

Swedish Administrative Court Clarifies That Refusal to Deduct Interest is Contrary to Freedom of Establishment

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On 22 January 2024, The Swedish Supreme Administrative Court (SAC) gave its [decision](#) in the case of *AB v. Skatteverket* (Case No. 4068-23) concerning the question of whether the limitation rules for interest deductions are not compatible with the freedom of establishment in the [Treaty on the Functioning of the European Union \(TFEU\)](#).

(a) Facts. The Swedish company (A), is part of an international group. Within the group, a restructuring is planned involving several intra-group transactions. As part of this restructuring, A will acquire all shares in B from group company C. The acquisition will mainly be financed by A taking out a loan from group company D, which is domiciled in another country within the European Union. The terms of the loan, including the interest rate, will be at a market rate.

A applied for a preliminary ruling from the Swedish Counsel for Advance Tax Rulings (the Counsel) to find out whether a deduction for interest expenses on the debt to D can be denied on the grounds that the debt relationship has arisen solely or almost solely to obtain a significant tax advantage for the common interest (question 1) or because the acquisition of B is not substantially motivated by commercial reasons (question 2). If the interest is subject to a deduction ban, A wanted to know if this constitutes an impermissible restriction on the freedom of establishment under the [Treaty on the Functioning of the European Union \(TFEU\)](#) (question 3).

(b) Issue. The main issue in the case is whether it is consistent with the freedom of establishment in the [Treaty on the Functioning of the European Union \(TFEU\)](#) to deny deductions for interest expenses on an intra-group debt relating to an intra-group acquisition of shareholdings on the grounds that the acquisition is not substantially commercially motivated.

(c) Decision. The Counsel initially held that the denial of the interest deduction was contrary to the freedom of establishment under the [Treaty on the Functioning of the European Union \(TFEU\)](#). However, the Swedish Tax Agency appealed the decision and the case was to be tried in the Supreme Administrative Court. The SAC found that the rules resulted in a difference in treatment between domestic and cross-border situations, as the special provision would not apply to debts between two Swedish companies with unlimited group contribution rights. SAC concluded that the provision in question would constitute an impermissible restriction on the freedom of establishment if applied to interest payments to companies in other EU Member States.

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