

Indirect Tax Alert

Sweden's Supreme Administrative Court requests preliminary ruling from CJEU on "reverse-Skandia situation" where a head office in Denmark supplies services to its Swedish branch

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Background

A Danish bank operates in the Nordic countries through different branches, including a branch in Sweden. The head office in Denmark allocates costs to its Nordic branches for the use of an IT platform necessary for the operations carried out in their respective countries. The case was brought before the Swedish Board for Advance Tax Rulings where the branch argued that in the capacity of a branch to a head office the branch is not independent and is not itself liable for the economic risks of its activity. The branch and its head office should consequently be seen as one single taxable person. A different conclusion would be in contradiction with the principle of equal treatment since how the rules for value-added tax (VAT) groups have been implemented by European Union (EU) Member States will impact the branch's VAT status as well as how transactions should be treated for VAT purposes.

The Board for Advance Tax Rulings ruled that the Swedish branch (not part of a VAT group) and the Danish head office (part of VAT group in Denmark) are two separate taxable persons and that the Swedish branch should account for Swedish VAT under the reverse charge mechanism. Three out of seven members of the Board had dissenting opinions and agreed with the branch's view that the fact that the head office is part of a VAT group in another EU Member State does not imply that the branch should be considered as a separate taxable person.

Request for preliminary ruling

The case was appealed by the branch to the Swedish Supreme Administrative Court. The Branch argued that the *Swedish VAT Act* lacks a clear and unambiguous legal provision that deems a foreign VAT group to be a taxable person. Hence, the consequence that VAT has to be paid under the reverse charge mechanism by the branch, without support from national law goes against the principle of legality and the principle of legal certainty. The Supreme Administrative Court determined that the case should be referred to the Court of Justice of the EU (CJEU) for a preliminary ruling. The question

referred is whether the Swedish branch should be considered as a separate taxable person, separated from its head office which **is part of the Danish VAT group**, when the head office supplies services and allocates the costs for these services to the Swedish branch.

The Swedish Supreme Administrative Court mentions in its press release that based on CJEU case law, a branch which is part of a VAT group is considered as a separate taxable person when acquiring services from its head office. However, the referred question has never been directly interpreted by the CJEU.

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