Intra-Group Charges – Establishing the Taxable Amount for VAT Purposes

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On 3 July 2025, the Court of Justice of the European Union (ECJ) issued its decision in *Högkullen AB* (Case 808/23), following the request for a preliminary ruling by the Supreme Administrative Court in Sweden. In the decision, the ECJ sheds light on whether services rendered by a holding company to subsidiaries should implicitly be qualified as a single/unique active management service (with no determinable market value) or distinct services (for which a market value may be determined), with direct relevance in establishing the rules based on which the taxable base for VAT purposes should be determined.

This is another one of the recent ECJ cases in which taxpayers and courts seek, among others, to pinpoint the relationship between VAT and transfer pricing rules (*see also* C-527/23 *Weatherford Atlas Gip*, C-726/23 *Arcomet Towercranes* and C-603/24 *Stellantis Portugal*), although in *Högkullen AB* transfer pricing aspects are rather inferred from the context without being specifically addressed in either the questions raised or in the ECJ's reasoning.

This note provides a taster of the decision. For a more nuanced case summary, including the details of the reasoning of the ECJ, an entry will be made in the ECJ Case Law IBFD collection.

1. Background of the case

This case deals with the optional provisions of article 80 of the VAT Directive (2006/112). Under article 80:

> In order to prevent tax evasion or avoidance, Member States may in any of the following cases take measures to ensure that, in respect of the supply of goods or services involving family or other close personal ties, management, ownership, membership, financial or legal ties as defined by the Member State, the taxable amount is to be the open market value:
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> (a) where the consideration is lower than the open market value and the recipient of the supply does not have a full right of deduction under Articles 167 to 171 and Articles 173 to 177.

The open market value is (per article 72 of the VAT Directive (2006/112)):

- the full amount that a customer at the same marketing stage would have to pay for the services in question, under conditions of fair competition and at arm's length, to a supplier from the same Member State in which the transaction is taxable (paragraph 1).
- If no comparable supply of services can be determined, "open market value" means an amount that is not less than the full cost to the taxable person for providing the service (paragraph 2).

Högkullen AB is the parent company of a real estate management group. The company is actively involved in the management of its subsidiaries, providing them with business management, financial services, real estate management, investment services and IT and staff administration services.

The subsidiaries in question do not have full deduction right.

In year 2016, Högkullen AB charged an amount of approximately EUR 204,200 on services to its subsidiaries, plus

VAT. The consideration was determined by applying the cost-plus method:

- The costs incurred by Högkullen AB in purchasing and performing the services were determined, based on allocation keys. A mark-up was applied on such costs.
- "Shareholder" costs, such as the costs of drawing up annual accounts, auditing and general meetings, as well as the costs of raising capital, were considered as not connected with the services provided and were not included.

The total costs incurred by Högkullen AB in 2016 amounted to approximately EUR 2,484,000 and were deducted in full.

Tax authorities objected to the amount of VAT collected by Högkullen AB, considering that the services supplied by Högkullen to its subsidiaries were charged at a price lower than the open market value. The authorities considered that the active management of the subsidiaries is a single joined-up service, for which there were no comparable services freely available on the market – hence the taxable amount should be determined as the total amount of costs borne by the company for 2016 (under the rules of article 72(2) of the VAT Directive (2006/112)).

Högkullen AG argued that the various services provided to its subsidiaries must be assessed individually and that equivalent services may be acquired freely on the market. Hence, the open market value of such services could be determined, and such value is the taxable value for VAT purposes (under article 70(1) of the VAT Directive (2006/112)).

2. Questions raised to the ECJ

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 (2006/112), 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?*

ECJ answer: No, services provided by a parent company to its subsidiary cannot be regarded in all cases by tax authorities as constituting a single supply (approach which would preclude determining the open market value via the comparison method mentioned by article 72(1)).

Why?: The ECJ reiterates its previous principles on (i) principal vs ancillary supplies, respectively; and (ii) single composite supplies vs multiple individual supplies. In the present case, the services provided by Högkullen to its subsidiaries (business management services, financial services, real estate management services, investment services and IT and staff administration services) cannot be concluded as being so closely linked that they form, objectively, a single, indivisible supply:

- Those services, even if they are provided together, appear each to have their own character and to be identifiable.
- The fact that an overall price is paid by each of the subsidiaries to Högkullen for all the services is generally not decisive in the analysis. This is even more so in case of intra-group supplies, since the group would be otherwise able to influence the classification to be given to those supplies for VAT purposes through the remuneration arrangements agreed.

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 (2006/112) 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?*

ECJ answer: No need to answer.

Why?: The question is based on the premise that the interpretation of the VAT Directive (2006/112) permits the

assumption that, in the case of active management of its subsidiaries by a parent company, there are no comparable services freely available on the market (i.e. the open market value would need to be valued at full cost). This is not the case.

3. Conclusion

Based on the current decision, it is clear that an automatic assessment of supplies of services performed by parent companies to subsidiaries as single supplies is not allowed. This entails that a case-by-case analysis is required, to be performed both by taxpayers (in implementing their intra-group transactions) as well as tax authorities (prior to re-assessing the taxable base):

- As mentioned by AG Kokott in her Opinion (point 43), the fact that similar separate services are offered on the market by specialist providers may be an indicator for separate supplies.
- Where comparables exist for a particular type of stand-alone service, the open market price should be determined by reference to it (under article 72(1)) and not by reference to the full cost of the company incurred for providing the service.

The manner in which the full cost connected to rendering the services is to be determined for VAT purposes remains open for the time being. AG Kokott offered some guidance in her Opinion, but it remains to be seen if the points would be followed by the ECJ in its subsequent jurisprudence. From a practical perspective, the need to rely on full cost in related-party transactions seems to become less frequent, as distinct services with related comparables are likely to exist in most cases. Nevertheless, the full cost is utilized as a taxable base for VAT purposes also in other circumstances (e.g. free-of-charge supplies of services).

In addition, while the open market determination is relevant only for Member States which have implemented the optional provisions of article 80 of the VAT Directive (2006/112) (and only for situations falling within these provisions), the need to differentiate between single composite supplies and multiple supplies may be relevant in broader circumstances (e.g. determine place of supply rules or eligibility for reduced VAT rates).

IBFD references:

- EU tax law developments are reported in the daily IBFD Tax News Service.
- For IBFD summaries of ECJ judgments, *see* the ECJ Case Law IBFD collection.
- SE: ECJ, 3 July 2025, Case C-808/23, *Högkullen AB v. Skatteverket*, Case Law IBFD