

ECJ Preliminary Ruling Request (VAT): Y (Case C-641/22) – Gelderland District Court Submits Referral on Whether Pension Fund Can Be Classified As Special Investment Fund for VAT Exemption Purposes

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On 30 January 2023, a preliminary ruling request lodged on 12 October 2022 was published in the OJEU. By this, the Rechtbank Gelderland (District Court of Gelderland, the Netherlands) made reference to the Court of Justice of the European Union (ECJ) for a preliminary ruling in the case Y v. Inspecteur van de Belastingdienst Amsterdam (Case C-641/22) on whether unit-holders in a pension fund can be regarded as bearing investment risk, and if it means that the pension fund constitutes a special investment fund for the purposes of the exemption provided by article 135(1)(g) of the [VAT Directive \(2006/112\)](#).

The Rechtbank Gelderland requested the ECJ to answer the following question:

"Must Article 135(1)(g) of the [[VAT Directive \(2006/112\)](#)] be interpreted as meaning that unit-holders in a pension fund such as the one at issue in the main proceedings can be regarded as bearing investment risk, and does this mean that the pension fund constitutes a 'special investment fund' within the meaning of that provision? Is it relevant in that regard:

- whether unit-holders bear an individual investment risk or is it sufficient that unit-holders as a collective – and no one else – bear the consequences of the investment results?
- what the magnitude of the collective or individual risk is?
- to what extent the amount of the pension benefit depends also on other factors, such as the number of years of pension accrual, salary level and the actuarial interest rate?
- that the employer has guaranteed for the period 2014 to 2020 up to an amount of €250,000,000 in order to achieve the targeted pension accrual?"