

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

In case no. 7109-20, the **Swedish Tax Agency** (Appellant) v. **Söderberg Läkekonst AB** (Respondent), the Supreme Administrative Court delivered the following judgment on 31 May 2021.

SUPREME ADMINISTRATIVE COURT RULING

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

BACKGROUND

1. The supply of services is, as a main rule, subject to value added tax. However, certain activities in the public interest are exempted from taxation, *inter alia* services which constitute medical care.
2. AA is a licensed doctor. He conducts his activities at Söderberg Läkekonst AB (the company) and has entered into a collaboration agreement with Region Norrbotten to, as a part of out-patient medical care in the region, operate medical service within the specialities internal medicine, geriatrics and general medicine. The company applied for an advance ruling in order to learn whether the services which the company provides within the framework of this activity are tax-exempt medical care.
3. The collaboration agreement with the region states the following. Medical practice means the examination and treatment due to illness or injury and advice on birth control. AA is responsible for ensuring that premises and equipment suitable for the practice are available. The practice will be situated in Luleå municipality and carried out on premises which belong to Läkarhuset Hermelin AB (the medical centre). However, AA is free to relocate the practice to other premises within the municipality. For his undertaking in accordance with the agreement, AA is compensated by the region in accordance with the medical care

compensation regime. He may also charge patient fees in an amount not exceeding the amount applicable to comparable care within the region.

4. The company has also entered into an agreement with the medical centre. The following regarding the respective undertakings of the contracting parties is apparent from the application documents.
5. The medical centre undertakes to provide the company personnel with the proper skills, suitable premises including access to its own reception room disposed of by the company, medical and other equipment as well as adequate systems for patient and medical records management. The medical centre's personnel shall, *inter alia*, book patients, conduct examinations and test-taking which has been prescribed and delegated by the company's doctors as well as assist in examinations and operations. As compensation for the medical centre's services, the company is to pay an amount to the medical centre corresponding to a certain percentage of the company's revenues.
6. The company undertakes to conduct the practice in accordance with science and proven experience and instructions from the region and the National Board of Health and Welfare. The company's doctor determines which examinations he wishes to carry out himself and which will be delegated to medical centre personnel. The measures which have been carried out or delegated shall be documented and recorded in the medical centre's patient and medical record system. The company shall inform the medical centre regarding consultation hours, holidays and absences. During absences, the company is responsible for the measures which need to be carried out as a consequence thereof. The company's doctor shall participate in the medical centre's marketing, stay updated on events in the medical centre and participate in personnel activities.
7. The Board for Advance Tax Rulings was of the opinion that the VAT assessment of the company is dependent on whether this is to be regarded as a supply of staff for the medical centre or as the provision of medical care to the company's

patients. In light of, *inter alia*, the fact that the company itself determines which examinations the company's doctor will provide and determines the scope of its activities and the scheduling thereof, the Board was of the opinion that the company independently provides medical care and may not be deemed to supply staff to the medical centre. The Board thereby found that the company's provision is tax-exempt medical care.

8. The application for advance ruling also applied to the issue of the manner in which the medical centre's provision to the company is to be addressed for VAT purposes. However, this question was disallowed by the Board for Advance Tax Rulings.

CLAIMS, ETC.

9. *The Swedish Tax Agency* claims that the Supreme Administrative Court shall amend the advance ruling of the Board for Advance Tax Rulings and find that the company does not provide tax-exempt medical care.
10. *Söderberg Läkekonst AB* is of the opinion that the advance ruling is to be affirmed.

REASONS FOR THE RULING

Question in the case

11. The question in the case is whether the company's provision is tax-exempt medical care.

Legislation, etc.

12. It is apparent from Chapter 3, section 1, first paragraph of the Value Added Tax Act that the supply of services for consideration is subject to tax unless otherwise

stated in the chapter. *Supply of services for consideration* is understood pursuant to Chapter 2, section 1, third paragraph (1) to be a service, for consideration, which is performed, assigned or in some other manner provided to someone.

13. According to Chapter 3, section 4, first paragraph, the supply of services which constitute medical care are exempt from taxation. It is apparent from section 5, first paragraph that measures to medically prevent, examine or treat diseases and injuries provided by persons specially licensed to practice as medical professionals is covered by this exemption.
14. The provisions of the VAT Act regarding tax exemptions for medical care correspond to Article 132.1 (b) and (c) of the VAT Directive (2006/112/EC).

The Court's assessment

15. The Board for Advance Tax Rulings has been of the opinion that that which is to be determined is whether the company supplies staff, which is a taxable service, to the medical centre or tax-exempt medical care to the company's patients. Accordingly, the Board has made its assessment on the basis of the existing case law applicable to the demarcation between the supply of staff and medical care.
16. According to the agreement between the company and the medical centre which has been submitted, however, the company does not provide any services for consideration to the medical centre. The company's undertakings in accordance with the agreement are performed without consideration and may be deemed to facilitate the medical centre's provision to the company. The only services which the company provides for consideration within the context of the activity covered by the application for advance ruling is thus which is provided to the company's patients. That to be determined by the Supreme Administrative Court is thus only whether the company's provision to the patients is covered by the tax exemption for medical care.

17. Through AA, the company has been engaged by the region to provide care to patients within the specialities internal medicine, geriatrics and general medicine. The medical measures provided by the company consist of examination and treatment due to illness or injury and advice on birth control. The measures are performed by AA who is a licensed doctor and by the personnel, e.g. licensed nurses, provided by the medical centre to the company.
18. It is clear that the services provided by the company to patients are of the type covered by the tax exemption for medical care. For the assessment, it is irrelevant whether the services are performed by the company's own employees or by personnel externally hired by the company or whether the company owns the equipment and the premises used in the activity or whether these resources are provided to the company by someone else. The fact that the medical centre provides certain services to the company thus does not affect the assessment of whether the services provided by the company to the patients constitute medical care.
19. Based on the above, it follows that the advance ruling of the Council for Advance Tax Rulings is to be affirmed.

Justices Jermsten, Ståhl, Rosén Andersson and Anderson have participated in the ruling.

Judge Referee: Monika Knutsson.