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ECJ: Minimum basis for VAT on intra-group services of management holding

In a Swedish request for a preliminary ruling, the ECJ - as an indirect consequence of its “holding case law” - was asked to specify details of determining the minimum assessment basis for VAT and clarify whether actually all of the expenses of the management holding must be included in the basis for that tax.

Background

In the present case, the controlling holding company of a property group ‘actively managed’ its subsidiaries in return for payment of consideration. In doing so, it supplied various services including, inter alia, company management or the provision of infrastructure. The holding company did not carry out any other activities. To enable the supply of those services, it incurred considerable expenditure, including long-term investments. In the year at issue, 2016, t**he holding company’s expenditure exceeded the income arising out of its activities for the subsidiaries** many times over. The holding company **invoiced its subsidiaries for a total of approximately 2.3 million Swedish kronor** (SEK) during the year at issue, 2016. On the other hand, , the holding company’s **total expenditure amounted to approximately SEK 28 million**. Approximately half of that expenditure related to input services subject to VAT. The remaining amount related to VAT-exempt input services and non-taxable transactions such as wage payments. The holding company deducted all incurred input VAT amounts from its VAT liability. Those deductions also covered input services which were not taken into account when calculating the consideration payable for the output services.

The local tax office asserts that the holding company’s output transactions constitute a single supply. There was no comparable price for that service on the open market; consequently, the open market value would be at least equal to the full cost incurred in providing the service. Since the holding company had not provided any other services, the tax office regarded the total amount of its expenditure in the year at issue, namely SEK 28 million, as the taxable amount.

In her Opinion of 6 March 2025, **Advocate General** (AG) Juliane Kokott concluded that it would lead to incorrect results if in general all expenses of the holding company from the calendar year in question were included. It then follows from the holding case-law of the ECJ that every holding company of a group which makes fully taxable or partially taxable transactions must provide services for consideration to its subsidiaries if it wishes to neutralize the VAT burden on the group management costs by means of an input VAT deduction. Services for consideration are therefore artificially structured (‘constructed’) between the holding company and the subsidiaries. An input VAT deduction based on the group’s output

transactions thereby becomes almost impossible.

ECJ decision

The ECJ - in essence - confirmed the conclusion of the AG and held that*Articles 72 and 80 of the VAT Directive to be interpreted as precluding the services provided by a parent company to its subsidiaries in the context of the active management of those subsidiaries from being, in all situations, regarded by the tax authority as constituting a single supply which precludes the open market value of those services from being determined using the comparison method laid down in the first paragraph of Article 72 of that directive.*

The services provided by the holding to its subsidiaries were, more specifically, business management services, financial services, real estate management services, investment services and IT and staff administration services. The ECJ did not find that, as a matter of principle, such services are so closely linked that they objectively form a single, indivisible economic supply and, consequently, a single supply.

Even if the services are provided together, they appear each to have their own character and to be identifiable. The fact that an overall price is paid by each of the subsidiaries to the holding for all the services received from the holding cannot be decisive in relation to intra-group supplies since, otherwise, the group would itself be able to influence the classification to be given to those supplies for VAT purposes by means of the remuneration arrangements agreed.

Source:

ECJ judgment of 3 July 2025 **C?808/23** *Högkullen*.

Schlagwörter

VAT basis, management holding