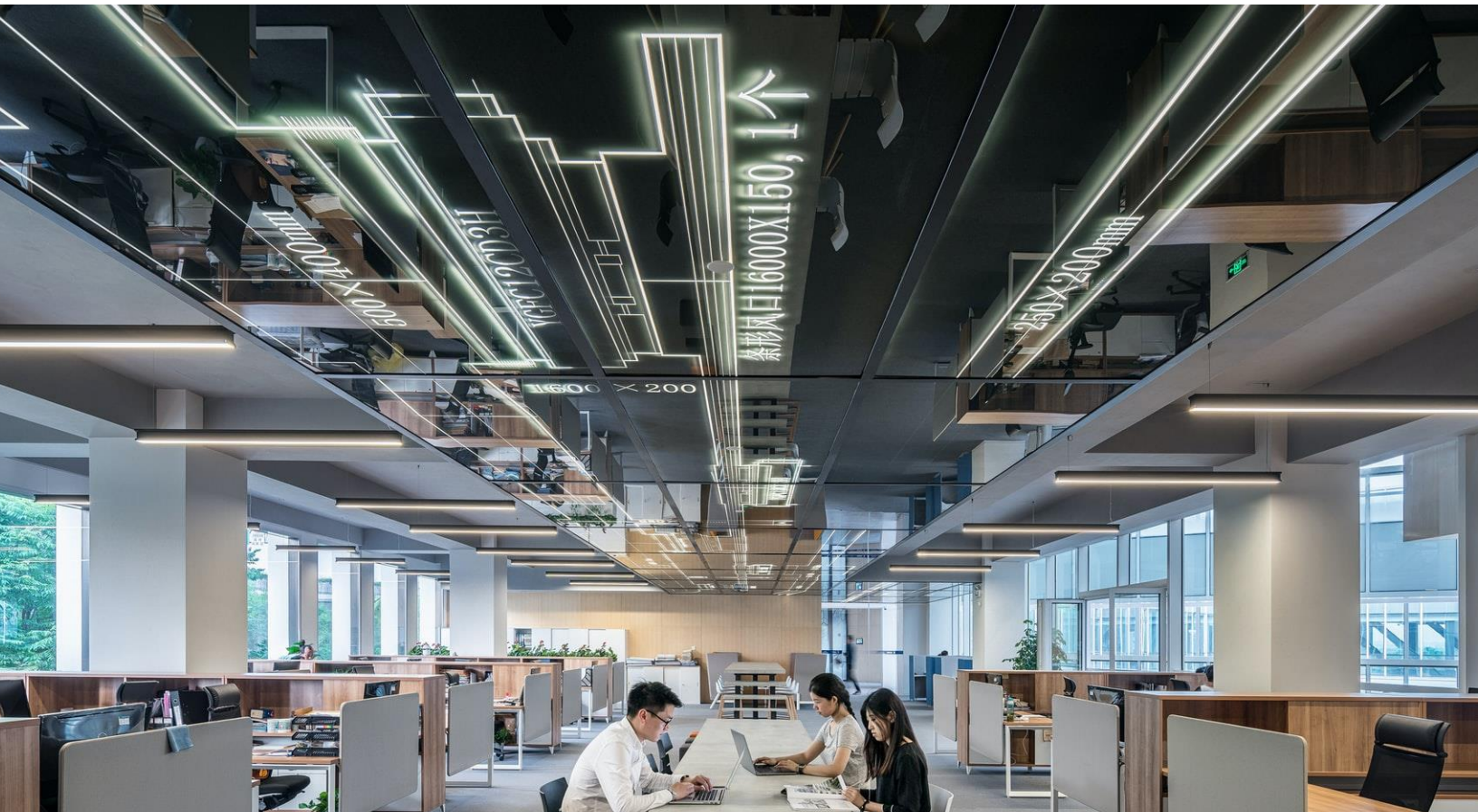


News Flash

July 8, 2021



Cross-border transactions from VAT point of view

Cross-border transactions between a principal establishment and its branch in another Member State for VAT purposes

The judgment of the European Court of Justice (ECJ) of March 11, 2021 in case C-812/19 (Danske Bank case) clarified how **the provision of cross-border services within the same legal entity** should be treated from a VAT perspective. The case concerns the principal establishment of Danske Bank, which is based in Denmark and **is a member of a VAT group** in that country, where its branch established in Sweden, which is the recipient of cross-border services provided by the principal establishment, is not a member of the Danish VAT group, and nor any other in the country of establishment.

Circumstances of the case and questions referred by the ECJ

Danske Bank's principal establishment, based in Denmark, which is part of the Danish VAT group, provides IT services in the form of a computer platform to its Swedish branch. Then the costs associated with using that platform are charged to Swedish branch by Danish principal establishment. The branch established in Sweden is not a member of any VAT group.

The Swedish branch of the company asked Revenue Law Commission in Sweden for a tax statement on whether the principal establishment in Denmark and its branch in Sweden could be considered as single taxable person or two separate persons for VAT purposes, and whether the services provided by the principal establishment to its the Swedish branch where the associated costs are charged to it, shall be considered as a taxable transaction for which the Swedish branch, as the recipient of the services, is required to pay VAT. The case was later taken over by the Supreme Court, Sweden, which stayed the proceedings and referred the matter to the ECJ.

ECJ conclusion

In order to answer these questions, the ECJ drew on an earlier judgment of 17 September 2014 in Case C-7/13 (Skandia America Corp. (USA), filial Sverige), where a principal establishment based in USA provided services to its branch established in a Member State of the European Union, which was a member of a VAT group in that Member State. In that judgment, the ECJ held that the supply of services by a principal

establishment of a company established in a third country to its branch in a Member State shall be considered as a taxable transaction if that branch is a member of a group of persons who may be regarded as a single taxable person for VAT purposes.

The ECJ further highlighted the territorial limitation arising from Article 11 of Directive 2006/112/EC (hereinafter "the VAT Directive"), which regulates the possibility to treat several persons as a single taxable person. The Danish legislation, which transposes Article 11 of the VAT Directive, authorizes several taxable persons who have the same owner and are established in the same Member State to register a Danish VAT group. The group can only concern undertakings established in Denmark.

Based on the stated above, the ECJ held as follows:

- **The supply of services** by a principal establishment in Denmark to its branch established in another Member State (Sweden) **constitutes a taxable transaction if that principal establishment is part of a VAT group**, the members of which may be regarded as a single taxable person. From a VAT perspective in a given case, it is the Danish VAT group which is providing the services to the Swedish branch.
- In accordance with the geographical limitation of the VAT group registration in Article 11 of the VAT Directive, **the Swedish branch of Danske Bank cannot be regarded as part of a Danish VAT group** of which the

company's principal establishment is a member.

- Following the reasons above, the ECJ held that **the principal establishment in Denmark, which is a member of a VAT group in that country, and its branch in Sweden cannot be regarded as a single taxable person.** They are to be considered as separate taxable persons when the principal establishment provides services to its branch, where the associated costs are charged to it.

Practical recommendations

The rules for VAT group registration (pursuant to Article 11 of the VAT Directive) have been implemented by several EU countries, including Slovakia. If the company has several establishments in different countries, **when reposting the costs of services provided between these establishments within the same legal entity, we recommend checking whether any of these establishments is part of the VAT group in the country of establishment.** Participation in a VAT group registration may result in the transaction being regarded as a transaction between two different taxable persons and will be subject to VAT.

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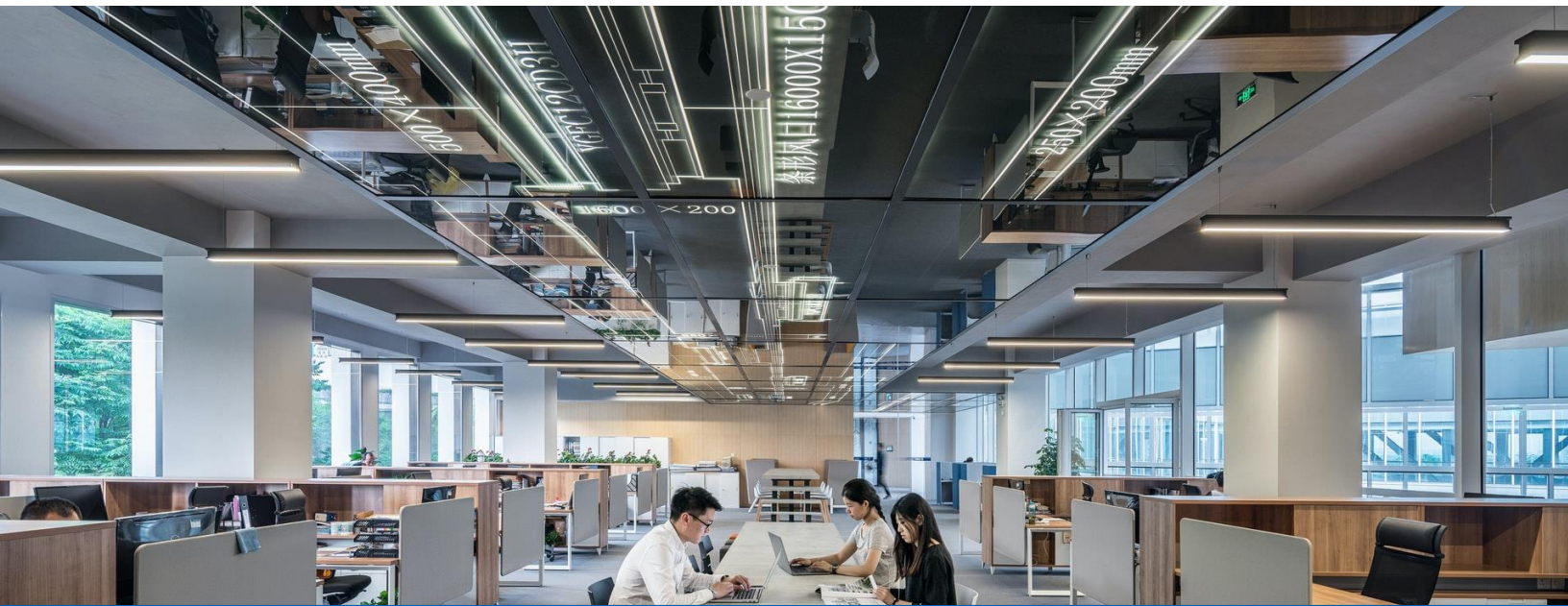
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