Sweden

Taxation

HEDGE FUNDS 2009

Hedge fund managers/advisors

Taxation

Tax rates applying to hedge fund managers/advisors

A management company of a Swedish hedge fund must be a Swedish limited liability company (Sw. aktiebolag, AB). An AB is subject to Swedish corporation tax on its taxable profits at a rate of 26.3 percent for financial years beginning 1 January 2009. For fund advisors, other types of companies might be possible.

The income tax on distributed dividends to owners of an AB vary depending on the type of owner. Companies that receive dividends are taxed at a rate of 28 percent. However, if the shares relate to the business of the company and certain conditions are fulfilled the distributions could be exempt from tax. Individuals that receive dividends are normally taxed at a tax rate of 30 percent. However, distributions to individuals on shares in unquoted companies are taxed at a tax rate of 25 percent and distributions on so called qualified shares in closely held companies are taxed at a tax rate of 20 percent unless it exceeds a certain amount. In the latter case, the excess amount would be taxed as earned income at a progressive tax rate varying between approximately 27 percent and 57 percent.

The effective tax rate usually suffered by hedge fund managers/advisors

Most Swedish hedge fund managers are structured as an AB with a corporate member and individual members or with individual members only. The effective tax rate is therefore a combination of the tax rates for individuals and the corporation tax rate (see above).

Tax concessions, allowances, or exemptions specifically available to hedge fund managers/advisors

There are no concessions, allowances, or exemptions that are specifically available to Swedish fund managers/advisors.

AUDIT ▪ TAX ▪ ADVISORY

Details of anti-avoidance tax rules that could bring the profits of an offshore hedge fund into tax

Depending on the legal status of the hedge fund and its domestic taxation a hedge fund manager that owns shares in an off shore fund might be taxed in Sweden. In some cases, the Swedish CFC rules might apply.

Requirements to charge VAT (or equivalent sales tax) and the rate

The fund manager is not required to charge VAT provided that the fund is classified as an investment fund.

Hedge fund structures

Taxation

Tax rates applying to the fund

Open-ended mutual funds are organized in Sweden as Värdepappersfonder and Specialfonder, jointly called Investeringsfonder (investment funds). Hedge funds are examples of Specialfonder. Investment Funds can only be established under the Swedish legislation on Collective Investment Undertakings which is based on the EU Directive re UCITS. However, Värdepappersfonder are harmonized funds whereas Specialfonder are non-harmonized funds.

For tax purposes, all Investment Funds are treated the same.

A hedge fund is not a legal entity but is treated as separate taxable entity. It may be either accumulating or distributing and can invest either exclusively in shares in listed companies or in bonds or in a mix of securities.

A hedge fund is liable to corporate tax at a special rate of 30 percent (whereas the general corporate tax rate is 26.3 percent). Capital gains on shares and similar financial instruments, that is, convertibles issued in Swedish kronor (SEK), warrants, etc., (Sw. delägarrätter) are not taxable. As compensation, the fund has to report a deemed taxable income of 1.5 percent of the fair market value at the beginning of the fiscal year of such instruments. Accordingly, the fund may not deduct any capital losses on such financial instruments. All other income, such as dividends, interest, capital gains on sales of bonds, and similar interest bearing financial instruments, etc. is taxable as ordinary income.

Administration costs and interest paid (if any) are tax deductible. Distributed dividends are also treated as a tax deductible cost. Consequently, a distributing hedge fund will normally not pay income tax.

The hedge fund may credit foreign withholding tax against its income tax liability in a certain manner. Withholding tax may be reduced or eliminated under the terms of a double taxation agreement.

Access to double tax treaties

A hedge fund is a taxable entity as such but is not a legal person under civil law. This implies that such an undertaking is a person and a company for the purposes of the application of tax treaties based on the OECD Models (Article 3 (i) (a) and (b)). It also means that such an undertaking is resident in Sweden under Swedish tax laws and a resident of Sweden for the purposes of the application of Swedish tax treaties based on the OECD Models (Article 4 (i)).

Where a hedge fund derives income from a state with which Sweden has concluded a double tax treaty, the fund would be entitled to any benefit provided for in the treaty, provided the fund is a resident of Sweden in the sense of the treaty and fulfills the requirements in the limitation of benefits article, if any.

Value-added tax registration and charging requirements

The fund is not required to register or charge VAT. Reverse charge applies for the management company at a rate of 25 percent.

In theory a fund could reclaim input VAT on costs on the sale of assets/shares provided it can be proven that the purchaser is established outside the EU.

Withholding tax on dividends or interest payments

Withholding tax of 30 percent is levied on dividends received by a resident individual. This tax is, however, not a final tax but may be credited against the taxpayer's final tax liability.

Withholding tax of 30 percent is also normally levied on non-resident individuals with limited tax liability in Sweden and on foreign legal entities, with some exceptions. The tax rate is normally reduced under a tax treaty.

Tax return requirements

The fund needs to file an annual corporate income tax return on 2 May each year. The taxable period is normally the calendar year ending 31 December.

Investors

Taxation

Specific anti-avoidance tax legislation applying to an investor in an onshore fund

Not applicable

Specific anti-avoidance tax legislation applying to an investor in an offshore fund

There is general anti- avoidance tax legislation (Sw. Lag (1995:575) mot skatteflykt) that could apply in different situations if certain criteria are met. There is also an article in the Swedish Witholding Tax Act (Sw. Kupongskattelag (1970:624)) that applies to situations when a beneficial owner to a dividend holds the shares under such circumstances that someone else incorrectly benefits from a tax relief as regards income tax or withholding tax.

Tax information needs of investors

An Investor will normally require information as regards the fair market value at the end of each calendar year of the shares held in the offshore fund.

If the offshore fund makes a distribution, the Swedish investor will require details of the gross amount and any foreign tax withheld/paid.

On disposal of units in the offshore fund, the investor will require information about the sales price, sales expenses and the tax base (acquisition cost), that is, the capital gain or loss.

If the offshore fund is tax transparent or not comparable to a Swedish investment fund, additional information will normally be required.