is therefore also an exempt supply.