

Bullerbo, Sweden  
March 12, 2004



## European Commission DG Taxation and Customs Union

Department C3

Dear Mr. Stephen Bill

With reference to my telephone call today, I hereby submit my questions, by e-mail and wish and hope for a quick answer.

### **The right to claim VAT back on early investments, made in a project which later becomes a company.**

This question is related to the **Sixth VAT Directive 77/388/EEC** and relevant and related cases by The Court of Justice of the European Communities.

A creation of a company is made in several stages, the last, in a chain of events, by getting the corporation registered by the member state's authority for holding a record of companies, like in Sweden PRV (Patent- och Registreringsverket).

### **Background**

a. When a project is born, it normally starts with just, **an idea**, from and by one individual or several of entrepreneurs.

b. At a next stage, someone **proclaims** the intentions **to do something**.

At such an early stage, you as an entrepreneur, doesn't have a formal company for such an idea/project, it is just an idea which starts to be shaped.

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c. At this stage, at the time, **when you proclaim** your intentions, you have taken the decision to start a project; you may even give the project a name, as an example “NEWCO”.

At this early stage, you also sign a lease agreement for a house or part of a house, from where you plan to operate the business.

d. At this early stage, you may not have decided yet in which legal form you will operate NEWCO, but, to make the story shorter, you have decided to start a limited liability company, what we in Sweden call “Aktiebolag”.

e. Before all the legal documents are being arranged, you have asked some friends or business partners to join your board, it may already have passed a few months, let say, that it has passed 6 months from stage (a) to point (e). The share capital is also at this time paid in, by its full amount.

During such time, stage (c)-(e), you may even have started to invest and started to pay directly related costs, which are necessary as a foundation for the operation you plan to operate.

f. The NEWCO legal documents, are being signed and will, due to distances between board members, living in different member countries, not reach the registration authority before another 6 months has passed.

g. The registration authority registers the company and it is publicized as a registered private share holding company (Aktiebolag) and it is getting its name approved.

h. Thereafter, the NEWCO AB, as the name would be, will register itself at the local tax authority, receives the license to operate and pay its social fees and taxes (F-skatt) and are being registered for VAT.

i. NEWCO AB is also to be the contra party for the lease agreement confirming that the company now will be responsible for what was agreed in point (e).

j. At the first declaration for VAT, the NEWCO AB will bring up all the pre-investments and all the pre-cost, from when the first economic activity started stage (c) and onwards.

- All the investments are now “things” which is part of the new corporation and its activities.
- All the costs are also directly related to the activities and part of the future services or products you will sell, from the NEWCO AB.



- The parties whom has been starting the project has with no exception given the impression of that they have done all their deals and transactions in the name of the project.

### **Now is the question:**

**Q1.** Are the cost and the investment, which has been made between point (c) up to point (g), where the initiator has paid those + VAT on behalf of the project and in the NEWCO AB recorded these funds as early shareholder contribution, on top of the share capital which where paid in, point (e).

**Q2.** As I understand the sixth directive 77/388/EEC and the different cases, the NEWCO could even claim the VAT back before the company even would have become a company?

**Q3.** As I have understood the whole idea of the VAT neutralization philosophy, any cost or investment, made as part of or directly related the project, are at any stage to be paid back?

**Q4.** As I have understood it, the VAT claim doesn't disappear, just because you wait to ask it back, and you didn't ask it back at the time for the transaction?

**Q5.** The opposite would also be applicable, if you had sold something, before the company come to be a company, you would be obliged to pay VAT for such sell, as well?



**Q6.** The parties, let say, the board or even if we take it before the board where formed, those individuals or a corporation if such, would be the founder, would be personally responsible for such transactions up to the time the company where to get its own legal entity status?

Hope that I have made the explanation clear.

Sorry if my English grammar is not the best.

I am also sorry to bother your department with such basic question, but there seems to be a problem to understand which laws is applicable in a member state, such as Sweden.

Looking forward to soon hear back from you.

A handwritten signature in blue ink, appearing to read "Lars Olof Känngård".

**Lars Olof Känngård**