

Swedish Tax Newsletter January 2009

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. This first regular issue for 2009 features a general update on the Swedish tax system and a few integrated newsflashes.

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 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.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. From 1 January 2009, off-the-shelf companies are viewed as equal with newly established companies for the purposes of the group contribution regime.

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. 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 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.

In general, interest cost on debt is fully deductible provided at arm's length. However, Sweden has this year introduced anti-debt push down provisions under which deduction is refused for interest payments accruing after 31 December 2008, 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 debt is based on commercial reasons. Thus, the loan agreements may have been signed years ago, but interest payments from now on are still 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 exists for real property).

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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 refinancing 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 re-quirements 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.

Last Spring, the Government removed partnerships from those 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.

- The threshold for direct tax depreciation (immediate deduction) of acquired fixed assets is proposed to be increased as from 1 July 2009 to some SEK 10,000 – 20,000 depending of the operation's size, and to become applicable for financial years starting after 31 December 2008.
- Following a recent ruling by the Swedish Supreme Administrative Court on how to net group contributions against tax losses carried forward in case those are restricted after ownership changes, the legal situation has become rather complicated, and will usually require detailed considerations in order to facilitate a correct and safe tax return filing.

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 (ie. companies with a limited number of active 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.

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).

Mandatory social security charges payable by employers on remuneration to employees (or by the self-employed) are levied at Swedish 31.42% as of 1 January 2009. For employees born 1983 or later the rate is reduced to 15.49%. For employees born between 1938-1942 the rate is 10.21%, while for employees born in 1937 or earlier there is no mandatory social security charge. 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 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 ap-pli--cation, from individual taxes and social charges for three years.

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

- 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.

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Swedish EC Tax; Up-date & News

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Pursuant to certain ECJ cases, Swedish tax law now exempts prizes from foreign lotteries or premium lottery bonds as long as the lottery or the bonds are organised or issued within the EEA.

Furtheron, exit taxation of vested stock options upon migration from Sweden has also been abolished for promoting “fee movement”. Taxation instead occurs at exercise or sale as from 2009 (also for immigrants).

Following a formal request from the EC Commission, the Swedish Ministry of Finance proposes a change in the tax rules for non-resident artists and athletes performing work in Sweden, introducing a choice to be taxed according to normal income tax provisions instead of the flat rate wht. Social fees may also become due. If adopted, these rules may become applicable for remuneration issued after 30 June 2009.

Following a formal request from the European Commission, the Swedish Government has announced that it no later than 2010 aims at changing the immediate exit charge on companies that cease to be taxable in Sweden.

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 “TP” documentation requirements in place.

During late 2008, agreements on exchange of information relating to tax matters etc. (and sometimes partial tax treaties) have been signed with Jersey, Guernsey, and Isle of Man. Similar agreements with other tax haven jurisdictions may be on its way. The new renegotiated double taxation treaty between the Nordic countries, ie. Sweden, Norway, Denmark, and Finland, came into effect on 1 January 2009. Several new, cancelled or renegotiated tax treaties are processed by Sweden, like eg. with Algeria, Azerbajdzjan, Brazil, Ghana, Lebanon, Nigeria, Peru, Singapore, South Africa and Uzbekistan.

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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