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In case no. 2192-23, the **Swedish Tax Agency** (Appellant) v. **Stall Racing Luck Handelsbolag** (Respondent), the Supreme Administrative Court delivered the following judgment on 28 May 2024.

RULING OF THE SUPREME ADMINISTRATIVE COURT

The Supreme Administrative Court finds that it is not contrary to the principles of protection of legitimate expectations and of legal certainty to deny Stall Racing Luck Handelsbolag deductions of input value added tax.

The Supreme Administrative Court overturns the judgment of the administrative court of appeal in so far as pertains to deductions of input value added tax and remands the case to the administrative court of appeal for continued examination in accordance with what is stated in paragraph 19.

The Supreme Administrative Court grants Stall Racing Luck Handelsbolag compensation for costs incurred in the Supreme Administrative Court in the amount of SEK 59,500.

BACKGROUND

1. Any person who carries out economic activity that entails an obligation to pay value added tax is entitled to deduct the input tax relating to acquisitions in the course of the activity. Anyone who intends to conduct such activity shall notify the Swedish Tax Agency, which shall register the person for value added tax.
2. Stall Racing Luck Handelsbolag was registered in 2008 for value added tax regarding horse racing activities. At that time, the Swedish Tax Agency was of the view that prize money received by a participant in a race relating to the horse's performance in the race could be regarded as compensation for the supply of a service. Subsequently, it has, by virtue of rulings from the European Court of Justice and the Supreme Administrative Court, been

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clarified that prize money cannot constitute such compensation since the receipt of the prize money is subject to a degree of randomness.

3. In 2021, the company owned a share in a trotter. For the May–August accounting periods, the company reported value added tax due on so-called payments for participation, i.e. compensation received by the company due to the fact that the horse had started in competitions independently of its performance, and deducted input value added tax in respect of costs for, *inter alia*, training fees, transportation, feed, stall rental and accounting.
4. The Swedish Tax Agency decided not to grant deductions for the input tax. The reasons given for the decision were that the company had not carried out economic activity during the relevant periods since prize money is not subject to value added tax and activity consisting solely of participating in competitions in consideration of payment for participation did not constitute economic activity in the view of the agency. Subsequently, the Swedish Tax Agency decided to, for the same reasons, de-register the company from value added tax.
5. The company appealed both decisions to the Administrative Court in Malmö which rejected the appeal in the case regarding registration but granted the company's claim in the case regarding deductions of input tax. The administrative court held that it would be contrary to the principles of the protection of legitimate expectations and of legal certainty to deny the company deductions of input tax on the basis that it did not carry out economic activity. The court stated that the company, during the relevant periods of time, had not yet been de-registered from value added tax and that the Swedish Tax Agency had not otherwise notified the company that the agency was no longer committed to its position that the company was carrying out economic activity.

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6. The Swedish Tax Agency appealed to the Administrative Court of Appeal in Gothenburg which made the same assessment as the administrative court and rejected the appeal.

CLAIMS, ETC.

7. *The Swedish Tax Agency* claims that the Supreme Administrative Court shall modify the ruling of the administrative court of appeal and deny the company deductions of input tax.
8. *Stall Racing Luck Handelsbolag* is of the position that the appeal shall be rejected and claims compensation for costs incurred in the Supreme Administrative Court in the amount of SEK 59,500.

REASONS FOR THE RULING

The question in the case

9. The question in the case is the significance of the principles of the protection of legitimate expectations and of legal certainty in the assessment of the right to deductions of input tax for a company which has been registered for value added tax.

Legislation, etc.

10. The Value Added Tax Act (2023:200) entered into force 1 July 2023. According to the transitional provisions of the act, however, it follows that the former Value Added Tax Act (1994:200) is applicable to the circumstances in the present case. The following references are to the provisions in the 1994 act. There are corresponding provisions in the new act.

11. Pursuant to Chapter 1, section 1, first paragraph (1), value added tax shall be paid on such supply of services within the country that is taxable and made by a taxable person acting as such.
12. Any person who carries out a taxable activity may, pursuant to Chapter 8, section 3, first paragraph, deduct input tax that relates to acquisitions in the course of the activity.
13. The Swedish Tax Agency shall, pursuant to Chapter 7, section 1, first paragraph (3) of the Tax Procedures Act (2011:1244) in applicable wording, register anyone who is a taxable person within the meaning of the Value Added Tax Act. Anyone who intends to conduct business activity and who is to be registered shall, pursuant to section 2, first paragraph, sign up for registration by the Swedish Tax Agency prior to the commencement or takeover of the business activity. Pursuant to section 6, first paragraph, the Swedish Tax Agency may de-register a person who is no longer to be registered.

The Courts' assessment

The principles of the protection of legitimate expectations and of legal certainty

14. The administrative court and the administrative court of appeal have found that it would be contrary to the principles of the protection of legitimate expectations and of legal certainty to deny Stall Racing Luck deductions of input value added tax on the basis that the company, during the relevant periods, did not conduct any economic activity. In this assessment, the courts have relied on HFD 2021 reported case 52.

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15. That case pertained to a company which had been registered for value added tax for certain activity, upon which the Swedish Tax Agency later denied the company deductions of input tax on the basis that the activity was not carried out for the purpose of regularly generating revenue and that the company consequently could not be deemed to carry out economic activities. According to the Swedish Tax Agency, the agency had, upon registration, made an erroneous assessment of whether the criteria for economic activity had been fulfilled, meaning that the decision to register was incorrect even at the time it was made. The Supreme Administrative Court referred to the principles of EU law regarding the protection of legitimate expectations and legal certainty, and stated that the company must be able to rely on the permanence of the agency's assessment until such a time as otherwise notified.
16. Thus, the case regarded an altered assessment of the material circumstances relating specifically to the examined company. In the current case, the circumstances are different.
17. The decision to register Stall Racing Luck for value added tax was based on the fact that the Swedish Tax Agency, at that time, understood the legal situation to be that prize money constituted compensation for taxable services and that a company that competed with horses and received prize money could be deemed to conduct economic activity. However, by virtue of the rulings of the European Court of Justice and the Supreme Administrative Court in *Baštová* (C-432/15, EU:C:2016:855) and HFD 2019 reported case no. 68 respectively, it was clarified that prize money does not constitute compensation for the supply of services. Thereafter, the Swedish Tax Agency published a statement in which the agency held that case law might influence the assessment of whether the criteria of economic activity are met and that a person whose revenue solely consists of payment for participation cannot be deemed to carry out such activity.

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18. The Supreme Administrative Court notes that the legal situation pertaining to prize money was made clear by virtue of the aforementioned judgments and that the Swedish Tax Agency, through the statement, clarified which conclusions the agency reached based on the judgments. After this, the company could not reasonably expect that the agency would continue to hold that the company was carrying out economic activity. The principles of the protection of legitimate expectations and of legal certainty thereby do not prevent the company from being denied deductions of input value added tax for the periods at issue in the case.

Economic activity

19. The administrative court of appeal has not determined whether deductions of input tax are to be denied on the basis that the company's activities do not constitute economic activity. This issue should not be examined by the Supreme Administrative Court as the court of first instance. Accordingly, the case is to be remanded to the administrative court of appeal for continued examination in this regard.

Compensation for costs

20. The case involves a question that is of importance for the guidance of the application of law and the company is therefore entitled to reasonable compensation for costs of counsel. The claimed amount is reasonable.

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

Judge Referee: Lena Åberg.