

*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. For Swedish language tax news we refer to our Swedish publication "Tax Matters" at: <http://www.taxmatters.se/>*

## 1. Swedish Corporate Taxation; Up-date & News

The Swedish corporate tax rate has been reduced from 28% to 26.3%, applicable for financial years starting 1 January 2009, or later. All income of corporate entities is treated as business income. The effective tax rate is slightly lower after deductible appropriations of max. 25% of net taxable income to an "accruals reserve", which must be returned to taxation within 6 years. Standardised income to mitigate the benefit of the accruals reserve appropriations b/f is though imposed at 72% of the interest rate on Governmental debt notes.

Fixed assets including intangibles and acquired asset goodwill are depreciable for tax purposes at max. 30% on declining balance or 20% straight line, with correspondence to the accounts. Buildings are depreciated at 2-5% depending on type and use. Stock in trade is valued at cost or market value, whichever is lowest, or at 97% of acquisition cost on FIFO basis.

Tax losses may be carried forward indefinitely, subject to restrictions or forfeiture upon ownership changes, mergers and de-mergers, dispositions with creditors and certain other reorganisations. Following rulings by the Supreme Tax Court on how to net group contributions against tax losses carried forward in case those are restricted after ownership changes, new legislation has been introduced. The situation has now become rather complicated, and will usually require detailed considerations in order to facilitate a correct and safe tax return filing.

Swedish companies are not taxed on a consolidated basis. However, it is for qualifying groups (i.e. a holding of >90% of the capital which must have prevailed during the whole fiscal year) possible to effectively offset operating losses of one Swedish company against operating profits of another Swedish company by way of group contributions, tax deductible for the contributor and taxable for the recipient. EEA companies are for these purposes regarded as Swedish companies, if the recipient is taxable in Sweden.

- Changes to the tax consolidation system are proposed with effect from 1 July 2010, to become applicable for companies with financial year endings after 30 June 2010, whereby a contribution may not exceed the amount of profit of the contributing company for that particular income year.
- In the same proposal and with the same time frame, new rules on so-called group deductions have been proposed for aligning the Swedish tax consolidation provisions with the "Marks & Spencer" principles as defined by the EU Treaty. The proposal launches a separate system for international consolidation under which a Swedish parent company will be able to deduct final losses in a directly held subsidiary within the EEA when the subsidiary has been dissolved through liquidation. Several requirements have though to be met. Among others the losses must have been incurred during a period when the Swedish parent company was a direct owner of more than 90 per cent of the shares. Unlike the group contribution system, the group deduction will not be tied to the transfer of funds. The losses in the foreign subsidiary should be calculated both according to foreign and Swedish tax rules and the lesser amount of the two is the maximum deduction available. Surprisingly, the group will have to consider – and carry out - all available tax planning activities abroad in order to ensure maximum utilization of the foreign losses abroad before any tax deduction is granted in Sweden. "Sophisticated tax planning" abroad, however, should not be necessary according to the proposal.

The abolished capital gains taxation for corporates a few years ago has under the participation exemption provisions made Sweden a favourable holding company location. Capital gains on shares held for business reasons are, thus, tax exempt

for corporates and losses are not deductible. The tax exemption also include dividends on such shares. Unquoted shares held as capital assets are always considered as held for business reasons. Quoted shares are considered held for business reasons provided that the holding corresponds to at least 10% of the voting rights, or the shares are held in the course of the business. An additional condition regarding quoted shares is that the shares must have been held for a period of 1 year. Shares in foreign companies, being similar to Swedish companies, will also qualify as shares held for business reasons.

- As from 1 January 2010, shares in partnerships (tax transparent entities) became included in the participation exemption regime (making also losses non deductible), including also indirect holdings via a partnership. The changes were combined with certain requirements of return to income of negative acquisition costs in partnerships.

The general participation exemption regime does not apply without exception; hence a sale of shares in "shell" companies is not tax exempt. A shell company exists if the market value of cash, shares and other marketable instruments (other than shares held for business reasons) and similar assets exceeds 50% of the consideration paid for the shares. The sale of a shell company results in a harsh taxation of the seller, as the gross consideration is taxed. Provided certain formalities are fulfilled it is however possible to avoid such taxation (by submitting a special tax return within 30 days of the disposal by the disposed company and potentially guaranteeing any tax debts as per disposal date).

Sweden's CFC-provisions (controlled foreign corporations) aim at taxing a Swedish resident shareholder for shareholdings in low-taxed foreign entities. A Swedish resident shareholder with a holding in a CFC-entity will annually be taxed for its portion of the income according to provisions relating to a Swedish corporate. For a corporate, the portion will be taxed at the Swedish corporate tax rate. Only holdings - direct or indirect through other foreign entities - corresponding to at least 25% (capital or voting rights) in the foreign entity could lead to CFC taxation. A foreign company is considered lowly taxed if the income in the com-

pany - calculated in accordance with Swedish provisions — is taxed at a rate below 14.47%. However, if the foreign entity is resident in an "approved country", CFC taxation should not arise. Approved countries appear in an official "b/w" list. Active EEA entities are under qualifying circumstances also excluded.

No debt/equity rules exist for tax purposes. For company law purposes, a company can however not lose more than half of its registered share capital without facing compulsory liquidation or re-financing requirements in accordance with detailed rules of the Companies Act.

In general, interest cost on debt is thus fully deductible provided at arm's length. However, Sweden has introduced anti-debt push down provisions under which deduction is refused 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% (tax rate comparison), or it is shown that the share transfer and the debt is based on commercial reasons. Thus, a loan agreement may have been signed many years ago, but interest payments still becoming covered by these new restrictions.

No Swedish withholding tax is levied on interest payments (or technical fees) to abroad. No stamp tax on capital is levied, but stamp tax is levied on transfer of real property and leasehold land.

Swedish source royalty fees and certain rental fees are taxed as a special form of income from a permanent establishment at the regular corporate tax rate, subject to treaty tax reduction or waiver. Filing requirements nonetheless apply.

Swedish withholding tax on dividends to foreign shareholders is generally levied at 30%, but it is reduced or waived under most tax treaties. It is also waived according to domestic provisions on dividends to corporate shareholders in approved jurisdictions for shares held for business reasons (cf. above). No withholding tax is levied on profit distributions by branches.

- The future of the proposal to exclude many Swedish companies from the obligation to undergo statutory audit as from financial years commencing as from 1 July 2010, is still uncertain.

- An official report has proposed several changes to Swedish taxation procedures, including a split of the current single tax filing date in May into five different dates, as from 2011.
- The Government has proposed to revert to the earlier minimum share capital requirement for Swedish corporates (AB, priv.) of SEK 50,000 (from 100,000) as from 1 April 2010.
- The tax filing season of 2010 requires the corporate tax return for financial year-endings during calendar year 2009 to be filed already on 3 May 2010 (without incurring late filing penalties). Interest surcharges on underpayment of preliminary taxes against final taxes however generally apply already from 12 February 2010.
- In a recent ruling by the Swedish Supreme Tax Court, the Swedish fiscal sanction system was found not to violate the Human Rights Convention's prohibition against dual punishment. Certain debate has though arisen after the decision.

## 2. Swedish Individual/Small Business; Tax Update & News

Earned income and business income is for individuals taxed at progressive rates at a maximum of some 57%. Income from capital sources, including gains, is generally taxed at a flat rate of 30% (with reduced 25% tax rate applicable to non-listed shares).

Such capital income from closely held companies (ie. companies with a limited number of active individual shareholders) is for individuals taxed partly as earned income, partly as capital income under a complex but sometimes beneficial tax regime where the basis for taxation at a further reduced capital income tax rate of 20% is dictated by eg. the tax cost base for the shares + the company's accumulated salary costs.

Mandatory social security charges payable by employers on remuneration to employees (or by the self-employed) are levied at 31.42%. For very young employees, the social fees are reduced and for very old employees the fees are waived. A further approx. 7% (fully creditable / deductible) is

payable by employees themselves within certain (low) brackets. Additional pension benefits on top of the mandatory system are customary among most Swedish employers. A special pension tax is payable by employers on such additional pension premiums and commitments, at approx. 24% (deductible).

- Borrowing from controlled foreign entities was apparently a common tax planning scheme and as from 1 January 2010 (with partial retroactive effects), the borrowing lead to income tax up-front and tax deduction for interest expenses is refused, in relation to so-called prohibited loans, from foreign legal entities to Swedish individuals.
- In order to do away with the "black market" there is from 1 January 2010 a legal requirement for anyone (with some exceptions for eg. insignificant activities) who trades in return for cash payment, to use a certified cash register.
- Of the same general purport is the availability since some time of tax reduction for individuals for certain domestic home-services and home owner refurbishment services costs.

Special rules apply when an individual disposes of shares in a "shell" company, whereby the individual seller in certain cases will be taxed at higher rates (as for business income, plus social charges).

Tax relief is available for expatriates qualifying as foreign "key-persons" on temporary assignment to Sweden, whereby 25% of the remuneration and certain allowances paid by a Swedish employer may be exempted, after application, from individual taxes and social charges for three years.

Swedish wealth tax, estate (death) tax and gift taxes were abolished some years ago.

## 3. Swedish EC Tax; Up-date & News

There are continuously ECJ tax rulings of both indirect and direct relevance for Swedish tax jurisprudence. In order for our clients to stay up-dated, a special free subscription is however now available on our EU Tax Newsletter — please just

send an e-mail to: [eudtg@nl.pwc.com](mailto:eudtg@nl.pwc.com) with "Subscription EU Tax News" as the subject.

- Following a formal request from the European Commission, the Swedish Government has introduced new rules as from 1 January 2010 that will grant extension with payment of immediate exit taxes for companies that cease to be taxable in Sweden by becoming tax resident in another EEA country by way of tax treaty shopping measures (intended or unintended). Respite may be granted after filing a special application and only for one year at a time.

#### 4. Swedish International Tax; Up-date & News

The carry-forward period for foreign tax credit has been extended from 3 years to 5 years, for financial years commencing after 31 December 2008. Also, further details have been introduced on the allocation of expenses to the foreign income for the purposes of computation of the maximum credit available, as well as certain clarifications in cases of mergers and tax-commissionaire relationships.

As of 1 January 2007 Sweden has formal transfer pricing documentation requirements in place.

- The possibility for Swedish or foreign entities carrying on business activities in Sweden conducting cross-border transactions to apply for Advanced Pricing Agreements is available as from 1 January 2010, provided certain requirements are fulfilled such as the transaction amount involved not being negligible compared to the business as a whole.
- During recent years, agreements on exchange of information in tax matters etc. and sometimes partial tax treaties have been negotiated or signed with many tax haven jurisdictions like eg. Jersey, Guernsey, Isle of Man, the Cayman Islands, Bermuda, the British Virgin Islands, Aruba, San Marino, Samoa, the Cook Islands, the Turks and Caicos Islands, the Dutch Antilles, and Anguilla.

A newly renegotiated tax treaty between the Nordic countries came into effect on 1 January 2009.

An amendment has been agreed upon in the tax treaty with Austria, extending the possibilities for exchange of information in order to make tax control more efficient.

Several new, cancelled or renegotiated tax treaties are processed by Sweden with eg. Algeria, Azerbajdzjan, Brazil, Ghana, Lebanon, Nigeria, Peru, Singapore, South Africa and Uzbekistan.

#### 5. Swedish VAT and Indirect Tax; Up-date & News

The Swedish VAT system is harmonized with the EC-rules. The general VAT rate is 25% and chargeable on most goods and services. Reduced rates apply to a few goods and services, such as foodstuffs (12 %) and transport of passengers (6 %). Certain financial and insurance services are exempt from VAT.

- From January 2010 a number of changes were introduced in Sweden and the rest of the EU relating to the supply of services. The new rules mainly affect international sales of services between taxable entities established in the EU. The main rule for supplies made to businesses (B2B) is that the services are subject to VAT where the buyer is established rather than where the supplier is established. Supplies made to non registered businesses or to consumers, (B2C) are VAT-able where the supplier is established.
- Another change from January 2010 involves the introduction of a new sales list where the supplier must report his sale of services subject to reverse charge to buyers in other EU-countries on a quarterly basis. The previous quarterly reporting of goods has changed to a monthly reporting. If a company supplies both goods and services, monthly reporting is applicable.
- The VAT package also contains new rules regarding the procedure for application for refund of VAT incurred in other EU countries. A new simplified electronic procedure applies from 1 January 2010.

The three main Swedish excise duties are harmonised with EU rules. These are alcohol tax, tobacco tax and tax on fuels and electricity. There are however still differences in local legislation between the member states. The taxation of fuels is partly EU harmonised, partly national. Fuels are subject to energy tax, carbon dioxide tax and sulphur tax. Depending on use of the fuels, the taxes may be partly or fully reduced.

Fuel consumption within certain manufacturing processes of industrial activities often leads to reduction. Some specific uses are exempt from taxation, like metallurgic processes, mineralogical processes and chemical reduction. Mainly the same processes are exempt from tax on electricity. For bio-fuels certain exemptions may also apply. Other Swedish excise duties are waste tax, tax on advertisement and tax on traffic insurance premiums.

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