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By PwC Deutschland | 25 March 2021

ECJ: Services between head office and foreign branch may be subject to VAT

The ECJ held that services by an EU head office, who is part of a VAT group, to its foreign branch are in general subject to VAT if the cost of such services are charged to the branch. For VAT purposes head office and its branch located in another Member State must be regarded as separate taxable persons.

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Background

Danske Bank's head office (head office) located in Denmark is part of a Danish VAT group. In Sweden, Danske Bank carries out its activities through a branch. Danske Bank maintains an IT platform for its activities in the Scandinavian countries which is used by its foreign branches. That platform is, to a great extent, common to all the company's branches. The costs incurred in connection with the use of that platform by the Swedish branch were charged to it by Danske Bank head office.

Decision

In its current decision the ECJ followed the principles laid down in its judgment of 17 September 2014 in the case *Skandia America* (**ECJ case C-7/13**) with the following result:

For VAT purposes the head office which is part of a VAT group and its branch established in another Member State must be regarded as separate taxable persons if the head office provides services to the branch and allocates the costs for these services to it. Services between these entities therefore constitute taxable transactions. The ECJ points out that it is not the parent company but the VAT group itself who is the taxable person that provides the service and that there is therefore an exchange of services between two different taxable persons.

The ECJ went on to say that services provided by the parent company (head office) to its branch are in principle non-taxable internal transactions, because head office and the foreign branch are one entrepreneur (business). However, if head office is a member of a VAT group in a Member State, services between the head office and its foreign branch may be subject to VAT. This is because the VAT group itself is regarded as an independent business. Since the scope of the VAT group is limited to local (here: Danish) entities, a branch established in another Member State cannot be a member of the Danish tax group.

This judgment may have far-reaching consequences for the financial services sector or other companies with limited input VAT deduction. Especially if the parent company and the permanent establishment (branch) are in different Member States and at least one part of the company is a member of a VAT group.

Takeaway from a German VAT perspective

Contrary to the provisions of the EU VAT Directive, the present German fiscal unity concept for VAT purposes (VAT grouping) considers the parent company as the taxable person rather than the VAT group itself. Therefore, from a German perspective, services between the two are still regarded as non-taxable intra-company transactions. It could therefore reasonably be argued not to apply the Danske Bank judgment for the time being, specifically in cases where a parent company or permanent establishment located in Germany receives services from or provides services to a part of the business establishment located abroad.

However, with view to further pending proceedings before the ECJ on similar cases (i. a. as in case C-141/20), it cannot be ruled out that in future the German legislator will be forced to amend its national VAT group regulations.

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Source:

The ECJ case reference is **C-812/19** *Danske Bank* judgment of 11 March 2021.

Keywords

Foreign branch, VAT group, head office, intracompany transaction