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In case no. 507-25, the **Swedish Tax Agency** (Appellant and Respondent) v. **Hedvig AB** (Respondent and Appellant), the Supreme Administrative Court delivered the following judgment on 5 June 2025.

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RULING OF THE SUPREME ADMINISTRATIVE COURT

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

BACKGROUND

1. The supply of goods and services is, as a starting point, subject to VAT. A transfer of assets in a business in conjunction with a transfer of the business is not regarded as a supply of goods or services pursuant to Chapter 5, section 38 of the Value Added Tax Act (2023:200). This only applies, however, provided that the tax which would otherwise have been charged on the transfer would be deductible for the recipient of the assets or the recipient would be entitled to a refund of the tax.

2. Hedvig AB conducts a tax-exempt business in the form of insurance brokerage. The company intends to transfer the business to its wholly owned subsidiary, Hedvig Försäkring AB. The transfer is intended to include all assets which are related to the brokerage business, including internally generated intangible assets, inventories, customer lists, personnel, trademark and existing agreements.

3. Hedvig applied for an advance ruling from the Board for Advance Tax Rulings to learn whether the transfer of assets to the subsidiary is covered by the provision regarding business transfers or whether the transfer is to be deemed as a supply of goods or services.

4. The Board for Advance Tax Rulings concluded that the provision in Chapter 5, section 38 of the Value Added Tax Act could not be applied to the current transfer of assets. The Board for Advance Tax Rulings held that the transfer does not fulfil the condition that the recipient would be entitled to a deduction

of input tax which would have otherwise been charged on the transfer since the subsidiary exclusively conducts tax-exempt business.

CLAIMS, ETC.

5. *The Swedish Tax Agency* and *Hedvig AB* claim that the Supreme Administrative Court is to find that the provision in Chapter 5, section 38 of the Value Added Tax Act is applicable to the transfer.

REASONS FOR THE RULING

Legislation, etc.

6. Chapter 3, section 1 (1) and (3) of the Value Added Tax Act state that the supply of goods and services for consideration within the country by a taxable person acting as such is subject to VAT.

7. Chapter 5, section 38, first paragraph of the Value Added Tax Act states that such a transfer of assets in a business which takes place in conjunction with the transfer of the business is not deemed to be a supply of goods or services. According to the second paragraph, the first paragraph applies provided that the tax which would otherwise have been charged on the transfer would be deductible for the recipient of the assets or that the recipient would be entitled to a refund of such tax.

8. The provisions of Chapter 5, section 38 of the Value Added Tax Act correspond to Articles 19 and 29 of the VAT Directive (2006/112/EC).

9. Article 19, first paragraph states that in the event of a transfer, whether for consideration or not or as a contribution to a company, of a totality of assets or part thereof, Member States may consider that no supply of goods has taken place and that the person to whom the goods are transferred is to be treated as the successor to the transferor.

10. The second paragraph of the Article states that Member States may, in cases where the recipient is not wholly liable to tax, take the measures necessary to

prevent distortion of competition. They may also adopt any measures needed to prevent tax evasion or avoidance through the use of the Article.

11. According to Article 29, Article 19 shall apply in like manner to the supply of services.

The Court's assessment

12. The transfer of assets from Hedvig to Hedvig Försäkring described in the application for the advance ruling takes place in conjunction with a business transfer referred to in Chapter 5, section 38, first paragraph of the Value Added Tax Act. According to information provided, Hedvig Försäkring has no right of deduction of input VAT and is not entitled to a refund of such tax. The transfer accordingly does not fulfil the condition of Chapter 5, section 38, second paragraph of the Value Added Tax Act according to which the recipient would be entitled to a deduction or refund of the tax which would otherwise have been charged. The question is whether this condition is compatible with the VAT Directive.

13. It is apparent from the case law of the European Court of Justice that Article 19, second paragraph of the directive is exhaustive in so far as it pertains to the conditions under which a Member State, which makes use of the option provided in Article 19, first paragraph, may limit the application of the no-supply rule (see judgments of the European Court of Justice in case C-444/10, *Schriever*, EU:C:2011:724, paragraph 21 and case C-497/01, *Zita Modes*, EU:C:2003:644, paragraph 30).

14. In order for Chapter 5, section 38, second paragraph of the Value Added Tax Act to be deemed to remain within the scope granted by the directive, it is necessary, in so far as is now of interest, that the requirement regarding the recipient's right to a deduction or refund of VAT may be regarded as a necessary measure in order to prevent distortion of competition.

15. The Swedish Tax Agency and Hedvig are of the opinion that the requirement in Chapter 5, section 38, second paragraph exceeds what is necessary in order

to prevent distortion of competition in cases where neither the transferor nor the recipient have a right of deduction.

16. The Supreme Administrative Court does not share the position of the parties. In the event VAT is not paid in a case such as this one, the recipient may namely obtain a competitive advantage relative to other actors who carry out the same type of tax-exempt transactions but by means of assets which are acquired in a manner other through a business transfer since they are compelled to pay tax on the acquisitions and pass it on to their customers.

17. Such a risk for the distortion of competition would in particular be able to arise in the event the transfer includes assets which were not subject to VAT at an earlier stage, e.g. internally generated immaterial assets. Another example is where the transferor has already been able to pass to its customers the tax which was previously paid, which has the consequence that the tax is not included as a cost component in the subsequent business transfer.

18. In light of the aforementioned, the Supreme Administrative Court finds that Chapter 5, section 38, second paragraph of the Value Added Tax Act may be justified based on the need to prevent distortion of competition. The fact that the provision is to some extent formulated as a standard provision may be regarded as pragmatically justified and compatible with the directive. In this context, special consideration should be given to the fact that the purpose of Article 19 is to prevent the resources of the recipient from being overburdened by a disproportionate charge to tax which, in any event, would ultimately be recovered through deduction of the input VAT paid (see the judgment of the European Court of Justice in case C-651/11, *X BV*, EU:C:2013:346, paragraph 41 and the case law set forth therein). Thus, the purpose is not to prevent the charge of a non-deductible tax.

19. An application of Chapter 5, section 38, second paragraph in accordance with the wording of the provision thus does not contravene the VAT Directive. Accordingly, the advance ruling of the Board for Advance Tax Rulings shall be affirmed.

Case no.
507-25

Justices Henrik Jermsten, Margit Knutsson, Inga-Lill Askersjö, Mahmut Baran and Mikael Westberg have participated in the ruling.

Judge Referee: Jonas Ljungberg.