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In case no. 1536-23, **AA** (Appellant) v. the **Swedish Tax Agency** (Respondent), the Supreme Administrative Court delivered the following judgment on 20 February 2024.

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## **RULING OF THE SUPREME ADMINISTRATIVE COURT**

The Supreme Administrative Court rejects the claim to obtain a preliminary ruling from the European Court of Justice.

The Supreme Administrative Court modifies the advance ruling of the Board for Advance Tax Rulings and finds that the contribution levied by Kärrbackstrands Samfällighetsförening on its members does not pertain to a transaction subject to VAT.

## **BACKGROUND**

1. Goods and services which are supplied by a taxable person for consideration shall, as a rule, be subject to value added tax (VAT). This case pertains to the question as to the manner in which the contributions which a joint property association levies on its members are to be treated for VAT purposes.
2. A joint facility is a facility which is shared by several properties and which is established to serve a purpose of enduring importance to them. The facility belongs to the properties participating in it and the properties participating in the construction and operation of the facility constitute a joint property unit.
3. A joint facility may be managed by a joint property association in which the property owners are members. Even if the facility is managed by a joint property association, it is the property owners who are responsible for it. The grounds on which the costs of construction and operation of the joint facility are to be apportioned are established by ascribing to each property a participatory share in conjunction with the cadastral procedure by which the facility is established. In

the event the needs of a joint property association for funds are not covered by other means, cash contributions shall be levied on the members.

4. *Kärbackstrands Samfällighetsförening* is a joint property association that manages a joint facility consisting of roads and appurtenant road fixtures. In order to determine whether contributions levied on the members are to be subject to VAT, the association applied for an advance ruling and inquired whether it conducts economic activity in the capacity of a taxable person and whether levying contributions for operation and improvement of the joint facility constitute consideration for the supply of goods or services for the purposes of VAT.
5. The Board for Advance Tax Rulings found that the joint property association, by virtue of the activities described in the application, may be deemed to conduct economic activity in the capacity of a taxable person and to supply services for consideration to its members.

#### **CLAIMS, ETC.**

6. *Kärbackstrands Samfällighetsförening* claims that the Supreme Administrative Court shall modify the advance ruling of the Board for Advance Tax Rulings and find that the association does not supply goods or services in the capacity of a taxable person when the association's costs for the joint facility are allocated amongst the association's members by imposition of a levy. The joint property association further claims that the Supreme Administrative Court shall obtain a preliminary ruling from the European Court of Justice.
7. *The Swedish Tax Agency* claims that the Supreme Administrative Court shall affirm the advance ruling.

## REASONS FOR THE RULING

### The question in the case

8. The question in the case is whether contributions levied on members of a joint property association pertain to a transaction which is subject to VAT.

### Legislation, etc.

#### *Value added tax*

9. Pursuant to Chapter 1, section 1, first paragraph (1) of the Value Added Tax Act (1994:200), value added tax shall be paid on such intra-country turnover of goods or services that is taxable and made by a taxable person acting as such. *Turnover of goods* means, pursuant to Chapter 2, section 1, first paragraph (1), that a good is transferred for consideration and *turnover of services* means, according to third paragraph (1), that a service for consideration is carried out, transferred or otherwise made available to someone.
10. Since the time the Board for Advance Tax Rulings issued its decision, the 1994 Value Added Tax Act has been repealed and replaced by the Value Added Tax Act (2023:200) which came into force on 1 July 2023. It follows from the transitional provisions that the new act – with the exception of certain situations not relevant here – applies to circumstances relating to the period commencing with the coming into force. It is apparent from Chapter 3, section 1(1) and (3) of that act that the supply of goods and services for consideration made within the country by a taxable person acting as such are transactions subject to VAT.
11. The provisions have their counterparts in Article 2(1)(a) and Article 2(1)(c) of the VAT Directive (2006/112/EC).

*Joint property units*

12. Pursuant to section 1, first paragraph and section 4, first paragraph of the Joint Facilities Act (1973:1149) a joint facility may be established by means of cadastral procedures at a cadastral authority in order to provide for purposes of enduring importance for several properties.
13. Section 14, first paragraph provides that a joint facility and the right to space are jointly owned by the properties participating in the facility. It is apparent from the second paragraph that the participating properties constitute a distinct joint property unit for the construction and operation of the facility.
14. Section 15, first paragraph prescribes that the grounds on which the construction costs of a joint facility are to be apportioned are established in conjunction with the cadastral procedure. A participatory share is designated for each property, which is determined according to what is reasonable taking into account primarily the benefit enjoyed by such property from the facility.
15. According to section 15, second paragraph, first sentence, participatory shares are also determined in respect of the costs for operating the facility. Such participatory share is pursuant to the second sentence determined in accordance with what is reasonable taking into account primarily the extent to which the property is expected to use the facility. The third sentence provides that, where suitable, it may be prescribed that the costs are primarily to be allocated by means of charging a fee for the use of the facility.
16. Pursuant to section 4 of the Joint Property Units (Management) Act (1973:1150), a joint property unit may be managed by a specially formed joint property association. Section 1, second paragraph and section 17 provide that the owners of the properties which comprise the joint property unit are members of the association. Pursuant to section 18, the purpose of the association is to manage the

joint property unit, and the association may not conduct activities which are alien to such purpose.

17. Section 40 prescribes that, where a joint property unit's need for funds is not covered in another manner, cash contributions may be levied on the members. As a rule, such levy takes place in accordance with section 42, first and second paragraphs, in accordance with a debit list prepared by the governing body and presented to the association meeting, which sets forth the amounts to be levied, the amount charged to each member and when payment shall be made.

#### **The Court's assessment**

18. The Union law regime relevant in the case has already been interpreted by the European Court of Justice, and the precedent of the Court provides sufficient guidance to decide the case. Accordingly, there is no reason to obtain a preliminary ruling.
19. A condition for a contribution which is levied on the members of Kärrbackstrands Samfällighetsförening to be subject to VAT is that the contribution may be deemed to constitute consideration for the supply of goods or services.
20. The Supreme Administrative Court has previously determined that a joint property association which, in accordance with its purpose, performs a task which provides exclusively for the needs of the participating properties cannot be deemed to sell a product or service within the meaning of value added tax law (RÅ83 reported case no. 1:26 and RÅ 1986 case notice no. 675). This view is also confirmed indirectly in case HFD 2015 reported case no. 54 (*cf.*, also, RÅ 2002 reported case no. 13 and HFD 2011 case notice no. 75).
21. However, the Swedish Tax Agency asserts that the legal position established by virtue of previous rulings of the Supreme Administrative Court may no longer be maintained taking into account legal developments within the European Court of

Justice. The Swedish Tax Agency points, *inter alia*, to the *WEG Tevesstraße* (C-449/19, EU:C:2020:1038) case and the case law referred to in that judgment.

22. In that ruling, the European Court of Justice determined that a transaction which consisted of a delivery of heat from an association of residential property owners to a member for consideration constitutes a supply of a good which, in principle, is subject to VAT within the meaning referred to in Article 2(1)(a) of the VAT Directive (paragraph 38). It is apparent from the judgment that the Court assumed that each member paid for their consumption of heat in accordance with their individual meters (paragraph 28).
23. It is apparent from the application for a preliminary ruling that the levies which Kärrbackstrands Samfällighetsförening intend to impose on its members for costs for operating and improving the joint facility are based on the participatory shares established in the cadastral procedure when the facility was established. Accordingly, this involves the levies which took place pursuant to section 40 of the Joint Property Units (Management) Act and pertain to costs allocated in accordance with participatory shares in accordance with section 15, second paragraph, first and second sentences of the Joint Facilities Act. As set forth in paragraph 15, this entails that the costs are allocated in accordance with what is reasonable taking into account primarily the extent to which the property is expected to use the facility, as opposed to when the costs are allocated in accordance with the third sentence by means of charging a fee for the use of the facility.
24. In the preparatory works relating to section 40 of the Joint Property Units (Management) Act, it is observed that the statute addresses the issue of the members' contribution obligation to a joint property association. It is further stated that fees for the use of a joint facility to be paid by co-owners in accordance with section 15, second paragraph, third sentence of the Joint Facilities Act shall be treated as income when drawing up the estimate of the expenditure and income

for the association. They are not to be levied according to the regime set forth in section 40 and the subsequent sections (Government Bill 1973:160, pp. 431 f.).

25. Such levies as are involved in the case are thus not based on – and have no connection to – the fact that the facility is used by any individual member but, rather, are imposed in order that the members of the joint property association shall fulfil their joint obligation to contribute to the financing of the joint facility. The contributions levied thus cannot be deemed to constitute consideration for the supply of goods or services from the association to the members.
26. Thus, as regards levying contributions, neither the *WEG Tevesstraße* case nor the case law which has otherwise been developed by the European Court of Justice constitute reason to disregard the legal position which has been established by virtue of the previous rulings of the Supreme Administrative Court.
27. It follows from the aforementioned that contributions levied on the members of Kärbackstrands Samfällighetsförening for the operation of the association's joint facility do not pertain to a transaction which is subject to VAT.

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Justices Margit Knutsson, Kristina Ståhl, Inga-Lill Askersjö, Mats Anderson and Martin Nilsson have participated in the ruling.

Judge Referee: Sofia Karlsson Wramsmyr.