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In case no. 6471-19, **Technopolis AB** (Appellant and Respondent) v. the **Swedish Tax Agency** (Respondent and Appellant), the Supreme Administrative Court delivered the following judgment on 4 February 2021.

RULING OF THE SUPREME ADMINISTRATIVE COURT

The Supreme Administrative Court finds, by way of amendment of the advance ruling of the Board for Advance Tax Rulings, that Technopolis AB's supply of the UMA Access, UMA Team and UMA Access+ memberships is subject to tax.

The Supreme Administrative Court affirms the advance ruling of the Board for Advance Tax Rulings as regards the UMA Private membership.

BACKGROUND

1. The supply of services for consideration is, as a main rule, subject to value added tax. However, the letting of immovable property is exempted from taxation.
2. In the event a transaction is composed of several elements which, assessed individually, are subject to the normal tax rate or are tax exempt, a determination must be made whether there is one or several supplies. In the event the transaction is deemed to consist of a single supply, it is tax exempt if the predominant element of the supply is tax exempt.
3. Technopolis AB provides so-called activity-based workplaces through memberships. The company applied for an advance ruling in order to learn whether the provision of the respective membership is to be regarded as a composite supply which is subject to tax. In the event the Board for Advance Tax Rulings should find that it is a matter of several separate supplies, the company wished to know whether these are subject to tax or tax exempt. The application states the following.

4. Activity-based workplaces are offered at the company's facilities. In order to stimulate networking amongst customers, the company intends to employ a so-called community manager who will assist in ensuring that the customers come into contact with one another. The community manager shall also ensure that the customers have what they need and will take orders for supplementary services. In addition, the company will arrange joint networking activities and marketing events.
5. There are four different types of memberships. All memberships grant a right of access to a facility 24 hours a day and to one of the company's other facilities within or outside Sweden for not more than five days per month. The term of agreement is not less than one month. The price paid by the customers is calculated based on the aggregate value of the services included in the membership. In addition to that which is included in the memberships, additional services will be offered in exchange for payment in accordance with a separate price list.
6. UMA Access provides the customer with access to a workstation in an open office depending on availability. In addition, access is provided to Wi-Fi, the company's internal social network, reception service staffed 24 hours a day, coffee, etc., printing and copy services, cleaning, security services and maintenance of the facilities. Finally, a discount on the price for using any of the meeting rooms is received.
7. UMA Team is a membership for several persons from one company. It is provided in three different variants depending on the number of persons and offers the same services as UMA Access.
8. UMA Access+ corresponds to UMA Access with the difference that the customer is guaranteed a certain workstation. In addition thereto, the customer also has access to lockable cupboards, company address and post box.

9. UMA Private provides the customer with access to a furnished and lockable room which other customers are not entitled to use. In order to enter the office, the customer needs to go through the reception. Bringing one's own furniture or making any changes to the interior of the room is not permitted. The membership otherwise entails the same services as UMA Access+.

10. The Board for Advance Tax Rulings found that the company's supply of the respective memberships is to be regarded as a composite supply of services which is tax exempt. In justification thereof, the following was stated. Through the memberships, the customers obtain 24-hour-a-day access to premises at which they are offered, *inter alia*, a workstation. Although UMA Access and UMA Team only offer the customer access to a workstation depending on availability, it may be assumed that the premises are scaled in such a manner that the customers who come to the premises normally are provided with access to a workplace. The services offered to the customers over and above a flexible workplace, such as maintenance, cleaning, security and office materials and access to a community manager, are such as may be deemed to be necessary in order to use the premises in the intended manner, i.e. ancillary services. Through the memberships, the company thereby primarily supplies its customers with access to premises.

CLAIMS, ETC.

11. *Technopolis AB* claims that the Supreme Administrative Court is to find that each and every one of the company's memberships is to be regarded as constituting a supply of a taxable service.

12. *The Swedish Tax Agency* claims that the Supreme Administrative Court is to affirm the advance ruling.

REASONS FOR THE RULING

The question in the case

13. The question in the case is whether the supply of memberships which provide access to premises with activity-based workplaces is tax exempt as a letting of immovable property.

Legislation, etc.

14. The supply of goods and services is, pursuant to Chapter 3, section 1 of the Value Added Tax Act (1994:200) subject to tax unless otherwise stated in the chapter. According to section 2, first paragraph the grant of tenancy rights and other rights to immovable property is tax exempt.
15. The provision in Chapter 3, section 2, first paragraph of the Value Added Tax Act corresponds to Article 135 (1) (l) of the VAT Directive (2006/112/EC) in which it is prescribed, *inter alia*, that the letting of immovable property is tax exempt.

The Court's assessment

One or several supplies

16. It is clear from the European Court of Justice's case law that, where a transaction comprises a bundle of elements and acts, regard must be had to all of the circumstances in which the transaction in question takes place in order to determine whether that operation gives rise to one single supply or to two or more distinct supplies (*KPC Herning*, C-71/18, EU:C:2019:660, paragraph 35).
17. Every supply must normally be regarded as distinct and independent. Where two or more elements of a transaction are so closely linked that they form, objectively, a single, indivisible economic supply, which it would be artificial to split, they

are, however, to be regarded as a single supply (*KPC Herning*, paragraphs 36 and 38).

18. It is also a matter of a single supply where one supply constitutes the principal and the other is to be regarded as ancillary thereto. A supply must be regarded as ancillary to a principal supply if it does not constitute for customers an end in itself but a means of better enjoying the principal service supplied (*KPC Herning*, paragraph 38).

Letting of immovable property

19. The European Court of Justice has defined the concept of the letting of immovable property in Article 135 (1) (1) of the VAT Directive as the conferring by a landlord on a tenant, for an agreed period and in return for rent, of the right to occupy that property as if that person were the owner and to exclude any other person from enjoyment of such a right (*Veronsaajien oikeudenvaltayksikkö*, C-215/19, EU:C:2020:518, paragraph 40). All conditions must be satisfied for there to be letting of immovable property. In addition, the term must be interpreted strictly. (*Luc Varenne*, C-55/14, EU:C:2015:29, paragraphs 22 and 23.)
20. The European Court of Justice has further stated that the letting of immovable property is normally a relatively passive activity, not generating any significant added value, and that an activity is excluded from the exemption, in the absence of quite exceptional circumstances, where it also entails a certain number of commercial activities (*Veronsaajien oikeudenvaltayksikkö*, paragraphs 41 and 43).
21. The actual period of the letting is not, of itself, the decisive factor in determining whether a contract is one for the letting of immovable property except so far as concerns short-term leases (*Sequeira Mesquita*, C-278/18, EU:C:2019:160, paragraph 25).

Assessment in this case

22. Both the Board for Advance Tax Rulings and the parties are of the opinion that the respective memberships constitute a single composite supply. The Supreme Administrative Court makes the same assessment and thus moves on to examine whether the supplies are tax exempt as lettings of immovable property.
23. The company emphasises that the customers principally seek the equipment and the services, in particular the company's social network, which is included in the memberships, and not a particular workplace or area of the premises. The supplies are accordingly subject to tax.
24. The Swedish Tax Agency is of the opinion that it is the access to the workplace which constitutes the principal part of the supplies. If premises are made permanently available together with other goods and services, access to the premises is normally such an important part of the supply that it may be deemed to be this part which an average customer principally seeks and which thus characterises the supply as a whole. Accordingly, the memberships are tax exempt.
25. The Supreme Administrative Court notes that the UMA Access and UMA Team memberships do not grant any guaranteed right to a workplace or a certain area. Thus, a customer is not entitled to occupy a place or an area and exclude others from the corresponding right. All the conditions established by the European Court of Justice in order for a tax exempt letting of immovable property to be deemed to exist are thereby not satisfied (see paragraph 19) and both of these supplies are accordingly subject to tax.
26. The UMA Access+ membership guarantees the customer a certain workstation and thereby contains an element which may be deemed to constitute a letting of immovable property. However, the membership also includes several other services. That which an average customer seeks may be deemed to be a

combination of both of these elements, i.e. the right to use a workstation and the access to the other services. The elements are therefore to be placed on the same footing and none of them is to be regarded as principal. Since tax exemptions are to be interpreted restrictively, the supply of the UMA Access+ membership cannot be covered by the tax exemption but, rather, is subject to tax (*Deutsche Bank*, C-44/11, EU:C:2012:484, paragraphs 41–43).

27. As finally regards UMA Private, the customer is entitled to a certain lockable room and may thus exclude others from the corresponding right. While there are certain limitations on the customer's possibility to dispose of the rooms, the right of use of the premises may be deemed, in the view of the Supreme Administrative Court, to constitute the dominant element of the supply. Accordingly, the UMA Private membership is tax exempt.
28. The advance ruling of the Board for Advance Tax Rulings shall, as regards the UMA Access, UMA Team and UMA Access+ memberships, accordingly be amended. The advance ruling as regards UMA Private shall be affirmed.

Justices Helena Jäderblom, Margit Knutsson, Erik Nymansson, Mahmut Baran and Kristina Svahn Starrsjö have participated in the ruling.

Judge Referee: Ann Linders.