

SLFI Group — Federal Court of Appeal confirms that funds may unbundle and outsource fund managers’ exempt financial services

September 27, 2019

SLFI Group v. Canada ¹(*SLFI Group*) is an important decision from the Federal Court of Appeal (FCA) with respect to the application of GST/HST to fund management activities. The FCA overruled the Tax Court of Canada (TCC) to hold that payments made by a group of investment funds (the Funds) to a U.S. subsidiary of Citibank for financing services was GST/HST exempt. This was the case even though this financing function was originally within the purview of the fund manager (the Manager) and would have been GST/HST taxable if rendered directly by the Manager. By outsourcing the financing function to a third party, the Funds were able to save approximately \$45M in otherwise unrecoverable GST/HST.

The FCA reasons are instructive and provide guidance on how to successfully unbundle, outsource and re-characterize certain activities performed by the fund manager so that they can be treated as GST/HST-exempt financial services.

Key Takeaways

- The Court’s comments in *SLFI Group* present an opportunity for Funds and other taxpayers that incur unrecoverable GST/HST to revisit their current arrangements to restructure and save unrecoverable GST/HST.
- *SLFI Group* also highlights the risk of investment fund arrangements where a portion of the fees paid to a third party may be construed as a payment “for the benefit” of the fund manager. If this were the case, the payments could potentially have been treated as consideration for taxable services.

Overview of the Facts

The Manager provided management and administrative services to the Funds. As part of its duties, the Manager financed the upfront payment of brokerage selling commissions so that the Funds could offer their investors a deferral or complete elimination of these commissions. The Manager no longer wanted to finance these

selling commissions for business reasons and, as trustee of the Funds, outsourced this function to a U.S. special-purpose subsidiary of Citibank (the Funding Corp.).

The Canada Revenue Agency reassessed the Funds and the Manager to impute GST/HST on those services, for approximately \$45M in unremitted GST/HST. The taxpayers appealed the reassessment to the TCC, where the TCC held that the services were taxable because the services were part of the Manager's duties and would have otherwise been taxable if rendered by the Manager rather than outsourced to the Funding Corp. The FCA disagreed with the TCC and held that Funding Corp.'s services were GST/HST-exempt financial services.

For further information on how *SLFI Group* may affect your GST/HST obligations, feel free to [contact the authors below or any members of our Commodity Tax group.](#)

¹ 2019 FCA 217.

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