Sweden
Suède
Schweden
Suecia

Branch Reporter
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1. Background

Sweden has in the past had some other taxes concerning the raising of capital.[1] The modern consumption tax is, however, value added tax (VAT). As for other EU Member States the general description of the VAT system and the directives concerning financial services is given in a special EC report. In the following the focus will be the particular Swedish experiences regarding VAT and financial services.

Sweden became an EU Member State in 1995, but the VAT legislation was amended to establish better conformity with the EC VAT directives already in 1991, when services also became taxable by VAT. An exemption was made for financial services. It was not clear how far this exemption reached and this led to some legal disputes in the following years. Before 1995 and even for some time thereafter the EC directives had no impact on interpreting the Swedish statutory rules. Later on, however, there has been a turn towards conformity with the EC directives and the EC court case law. Now the Supreme Administrative Court is ready to dismiss an appeal from the Council of Advance Tax Ruling if EC law has not been considered.[2]

Another reason for the great interest in interpreting the exemption for financial services in Sweden is the large effort tax authorities put into auditing the financial sector during the mid-1990s. This gave rise to a number of tax disputes between the financial institutions and the tax authorities. Some issues have been judged upon by the Supreme Administrative Court, other are pending or still subject of litigation in lower courts. The special Swedish institute on advance ruling by an impartial authority (Council of Advance Tax Ruling), albeit not regarded as a court in EC law, with the unconditional right to appeal

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1 See Björn Westberg, "Council Directive 69/335/EEC: Implementation of the Directive in Sweden and other matters related to Swedish taxes on the raising of capital", *EC Tax Review* 1999-2, pp. 129 *et seq.*

2 See e.g. RÅ 1999 not. 282 and RÅ 2001 not. 28.

to the Supreme Administrative Court, has also contributed to more case law on the matter.[3]

2. The rules in Swedish VAT legislation

Before 1991 most services where outside the VAT field, in contrast to goods. In 1991 all services were made taxable except for those especially exempted from VAT. One of these exemptions was that of financial services. Reasons for this exemption were technical problems and international aspects.[4] Since Sweden applied for membership in the EU during 1991 the work on an EC conforming VAT law continued. It resulted in a new VAT law in 1994 and some further amendments in the following year when Sweden became a Member State.

The statutory rules during 1991–1994 and in 1994 VAT Act (Chapter 3, section 9) are almost the same. They are quite short and say that bank and financial services and also trade in securities or such similar businesses are exempt from VAT. The concept of bank and financial services is not defined in the statutory rules and it was only partly discussed in the preparatory work of the legislation. There is, however, a negative list (second paragraph) of what is *not* included. The list contains specially defined administrative services (*notariattjänster*), debt collection (*inkassotjänster*), administrative services regarding factoring and rent of deposit (storage) facilities (*uthyrning av förvaringsutrymmen*). Administrative services are not exempted since they are the same sort of services provided by lawyers and accountants. It was more common for banks to provide them in earlier days. The definition relates to these kinds of services, but today it seems a little out of fashion, and so sometimes it may be difficult to define the area and what is really meant by this concept. The other kind of services, mentioned above, relate to article 13B(d) in the sixth directive. So also do the rules on what is meant by transactions in securities (third paragraph). Since the Member States are allowed to exempt management of investments funds from VAT, Sweden has defined this with reference to the statutory regulation on security funds (*lagen om värdepappersfonder*).

The rules about exemption from VAT on financial services are as described above rather short and depend on the interpretation of the concept of bank and financial services. For instance, in the beginning of the 1990s it was not clear whether the concept should be interpreted with reference to the institutions performing the services or if it was the character of the service as such, independent of the subject (see the reasoning in some of the cases below). Another problem was to go through all different services banks and financial institutions provide and to see whether to allocate them under traditional bank or financial services

[3] See Christer Silfverberg, Swedish branch report in *Cahiers de droit fiscal international*, vol. 84b (1999), p. 565, about the Swedish system of advance ruling.

[4] For the development and changes in the rules concerning financial services, see Anders Hultqvist, *Moms och finansiella tjänster*, Norstedts 1998, pp. 24 *et seq.*

and, if so, they were not the certain type of administrative services (called *notariattjänster*) that banks traditionally have provided for their clients. This led to a rather extensive work to interpret the legislation.

Later on it has become more obvious and recognised by the tax authorities and the courts that the Sixth EC VAT Directive (77/388) may have direct effect and thus have precedence over Swedish statutory rules, this is in the interest of the tax subject. It has been clear that Swedish law on this field must be interpreted in conformity with the rules in the directive. On the other hand, these rules, described in the EC report, are also short and require skilled interpretation. As mentioned above it has led to much discussion, advance rulings and court trials. Judgements from the Supreme Administrative Court and the EC Court have been of great importance. However, there are still important issues waiting to be tried to reach a better understanding of the exemption. For the financial market it is also important to achieve practicability.

3. Bank and financial services

Most traditional bank services are exempt from VAT, such as interest on loans, bank guaranties, loan administrative services, payment services and so on. Rental for safe-deposit boxes and other deposit services are, however, taxable. There are few if any legal disputes about common services that banks supply to their customers. Most of them seem to be exempted, even if we do not have an extensive list of all services as in the Blue Book by the British Bankers Association (it is known in Sweden and may have been of guidance). A question that might arise in a particular case is the relationship between Swedish law and the EC VAT directives. Since the Swedish statutory rules mention bank services without any explanation, but reasonably with reference to what banks are allowed to do under the banking law, it might be an argument that all that kind of such services are exempt under Swedish law even if the directive says otherwise, since EC rules cannot be applied as having direct effect against the tax subject. There is, however, no such case heard of as pending in courts, but the question was raised and the Swedish statutory rules prevailed in a case where Sweden had failed to incorporate the EC rules accurately during ten months in 1995.[5] On the other hand, courts seem to try to reach conformity with the directive and only in obvious cases interpret Swedish law differently in this area.

Some issues have been tried in practice, however. The fee a bank received for negotiating credits for another financial institution (*kreditmarknadsbolag*) was considered to be for a tax exempt service in *RÅ 1998 not. 111*. On the other hand, an opposite judgment was reached in an earlier case, where a real estate broker negotiated loans for a bank to his customers (*RÅ 1994 not. 13*). It is a little difficult to know if there were other facts in this early case which made the differ-

5 See Supreme Administrative Court case RÅ 1999 not. 245. The case concerned repayment of tax (Chapter 10, s. 11 Swedish VAT Act and art. 17.3(c) in the Sixth EC VAT Directive).

ence in tax characterisation or if it was because of another statutory interpretation since at the time it was not necessary to take EC law into consideration. The reason may be the latter since it was mentioned in the judgment that bank and financial services can be supplied by financial institutions only. In Community law what is VAT exempt negotiation of loans has to be determined by the service performed and not with regard to the tax subject as such being a financial institution.[6] In another case a financial institution handled debt instruments in real estate transactions and took part in arranging the loans, but even if some of the services could be characterised as financial services the supply was considered to be a single supply and mainly to consist of a taxable service (*RÅ 1996 not. 243*). Even though EC law was mentioned in the judgment, as a background to Swedish law, it was not relevant in the case (it concerned tax before 1995), and it is difficult to know if this case should be judged in another way with regard to EC law.

More obvious was the outcome of a case were a company supplied valuation services of real estate property in connection with sale of such property. This was judged as taxable services (*RÅ 1992 not. 209*). Also computer services to a bank were taxable, even though the computer system was designed to run payment and clearing services (*RÅ 1992 not. 210*).

The intermediary services in the payment and clearing system supplied by *Bankgirocentralen* (BGC) have also been discussed in practice and judged by the Council of Advance Tax Ruling and the Supreme Administrative Court (*RÅ 1999 not. 46*). BGC provides a payment system in Sweden between banks and their customers. In the application it asked for an advanced ruling on its provided services: incoming payments, outgoing payments and two other services, one described as a menu (not further described in the case) and one as invoicing on behalf of customers. The payment services and the menu service were, with reference to both Swedish law and the EC court judgment in the *SDC* case (C-2/95, *Sparekassernes Datacenter*), found to be exempt supplies. The BGC invoicing services were supplied on behalf of the bank to their customers for the BGC services and the prices for these services were decided by each bank. The invoicing service was regarded as a distinct principal service that did not fall within the financial services exemption.

Another question related to factoring was raised in the case *RÅ 2000 ref. 63*. A mail order company gave long time credits to its customers and sold the claims to another company within the same group for 116 per cent of the nominal amount (representing the market value since the interest rate was approximately 30 per cent). The company buying the claims received payments from the mail order customers and handled all work on late payments, etc. Bad claims could be sold back to the mail order company. The Council of Advance Tax Ruling did not characterise this arrangement as a taxable administrative

[6] See, for instance, *Becker* v. *Finanzamt München-Innenstadt* (Case 8/81), a real estate broker negotiating loans, a principle developed in *Sparekassernes Datacenter* v. *Skatteministeriet* (Case C-2/95) and other cases.

service. It also decided that any losses on claims were to be regarded as deductible losses.[7]

4. Transactions in securities

Traditional trade in securities is exempted from VAT. Information services that are not ancillary to a supply of transactions in securities, but rather a single or the principal supply, are taxable.[8] In Sweden there is a difference between the stock market and the money market. On the stock market there is a stock exchange (OM Stockholm Stock Exchange) and most banks and brokers are members of the stock exchange. They either buy stock to resale to customers or they act as intermediaries and get paid a commission. Normally this does not raise any question about VAT. These fees are exempt. There have, however, been some hard issues to be solved by the courts. One is larger stock purchase agreements and mergers and acquisitions where the commission may be higher than in ordinary stock trade. Another is distinguishing trade from management in shares. A third issue is when two or more brokers are involved in the transactions and share the commission. The first issue will be dealt with under corporate finance services below, but the other two shall be developed here.

In a number of tax audits the question has been raised whether the fee charged to a client refers to management services or transactions in securities. In principle, management services are taxable (*RÅ 1993 not. 71 and RÅ 1998 not. 249*) and transaction services are exempt, with one exception and that is management of securities funds that is also exempt from VAT. Sometimes, however, the financial institution takes care of both management and trade in a client's financial instruments. In such cases it may depend on how the services are charged, separately or together, but also how they relate to each other and are supplied to the customer. For VAT purposes it may be classified as two independent supplies or as a single supply if one of those is the principal supply to which the other is ancillary. In the latter case the ancillary supply receives the same tax treatment as the principal supply. In a recent case from the Court of Appeal (*kammarrätten i Stockholm*) such a service was treated as a single supply with reference to the EC Court ruling in C-349/96 (*Card Protection Plan*).[9] It seems, as in other cases of this kind, as if the outcome would depend on how the service or services are supplied to the customer.[10] In a recent advance ruling decision, where the customer

7 About deductibility, see Chapter 7, s. 6, para. 3 in the Swedish VAT legislation; compare art. 11A, 11C in the Sixth EC VAT Directive. The case was decided with reference to the ECJ rulings in Case C-317/94 (*Elida Gibbs Ltd*) and Case C-330/95 (*Goldsmiths Jewellers Ltd*).

8 See a decision of Council of Advance Tax Ruling, 21 December 2000, (*RSV:s rättsfallsprotokoll 1/01*).

9 *Kammarrättens dom 2002-09-20, mål nr* (case no) 2676-78-2000. The court also referred to two judgements by the Supreme Adminstrative Court (in *RÅ 2001 not. 23* and *RÅ 2002 ref. 9*).

10 With reference to other case law (Joined Cases C-308/96 and C-94/97 *Commissioners of Customs and Excise* v. *Madgett and Baldwin* [1998] ECR I-6229, para. 24) the ECJ in *CPP* (C-

also took active part in how the investments should be managed, the service was treated as one single taxable supply.[11]

The other issue, where two or more institutions have shared the commission in an intermediary service of selling or buying stock, has led to a difficult situation where different parts of the Court of Appeal in Stockholm have reached different conclusions. In short, the circumstances are that two financial institutions, one often a smaller one who is not a member of the stock exchange and a larger one that is, cooperate to supply the customers of the smaller institution with trade in securities. The broker in the smaller institution takes orders to buy or sell securities from his client, then passes these orders to brokers in the larger institution who effect them by selling securities or intermediate such orders through the stock exchange. The larger financial institution charges the customer a commission and then shares this with the smaller institution (50–50, 60–40 or otherwise). The standpoint of the tax administration is that the payment to the smaller institution is taxable, since it is a payment for providing a customer to the larger institution. It has, however, been argued to be a transaction fee, and therefore exempt, since it is a part of the fee charged by the larger institution on the value of the traded securities in each case.[12] The Court of Appeal has as mentioned above reached both these conclusions in different cases. There does not seem to be different facts, but rather different legal viewpoints that have led to the judgments. The Supreme Administrative Court has not yet granted leave to appeal in any of these cases, but it would of course be a great help for the financial market if it did.

After a decision by the tax administration, most fees at the OM Stockholm Stock Exchange were regarded to be tax exempted. The stock exchange has a computer system where members (financial institutions) put in their selling and purchasing offers from terminals. The computer system finds matching offers and gives the parties through the system a notice of concluded deals. These deals are binding for both parties and afterward registered at VPC. Most of the fees to the stock exchange were found to be related to transactions in shares and accordingly held to be exempted with reference to the Sixth EC VAT Directive and the *SDC* case (C-2/95).

It should be noted that the registration fees and other fees paid to the stock exchange by the listed companies are taxable, but not deductible for the companies, since they do not concern the business performed by the companies (*RÅ 2001 not. 70*). For the same reasons a Swedish company was not allowed to deduct taxable consultancy fees for services supplied in connection with registration on the New York Stock Exchange (*RÅ 2001 not. 69*).

On the money market there is no such institution as a stock exchange. There is, however, an information system (PMI) that ought to supply taxable services. The

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349/96) stated that a service must be regarded as ancillary to a principal service if it does not constitute for customers an aim in itself, but a means of better enjoying the principal service supplied (see para. 30).

11 Decision by the Council of Advance Tax Ruling, 8 May 2001 (*RSV:s rättsfallsprotokoll 21/01*).

12 See Hultqvist, *op. cit.*, p. 150.

securities reach the market through financial institutions acting as primary dealers. They buy the securities and resell them to investors, sometimes almost simultaneously, but legally this is buying and selling securities. Then they act as market makers and trade the issued securities by putting two way prices. They do not get any commission in this trade, but rather make gains or losses on the price difference between buying and selling prices. From a VAT perspective there is no supply of a service.

At least two issues have been raised in Sweden concerning this market. One is the service provided by money brokers, where offers are negotiated between sellers and buyers on a name give up basis. The broker gets a commission when seller and buyer have reached each other and concluded a purchase of the money instruments. It was questioned if this was a negotiation and VAT exempt, but after a while the question was dropped by the tax authorities and the commission was treated as exempt from VAT. Another question has been the VAT treatment of so called market makers' fees. It is provided by the issuers of bonds and other money instruments to the institutions acting as primary dealers. It has been argued that it is a financing cost and should be VAT exempt. On the other hand the fees have been called market makers' fees which more refers to keeping a secondary market (a marketplace). In a recent case decided by the Court of Appeal the court reached the conclusion that it is a fee for keeping a market place and therefore taxable.[13] Whether leave to appeal to the Supreme Administrative Court will be granted remains to be seen.

5. Corporate finance services

Many services are supplied by financial institutions and consulting firms under the label corporate finance. Some may be of more administrative, legal or economical character without being a financial service or ancillary to a principal financial service, others will be recognised as financial services. One of these more complicated combined services, an initial public offering (IPO), was tried in an advance ruling case (*RÅ 2001 not. 23*). A financial institution had to arrange all necessary requirements for a company to reach the public with shares and get listed on the stock exchange. As described in the case, the most important service was to buy and sell (a so-called bought deal) or to intermediate the shares to the investors. Sometimes this requires issuing new shares, sometimes not. Since there is no market price on these shares it takes a large effort to evaluate the company and present it correctly in a prospect. Market activities, as for example meetings with potential investors, are also required. The financial institute generally gets a commission for all its work and activities related to the value of the stock sold and far higher than commissions received in ordinary trade over the stock exchange. Outside this supply falls economic and legal work

[13] *Kammarrättens dom 2002-09-20, mål nr* (case no) 2676–78-2000

provided by auditors and lawyers, whose fees are usually taxable. The Council of Advance Tax Ruling and the Supreme Administrative Court found the intermediary services to be tax exempt, after having concluded that it was a single supply with reference to the EC Court case C-349/96 (*Card Protection Plan*). No other VAT treatment was considered for administrative fees for distributing shares or where the supply also included arranging of the issue of new shares. A fee paid in advance to the financial institution shall according to the same ruling also be tax exempt even if the mandate is cancelled and no distribution of shares takes place.

For other kinds of corporate finance services the same kind of reasoning may be applied to reach a fair VAT treatment. A mandate to purchase or sell larger amounts of shares might mainly be a financial service (transaction in securities), but sometimes be more of a legal or other service. In mergers and acquisitions such questions might arise. An early case during the period before Sweden became an EU Member State might not be representative in this new perspective, but could at least illustrate the issue. A company which was trading in securities, held as investments, got a mandate from a company to sell the shares in a subsidiary. It had to try to find a purchaser to the shares, to participate in the negotiations between seller and purchaser and to take part in drafting the contract. The company was to get a fee related to the price of the shares. The fee was considered to be taxable by the Council of Advance Tax Ruling and the Supreme Administrative Court (*RÅ 1994 not. 422*). In the decision it was emphasised that the concept of transactions in shares is only applicable to such services as are typical for banks and other financial institutions. The service supplied by the company was not regarded as such, but rather as a consulting service in connection with the sale of a company (the subsidiary). The same judgment was reached with almost identical arguments in a similar case (*RÅ 1996 not. 84*). Whether the judgments would be different today is difficult to say, but at least the legal argumentation would be different, not related to what the financial institutions normally do, but rather to the character of the service as such.

In later practice Swedish courts have interpreted the statutory rules differently and applied EC directives and EC case law and are focused on the service supplied instead of the tax subject.

Facts may vary so it is difficult to give a certain answer for all these kind of services. If there is a single supply and its character mainly is to sell or buy shares it seems likely to be treated as a tax exempt supply. The Council of Advance Tax Ruling has recently found such a service to be exempt.[14] Also the supply of a service to arrange the issue of new stock was regarded to be tax exempt in the same case. On the other hand buying or selling companies may be more of a legal service, where the distribution of shares are a smaller part only, and as such the supply could be taxable, if it is not possible to treat the distribution of shares as an independent service.

[14] See decision of Council of Advance Tax Ruling, 8 Jan 2002 (*RSV:s rättsfallsprotokoll 4/02*).

6. Conclusions

During the last decade Swedish financial institutions, tax authorities, tax lawyers and courts have had to define the concept of financial services to be able to classify the provided services in the financial area correctly under the VAT law. A practical matter is foreseeability and equal treatment on this competitive market, since uncertainty creates problems and unnecessary costs. The Swedish experience is that both the Swedish statutory rules and the rules in the EC directives concerning financial services have been difficult to interpret.

The Swedish statutory rules are quite vague and seem to refer to services provided by the institutions (banks and other financial institutions). There was in the first period of years also a tendency to interpret the rules with reference to what these institutions normally do and legally are allowed to do. After becoming a member of the union, the character of the service as such was put in focus. The *SDC* case (C-2/95) before the ECJ came during this period and, together with some other ECJ cases, were of guidance in developing Swedish case law. The Supreme Administrative Court has on several occasions emphasised the importance of the EC VAT directives and almost always interpreted the Swedish VAT rules in this field in conformity with the directives. Only in straightforward cases rules in the Swedish VAT Act prevail and are interpreted otherwise. Comparative studies with VAT law in some other EU countries have also been helpful.

Since the exemption in article 13B(d) in the Sixth VAT Directive is to be interpreted strictly and lacks a more general concept of what is meant by financial services it is a little difficult to be certain in judging many of the complicated services on this market. Some of the cases mentioned in this report may serve as a good illustration. Even if it was clear that many of traditional bank and financial services were to be tax exempt, it has taken large efforts to classify a range of services in a VAT perspective and that work will most probably continue in the future. It would be of great help if the exemption could be more specific, especially in the field of intermediary services, or if it could contain a clear general concept of what are to be considered as financial services.

In the meantime one may hope for more ECJ rulings developing the concept. Comparative studies would probably also be helpful. It has to be a common interest and of great importance for the financial institutions to get equal treatment in all countries in the European market. Finally, a modernised Swedish statutory regulation as, for instance, in the national legislation in Germany and Great Britain, could be discussed.

Résumé

La Suède est un État membre de l'Union européenne depuis 1995 et se conforme aux directives sur la TVA figurant dans le rapport de la CE. Toutefois, l'exemption des activités financières a été introduite dès 1991, lorsque ces activités sont devenues imposables aux termes de la loi sur la TVA. Au cours de la dernière décennie, les institutions financières

suédoises, les autorités fiscales, les fiscalistes et les tribunaux fiscaux avaient dû définir le concept d'activités financières pour être en mesure de classer correctement les activités exercées dans le domaine financier conformément à la loi sur la TVA. Une question pratique est la faculté de prévoir et d'assurer l'égalité de traitement sur ce marché ouvert à la compétition, étant donné que l'incertitude soulève des problèmes et crée des coûts inutiles. La Suède sait par expérience que les dispositions législatives suédoises et les règles des directives de la CE concernant les activités financières ont été les unes et les autres difficiles à interpréter.

Les dispositions législatives suédoises sont tout à fait vagues et semblent se référer aux services fournis par les institutions (banques et autres institutions financières). Au cours des premières années, on a également constaté une tendance à interpréter les règles en se référant à ce que ces institutions font normalement et à ce que la loi leur permet de faire. Après l'entrée de la Suède dans l'Union, l'examen a été centré sur le caractère du service en tant que tel. L'affaire *SDC* (C-2/95) est venue devant la CEJ pendant cette période et, en même temps que d'autres affaires soumises à la CEJ, a contribué à l'évolution de la jurisprudence suédoise. Le Tribunal administratif suprême a souligné à plusieurs reprises l'importance des directives de la CE concernant la TVA, et interprété presque toujours les règles suédoises régissant la TVA dans ce domaine comme étant conformes aux directives. C'est seulement dans des cas tout à fait clairs que les règles de la loi suédoise sur la TVA prévalent et sont interprétées autrement. Les études comparatives avec la législation sur la TVA en vigueur dans d'autres pays de l'UE ont également été utiles.

Comme l'exemption prévue à l'article 13B(d) de la sixième Directive sur la TVA doit être interprétée à la lettre et est dépourvue d'un concept plus général de ce qu'on entend par activités financières, il est un peu difficile de juger avec certitude nombre des activités compliquées exercées sur ce marché. Certains des cas mentionnés dans le présent rapport fourniront peut-être une bonne illustration du problème. Même s'il est apparu que nombre des activités bancaires et financières traditionnelles devaient être exemptées d'impôt, il a fallu beaucoup d'efforts pour classer une série d'activités dans la perpective de la TVA, et il est plus que probable que ces efforts se poursuivront à l'avenir. Il serait également très utile que l'exemption puisse être plus spécifique, en particulier dans le domaine des services intermédiaires, ou qu'elle puisse renfermer un concept général clair de ce qu'il convient de considérer comme activités financières.

On peut espérer dans l'intervalle que la CEJ se prononcera plus souvent en faveur de ce concept. Des études comparatives constitueraient aussi probablement une contribution positive. Il doit être de l'intérêt commun, et d'une grande importance pour les institutions financières, d'aboutir à l'égalité de traitement dans tous les pays sur le marché européen. Finalement, la question d'une réglementation suédoise modernisée, comme par exemple dans la législation nationale d'Allemagne et de Grande-Bretagne, pourrait être examinée.

Zusammenfassung

Schweden ist seit 1995 Mitgliedstaat der Europäischen Union und hält die im EG-Bericht beschriebenen Mehrwertsteuerrichtlinien ein. Die Befreiung von Finanzdienstleistungen wurde jedoch bereits 1991 eingeführt, als Dienstleistungen nach dem Mehrwertsteuerrecht steuerpflichtig wurden. Im letzten Jahrzehnt mussten schwedische Finanzinstitute, Steuerbehörden, Steueranwälte und Gerichte den Begriff Finanzdienstleistungen definieren, um die im Finanzbereich erbrachten Dienstleistungen nach dem Mehrwertsteuerrecht korrekt einstufen zu können. Ein praktisches Anliegen ist Vorhersehbarkeit und Gleichbehandlung

auf diesem wettbewerbsgeprägten Markt, da Unsicherheit Probleme und unnötige Kosten bewirkt. Schweden hat die Erfahrung gemacht, dass sowohl die schwedischen Gesetzesvorschriften als auch die Regeln der EG-Richtlinien in Bezug auf Finanzdienstleistungen schwierig zu interpretieren sind.

Die schwedischen Gesetzesvorschriften sind sehr vage und betreffen offensichtlich von Institutionen (Banken und sonstigen Finanzinstituten) erbrachte Dienstleistungen. In den ersten Jahren bestand auch die Tendenz, die Regeln unter Berücksichtigung dessen zu interpretieren, was diese Institute normalerweise tun und was sie gesetzlich tun dürfen. Nachdem Schweden Mitglied der Union wurde, trat der Charakter der Dienstleistungen stärker in den Vordergrund. In jener Zeit behandelte der EuGH auch den *SDC*-Fall (C-2/95) sowie einige andere Fälle, die Richtlinien für die Entwicklung des schwedischen Fallrechtes lieferten. Das Oberste Verwaltungsgericht hat wiederholt die Bedeutung der EG-Mehrwertsteuerrichtlinien hervorgehoben und die schwedischen Mehrwertsteuerbestimmungen in diesem Bereich fast stets gemäss den Richtlinien interpretiert. Nur in offensichtlichen Fällen werden Bestimmungen des schwedischen Mehrwertsteuergesetzes geltend gemacht und anders ausgelegt. Auch vergleichende Untersuchungen der Mehrwertsteuergesetze in einigen anderen EU-Ländern haben sich als hilfreich erwiesen.

Da die in Artikel 13B(d) in der Sechsten Mehrwertsteuerrichtlinie vorgesehene Befreiung streng auszulegen ist und den Begriff Finanzdienstleistungen nicht allgemeiner definiert, ist es etwas schwierig, einige der komplizierten Dienstleistungen dieser Branche mit Gewissheit zu beurteilen. Einige der in diesem Bericht erwähnten Fälle können hierfür als gute Beispiele dienen. Obwohl eindeutig war, dass viele traditionelle Banken und Finanzdienstleistungen steuerbefreit sein müssten, bedurfte es grosser Anstrengungen, um ein breites Spektrum von Dienstleistungen für Mehrwertsteuerzwecke einzustufen, und diese Bemühungen dürften aller Wahrscheinlichkeit nach auch noch künftig notwendig sein. Es wäre eine grosse Hilfe, wenn die Befreiung konkreter formuliert werden könnte, vor allem in Bezug auf Vermittlungsdienste, oder wenn eine klarere allgemeine Definition gegeben werden könnte, was als Finanzdienstleistungen zu betrachten ist.

Bis dahin ist zu hoffen, dass der Begriff durch weitere EuGH-Entscheidungen klarer formuliert wird. Auch vergleichende Untersuchungen dürften hilfreich sein. Es ist im gemeinsamen Interesse und für die Finanzinstitute von grosser Bedeutung, in allen Ländern auf dem europäischen Markt gleich behandelt zu werden. Schliesslich könnten auch modernere schwedische Gesetzesbestimmungen, wie sie zum Beispiel in der innerstaatlichen Gesetzgebung Deutschlands und Grossbritanniens verankert wurden, erörtert werden.

Resumen

Suecia es un Estado miembro de la UE desde 1995, que se conforma a las directivas sobre IVA del informe de la CE. Sin embargo, la exención de los servicios financieros se introdujo en 1991, cuando se convirtieron en imponibles según la ley del IVA (LSIVA). Instituciones financieras, autoridades tributarias, fiscalistas y tribunales fiscales tuvieron que definir, a lo largo del último decenio, el concepto de servicios financieros para clasificar correctamente las actividades del sector financiero conforme a la LSIVA. Un tema práctico es prever y asegurar la igualdad de trato en este competitivo mercado, dado que la inseguridad origina problemas y costes innecesarios. Suecia conoce por experiencia que la normativa interna y las reglas de las directivas de la UE han sido difíciles de interpretar en lo que se refiere a los servicios financieros.

La normativa sueca es vaga y parece referirse a los servicios prestados por las instituciones (bancos y entidades financieras). Durante los primeros años se constató también una tendencia a interpretar la normativa refiriéndose a lo que estas entidades hacen normalmente y aquello que la ley les permite hacer. Tras la entrada de Suecia en la Unión, el examen se centró en el carácter del servicio en tanto tal. El asunto *SDC* (C-2/95) y otros sometidos al TJE durante este periodo han contribuido a la evolución de la jurisprudencia sueca. El Tribunal Supremo administrativo ha subrayado en numerosas ocasiones la importancia de las directivas de la CE sobre IVA, interpretando casi siempre que la normativa sueca del IVA en este campo es conforme a las directivas. Unicamente en casos meridianamente claros prevalece la LSIVA y se interpreta de otra forma. También han sido de utilidad los estudios comparativos con la vigente legislación del IVA de otros países.

Dado que la exención prevista en el artículo 13B(d) de la Sexta Directiva sobre IVA ha de interpretarse estrictamente y carece de una noción general de lo que se entiende por servicios financieros, es difícil precisar con certeza muchos de los complicados servicios de este mercado. Algunos de los casos aportados en esta ponencia ilustrarán este problema. Incluso cuando se ha establecido la exención de determinados servicios bancarios y financieros tradicionales, ha sido necesario realizar un esfuerzo de clarificación en una serie de ellos desde la perspectiva del IVA y es más que probable que haya que continuar haciéndolo en el futuro. También sería de gran utilidad que la exención fuera más específica, particularmente en los servicios de intermediación, o que se estableciera un concepto general de lo que hay que considerar como servicios financieros.

Es de esperar que el TJE se pronuncie más a menudo desarrollando este concepto. Probablemente los estudios comparativos serían una contribución positiva. Debe ser de interés común y de gran importancia para las instituciones financieras llegar a la igualdad de trato en todos los países del mercado europeo. Por último, debería examinarse el tema de una modernizada reglamentación sueca, como por ejemplo en la legislación de Alemania y Gran Bretaña.