

Swedish Tax Newsletter

December 2011

The Swedish Tax Newsletter is an English language summary providing a general update on the tax system and highlighting recent developments within the area of Swedish tax and related legal matters with emphasis on the corporate tax side. There are no major developments since last issue (August 2011). For Swedish language tax news we refer to our Swedish publication "Tax matters" at:

<http://www.taxmatters.se/>

1. Swedish Corporate Tax Changes

A few corporate tax changes are proposed for 2012. The old "Lundin" anti-abuse provision, which prevents tax exemption for dividends in certain cases of an acquired company containing only accumulated earnings, is believed to be obsolete and is proposed to be abolished.

The strict tax filing provisions for avoiding applicability of the harsh shell-company tax regime, which otherwise may lead to that the entire sales proceeds are taxed as capital gains (as opposed to a tax exemption in line with our participation exemption regime for corporates), are proposed to be prolonged from 30 days to 60 days after the sales date. It is proposed to optionally be able to start the timing calculation from the date of the purchaser taking possession of the shares/participations.

2. Swedish Interest Deductibility

In six judgments dated 30 November the Swedish Supreme Administrative Court confirms the Tax Ruling Board's earlier rulings on the Swedish interest-stripping restrictions with just few exceptions. The judgements, thus, came out kind of negative for the tax payers on most accounts.

As you might know these provisions which mainly are aimed against debt-push-down situations, were introduced in 2009 and refuses Swedish interest deduction for interest payments on any intra-group loans related to acquisition of shares from an affiliate, unless the creditor is taxed for the interest at least 10%, or it is shown that the

share transfer and the debt is based on commercial reasons.

Although there were dissidents in a few of the Supreme Administrative Court cases, these judgments overall confirm the very restrictive approach of the Tax Ruling Board in the appealed rulings, which dealt with a wide variety of situations among regular debt push downs, like eg. new issues, NID-deductions, EU-law conformity, tax treaty conformity etc. In respect of the "commercial reasons test", though, the Court found in one case, the exception applicable in a situation with an internal acquisition preceded by an external acquisitions, where the subsequent internal acquisition in terms of timing and otherwise "only appeared to be part of introducing the new company into the group". The Court also separated between organisational reasons and commercial reasons.

It can finally be mentioned that interest deductibility in a wider sense recently has been debated in Sweden and a governmental committee that last year was appointed for a major review of the corporate tax system with the aim of broadening the tax base, was also asked to create a greater neutrality between equity and debt, with reports scheduled in late 2013, for potential enactment till January 2014. There have also been a few court cases with unexpected outcome on domestic transfer-pricing type interest deductibility issues. Quite recently a malpractice scandal within the field of a PE-held health care company handling outsourced public sector care for the elderly resulted in public debate on the general possibilities to legitimately net Swedish profits against interest expenses routed offshore. The debate led to a statement by the

Swedish minister of finance a few weeks ago, that he immediately wished to stop aggressive interest deductions and hoped to have a proposal available already during spring 2012. Simultaneously the Tax Authority has been asked by the Ministry of Finance to map the interest deductibility matters, with a first report scheduled till April 2012 and a final report by end 2012.

In summary, the current public debate indicates that further Swedish restrictions for interest deductibility is to be expected sooner rather than later, in one way or another.

3. Swedish Investment Fund Taxation

With applicability from 2012, the Swedish tax regime for investment funds, will be radically changed. Swedish investment funds are currently taxable but shift the tax burden to their investors by way of deductible distributions. The highlights of the new rules (1 Jan.) are that Swedish (and foreign) investment funds will be fully exempted from tax but Swedish resident investors in Swedish and foreign investment funds will have to include a notional income in their tax returns based on the value of their fund investments. Dividends to qualifying foreign investment funds (ie. EEA-resident or/and information exchange treaty countries) will be exempt from withholding tax. Rules have also been adopted which exempt cross-

border fund mergers from tax, both on investor and fund level.

These changes will largely provide relief for the future in relation to the large number of currently ongoing wht reclaim litigations in Sweden for foreign investment funds based on EU non-discrimination reasoning. For foreign pension funds the complex situation still continues.

4. New dates for annual tax filing

The annual tax return filing date for corporates under the current rules is by 2 May the year after the calendar year during which the financial year expired, with extension normally available till 15 June at the very latest.

For spreading the filings over the year, new tax return filing dates will apply as from the 2014 tax assessment (closings during 2013), and will imply that for financial yearendings during calendar months Sept.- Dec. will be due on the following 1 July, Jan.- Apr. at 1 Nov, May-June at 15 Dec. and July-Aug. at 1 March. If the tax return is filed electronically there is an automatic one month extension. Extensions in other respects will only be granted if there are special reasons. As preliminary taxes are due for (and during) the financial years, there may be underpayments resulting from the transitional rules upon the shift to the new system.

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