

# Swedish\* Tax Newsletter

**August 2008**

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*The Swedish Tax Newsletter is a summary providing a general update on the tax system and highlighting recent developments during the year within the area of Swedish tax and related legal matters.*

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

Corporate tax is levied at 28%. 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 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 30% of declining balance or 20% straight line, with correspondence to the accounts. Buildings are depreciated at 2-5% depending on type and usage. 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.

Swedish companies are not taxed on a consolidated basis. However, it is for qualifying groups (i.a. 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.

The abolished capital gains taxation for corporates 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 includes dividends on such shares. Unquoted shares 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.

The participation exemption 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 calculated according to provisions relating to a Swedish corporate. For a corporate, the portion will be taxed at the Swedish corporate tax rate of 28%. 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 company - calculated in

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accordance with Swedish provisions – is taxed at a rate below 15.4%. 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 would also be excluded.

No withholding tax is levied on interest payments (or technical fees). No stamp tax on capital is levied (but exists for real property).

Interest cost on debt is fully deductible irrespective of its purpose, provided at arm’s-length (see though below on a new proposal).

No debt/equity rules exist for tax purposes. For civil 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.

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

Swedish withholding tax on dividends to foreign shareholders is according to the general rule 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.

- With immediate effect from mid-April, on terms to be confirmed later, the Government removed partnerships from the entities qualifying for the special reorganisation provisions enabling below market value transfers of assets. Apparently a wide ranging misuse of partnerships in the real property investment area is the reason for the Government’s action, but the changes tend to make partnerships unusable overall.
- According to proposed changes of the group contribution regime, a memo from the Ministry of Finance proposes

from 2009 to restrict the amount available for a contribution to the positive income of the contributor. It is also proposed to equal off-the-shelf companies with newly established companies for the purposes of the group contribution regime (which is an adjustment following a recent court case with contrary outcome).

- According to a memorandum from the tax authority which currently is circulated by the Government, it is proposed that a restriction for interest deductibility should be introduced for intra group loans from 2009, in order to prevent “interest carousels” which arguably erode the Swedish tax base. According to the memo, interest deduction would be refused on any intra group loans related to acquisitions of a company from an affiliate, such loans taken for making dividends, or capital contributions within a group. If introduced as proposed, the effects will be draconic. Heavy criticism is expected during the process of circulation.

## 2. Swedish Individual / Small Business Tax; Up-date & News

Earned income and business income is for individuals taxed at progressive rates at a maximum of some 56%. 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 (i.e. companies with a limited number of active shareholders) is for individuals taxed partly as earned income, partly as capital income under a complex but generally 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.

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).

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Mandatory social security charges payable by employers on remuneration to employees (or by the self-employed) are levied at approx. 32%. A further approx. 7% (partly 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 tax is payable by employers on such additional pension premiums / commitments, at approx. 24% (deductible).

Tax relief is available for expatriates (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.

- The Government is investigating tax incentives for “business angels” for promoting investments in growth companies, which may include special tax deductions, roll-over mechanisms or reliefs for individuals. A proposal may be launched spring 2009.

Wealth tax, estate (death) tax and gift tax have been abolished some years ago.

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

There have been many ECJ tax cases lately of both indirect and direct importance for Swedish tax jurisprudence, like the Marks & Spencer case on international loss-utilization or tax consolidation, and the Cadbury-Schweppes case on CFC issues. Some of them may be reported on in earlier editions of the tax newsletter. 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.

- As a result of recent rulings by the ECJ, the Swedish rules on exit taxation for vested stock options upon migration from Sweden are proposed to be abolished. The proposed change

(from 2009) will remove the exit tax (already today contrary to EC provisions) and instead enforce a general taxability at exercise (then also for immigrants). The ultimate impact of the new rules, combined with tax treaties, is for the moment not quite clear.

- According to an official statement from the tax authority, EU non-discrimination concerns leads to that tax depreciation at 30% on declining balance or 20% straight line must nowadays be accepted for a Swedish company with branches within the EEA. Contrary views for companies with foreign branches in general applied according to an earlier statement due to certain f/x concerns in combination with the stipulated tax – book correspondence.

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

As of 1 January 2007 Sweden has formal TP documentation requirements.

- Several new, cancelled or re-negotiated tax treaties are processed by Sweden, like e.g. with Algeria, Azerbajdzjan, Brazil, Ghana, Lebanon, Morocco, Nigeria, the Nordic countries, Peru, Singapore and Uzbekistan.
- Rumours say there will be an agreement on exchange of information between Sweden and the Channel Islands this autumn, and that further agreements with other Tax Haven jurisdictions may be on its way.
- The Supreme Tax Court found in a recent ruling that the CFC regime could be applied in respect of a Swedish company's captive insurance company in Switzerland, thereby taxing the Swiss entity's income in Sweden in spite of an existing bilateral tax treaty between the countries. The treaty override reasoning has attracted some interest in doctrine.

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## 5. Swedish VAT; 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.

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