

EY Luxembourg

Tax Alert

European Court of Justice: A second decision on the taxation of head office to branches transactions when a VAT group is involved

Executive summary

On 11 March 2021, the Court of Justice of the European Union (CJEU) released its decision in the Danske Bank case (Case C-812/19). The case considers the VAT treatment of cross-border services rendered within the same legal entity where the head office providing the service is part of a VAT group with other local entities, but its branch established in another Member State receiving the services is not within the same VAT group.

The CJEU has followed the principles set out in its earlier judgment in the Skandia case (Case C-7/13) and has held that the so-called 'Reverse Skandia' principle applies. This means that the head office of a company, situated in a Member State and forming part of a VAT group, and the branch of that company, established in another Member State, must be regarded as separate taxable persons where that head office provides that branch with services and imputes the costs thereof to the branch.

Background

In its judgment in the Skandia case, the CJEU held that a VAT group was a new and separate person, distinct from its members, and that supplies into a VAT-grouped branch in a Member State from an overseas head office (in Skandia's case a US-headquartered entity) were subject to VAT.

However, the Skandia judgment did not explicitly consider the situation where the VAT grouped establishment was the supplier rather than the customer. Given the gap in the Skandia judgment, a further question was referred to the CJEU in the Danske Bank case.



The facts, question referred and judgment

Danske Bank, a Danish headquartered bank, provided IT services to its Swedish branch. The Swedish branch is registered for Swedish VAT, while its head office is part of a Danish VAT group. The Swedish tax authorities argued that Swedish VAT should be due on these charges, with the Swedish Branch liable to self-account for VAT under the reverse charge mechanism.

Given the uncertainty around the application of Skandia principles, the following question was referred to the CJEU: "Does a Swedish branch of a bank established in another Member State constitute an independent taxable person where the principal establishment supplies services to the branch and imputes the costs thereof to the branch, if the principal establishment is part of a VAT group in the other Member State, while the Swedish branch is not a member of any Swedish VAT group?"

The CJEU has followed the Skandia logic in its entirety. The VAT group is distinct and separate from its constituent members, hence supplies between branches of the same legal entity are supplies for VAT purposes, where one or both establishments are locally VAT grouped.

Implications

The judgment shall result in additional cross-border intra-company services becoming subject to VAT.

Businesses, which do not have a full right to recover input VAT on costs, such as financial services and insurance businesses, are likely to be impacted by the judgment, as their VAT cost might increase.

Not all questions are answered by this judgment and some remain open. Given the UK is no longer part of the EU, it is for instance not clear whether this judgment should be applied to services provided to recipients within the EU, e.g., services provided to a Luxembourg branch which is not part of a VAT group from a UK VAT-grouped branch or head office.

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