



## FSI tax alert Belgium

### VAT applies to recharges from overseas head office to EU branch if branch is part of VAT group



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*In the Skandia America Corporation case, the Court of Justice of the European Union ("CJEU") ruled on 17 September 2014 that supplies of services from an overseas head office to a branch that is part of a VAT group in a member state should be subject to VAT. The VAT group has to account for this VAT under the reverse charge mechanism (C-7/13).*

#### Facts

Skandia America Corporation USA ("SAC") is a US entity with a Swedish branch. The Swedish branch is a member of a VAT group in Sweden together with other Skandia affiliates.

The US headquarter purchased IT services, which were recharged through the issue of internal invoices to the Swedish branch which took the role of processing the IT services and then supplying these to various entities in the wider Skandia corporate group (inside and outside the VAT group). Supplies from the SAC head office to the Swedish branch and from the branch to other entities within the Skandia group were made at a mark-up of 5%.

The dispute related to whether the recharge of the costs from the US head office to the Swedish branch is subject to VAT. The Swedish tax authorities defended that this is the case, since the branch was part of a VAT group and therefore a separate taxable person for VAT purposes. By contrast, Skandia relied on the FCE Bank principles (CJEU, C-210/04 FCE Bank) stating that a head office and its branch are part of the same legal entity and thus no VAT can be due on the recharge.

#### Judgment

The CJEU confirms that, in situations where a branch of an overseas entity is part of a VAT group, any supplies of services made by the overseas head office to this branch are considered to be made to the VAT group as a whole and are hence subject to VAT. The VAT group needs to account for VAT on these supplies under the reverse charge rule.

The Court does not follow the Advocate-General's opinion, which considered that a branch could not be a VAT group member independently from its head office, meaning that the overseas head office is also part of the VAT group. The CJEU ruled otherwise, stressing the VAT group's autonomy as a separate VAT taxable person. The services supplied by SAC to its Swedish branch must be deemed, for VAT purposes, not to be supplied to the branch but must be regarded as being supplied to the VAT group.

Under Belgian VAT law, when a Belgian branch is part of a VAT group, services received by this branch from establishments of the same legal entity abroad are currently taxed by means of an anti-abuse measure (art. 19bis of the Belgian VAT Code). Under the VAT authorities' guidance, the services received by the branch must only be taxed if they are recharged by the branch to other members of the VAT group (without VAT, so-called "channelling"). As a result of the Skandia-ruling, the VAT authorities may broaden the scope to all recharges between foreign head offices and branches that are part of a Belgian VAT group.

The impact in other countries will be even more considerable as a number of them currently consider that if a branch adheres to a VAT group, this membership covers the entity as a whole. As a result, services supplied by overseas members of the VAT group to other members of the VAT group are disregarded for VAT purposes altogether.

The CJEU did not discuss the reverse situation, where a head office is part of a VAT group in an EU member state and renders services to its foreign branch. Will this be considered as a service rendered by the VAT group to the foreign branch and therefore also be taxed? One can expect that this topic will trigger a lively debate and may require further legislative action or jurisprudence in order to obtain clarity.

Businesses operating through head office – branch structures and who have set up VAT groups in Belgium or abroad may need to reconsider the VAT treatment of head office recharges. There is likely to be a particularly significant impact in the financial services sector, where arrangements involving branches and VAT groups are not uncommon and VAT is not fully recoverable and hence a cost factor. The extra VAT charges on head office – branch recharges may require structural changes to the VAT group set-up. A cost impact assessment covering all countries involved in the corporate structure is a recommended first step.

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