

Ministry of Finance's position on impact of Skandia judgment for the Dutch practice

On February 10, 2015 the Ministry of Finance informally announced the position taken by the Netherlands on the application of the [Skandia judgment](#) (C-7/13). According to the Ministry of Finance, the Skandia judgment does not apply in the Netherlands. This is the case for both a Dutch head office that is part of a Dutch VAT group and a Dutch fixed establishment that is part of a Dutch VAT group. The Netherlands has informed the European Commission about its position.

1. Position Ministry of Finance

The reason the Ministry of Finance has decided not to apply the Skandia judgment is because the VAT group regime in the Netherlands is different to the VAT group regime in Sweden. It was an established fact in the Skandia case that only the Swedish fixed establishment was part of the VAT group in Sweden. The US head office was not. In 2002 the Supreme Court ruled on the Dutch VAT group, concluding that the foreign head office was also part of a VAT group in the Netherlands. The foreign head office, along with the Dutch fixed establishment, therefore belong to the same taxpayer.

The position taken by the Ministry of Finance effectively means that the Dutch practice in place before the Skandia judgment will continue unchanged. The question that arose was whether the judgment also had to be applied in the Netherlands. This would have had considerable financial and practical implications for the Dutch business sector. The Dutch position was the result of intense consultation with various interest groups. The Ministry of Finance's position will be officially published by way of an amendment to the existing [policy statement on fixed establishments for VAT purposes](#) (Notification 22, only available in Dutch). The amended policy statement may provide more detail on specific situations.

2. Practical consequences

Services between a head office and a fixed establishment will therefore remain outside the scope of Dutch VAT, even if the Dutch head office/fixed establishment is part of the Dutch VAT group. This is in line with the Supreme Court interpretation of the Dutch VAT group regime. We concur with the path the Netherlands has chosen in this, both from a VAT technical and a practical perspective.

It continues to be important to examine how other Member States treat the services between a head office and a fixed establishment. On February 10, 2015 the UK tax authorities (HMRC) published [guidance](#) on the application of the Skandia judgment in the United Kingdom. Their position is largely the same as that of the Netherlands. However, unlike the Netherlands, HMRC takes account of the scope of the foreign VAT group. If it is limited to local establishments of the VAT group, as is the case in Sweden, then the Skandia judgment will apply, according to the HMRC. The HMRC guidance will take effect as of January 1, 2016. Other Member States take the position that the judgment applies in full.

The European Commission and the Member States will meet to discuss the application of the Skandia judgment at the end of March. The Commission appears to prefer a broad interpretation of the judgment. We will, of course, keep you informed of the outcome of this meeting.

If you would like to discuss the implications of the Skandia judgment for the Netherlands and other Member States, please contact one of the advisors of the Indirect Tax Financial Services Group at KPMG Meijburg & Co, or your own Meijburg tax advisor.

Meijburg & Co
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