

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

In case no. 7095-21, the **Swedish Tax Agency** (Appellant and Respondent) v. **PodMe AB** (Respondent and Appellant), the Supreme Administrative Court delivered the following judgment on 15 June 2022.

RULING OF THE SUPREME ADMINISTRATIVE COURT

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

BACKGROUND

1. Value added tax is, as a main rule, charged at a rate of 25 per cent. However, as regards sales of books, newspapers and periodicals, a reduced tax rate of 6 per cent is applied. The reduced tax rate is applied irrespective of whether such a product is provided in printed form or by electronic means.
2. PodMe AB provides a subscription service which, for a fixed monthly fee, provides the customers access to the stories, features and interviews in audio format, so-called podcasts. The company applied for an advance ruling in order to find out whether the service is subject to the reduced tax rate for books, newspapers and periodicals which are supplied by electronic means. The service was described in the following manner in the application.
3. The company's customers can connect to the service via the company's website or via its app. The service is free of advertising and covers just over more than forty different titles (podcasts). The offering is being expanded and changes continuously. The content can be divided into three categories: documentary accounts, interviews and discussions, and short stories and fiction. Most of the podcasts may be categorised as documentary accounts and, in terms of content, most have a societal focus and address subjects such as crime, trials, correctional treatment, accidents and catastrophes. There are also historical accounts and interviews with known personalities. Certain podcasts consist of longer accounts

which are broken up into episodes, while others consist of shorter accounts. The latter may be part of a series on a certain theme.

4. Within the two categories, documentary accounts and short stories and fiction, most of the podcasts are based entirely on written manuscripts. Within the interviews and discussions category, the structure and questions are written in advance, but the discussions are spontaneous. This category comprises a small component of the offering.
5. The company submitted two examples of audio files within each of the three categories.
6. The Board for Advance Tax Rulings found that the supply of the subscription was covered by the 25 per cent tax rate. In explanation thereof, the Board stated the following.
7. In consideration of a flat price, the subscription covers various titles and the content changes over time. It constitutes a composite supply, a digital product, for the purposes of value added tax. The assessment of whether the digital product's principal area of use is the same as for a comparable printed product is therefore to be made in light of the contents as a whole obtained through the subscription.
8. The accounts included in the subscription differ from audiobooks in that they are enhanced with elements involving actors who act certain scenes, recorded audio files, illustrative sound effects, music, etc., and that there is not always a printed copy. The composite content provides the customer with an experience which differs from listening to an audiobook. The customer receives an account presented in a more dramatic form which is rather more comparable to a radio programme and radio theatre although it may contain elements which have the characteristics of audiobooks.

9. The preparatory works state that it is primarily products which consist of text and that are intended for actual reading which are to be subject to the reduced tax rate. In comparison with such a product, the company's product may be regarded as possessing a different content and an enlarged area of use. This is because the composite content of the service for an average consumer entails something other than a mere reading aloud of a book or an article. Accordingly, the supply does not constitute the sale of books or newspapers which are supplied electronically, and they are accordingly not subject to the reduced tax rate.

CLAIMS, ETC.

10. *The Swedish Tax Agency* claims that the Supreme Administrative Court is to affirm the advance ruling of the Board for Advance Tax Rulings.
11. *PodMe AB* claims that the Supreme Administrative Court is to amend the advance ruling and find that the company's service is subject to the reduced tax rate for publications supplied electronically.

REASONS FOR THE RULING

The question in the case

12. The question in the case is whether the supply of a digital subscription service which makes it possible for the customer to listen to podcasts is subject to the reduced tax rate for books, newspapers and periodicals supplied by electronic means.

Legislation, etc.

13. According 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 tax basis except where otherwise follows from the second or third paragraphs.

14. Chapter 7, section 1, third paragraph (1) states that the tax is charged at a rate of 6 per cent of the tax basis for sales of books, newspapers and periodicals provided that the goods are not wholly or principally intended for advertising. It follows from (5) of the same paragraph that such reduced tax rate is also charged on turnover of such products if they are supplied by electronic means provided that they are not wholly or principally intended for advertising and do not consist wholly or principally of moving pictures or audible music.
15. These provisions regarding reduced tax rate were implemented based on Article 98 of the Value Added Tax Directive (2006/112/EC) and point (6) of Annex III of the Directive.
16. The preparatory works to the provisions of the Value Added Tax Act regarding electronic publications state the following. The supply of a product by electronic means constitutes, as opposed to the supply of a printed product, the supply of a service. This means that the physical characteristics of the product cannot be used in the determination of the scope. Determinative to whether such supply is to be subjected to the reduced tax rate should thus be the area of use, content and function of the service. In order for a product supplied by electronic means to be subject to the reduced tax rate, its area of use should primarily be the same as for a comparable printed product (Government Bill 2018/19:73, pp. 14 and 21).

The Courts' assessment

17. The Supreme Administrative Court makes the initial assessment that the subscription to which the application pertains may be deemed to be a single, composite supply for the purposes of value added tax. The components which are included in the supply, i.e. the audio files to which the customer obtains access, may, furthermore, be regarded as of equal status *inter se*. According to the case law of the European Court of Justice, all components must then be subject to the reduced tax rate in order for this to be applicable to the supply (*Bařtová*, C-

432/15, EU:C:2016:855, paragraph 75).

18. As mentioned, according to the preparatory works, the product's area of use, content and function (see paragraph 16; *cf.*, also, HFD 2021 reported case no. 51) should be decisive as to whether a product is subject to the reduced tax rate for publications supplied by electronic means. The preparatory works also state the following. The lower tax rate for printed books, etc., is primarily intended for publications which principally consist of text of some type and are intended for actual reading. This should also be the starting point for the assessment of whether a certain product published by electronic means is subject to the reduced tax rate. Publications which consist of talking text and which are intended for listening are also covered. There should be no requirement that the content was originally published in printed form and that there is accordingly a printed counterpart in order for the products provided by electronic means to be subject to the reduced tax rate. Furthermore, services which grant a right to read or listen to electronic publications during a subscription period are covered (Government Bill 2018/19:73, pp. 13 and 21).
19. In the view of the Supreme Administrative Court, a condition in order for a digital product in the form of audio files to be subject to the reduced tax rate for electronic publications should, against this background, be that the audio files contain reproduction of text. By using an audio file, the customer may thus be able to consume the text, not by reading it, but by listening to it. It follows from this that the production of the audio file must be based on a script. It is not necessary that the script exists in printed form, but a presentation which consists of one or more persons speaking freely without a script does not reproduce an existing text and is thus not subject to the reduced tax rate.
20. It is apparent from the company's description in the application for advance ruling and from the audio files which have been submitted that several of the podcasts included in the company's subscription service consist of the reading of texts aloud. In certain cases, the reading aloud has been enhanced by components of

dialogue, sound effects, music, etc. The fact that a reading is dramatized in such way does not, however, prevent that it is a question of reading a text aloud. These components of the subscription may thus per se be deemed to be such presentations that are subject to the reduced tax rate for electronic publications.

21. However, the subscription also includes audio files which contain interviews and discussions. These are not based on scripts but, rather, the dialogue is spontaneous although based on certain pre-determined questions. In these respects, there is thus no question of reading texts aloud. The company has stated that comparable presentations exist in physical form since interviews and reproduction of discussions occur commonly in printed newspapers and periodicals. As stated in paragraph 19, however, the assessment is not to have in view whether an oral presentation could exist in written form or whether it could have subsequently been written down but, rather, whether the presentation consists of reading an already existing text aloud.
22. Thus, the subscription contains components which are not subject to the reduced tax rate for books, newspapers and periodicals supplied by electronic means. This means that such tax rate is not to be applied to the company's supply.
23. Accordingly, the advance ruling of the Board for Advance Tax Rulings is affirmed.

Justices Jäderblom, Ståhl, Anderson, Jönsson and Medin have participated in the ruling.

Judge Referee: Lena Åberg.