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In case no. 655-20, the **Swedish Tax Agency** (Appellant) v. **AA** (Respondent), the Supreme Administrative Court delivered the following decision on 27 April 2021.

SUPREME ADMINISTRATIVE COURT RULING

The Supreme Administrative Court dismisses the case.

BACKGROUND

1. When the Swedish Tax Agency performs an audit of a taxpayer, the agency may, under certain circumstances, by means of so-called securing of evidence, search for and seize documents necessary for the audit. The decision regarding securing of evidence is taken by an administrative court following application by the Swedish Tax Agency.
2. *Documents* refers to both physical and electronic documents. Electronic documents may be stored in, for example, a computer located at the taxpayer's business premises. However, such documents may also be stored in a so-called cloud service. By this is meant that the documents are physically stored on servers run by a service provider and that the person who uses the service obtains access to the documents via the Internet. This case concerns whether the provisions regarding the securing of evidence are applicable to documents which are stored in such a cloud service.
3. The Swedish Tax Agency decided to audit AA and applied to the Administrative Court in Falun to search and seize documents at the business premises of AA's company and, in the event the documents sought were not found there, at his residence at the same address.

4. The Swedish Tax Agency further applied to search and seize documents also in AA's business areas related to a stated e-mail address and a digital marketplace. According to the Swedish Tax Agency, the business areas were located on servers situated at unknown addresses but were disposed of by AA from his business premises and/or residence. These searches were to be conducted at the same time as the search was carried out at the relevant address. In the following, this part of the Swedish Tax Agency's application is referred to as the application for securing of documents stored in cloud services.
5. The administrative court decided that documents covered by the Swedish Tax Agency's audit could be sought and seized at the business premises and residence in accordance with the application. The administrative court further decided that the Swedish Tax Agency could take measures to secure documents stored in the stated cloud services provided, *inter alia*, that such measures were carried out within Swedish jurisdiction.
6. The Swedish Tax Agency appealed the decision to the Administrative Court of Appeal in Sundsvall and claimed that the application for securing of evidence was to be granted in full and stated the following. The conditions established by the administrative court entail that it is practically impossible to carry out the measures.
7. The administrative court of appeal was of the opinion that the conditions were not present in order, by virtue of the provisions regarding securing of evidence, to at all grant authorisation to search and seize electronic documents in the manner the administrative court had done. Accordingly, the appeal was rejected.
8. Both the administrative court and the administrative court of appeal have ordered that AA be notified of the judgments only in connection with the execution.

CLAIMS, ETC.

9. *The Swedish Tax Agency* claims that the application for securing of evidence is to be granted in its entirety and states that, in order for the agency to be able to conduct its control activities in an efficient way, there must be the possibility to search and seize also externally stored documents and to do so even if the documents are digitally stored at an unknown location.
10. AA has not been informed of the Swedish Tax Agency's appeal.

REASONS FOR THE RULING**The question in the case**

11. The question in the case is whether the provisions regarding securing of evidence are applicable to documents stored in a cloud service.

Legislation, etc.*The Instrument of Government*

12. According to Chapter 2, Article 6, first paragraph of the Instrument of Government, everyone shall be protected in their relations with the public institutions against house searches and other such invasions of privacy. Article 20, first paragraph provides that this protection, under certain specifically prescribed conditions in the Instrument of Government, may be limited in law.

The Tax Procedures Act

13. Securing of evidence is a coercive measure governed by the Tax Procedures Act (2011:1244).

14. According to Chapter 45, section 2, first paragraph, *securing of evidence* means, *inter alia*, searches and seizures of documents in accordance with sections 4–11. Chapter 3, section 9 provides that *document* means any written or pictorial matter and recording which may be read, listened to or otherwise comprehended only using technical aids.
15. It follows from Chapter 45, sections 3–5 that, when an audit is carried out on the business premises of the subject of the audit, the documents necessary for the audit may be sought on the business premises and seized for examination.
16. *Business premises* means, in accordance with Chapter 3, section 18, first paragraph, areas which are principally used in the business which give rise to or may be assumed to give rise to an accounting obligation in accordance with the Bookkeeping Act or which are operated by a legal person other than a decedent's estate. It is apparent from the second paragraph that *business premises* also means areas of land, means of transportation, storage places and other areas which are disposed of or may be assumed to be disposed of by the business.
17. Furthermore, under certain circumstances, pursuant to Chapter 45, section 7, a document which is necessary for an audit may be sought on premises, at a storage site or in another area which does not constitute the business premises of the subject of the audit and may be seized for examination.
18. Chapter 69, section 2 states that a decision regarding the securing of evidence ceases to apply where the execution does not begin within one month of the day of the decision.

The Court's assessment

19. The securing of evidence is a measure of the type which, pursuant to Chapter 2, Articles 6 and 20 of the Instrument of Government, require legal basis.

20. The provisions regarding securing of evidence in Chapter 45 of the Tax Procedures Act apply to searches and seizures of documents on premises and in other physical areas. The provisions also cover electronic documents stored in, for example, computers and storage media of various types (*cf.* Government Bill 1993/94:151, p. 153 and Swedish Government Official Report 1992:110, p. 353). However, this presupposes that the storage location is known and can be specified in the decision regarding securing of evidence.
21. However, there are no provisions regarding the securing of evidence in the form of searches and seizures of documents which are stored in cloud services the physical storage location of which cannot be localised. Accordingly, there is no legal basis for granting the Swedish Tax Agency's application for securing of evidence to the extent it applies to documents stored in the relevant cloud services, and the administrative court should thereby have rejected the application in this respect.
22. The decision for securing of evidence has, in accordance with Chapter 69, section 2 of the Tax Procedures Act, ceased to apply. Accordingly, the case will be dismissed.

Justices Jermsten, Ståhl, Saldén Enérus and von Essen have participated in the ruling.

Judge Referee: Charlotta Alsterstad Lindfors.