TRANSACTIONS BETWEEN HEAD OFFICE AND FIXED ESTABLISHMENT VAT TAXABLE DUE TO THE PRESENCE OF A VAT GROUP

On March 11, 2021, the Court of Justice of the European Union (hereinafter: CJEU) decided in the Danske Bank case that services provided by a Danish head office to its fixed establishment in Sweden are subject to VAT as the Danish head office was part of a VAT group in Denmark. The case is comparable to the 2014 CJEU judgment in Skandia America Corporation (hereinafter: Skandia). In certain situations, the impact of the Danske Bank judgement can be significant for the VAT treatment of intercompany services. This applies in particular when the receiving entity concerned does not have a (full) right to recover input VAT. In this news flash we will briefly elaborate on the facts and the potential impact in practice.

Danske Bank (case)

Danske Bank uses an IT platform for its activities. This platform is largely used for all fixed establishments of the head office. Costs for the use of the platform are charged by the Danish head office to the fixed establishment in Sweden. The CJEU was asked whether a Swedish fixed establishment (which was not part of a VAT group) should be identified as a separate VAT-taxable person, when the Danish head office – which is part of a VAT group in Denmark – allocates costs to this fixed establishment in Sweden.

The CJEU ruled that both a head office that is part of a fiscal unity in an EU Member State and a fixed establishment of the same head office located in another EU Member State must be regarded as two independent VAT-taxable persons, when that head office provides services to the fixed establishment and allocates the costs thereof to this fixed establishment. The aforementioned also holds that services and transactions between the head office and the fixed establishment are VAT-taxable.

Impact in practice

The judgement in the Danske Bank could have an impact for companies which have a head office in an EU member state and a VAT fixed establishment in another EU member, in case either the head office or the fixed establishment are part of a local VAT group.

The impact occurs for example when the head office and the fixed establishment do not have a full right to recover VAT. For such entities it is beneficial that transactions and services between the head office and the fixed establishment are irrelevant for VAT purposes, which is in accordance with CJEU 23 March 2006, FCE Bank, C-210/04 and 24 January 2019, Morgan Stanley & Co International. However, when such services and transactions would become subject to VAT, the VAT will be a burden for the recipient as no (full) right to recover VAT exists. Whether the cross-border pro rata calculation as decided by CJEU Morgan Stanley & Co International, is still applicable in the facts and circumstances as in Danske Bank, is still to be reviewed.

More information

If you have any questions about the possible impact of the Danske Bank judgment, please contact your RSM advisor.