

*PwC Nordic*  
FS Tax & VAT Event

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OSLO, 25-26 OCTOBER 2017



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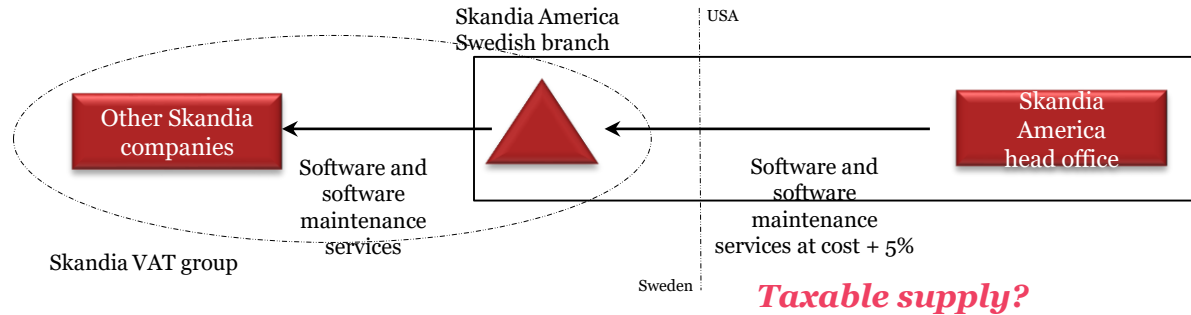
# *VAT Country Update*

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# *Skandia updates*

# Transactions between head office and branch

## Skandia case and VAT grouping rules



## Sweden - Skandia case and VAT Grouping rules

- The Swedish Tax agency (STA) issued guidelines 23.11.2105, confirming the Skandia case
- Also confirmed by the Supreme Administrative Court (SAC) in case HFD 2015 ref. 22 (concerning internal services from e.g. the HR function at the head office)
- However, the guidelines from STA and case from SAC only deals with VAT groups registered in Sweden.
- **Recent decision from SAC 27.9.2017 regarding services from head office in an Irish VAT group to a Swedish branch**
- The case (an appealed binding ruling from the Board for Advance Tax Rulings) was however rejected and repealed by SAC due to insufficient facts
- However, from SAC:s description of the binding ruling it can be understood that the Board had concluded that the transactions from the head office to the branch should not be regarded as supplies for VAT purposes, since they were part of the same taxable person (cf. ECJ case C-210/04, FCE Bank)...
- ...while the STA had argued that the assessment must be made with regard to the Irish rules for VAT grouping.



## ***Finland - Skandia case and VAT Grouping rules***

- Over three years since **Skandia (C-7/13)** – ***no changes in the law, no guideline yet***
- According to case law (**KHO 2004:120**): service charge between branch/head office in different countries and VAT groups without VAT.
- Tax Authority has a draft guideline ready: ***strict interpretation***
- **Central Tax Board decision (25.8.2017, KVL 2017/46)**
  - Finnish branch of a UK company supplied sales and marketing services to the UK head office
  - UK head office belonged to a VAT group in the UK
  - Services were considered sold to the UK VAT group
  - Finnish branch was entitled to deduct VAT on purchases made
- Old yearbook case and no change in law vs **ECJ** case and **Central Tax Board** decision
- Tax Authorities to publish the guideline – ***no retroactive effect***



# Denmark - Skandia case and VAT Grouping rules

## Transactions between head office and branch

### Danish VAT groups

- The Skandia case seems to confirm the existing Danish practice with regard to **Danish VAT groups** (binding ruling from the National Tax Board in SKM2009.119.SR and in SKM2016.344.SR)

### Foreign VAT groups

- The Skandia case applies also to **foreign VAT groups** (binding ruling in SKM2016.344.SR)
- However, **draft guidelines** issued following ECJ's judgment in case C-7/13 Skandia stating that this a **change** in practice in relation to foreign VAT groups. This should have effect as from the publishing of Skandia-case in the Danish VAT guidelines (29 January 2015).
  - A Danish branch should account for **reverse charge**

**VAT** for services received from its HQ located in another country **when the HQ is part of a local VAT group** (unless the services are VAT exempt or VAT free).

- Further, the supply from the Danish branch to the foreign HQ (being part of a local VAT group) should be considered as a supply for VAT purposes
- Uncertain: Impact on supply of services **between branches** which are not members of a VAT group?



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## ***Norway - Skandia case and VAT Grouping rules***

### **Transactions between head office and branch**

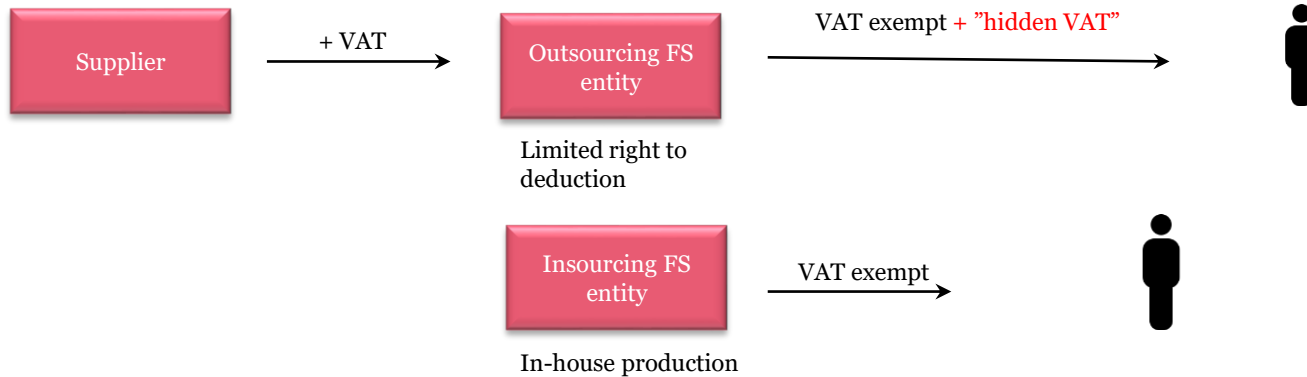
- (Skandia) - Case ***not relevant*** in Norway (tax authorities)
- Main rule; services between head office and branch not regarded as sale = no VAT
- From VAT group abroad to Norwegian branch = VAT applicable – if not taxed abroad



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# *Cost sharing VAT exemption*

## VAT exemption for “cost sharing”



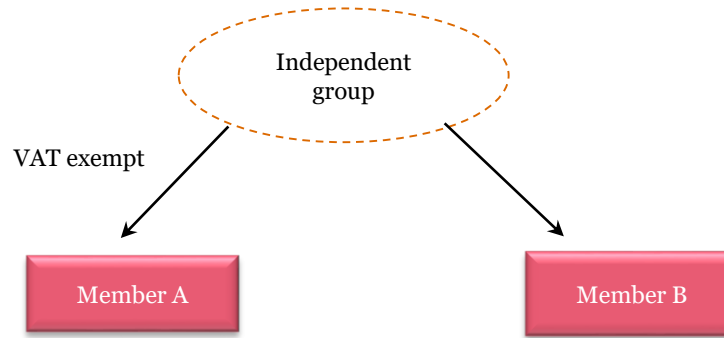
### *Purpose*

- “To create equal competition between companies that carry out in-house production and external purchases, respectively

### *Opportunities*

- Eliminate non-deductible VAT

## *VAT exemption for “cost sharing”*



### *Conditions*

1. “Independent group” and “members”
2. The activity, which each member of the group is carrying out, must either be VAT exempt or VAT free.
3. The services must be directly necessary for the exercise of the members’ VAT exempt or VAT free activities.
4. The Independent group may only claim from the members the exact reimbursement of their share of the joint expenses.
5. The VAT exemption is not likely to cause distortion of competition.

# *VAT exemption for “cost sharing”*

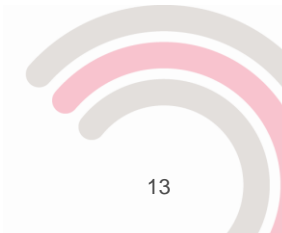
## **Recent cases for ECJ**

- Recent ECJ decisions in Aviva (C-605/15), DNB BANKA (C-326/15) and Commission v Germany (C-616/15), 21 September 2017
- Main conclusion: Exemption not applicable for FS- sector. Only applicable for public interest activities.



## Sweden - Cost sharing exemption

- The cost sharing exemption has been interpreted very strictly in Sweden
- Has been possible to apply for e.g. a union´s provision of negotiation services to another union
- Services of a more general nature cannot be subject for the exemption, e.g. procurement, management and general IT-services.
- Furthermore, the services should according to STA be supplied at cost to the members of the cost sharing group, i.e. without markup
- ***With regard to the strict interpretation in Sweden, the ECJ cases on no applicability to financial and insurance services should have limited effect for the FS sector***

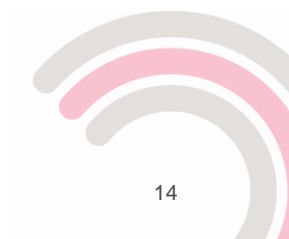


## ***Finland - Cost sharing exemption***

- Cost sharing exemption implemented into VAT Act as of **1.1.2014**
- **Limited application for FS** – One published ruling on insurance group IT services company charges



- **Supreme Administrative Court (KHO:2017:57)**
  - Health care group of companies – parent was planning to charge services to subsidiaries
  - Cost sharing exemption **cannot be applied within a group of companies**: subsidiaries have not independently decided to act through the structure and the subsidiaries cannot be considered to be members of a cost sharing group
- New ECJ cases on no applicability to financial and insurance services – **no retroactive effect**



## Denmark - Cost sharing exemption

- **Developments in Denmark - recent ECJ decisions in Aviva (C-605/15), DNB BANKA (C-326/15) and Commission v Germany (C-616/15), 21 September 2017**
- The cost sharing exemption does **not** apply to financial and insurance services
- **Change** of the Danish practice
  - **No retroactive effect** of the decisions
  - Change of the Danish practice / legislation
  - Existing binding rulings
- Alternative solutions?



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## *Norway - Cost sharing exemption*

- No special exemption in the law for cost sharing arrangement
- Cost allocation: without output VAT on certain conditions
- Rules are unclear and practice from the Norwegian VAT authorities varies significantly





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# *Transactions concerning payments and transfers*

# Transactions concerning payments and transfers

## Concept of “transactions concerning payments and transfers”

- Case C-2/95 *SDC*
  - The criteria
    - › “66. [the service] must, viewed broadly, form a distinct whole, fulfilling in effect **the specific, essential functions** of [the] service described ... . For ‘a transaction concerning transfers’, the services provided must therefore have the effect of transferring funds and **entail changes in the legal and financial situation.**”

VAT exempt?

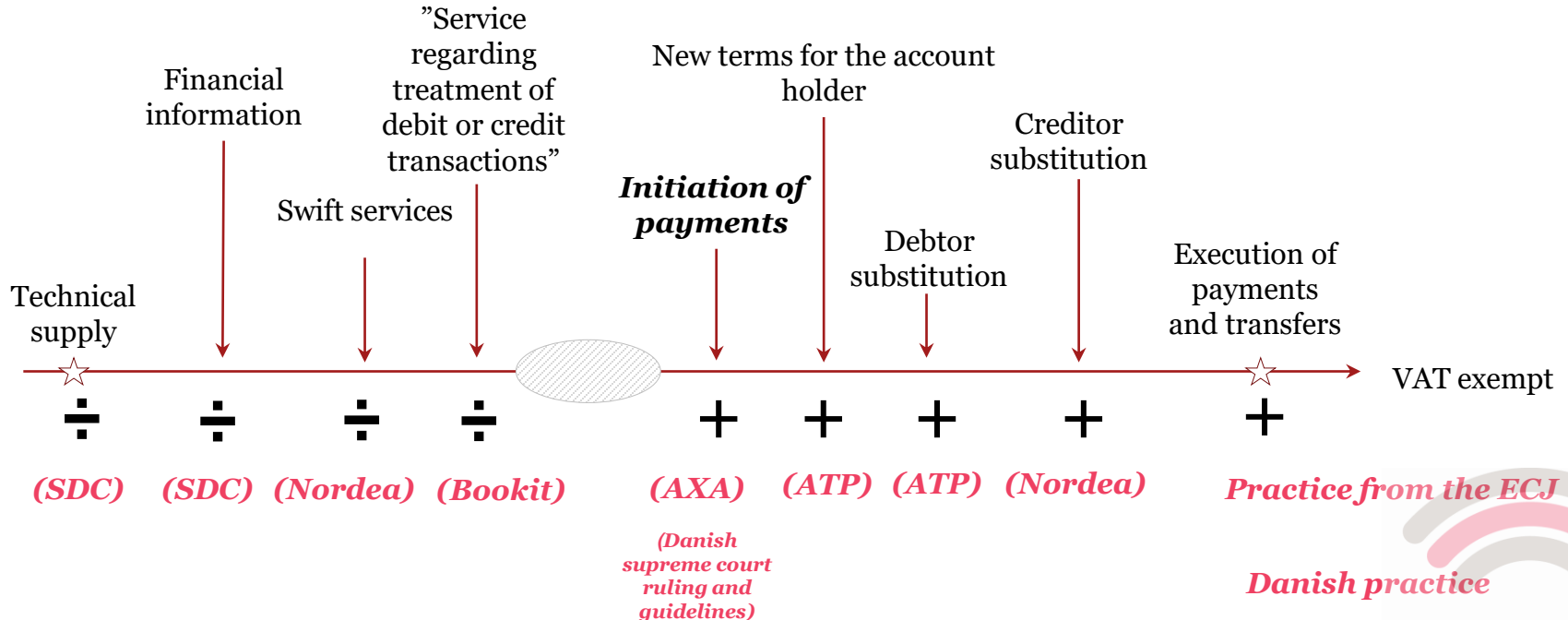


Payment or transfer?

What are “the specific, essential functions”?

# Denmark - Transactions concerning payments and transfers

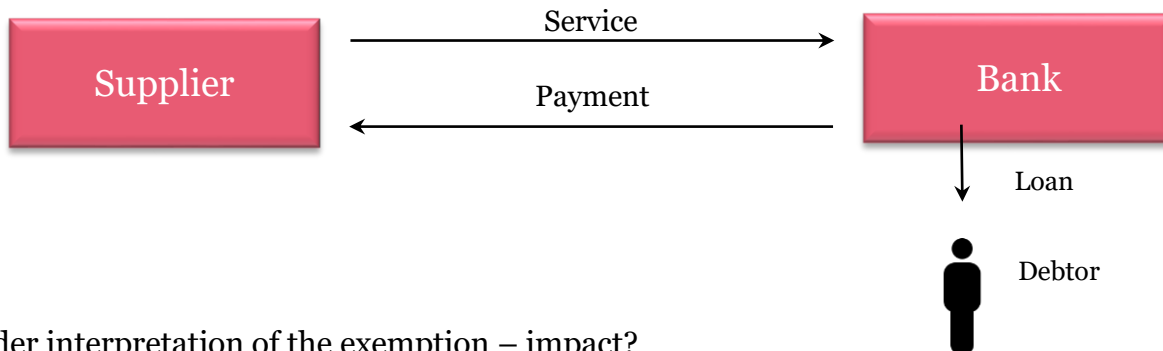
## Concept of “transactions concerning payments and transfers”



## Denmark - Transactions concerning payments and transfers

**Danish Supreme Court ruling from 16 September 2016 and guidelines from the Danish tax authorities from august 2017**

- Purchase of data processing services was considered as VAT exempt transactions concerning payments and transfers
- The supplier provides a data file that *initiates the transfer* of money which are *part of a process that in the end* changes the legal and financial relationship between the parties



- Broader interpretation of the exemption – impact?
  - Services concerning in-payments – e.g. premiums, interest and repayments/instalments
  - Services concerning payouts – e.g. insurance sum, pension payment, loan amount

## ***Sweden - Transactions concerning payments and transfers***



- No clear and settled case law
- The following are examples of exempt payment services according to the new guidelines from the STA:
  - Keeping of accounts
  - Receive money on an account in your own name with another account keeper and forward money by issuing payment instructions in your own name to that account keeper, i.e. a transfer over your own balance sheet
  - Under a power of attorney, conduct registering on an account kept by another account keeper
- Also notable that the STA, with regard to the distinction between an exempt payment service and a taxable collection/factoring service, is of the opinion that a service should be regarded as an exempt service if the purpose is to enable a payment to be made in a safe, efficient and user-friendly way between e.g. a store and customer or if it aims to ensure that the seller is paid for receivables while at the same time reducing the administration

***New guidelines from the STA 24.1.2017 regarding payment services and intermediation of such services***

## *Finland - Transactions concerning payments and transfers*



- No clear and settled case law
  - References to **SDC case C-2/95**: the services either are or not distinct in character, specific to and essential for.
  - Strict interpretation during recent years.
- **ECJ C-350/10**, Nordea Pankki Suomi Oyj – SWIFT subject to VAT

### *Recent case law from Supreme administrative court – Services subcontracted by banks*

- **KHO:2017:18 – Acquiring services** re debit/credit card payments
  - VAT exempt with reference to SDC, SWIFT, Bookit
- **KHO 3.2.2017 T 404** (not published) – services purchased from EBA Clearing (EURO 1/STEP1, STEP2 SCT and STEP2 SDD)
  - VAT taxable with reference to SDC, SWIFT

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## *Norway - Transactions concerning payments and transfers*

- EU case law normally accepted as guiding for Norwegian interpretation of the exemption
- However, **very strict interpretation** in practice (e.g. CSC 10.07,2014 – Appeal court)
- Must be involved in and responsible for the process of “moving” money or debiting/crediting accounts
- Initiation of payment not accepted as sufficient (CSC case)



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# *Factoring*

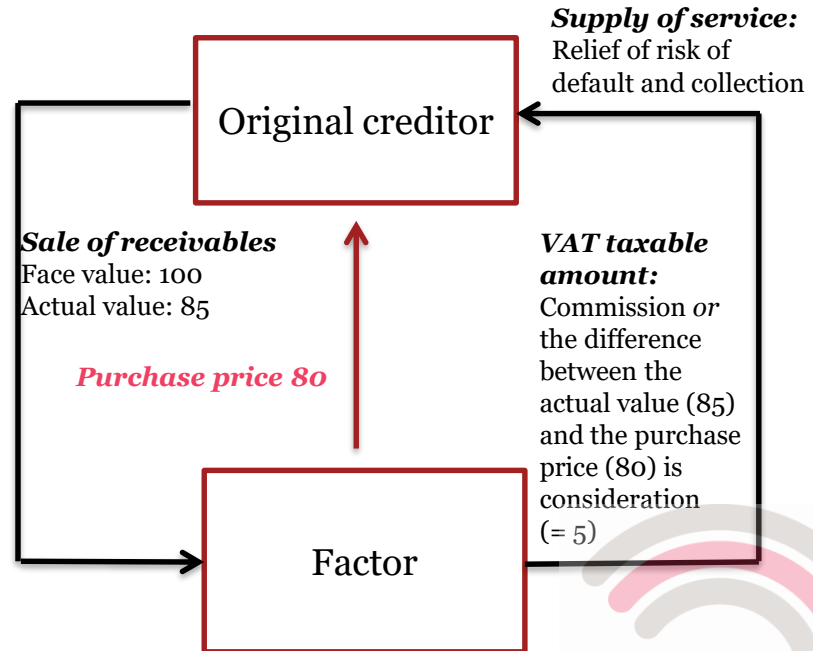


# VAT treatment of factoring

## Consequences of ECJ judgement in case C-305/01 MKG and C-93/10 GFKL

- Debt collection and factoring is a VAT taxable service;
- Factor should invoice the commission to the Seller with VAT
- Factoring activity **allows input VAT recovery**

## VAT treatment of factoring - illustrated



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## ***Denmark - VAT treatment of factoring***

### ***VAT practice***

- Danish VAT treatment of factoring services is in line with the EU case law *MKG*;
- This interpretation has been confirmed in Danish case law (SKM2011.170.ØLR and SKM2009.440.SR).

### ***Common practice of financial institutions***

- No VAT charged on factoring services;
- No invoices are issued for factoring services;
- Related input VAT is not deducted.

**Applying correct VAT treatment would be beneficial for the banks → input VAT recovery on costs related to factoring would be allowed and potentially a higher pro rata**

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# *Denmark*

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## ***Developments on TOGC in Denmark***

### **Conditions for a VAT free TOGC in Denmark according to the Danish VAT Act:**

1. There must be a transfer of business or part of a business
2. The purchaser must continue the transferred activity
- 3. *The purchaser must be VAT-registered***

Two recent binding rulings from the tax authorities:

- Transfer of **insurance** business → purchaser was not VAT-registered
- Transfer of **rental building** with VAT exempt lease agreements for **residential** purposes → purchaser was not VAT-registered
- In both cases, the tax authorities stated that the transfer of the VAT-exempt business was a VAT free TOGC

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# *Norway*



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## ***Court cases and statements from the tax authorities***

### **Case 16.08.2017 - Gjensidige Pensjonsforsikring AS (GPF )**

- Question: whether the company should calculate reverse charge on services purchased from a Danish IT company (Forsikringens DataCenter)
  - Both the services in question and the purchaser (GPF) are almost identical to the ATP case in Denmark.
  - Reverse charge applicable if the services would be VATable if purchased from a Norwegian company
- Arguments not based on type of services delivered but what type of entity GPF is and its activity.
  - Is GPF a securities fund (VAT act 3-6 f - verdipapirfond)?
  - Is GPF an investment company (VAT act 3-6 g – investeringselskap)?
- Court: Securities funds = contribution of capital for shares – unlimited interest in the assets
- GPF customers - no unlimited interest in the company but a right to defined contribution pension
- GPF is no fund manager – GPF only facilitated different pension schemes – which then again are invested in funds where the fund managers performs the asset management and makes the investment decisions
- ***Not covered by the exemption*** - Appealed, but no date set

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## ***Financial tax - the latest development***

### **Financial tax from 2017;**

- 5 % tax on the payroll base in the financial sector
- Tax on profit base in the financial sector, same level as 2016, 25 % (not reduced to 24 %)
- The financial tax is calculated as a percentage of the basis of the payroll tax for the taxable finance businesses
- Estimated tax benefit of **1,8 billions for 2017**
- All companies which has employees and mainly operates with activity in the finance and insurance area, cf. Statistics Norway for commercial grouping SN2007, section K
  - Pure holding companies without employees exempt
  - Threshold; 30 % financial activity (within section K) to be comprised
  - Exception for companies were more than 70 % of the salary related to financial K activity is VAT liable
    - Change from May 17, previously “total salary cost (revised national budget)
- VAT grouping - **no longer a safe option**
  - Financial tax on hired employees salary? - Include payment to “manpower company” in the tax base?

# *The tax authorities' national target group for the financial sector*

## **Pure holding not liable to account VAT on acquisition of services - still valid?**

- Normally, services supplied and invoiced by foreign established companies would attract VAT based on the assumption that the Norwegian purchaser is required to account and pay Norwegian VAT by the reverse charge mechanism
- According to a non-published ruling and previous administrative practice, a pure holding company not conducting any business activities except for owning shares in a company, is not deemed to qualify as an entrepreneur for VAT purposes, i.e.:
  - is a pure holding company,
  - with no other “activity” than to own shares in subsidiaries,
  - is not involved, directly or indirectly in the management of the subsidiaries, and does not supply any services
- Tax authorities *focuses on these companies* - Are they “pure”?





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# *Finland*

# *Platform for Crowdfunding – exempt intermediation in shares*

**Central Tax Board KVL 1:2017/ Supreme Administrative Court**

**4.10.2017 T 4930**

- Bank maintained an internet platform through which its clients offered equity based shares (emission) to investors for a specific price during a specific period
- Bank transmitted the underwritings for the clients approval and was responsible e.g. for the identification of the investors, transfers of the subscription payments and reconciliations as well as providing information to the investors as required by the **crowdfunding legislation** (key information document)
- Bank charged a fee for the intermediation - percentage of the share value
- Bank did not actively contact investors or provide underwriting services but participated in the marketing (crowdfunding campaign)
- One economic whole – ***VAT exempt as intermediation in shares***



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# *Sweden*

# *Continued focus on deductions of input VAT*

## **Guidelines from the STA 25.8.2015 (mixed VATable/non-VATable businesses)**

- States e.g. that the turnover should be the normal key for a pro rata calculation. Time spent is usually difficult for the STA to control and for the companies to verify.
- Also a lot of focus on direct allocations of input VAT

## **Guidelines from the STA 7.10.2016 (holding- and PE companies)**

- A requirement for full deduction is that the holding company performs VAT-related services to all subsidiaries.
- The statement also sets out the requirements for a holding company that acquires a subsidiary and wishes to deduct VAT from acquisition costs
- The STA also gives its view on how to calculate the deduction of input tax in a holding company that has mixed business and/or is passive in relation to certain subsidiaries
- PE companies shall be treated separately with regard to the right to deduct input VAT when establishing the business and in the ongoing management

