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In case no. 3217-21, **Aktiebolaget Högkullen** (Appellant) v. the **Swedish Tax Agency** (Respondent), the Supreme Administrative Court delivered the following judgment on 27 January 2026.

RULING OF THE SUPREME ADMINISTRATIVE COURT

The Supreme Administrative Court overturns the ruling of the administrative court of appeal in those respects pertaining to value added tax and tax surcharges and affirms the ruling of the administrative court in these respects.

The Supreme Administrative Court grants Aktiebolaget Högkullen compensation for costs incurred in the Supreme Administrative Court in the amount of SEK 600,000.

BACKGROUND

1. The taxable amount for value added tax is comprised, as a main rule, by the consideration for a good or service. In the event the consideration paid is less than the open market value of the good or service, however, the taxable amount may, under certain circumstances, be set at the open market value (so-called revaluation). This applies, among other things, to intra-group services provided to a customer which does not have a full right of deduction of input VAT.

2. As a main rule, the open market value for a service is to be determined at the amount which the customer would have paid to an independent supplier of such a service. Where there is no comparable service on the open market, the open market value instead consists of an amount corresponding to the vendor's cost for performing the service.

3. Aktiebolaget Högkullen is the parent company in a property management group. The property management is conducted in the company's subsidiaries. The company's economic activity consists of actively participating in the management of the subsidiaries by providing services to them in the form of

company management, accounts services, property management, investments, IT and personnel administration.

4. In 2016, the company had 19 directly or indirectly owned subsidiaries. Consideration from the subsidiaries for the services which the company had provided amounted that year to a total of approximately SEK 2.3 million which, according to the company, corresponded to the costs of purchasing and performing these services with a certain profit mark-up. The company's costs for the same year amounted to a total of SEK 28 million. The amount included costs which, in the view of the company, were not attributable to the services which had been provided to the subsidiaries such as capital acquisition and shareholder costs, including costs for a planned new share issue and stock market listing. The company deducted all input VAT, i.e. also for tax relating to the capital acquisition and shareholder costs.

5. The Swedish Tax Agency was of the opinion that the services had been provided to the subsidiaries below open market value and decided to revalue and increase the taxable amount. According to the Swedish Tax Agency, there were no comparable supplies on the open market and the taxable amount was thus set at an amount which equalled the company's costs for performing the services. The Agency was of the opinion that the company's combined costs for the relevant year, i.e. approximately 28 million, could be deemed to be attributable to the services which had been provided. The basis for the company's output VAT was thereby established at this amount. In addition, tax surcharges were imposed on the increase.

6. The company appealed to the Administrative Court in Gothenburg which granted the appeal and overturned the decision of the Swedish Tax Agency. The court was of the opinion that the shareholder costs were not obviously to be regarded as costs for performing administrative services and that the Swedish Tax Agency had not been able credibly to establish that the company had provided the services in exchange for consideration below open market value.

7. The Swedish Tax Agency appealed to the Administrative Court of Appeal in Gothenburg which granted the appeal and affirmed the decision of the Agency. The administrative court of appeal explained its ruling in that there were no services on the open market comparable to the services which the company had performed and that the company – by claiming a deduction for all input VAT – had indicated that the costs were related to the economic activity. According to the administrative court of appeal, all costs were to be taken into account when the open market value of the intra-group services was determined.

8. The Supreme Administrative Court has obtained a preliminary ruling from the European Court of Justice (see paragraphs 16–20).

CLAIMS, ETC.

9. *Aktiebolaget Högkullen* claims that the Supreme Administrative Court is to amend the judgment of the administrative court of appeal and reverse the decision of the Swedish Tax Agency. The company further claims compensation for costs incurred in the Supreme Administrative Court in the amount of SEK 1,157,850.

10. *The Swedish Tax Agency* is of the opinion that the appeal is to be rejected. As regards the company’s claim for compensation for costs incurred in the Supreme Administrative Court, the Agency is of the position that an amount equal to compensation for 120 hours’ work is reasonable.

REASONS FOR THE RULING

The question in the Supreme Administrative Court

11. The question is the manner in which the open market value for services provided by a parent company to its subsidiaries is to be determined in conjunction with the application of the provisions regarding revaluation of the taxable amount for value added tax.

Legislation, etc.

12. The Value Added Tax Act (2023:200) entered into force on 1 July 2023. It follows, however, from the transitional provisions that the previous Value Added Tax Act (1994:200) is applicable to the circumstances in this case. An account is given below of the provisions of the 1994 act. In the main, corresponding provisions are found in the new act.

13. Chapter 7, sections 2 and 3 provide that the taxable amount is comprised, as a main rule, of the consideration for a good or a service.

14. However, pursuant to Chapter 7, section 3(a), the taxable amount is the open market value where the consideration is lower than the open market value, the customer does not have a full right of deduction, the vendor and customer are connected to each other and the taxable person is not able credibly to establish that the consideration is in line with market conditions. The provision corresponds to Article 80 of the VAT Directive (2006/112/EC).

15. According to Chapter 1, section 9, first paragraph, *open market value of a service* means the full amount that a customer, at the same marketing stage at which the supply of services takes place, would have to pay, at the time of the supply and under conditions of fair competition, to an independent supplier for such a service situated within the national territory. Where no comparable supply of services can be ascertained, the open market value is, according to the second paragraph, an amount which is not less than the full cost to the taxable person of supplying the service. The provision corresponds to Article 72 of the Directive.

Advance ruling from the European Court of Justice

16. In the request for a preliminary ruling from the European Court of Justice, the Supreme Administrative Court posed the following question.

Question 1: When applying national provisions on the revaluation of the taxable amount, is it compatible with Articles 72 and 80 of the VAT Directive, where a parent company provides its subsidiaries with services of the kind at issue in the present case, always to regard those services as unique services whose open market value cannot be determined by means of a comparison such as that provided for in the first paragraph of Article 72?

Question 2: When applying national provisions on the revaluation of the taxable amount, is it compatible with Articles 72 and 80 of the VAT Directive to consider that the total expenditure of a parent company, including the costs of raising capital and shareholder costs, constitutes the cost incurred by the company in providing services to its subsidiaries, where the parent company's sole activity consists of the active management of its subsidiaries and the parent company has deducted all the input VAT paid on its acquisitions?

17. The European Court of Justice answered the questions by virtue of a judgment in case C-808/23 (EU:C:2025:516).

18. It is apparent from the judgment that the European Court of Justice was of the opinion that it could not be concluded that the services provided by the company were so closely linked that they form, objectively, a single, indivisible economic supply and, consequently, a single supply. Those services, even if they are provided together, appear each to have, according to the Court, their own character and to be identifiable. The fact that an overall price was paid by each of the subsidiaries to the company for all of the services cannot be decisive in relation to intra-group supplies since, otherwise, the group would itself be able to influence the classification to be given to those supplies for VAT purposes by means of the remuneration arrangements agreed (paras. 31–33).

19. In light of the foregoing, the European Court of Justice answered the first question such that Articles 72 and 80 of the VAT Directive must be interpreted as precluding the services provided by a parent company to its subsidiaries in the context of the active management of those subsidiaries from being, in all situations, regarded by the tax authority as constituting a single supply which precludes the open market value of those services from being determined using

the comparison method laid down in the first paragraph of Article 72 of that directive.

20. With regard to the reasons on which the answer to the first question was based, the court was of the opinion that there was no cause to answer the second question (paras. 35-38).

The Court's assessment

Value added tax and tax surcharges

21. It is apparent from the investigation in the case that the company and its subsidiaries are closely linked with one another in such a manner as is presupposed in order for the provisions regarding revaluation of the taxable amount to be applicable and that the subsidiaries do not have a full right of deduction for input VAT. In order for there to be a basis for revaluation of the taxable amount, it is also necessary that the consideration provided by the subsidiaries was lower than the open market value. The Swedish Tax Agency bears the burden of establishing that this is the case.

22. Initially, it may be noted that the preliminary ruling of the European Court of Justice states that the services provided by the company to the respective subsidiary are not to be regarded as a single complex supply. The assessment of whether the consideration paid is lower than open market value shall thus be carried out on the basis of the notion that it involves several separate supplies.

23. Even following the judgment of the European Court of Justice, the Swedish Tax Agency has maintained its position that there are grounds for revaluation in accordance with the Agency's decision. The Swedish Tax Agency is of the opinion that the company's service involving company management is unique, even if it is not a sub-component of a complex service, and that the open market value of such service is thus to be determined by application of Chapter 1, section 9, second paragraph of the Value Added Tax Act. The open market value thereby consists of an amount which is not less than the company's cost

of performing the service, and this cost price is, according to the Agency, significantly higher than the consideration charged by the company.

24. The Swedish Tax Agency asserts as the basis for the notion that this involves a unique service is that the company's cost for producing the company management service is so high that it per se shows that the nature of this service is not the same as a service which could be offered on the open market. The Swedish Tax Agency refers to HFD 2014 reported case 40 in which the Supreme Administrative Court stated that the fact that the parties in an intra-group transaction are related entails that the pricing may be affected by factors that are irrelevant in a comparable external transaction. The Court further stated that the Swedish Tax Agency, as regards intra-group services, should thereby be able to focus the evidence regarding the question of the open market value of the services on whether the consideration was lower than the cost of providing the services.

25. However, it is apparent from the European Court of Justice's preliminary ruling in the case at hand that the view expressed by the Supreme Administrative Court in the case was not compatible with the VAT Directive. Accordingly, also as regards intra-group services, a prerequisite for determining the open market value on the basis of the taxable person's cost price is that the Swedish Tax Agency first shows that there is no comparable service on the open market. In the view of the Supreme Administrative Court, the Swedish Tax Agency in this case, by merely referring to the fact that the company management service was expensive to produce, has not been able credibly to establish that comparable services are lacking. Accordingly, there is no basis for revaluing the taxable amount for this service.

26. As regards other services provided by the company, the Swedish Tax Agency is of the opinion that the open market value is to be determined in accordance with Chapter 1, section 9, first paragraph, i.e. at the amounts which the subsidiaries would have paid to independent suppliers for such services. The Swedish Tax Agency states that the company purchased these services externally and subsequently passed them onward to the subsidiaries, and that

the open market value for the services should thus be the price the company paid for them. Since the company's only activity is to provide services to the subsidiaries, all services purchased by the company should, according to the Agency, be regarded as having benefited the subsidiaries, and the company's costs for these services should thus be re-invoiced to the subsidiaries in full. That this did not occur, the Swedish Tax Agency also asserts that other services have been provided for consideration below open market value. Since the company has invoiced the subsidiaries a unit price for all services, the Swedish Tax Agency is further of the opinion that it cannot be required that the Agency conduct the calculation of the open market value for each individual service.

27. Accordingly, the Swedish Tax Agency has made an aggregate calculation of the open market value for all services which the company provided, and the Agency maintains, even following the judgment of the European Court of Justice, that the calculation can be carried out in such way. As mentioned, however, it is apparent from the judgment of the European Court of Justice that each of the services provided by the company are to be regarded as a separate supply, even if the subsidiaries have paid an overall price to the company for all services (see paras. 18 and 22 above). According to the Supreme Administrative Court, it follows therefrom that any revaluation of the taxable amount must be carried out for each individual service. Since the Swedish Tax Agency has not presented any basis which makes it possible to judge the open market value of the individual services which the company provided, there is no basis for revaluing the taxable amount even with respect to other services.

28. For the reasons stated above, it follows that the company's appeal is to be granted.

Compensation for costs

29. The company has claimed compensation for costs incurred in the Supreme Administrative Court in the amount of SEK 1,157,850. The compensation claim pertains to fees for two counsel for a total of 287.5 hours' work. The

hourly fee amounts to between SEK 3,400 and 5,500, and the average hourly cost is approximately SEK 4,000.

30. The company has been granted its claim, and the case pertains to a question which is of importance for the guidance of the application of the law. Accordingly, the company is entitled to reasonable compensation for its costs. Taking into account the nature and degree of difficulty of the questions, as well as what has been stated regarding the qualifications of counsel, the hourly fees may be deemed to be reasonable per se. As regards the number of hours for which compensation has been requested, the Supreme Administrative Court considers the following.

31. When the hourly fees on which a compensation claim is based are justified by the particular skills and experience of counsel, exacting demands may be placed on counsel to carry out the work independently and efficiently. However, it appears from the submitted cost specifications that both counsel have worked on essentially all measures and that much time has been committed to internal discussions of various sorts, some with other specialists. For these reasons, the expenditure of time appears rather substantial.

32. In addition, the expenditure of time in preparing submissions and reviewing the Swedish Tax Agency’s submissions also appear rather substantial. For example, mention may be made of the commitment of three hours to prepare a blank appeal after thirteen hours have been committed to deliberations and legal research prior to the appeal. Another example is that a total of just over 65 hours has been committed to review the Swedish Tax Agency’s answer regarding the company’s appeal and to draft a submission of approximately four pages of running text as a consequence of such answer. The company’s submissions also contain a number of repetitions of what has been previously asserted. Five hours of work relate to reviewing the judgment of the administrative court of appeal, which is not compensated by the Supreme Administrative Court (see, for example, HFD 2024 reported case no. 40).

33. Against this background, the Supreme Administrative Court finds that the company may be deemed to be reasonably satisfied with compensation in the amount of SEK 600,000, equal to 150 hours’ work at an average hourly cost of SEK 4,000.

Justices Kristina Ståhl, Per Classon, Inga-Lill Askersjö, Ulrik von Essen and Johanna Mihaic have participated in the ruling.

Judge Referee: Jonas Ljungberg.