

This translated ruling is provided for information purposes only. Only the Swedish-language versions are the official rulings.

In case no. 54-20, **VOI Technology AB** (Appellant) v. **the Swedish Tax Agency** (Respondent), the Supreme Administrative Court delivered the following judgment on 4 June 2020.

RULING OF THE SUPREME ADMINISTRATIVE COURT

The Supreme Administrative Court affirms the advance ruling of the Board for Advance Tax Rulings.

BACKGROUND

1. As a main rule, value added tax is charged at a rate of 25 per cent. For services relating to transport of passengers, however, a lower tax rate of 6 per cent is applied.
2. VOI Technology AB provides electric scooters which may be used for transport within certain areas. The customer obtains access to an electric scooter by first downloading an app onto his or her mobile telephone and creating a user account. The app shows where vehicles are available. The customer subsequently locates a vehicle and scans the QR code fixed thereon. Thereafter, the customer may use the vehicle in order to transport his or herself from one location to another at which the vehicle is abandoned. By scanning the QR code, the customer is charged a fixed fee. Following conclusion of use, the customer is charged an additional fee based on the time the vehicle has been available to the customer.
3. The company applied for an advance ruling to establish whether the company's service relates to such transport of passengers as is covered by the reduced tax rate.

4. The Board for Advance Tax Rulings noted that the company does not undertake to transport the customer from one location to another but, rather, offers a vehicle which the customer may rent for their own transportation. According to the Board, the situation thus does not involve transport of passengers but, rather, hiring a means of transport, and the service is thus subject to a tax rate of 25 per cent.

CLAIMS, ETC.

5. *VOI Technology AB* requests that the Supreme Administrative Court alter the advance ruling of the Board for Advance Tax Rulings and declare that the company's service is subject to the lower tax rate applicable to the transport of passengers.
6. *The Swedish Tax Agency* is of the position that the advance ruling should be affirmed.

REASONS FOR THE RULING

7. Pursuant to Chapter 7, section 1, first paragraph of the Value Added Tax Act (1994:200), tax is charged at a rate of 25 per cent of the taxable amount except where otherwise follows from the second and third paragraphs. Third paragraph (12) states that the tax shall be charged at a rate of 6 per cent of the taxable amount for transport of passengers with the exception of such transport in which the travel component is of subordinate significance.
8. The Value Added Tax Act's provision regarding the reduced tax rate for transport of passengers is based on Article 98 (2) of the Value Added Tax Directive (2006/112/EC) and point 5 of Annex III to the Directive. According to these provisions, Member States may apply a reduced tax rate for services in the form of transport of passengers and their accompanying luggage. It follows from the case law of the European Court of Justice that the expression, "transport of passengers and their accompanying luggage", given that it is included in an

exemption provision, is to be interpreted strictly and in accordance with its usual meaning (Commission v Spain, C-83/99, EU:C:2001:31, paragraphs 19 and 20).

9. It is clear from the company's description of the relevant service that the company only provides a vehicle which the customer may use to transport his or herself. Thus, the company does not provide the transportation as such. The service thus relates to the rental of a means of transport and not to the transport of passengers. The advance ruling of the Board for Advance Tax Rulings is therefore affirmed.

Justices Henrik Jermsten, Kristina Ståhl, Thomas Bull, Mats Anderson and Marie Jönsson have participated in the ruling.

Judge Referee: Monika Knutsson.