Indirect Taxation Blog

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VAT on services provided by a central house to its branch

The Central Economic-Administrative Court (TEAC) has recently issued a resolution on VAT taxation of services provided by a central house to its branch located in Spain. This is a matter on which there have been previous administrative pronouncements, both by the Directorate General of Taxes (DGT) and by the Court of Justice of the European Union (CJEU).

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In this particular case, a Spanish subsidiary in the insurance sector received services from its parent company established in Switzerland. Services that were subject to VAT in Spain. The group underwent a total restructuring and the subsidiary was transformed into a branch established in Spain. All the movable and immovable property, rights, shares and trade names that were part of the Spanish subsidiary became part of the assets of the new central house, established in Ireland, being, in turn, subject to the new branch in Spain that , in turn, is part of a VAT Group in Spain.

The Spanish branch received certain services from its head office, established in Ireland, which they considered not subject to the Tax, using as argument the decision reached by the CJEU in case C-210/04, FCE Bank PLC .

That case concerns a case in which a parent entity established in the United Kingdom provided services to its branch established in Italy. The litigation occurs when the Italian Administration considers that the services provided by the head office are subject to VAT in Italy, while the entity considers otherwise, on the understanding that the branch could not be considered an autonomous taxable person. The question at issue was whether the payments made by the branch to its parent company should be considered as consideration for a transaction subject to VAT.

The CJEU considers that to determine if there is a legal relationship between a non-resident company and one of its branches, in order to subject the services provided to VAT, it is necessary to verify whether the branch carries out an independent economic activity. **In that specific matter, the CJEU concluded that these services were not subject to the Tax because the Italian branch did not assume any economic risk, both constituting (parent and branch) a single VAT taxpayer** , so that the operations between the two, in the opinion of the CJEU, they were not subject to the tax.

On the basis of all of the above and with regard to the specific case under discussion, the TEAC considered that the services provided between the head office and the Spanish branch were subject and not exempt from VAT in Spain. The branch should have taxed said services by applying the taxable person's investment rule. **TEAC considers that in this specific case the branch carried out an economic activity independent of its headquarters, therefore, following the criteria maintained by the CJEU in the FCE Bank case, the payments made should be considered as consideration for operations subject to tax** .

We share TEAC's opinion. We have always maintained that **the CJEU's decision in the FCE Bank case**

establishment does not carry out operations or is an "empty" entity, something that does not happen, far from it, in all cases, we can affirm that the services provided by its headquarters would be outside the scope of VAT.

For its part, TEAC relies on another controversial matter on which the CJEU ruled in its day, to conclude that the services provided to the Spanish branch are subject to VAT. We are referring to Case C-7/13, Skandia America. In that case, **the CJEU stated that the services provided by an entity to its branch, when it is part of a VAT group, will be subject to VAT as the group is an independent taxable person** .

The TEAC bases part of its resolution on the decision indicated by the CJEU in the Skandia case, because the Spanish branch that receives the services of the parent company was part of a VAT group.

We consider that, in this case, the TEAC is not correct in its argument as there is no regime in Spain that establishes a group of VAT as an independent taxable person as established in Article 11 of the VAT Directive , which has not been incorporated into our national law.

The Special Regime of the Group of Entities (REGE) that is included in article 163 quinquies and following of the VAT Law, does not indicate that the VAT group is considered a single autonomous taxable person. **The entities that avail themselves of the special regime are different taxable persons, each with its corresponding Tax Identification Number, who will benefit, among other things, from a special calculation of the tax base of the operations carried out between the entities included in it.** .

We share TEAC's decision when considering that operations between a parent company and its branch will, as a general rule, be subject to VAT except in cases where said branch does not carry out economic operations, something that does not occur in all cases . Precisely the CJEU's decision in the FCE Bank case must be seen as an exception to the general rule.

For its part, we can not ignore that Spain does not have a VAT group regime in accordance with the provisions of article 11 of the VAT Directive, where several taxable persons with a certain degree of connection between them are allowed to act as a single taxable person. **Our REGE is nothing more than a special way of calculating the tax base of operations carried out between related companies.** Therefore, we cannot agree with TEAC's argument, since **the CJEU's decision in the Skandia case cannot be applied in Spain** .

where no exemption is applicable and, therefore, the branch must self-collect VAT, the tax could become a significant cost.

The TEAC resolution may also be a good opportunity to review our current Special Regime for the Group of Entities. **Perhaps it is time for the legislator to consider the possibility of including in our legislation an authentic VAT group regime in which operations between the entities that are part of it are not subject to tax** .