



GST News

Perspective is everything

Greetings from your Indirect tax team at Deloitte Singapore. We are pleased to present to you details of recent updates in relation to GST:

Skandia – CJEU decision on VAT grouping, branches and overseas head offices

On 17 September 2014, the Court of Justice of the European Union (“CJEU”) handed down its decision in the Swedish reference of Skandia America Corporation USA (“SAC”), holding that supplies of services from an overseas head office (“HO”) to a branch in a VAT group in a Member State should be subject to VAT and accounted for under the reverse charge by the VAT group.

Background

SAC is a US entity and, in 2007 and 2008, was the global purchasing company for IT services for the Skandia group. SAC carried out its activities in Sweden through its Swedish branch, which took the role of processing the externally-purchased IT services that had been supplied to it by SAC’s HO and then supplying these to various entities in the wider Skandia corporate group (including to other Skandia entities in Sweden with which the Swedish branch was in a VAT group with). Supplies from the SAC HO to the Swedish branch, and from the branch to other entities within the Skandia group, were made at a mark-up of 5%, with costs allocated between the SAC HO and the Swedish branch through the issue of internal invoices.

Issue

Taking the view that transactions from the SAC HO to the Swedish branch within the VAT group constituted taxable supplies on the basis that the supplies were to the VAT group being a separate person and so no longer within the same legal entity, the Swedish tax authority sought to levy VAT on these supplies. This decision was challenged by Skandia, with the Swedish court choosing to refer questions to the CJEU.

Decision

In a brief and fairly clear decision, the CJEU confirmed that, in situations where a branch of an overseas entity is part of a VAT group, any supplies of services made by an overseas head office in a non-EU country to this branch are considered to be made to the VAT group as a whole and hence no longer within a single legal entity and thus subject to VAT. It is then the responsibility of the VAT group to account for VAT on these supplies under the reverse charge.

Implications

As a result of the decision, supplies by a Singapore head office to its branches in European Member States, where such branch is in a VAT group, may be subject to VAT under the reverse charge. From a Singapore perspective, it is more likely that it will be a Singapore branch making supplies to its HO in a Member State however, the treatment of such was not directly addressed in this case (i.e. it only considered supplies from a HO to branch and not the other way around). There is likely to be a particularly significant impact in the FS sector, where arrangements involving branches and VAT groups are commonplace.

In some European Member States, the current treatment is that in situations when a branch or fixed establishment is part of a VAT group, this membership is considered to extend to the entity as a whole, with the result that services supplied by overseas members of the VAT group to other members of the VAT group are disregarded for VAT purposes. This is the case in the UK and as such, we expect that any changes to the current UK position will only be on a prospective basis and that there will be a transitional period to allow for consultation with taxpayers in respect of any changes to law or practice.

Immediate next steps

Businesses which may be affected by this decision should determine the potential financial impact it could have on their organisation, if the current Member States’ position on services supplied by overseas members of VAT groups needs to change and consider means of mitigating the additional VAT costs that could arise. It is also worth watching this space for further litigation regarding supplies from overseas branches into European HOs which should be more relevant for Singapore entities.

Contacts

If you require more information, please contact Richard Mackender or your usual Deloitte contact.

Name	Contact Number	Email
Richard Mackender	+65 6216 3270	rimackender@deloitte.com
Michael Velten	+65 6531 5039	mvelten@deloitte.com

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6 Shenton Way, OUE Downtown 2, #32-00,
Singapore 068809

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