

Indirect tax update

April 2021

Further developments on the operation of cross border VAT groups.

VAT - Head office - Branch supplies

Three main judgements of the Court of Justice of the European Union (“CJEU”) focus on the VAT treatment of supplies of services between a head office and its branch. It is clear from the judgements that the existence of a VAT group on either side of a transaction could significantly alter its VAT consequences. To further complicate the matter, differing interpretations of the VAT grouping provisions have been afforded by EU Member States. Some EU Member States apply a “local branch establishment” rule where only the establishment located in their territory can join the VAT group; while others (including Ireland and Netherlands) apply a “whole entity” approach under which the whole legal entity (i.e. head office and all its branches) becomes the part of the VAT group.

FCE Bank Case C-210/04

In this case, a UK head office supplied services to its Italian branch. There was no VAT grouping in place on either side of the transaction. The CJEU decided that this specific transaction would not be a supply for VAT purposes, as the head office and branch (being the same legal entity) are also a single person for VAT purposes.





Skandia Case C-7/13

In this case, a US head office supplied services to its Swedish branch. The Swedish branch was in a VAT group in Sweden with other entities. The CJEU ruled that the Swedish branch became a “single taxable person” with the VAT group members, i.e. to the exclusion of the US head office. This essentially meant that the head office and branch (the same legal entity) were no longer the same person for VAT purposes. In these circumstances, the transaction will be a supply for VAT purposes and liable to the reverse charge in Sweden on receipt by the branch.

It should be noted that under the Swedish VAT rules, only the establishment located in Sweden is considered to be a member of the VAT group.



Danske Bank Case C-812/19

In this case, a head office in Denmark supplied services to its Swedish branch. The head office was in a VAT group with other entities in Denmark. The CJEU held that the Danish head office and its group members were a “single taxable person”, i.e. to the exclusion of the Swedish Branch. In effect the head office and branch were no longer the same person for VAT purposes. As a result, there is a supply for VAT purposes, which the Swedish branch should, in this case reverse charge.

Similar to Sweden, Denmark also applies the “local establishment” approach to VAT grouping. It will be interesting to see how Revenue in Ireland apply these cases in practice as this could result in additional VAT costs for financial services companies. Although to date, Ireland, UK and the Netherlands which operate “cross border VAT groups” have not implemented the Skandia case.



Contact

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