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In case no. 6562-19, **City Dental i Stockholm AB** (Appellant) v. **the Swedish Tax Agency** (Respondent), the Supreme Administrative Court delivered the following judgment on 2 July 2020.

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RULING OF THE SUPREME ADMINISTRATIVE COURT

The Supreme Administrative Court rejects the claim for a request for a preliminary ruling from the European Court of Justice.

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

BACKGROUND

1. The supply of services for consideration is, as a main rule, subject to value added tax. However, certain activities in the public interest are exempted from taxation, *inter alia* transactions which constitute dental care.

2. As a rule, the supplier of a service is liable to pay the value added tax. However, in certain situations, the buyer of the service is liable to tax (so-called reverse charge procedure or tax on acquisition). This can be the case under certain circumstances, e.g. when a taxable person purchases services from a foreign taxable person.

3. City Dental i Stockholm AB operates a dental care clinic. The company intends to purchase services from a Polish dentist. The company applied for an advance ruling to learn whether it would be taxed on the acquisition of these services or whether the services are viewed as dental care which is tax exempt. The application and an appended agreement state the following.

4. The company is a private care provider which provides dental care services to patients at its clinic in Stockholm. Since these services are tax exempt, the company is not entitled to deductions for input value added tax. In the event the company is taxed on the acquisition of the services purchased from the dentist, the value added tax will thus constitute a cost in the operations of the company.

5. The dentist has a Polish equivalent of a Swedish sole proprietorship and is a foreign taxable person. The work to be performed by the dentist at the company's clinic is such dental care as is per se tax exempt. However, the company wishes to obtain clarity as to whether the services the company intends to purchase from the dentist will be viewed as dental care which is tax exempt or as a staffing service which is subject to tax.

6. Both the company and the dentist are care providers and are subject to supervision by the Health and Social Care Inspectorate. The dentist must comply with the company's rules and policies and provide the services in accordance with the time schedule determined by the company. The dentist is responsible for the dental care provided and for holding the proper license for practicing the dental profession in Sweden during the term of the agreement. The company is responsible for providing the dentist with booking and payment systems and dental equipment. The remuneration to the dentist amounts to a certain percentage of the net turnover generated by the dentist, after subtracting certain costs.

7. The Board for Advance Tax Rulings held that the purpose of the agreement between the dentist and the company is to staff the organisation for dental care provided by the company. According to the Board, the supply by the dentist to the company thus constitutes a staffing service, not dental care, and is therefore not covered by the tax exemption.

CLAIMS, ETC.

8. *City Dental i Stockholm AB* requests that the Supreme Administrative Court alter the advance ruling of the Board for Advance Tax Rulings and declare that the supply by the dentist is covered by the tax exemption for dental care. The company further requests that the Supreme Administrative Court request a preliminary ruling from the European Court of Justice.

9. *The Swedish Tax Agency* is of the opinion that the advance ruling should be affirmed.

REASONS FOR THE RULING

The question in the case

10. The question in the case is whether the services to be acquired by the company from the dentist constitute a staffing service which is subject to tax or dental care which is tax exempt.

Legislation, etc.

11. Pursuant to Chapter 3, section 4, first paragraph of the Value Added Tax Act (1994:200), the supply of services which constitute medical care, dental care or social care as well as the supply of other services and goods sold by the provider of the care as a part thereof are exempt from taxation. According to section 6, dental care is understood to mean measures to prevent, diagnose or treat illnesses, physical impairments and injuries in the oral cavity.

12. The VAT Directive (2006/112/EC) contains in Article 132(1)(a-q) provisions regarding exemptions for certain activities in the public interest, *inter alia*,

medical care, social care and education. The Swedish provisions regarding exemption from liability to tax for dental care are based on points (b) and (c) regarding exemptions for medical care.

13. According to Article 132(1)(b), the Member States shall exempt from liability to tax hospital and medical care and closely related activities undertaken by bodies governed by public law or, under social conditions comparable with those applicable to bodies governed by public law, by hospitals, centres for medical treatment or diagnosis and other duly recognised establishments of a similar nature. Article 132(1)(c) states that the provision of medical care in the exercise of the medical and paramedical professions as defined by the Member State concerned is to be exempted.

The Court's assessment

Preliminary ruling from the European Court of Justice

14. In several previous rulings, the Supreme Administrative Court has assessed how the line is to be drawn between services which constitute a staffing service subject to tax and services which constitute tax exempt medical care (see, *inter alia*, HFD 2018 reported case no. 41 and HFD 2020 reported case no. 5). The Court has found that sufficient guidance for determining the issue can be obtained from the case law of the European Court of Justice. The present case concerns, in principle, the same issues as those which arose in said cases, and the Supreme Administrative Court is of the opinion that this case can also be decided with guidance from the case law of the European Court of Justice. The claim for a request for a preliminary ruling from the European Court of Justice is therefore rejected.

Delineation between services which constitute a staffing service and services which constitute medical or dental care

15. In previous rulings, with reference to the cases *Horizon College* (C-434/05, EU:C:2007:343) and "*go fair*" *Zeitarbeit* (C-594/13, EU:C:2015:164), the Supreme Administrative Court drew the following conclusions from the case law of the European Court of Justice as regards the assessment of whether a supply constitutes a staffing service or medical care (see, for example, HFD 2020 reported case no. 5, paragraphs 22–24).

16. Where the supplied staff performs the medical measures on behalf of the buyer and is part of the buyer's organisation, this indicates that the service in question is a staffing service. In order to determine if this is the case, consideration shall be given to who has the overall responsibility for determining which work duties are to be performed, which patients will be subject to the measures, and when these are to be provided.

17. The fact that the supplied medical staff determines how the care is to be performed does not mean that the staff itself – or the subcontractor – is to be deemed to bear the overall responsibility for which work duties are to be performed. The fact that medical staff has a legal responsibility as to the manner in which its work duties are performed and is subject to supervision by the Health and Social Care Inspectorate does not affect this assessment.

18. When a purchasing care provider hires a subcontractor who provides medical staff for providing medical measures to the buyer's patients, the supply is thus normally regarded as a staffing service. The purpose of the agreement between the buyer and the buyer's subcontractor is namely under such circumstances deemed to be the supply of a resource with certain skills in order to allow the buyer to fulfil its obligations. Between the buyer and the subcontractor, the service provided is thus not medical care.

19. All the previous cases from the Supreme Administrative Court have addressed the delineation between a staffing service and medical care in situations in which the subcontractor was a company providing medical staff to the buyer. The general conclusions drawn from the case law of the European Court of Justice in these cases, however, apply irrespective of the corporate form in which the subcontractor conducts its operations (*cf. Kügler*, C-141/00, EU:C:2002:473, paragraphs 26–31) and also irrespective of whether the medical measures carried out by the provided staff constitute medical care or dental care.

20. However, the company has claimed that the Supreme Administrative Court in previous rulings has misinterpreted the case law of the European Court of Justice. The company is of the opinion that the judgment of the European Court of Justice in the case *Peters* (C-700/17, EU:C:2019:753) provides that the tax exemption in Article 132(1)(c) of the VAT Directive is applicable in all situations in which medical or dental care is performed by persons licensed to provide such care.

21. The *Peters* case involved a medical specialist who provided medical care services consisting of, *inter alia*, medical evaluation services to a laboratory company. Through a request for a preliminary ruling, the national court sought clarification as to whether an application of the tax exemption in Article 132(1)(c) is subject to the condition that there is a confidential relationship between the care provider and the patient. The European Court of Justice found that this was not the case. Accordingly, the case merely concerned the question whether the medical care services consisting of, *inter alia*, medical evaluation services provided by the medical specialist fell outside the scope of Article 132(1)(c) for the reason that they were not provided within the framework of a confidential relationship between the medical specialist and the patient. In the view of the Supreme Administrative Court, the case, however, provides no guidance for assessing whether a service at all constitutes a medical care service or whether it is instead to be viewed as a staffing service.

22. The Supreme Administrative Court thus finds in conclusion that the general conclusions previously drawn by the Court from the case law of the European Court of Justice shall also form the basis for the assessment in the present case.

Assessment in this case

23. The agreement between the company and the dentist states that the dentist, as subcontractor, shall provide dental care at the clinic operated by the company. Recipients of the dental care are the patients who turn to the clinic in order to obtain such care. The dental care is to be provided at the times determined by the company.

24. In the view of the Supreme Administrative Court, this means that the dentist is part of the company's organisation. It is the company which has the overall responsibility for determining which work duties are to be performed within the framework of the supply by the dentist. Accordingly, the dentist performs the engagement in accordance with the company's instructions. The purpose of the agreement is deemed to be that the dentist is to provide the services required in order for the company, in turn, to be able to provide dental care at its clinic. The dentist's supply thus constitutes a staffing service.

25. A staffing service is per se not a service which qualifies as medical care within the meaning of Article 132(1)(b) or within the meaning of Article 132(1)(c) of the VAT Directive but could, under certain circumstances, still be exempted from tax on the basis that the service constitutes an activity closely related to such care as is referred to in Article 132(1)(b) (HFD 2018 reported case no. 41 and HFD 2020 reported case no. 5, paragraphs 28 and 29). One of several conditions for this, however, is that the entity providing the staff is such a care establishment as is referred to in said article. Based on the information provided in the application for an advance ruling, it is not clear that the dentist operates any care establishment of

its own. Accordingly, the supply by the dentist cannot constitute an activity closely related to the care provided by the company.

26. The company's acquisition of services from the dentist is thus not covered by the tax exemptions in the Directive. The provisions regarding exemptions for dental care in Chapter 3, sections 4 and 6 of the Value Added Tax Act are to be interpreted in light of the Directive. Thus, the company shall be taxed for the acquisition of the services in question.

27. The advance ruling of the Board for Advance Tax Rulings is therefore affirmed.

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Justices Henrik Jermsten, Kristina Ståhl, Anita Saldén Enérus, Thomas Bull and Mats Anderson have participated in the ruling.

Judge Referee: Monika Knutsson.