

ATOZ INSIGHTS

Danske Bank (C-812/19): services provided by the head office part of a VAT group to a foreign branch fall within the scope of VAT

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On 11 March 2021, the Court of Justice of the European Union (CJEU) gave its decision in *Danske Bank A/S v. Skatteverket* (Case C-812/19).

Factual background

Danske Bank A/S is a bank with its head office in Denmark which carries out its activity notably in Sweden through a branch. The head office belongs to a Danish VAT group which does not include the Swedish branch.

The IT platform of Danske Bank is also used for the activity of its Swedish branch and part of the IT costs are therefore allocated/recharged by the Danish head office to its branch.

Danske Bank was of the opinion that FCE Bank jurisprudence (ECJ, FCE Bank, 23 March 2006, C-210/04) should be applicable. According to this case law, services between a head office and its branch (not performing an independent economic activity) should be considered as performed within the same legal person and should thus be out of the scope of VAT. As a consequence, Danske Bank considered that the allocation of IT costs is not subject to VAT at the level of its Swedish branch.

Conversely, the Swedish Tax Authorities were of the opinion that the Skandia jurisprudence (CJEU, 17 September 2014, Skandia America Corp. (USA), filial Sverige, C-7/13) is applicable. In this regard, they considered that the IT costs are to be recharged by the VAT group (and not by the head office as such) to the Swedish branch. Considering that the head office and the other VAT group members are a single VAT taxable person, the services rendered by the head office cannot be considered as “internal” transactions within the same legal entity. As a main consequence, services rendered by the head office through the VAT group would be in the scope of VAT and subject to the reverse charge mechanism at the level of the branch.

Decision of the CJEU and potential impacts

In its judgment, the CJEU mirrors its position in the Skandia case. Services provided by a head office part of a VAT group to its branch located in another Member State are to be considered as taxable transactions. As the services are provided by the VAT group, the head office and the branch cannot be considered as being a single VAT taxable person. As a consequence, transactions between the head office being part of a VAT group and foreign branches are considered as falling within the scope of VAT.

Although this decision is not surprising, it alleviates any remaining doubts that could still exist further to the Skandia judgement. Businesses have to review potential VAT impacts on costs allocations between a head office and its branch(es) when one of them is part of a VAT group.

Our VAT experts, Thibaut Boulangé and Silvin Leibengut, are available to discuss the eventual impacts of the Danske Bank case on your activities and to handle any questions you may have.

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