

# SKANDIA AMERICA CORPORATION INC.: VAT ISSUE FOR BRANCH AND HEAD OFFICE

SEPTEMBER 2014

ON SEPTEMBER 17, 2014 THE EUROPEAN COURT OF JUSTICE (ECJ) DELIVERED ITS DECISION IN THE CASE SKANDIA AMERICA CORP. v. SKATTEVERKET. THE COURT HELD “THAT SUPPLIES OF SERVICES FROM A MAIN ESTABLISHMENT IN A THIRD COUNTRY TO ITS BRANCH IN A MEMBER STATE CONSTITUTE TAXABLE TRANSACTIONS WHEN THE BRANCH BELONGS TO A GROUP OF PERSONS WHOM IT IS POSSIBLE TO REGARD AS A SINGLE TAXABLE PERSON FOR VALUE ADDED TAX PURPOSES.”

## VAT AND ARRANGEMENTS BETWEEN A BRANCH AND ITS HEAD OFFICE

In March 2006, the European Court of Justice (ECJ) in case (C-210/04), decided that a branch “which is not a legal entity distinct from the company of which it forms part, established in another Member State [...], should not be treated as a taxable person by reason of the costs imputed to it in respect of those supplies.”

### Example I

Lysis S.p.A., a company established in Italy, has a branch in Dublin to which it provides software and training services. VAT does not apply as Lysis S.p.A. and the branch are the one legal entity.

## VAT GROUPING

Under article 11 of the Vat Directive:-

*“Member States may regard as a single taxable person any persons established in the territory of that Member State who, while legally independent, are closely bound by financial, economic and organisational links.”*

15 of the 28 Member States, including Ireland the UK and Sweden, have availed of this article to permit the establishment of VAT groups.

## INTERNATIONAL GROUPS

Many international companies have used VAT grouping involving a branch and one or more local subsidiaries as a tool to manage their VAT issues on intergroup services. Typically, the branch and the local subsidiaries with which it is grouped for VAT purposes receive the benefit

of services from the head office in the form of advice, management, staff training, data processing, and the supply and the management of application software.

#### Example II

MyCo Inc., a company established in New Mexico, has a branch in Cork and also has two Irish subsidiaries. The branch and the subsidiaries belong to an Irish VAT group.

The efficiency of this structure was challenged by the Swedish tax authorities resulting in an ECJ decision (in Skandia America Corporation Inc. (C-7/13)) given on September 17<sup>th</sup> 2014.

#### **THE ECJ DECISION**

The ECJ decided that a VAT group is a taxpayer in its own right. “Supplies of services” from a head office to a branch grouped with other entities must be treated as supplies to the group and not to the branch. The supply of such services therefore attracts VAT.

#### **CONSEQUENCES OF THE ECJ DECISION**

As a consequence of the ECJ decision, any arrangements between a foreign company and its Irish branch may come within the scope of VAT if that branch is part of a VAT group. Where such a group is fully taxable, the decisions should have no significant impact. However, where such a group is VAT exempt or partially VAT exempt, if the decision is enforced to the letter, the group could be obliged to self-account for significant amounts of VAT which cannot be reclaimed. A significant number of International financial services companies with branches in Ireland could be affected by the decision.

#### **IRISH REVENUE LIKELY APPROACH**

Revenue are currently studying the decision and have not yet commented upon it. In view of the potentially far reaching implications of the decision, it is likely that Revenue will issue a statement to the effect that pending agreement with Irelands EU partners on what should be the collective approach to the decision, taxpayers should continue to apply the same tax treatment to the supplies in question as has been applied before the issue of the decision.

**CONTACT INFORMATION**

For further information please do not hesitate to contact us.



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