



MERGERS AND ACQUISITIONS

Sweden

Taxation of Cross-Border
Mergers and Acquisitions

2010 Edition

TAX

Sweden

Introduction

The Swedish tax environment for mergers and acquisitions (M&A) has changed fundamentally in recent years, and continues to change. The government has introduced various tax laws and proposals to minimize possibilities for avoiding taxation by using tax havens and to comply with the EU-law development. This section begins by explaining how these changes are likely to affect approaches to M&A transactions.

The chapter addresses three fundamental decisions facing a prospective purchaser:

- What should be acquired: the target's shares or its assets?
- What will the acquisition vehicle be?
- How should the acquisition vehicle be financed?

Of course, tax is only one part of transaction structuring. Company law governs the legal form of a transaction and accounting issues are also highly relevant when selecting the optimal structure. These areas are outside the scope of this book, but some of the key points that arise when planning the steps in a transaction plan are summarized below.

Recent Developments

The following summary of recent Swedish tax developments is based on tax legislation as at the end of October 2009 and also refers to amendments to proposed in the 2010 Finance Bill. The main changes include:

- limitations of deduction of interest expenses on loans by affiliated companies for the purpose of acquiring participation rights in other affiliated companies;
- from 1 January 2009, the corporate tax rate is 26.3 percent;
- partnerships may no longer transfer assets at below market value; and
- amendments to the Swedish controlled foreign company (CFC) rules.

Significant amendments to existing tax legislation proposed in the 2010 Finance Bill that are likely to have considerable impact on Swedish M&A structuring include the following:

- amendments to the group contribution regime;
- postponement of tax payments with regard to exit taxation; and
- tax-exempt capital gains and dividends for partnership interests.

Amendments to the Group Contribution Regime

Consolidated income statements are not recognized in Sweden for tax purposes. However, under the group contribution regime companies may tax-consolidate by way of group contributions. To be in compliance with recent EU-law development and also to prevent tax planning, the Swedish government has announced two changes to the group contribution regime.

- First, it is proposed to extend the regime to cover group contributions to companies that are not tax-resident in Sweden and cases where the contribution is not subject to Swedish corporate income tax. A contribution to a foreign company is only deductible if the receiving company has been liquidated and has tax losses brought forward that cannot be used by the company or by another company in the country where the receiving company is tax-resident.
- Second, the contributed amount may not exceed the profits of the contributing company. Hence, it should no longer be possible to create a loss in company under the group contribution regime.

Exit Taxation

The current proposal seeks to relax rules on tax payments on exit when assets are no longer taxable in Sweden, because of a tax treaty entered into with another EEA (European Economic Area) country. Broadly, the Swedish rules on exit tax apply when an asset is no longer subject to Swedish corporate tax. When a business activity is transferred abroad, or by other means leaves the Swedish corporate tax base, the

asset is considered sold at fair market value. The current proposal includes a right for the taxable person to apply for a respite of the tax payments due on exit.

Tax Exempt Capital Gains and Dividends on Partnership Interests

Under current law, capital gains on partnership interests are subject to tax and a loss is tax deductible. Under the proposed amendments interests in partnerships and shares held by partnerships shall be treated as shares held for business purposes, which means that capital gains/losses and dividends are tax-exempt. The rules are designed to prevent tax avoidance by using the right to deduct losses on partnership interests.

Asset Purchase or Share Purchase

An acquisition in Sweden is more often a share purchase rather than a purchase of the company's and assets, because capital gains on the sale of shares may be exempt. However, the benefits of asset acquisitions for the purchaser should not be ignored, particularly given that purchased goodwill benefits from tax deduction. Some of the tax considerations relevant to each method are discussed later in the chapter. The relative advantages are summarized at the end of the chapter.

Purchase of Assets

A purchase of assets will usually result in an increase in the base cost of those assets for both capital gains tax and capital allowances purposes, although this increase is likely to be taxable in the hands of the seller (a so-called step-up in value). In addition, historical tax liabilities generally remain with the company and are not transferred with the assets.

Purchase Price

There are no statutory rules on how the purchase price is to be allocated between the purchased assets, although it is recommended that the total consideration be apportioned among the assets acquired to the greatest extent possible. The remaining part of the consideration that cannot be allocated is booked as goodwill for the acquirer.

Under certain circumstances, it is also possible to dispose of assets at tax-residual values leading to no capital gain for the seller and no step-up in value for the purchaser. This could be useful in a pre-sale restructure.

Goodwill

Goodwill paid for a business (assets) may be depreciated. The rules for depreciation of goodwill are

the same as those for machinery and equipment (see later in the chapter).

Depreciation

Most tangible and intangible assets may be depreciated for tax purposes under the same rules as machinery and equipment, the major exceptions being land and shares which are non-depreciable.

The two main depreciation methods are the declining balance method where a maximum depreciation allowance of 30 percent of the aggregated book value is allowed and the straight-line method where assets are depreciated by 20 percent annually.

Buildings are depreciated straight-line by approximately 2 percent to 5 percent annually, depending on the building.

Tax Attributes

Tax attributes, such as tax losses, remain with the selling company and are not transferred with the assets.

Value-Added Tax (VAT)

As a rule, VAT is levied on all commercial supplies of goods or services made within Sweden unless specifically exempt from VAT. The standard rate of VAT is 25 percent. Certain supplies are subject to reduced rates of 12 percent or 6 percent. Goods and services exported from Sweden are zero rated (that is, no output VAT is charged, but full input VAT is recoverable). VAT is levied on the supply of goods or services within a group. It is possible to register certain companies as a VAT group, making intra-group supplies exempt from VAT.

Financial and insurance services are exempt from VAT (without input VAT recovery possibilities). The transfer of assets belonging to a business is also exempt from VAT when the assets are transferred in conjunction with the transfer of a business or a line of business liable for VAT. The purchaser must continue to run the business; otherwise the exemption is not applicable. If the transfer is exempt from VAT, the obligations and entitlement to adjust input VAT on capital goods are taken over by the purchaser. If land or buildings are being sold, professional advice should be sought, because complications arise if the vendor has, prior to the transfer, voluntarily opted to register the properties for VAT on letting.

If the exemption is not applicable, the purchaser of the assets has the right to deduct input VAT, if the purchase is for a business liable for VAT. If input VAT exceeds

output VAT in a VAT return, the tax authorities will repay the excess.

Foreign companies not liable for VAT in Sweden may receive a refund of input VAT incurred by submitting an application to the tax authorities.

Transfer Taxes

A stamp duty land tax is levied on transfers of real property. The duty, payable by the buyer, is 1.5 percent of the purchase price for individuals and 3 percent for corporate buyers. It should be noted that stamp duty is not charged when shares are transferred in a company holding real property.

The stamp duty on transfers of real property between companies within a group may be deferred until the property in question is sold to an external party, the companies no longer belong to the same group, or one of the companies ceases to exist because of liquidation or bankruptcy. Hence, the purchaser should be aware of any deferred stamp duties within the target company or group, because the acquisition or later reorganization may crystallize the deferred duty.

There is no stamp duty or transfer tax on security transactions, formations of companies and branches, or expansions of capital.

Purchase of Shares

The purchase of a target company's shares does not result in an increase in the base cost of that company's underlying assets. Hence, there is no step-up in the basis for tax depreciation and the buyer cannot deduct the difference between the underlying net asset values and the consideration for the shares.

Transactions costs, such as advisory costs, associated with purchases of shares will generally not be tax deductible if the deal is closed.

Sales or transfers of shares are VAT-exempt. Input VAT on costs related to share purchases may be recoverable to some extent, provided certain measures are taken. Input VAT on costs related to share sales is currently not recoverable in Sweden.

Tax Indemnities and Warranties

In a share acquisition, the purchaser is taking over the target company, together with all related liabilities, including contingent liabilities. Therefore, the purchaser will normally require more extensive indemnities and warranties than in the case of an asset deal. An alternative approach is to transfer the target's business to a newly-formed subsidiary with a view to the

purchaser taking over a clean company. However, such pre-structuring transactions may result in taxable income for the seller.

With large and medium-sized negotiated acquisitions, it is common for the seller to open the books of the target company to the prospective purchaser for a due diligence review. A normal part of the due diligence process involves an in-depth review of the tax affairs of the potential target company by the purchaser's advisers.

Reassessment of final tax returns by the Swedish tax agency is possible until the end of the year following the assessment year. In certain cases the period for reassessment is extended to five years. Reassessment for back taxes is possible within five years after the assessment year in the case of incorrect and/or omitted information in the tax return.

Tax Losses

Swedish tax losses carried forward may be transferred with the company. Under Swedish legislation, there are restrictions on the right to deduct losses when a company has an ownership change (that is, where another enterprise has obtained a decisive influence over the company). When a company has been subjected to such a change of ownership, pre-acquisition losses are deductible only to the extent that the losses do not exceed 200 percent of the costs incurred by the new owner(s) for acquiring the decisive influence over the company (the so-called amount limitation rule).

When a capital contribution has been made during the year in which the change of ownership took place or in either of the two preceding years, the consideration must be reduced by the corresponding amount when calculating any surviving tax losses. Since the legislation does not define capital contribution, it may include unconditional and conditional contributions.

In addition to the amount limitation rule, the group contribution limitation rule must also be observed. For a period of five years after the year in which a change in ownership took place (six years, in practice), a company with tax losses may not offset those losses against group contributions received. On the other hand, if the company itself generates a profit after the change of ownership, the company may offset its tax losses against those profits. After the five-year period, the tax losses are available for offset against group contributions received.

Transfer Taxes

There is no stamp duty or transfer tax on security transactions, formations of companies and branches, or expansions of capital.

Tax Clearances

It is not possible to obtain a clearance from the tax authorities giving assurances that a potential target company has no arrears of tax, or advising as to whether or not it is involved in a tax dispute.

Choice of Acquisition Vehicle

There are several potential acquisition vehicles available to a foreign purchaser and tax factors will often influence the choice. As already noted there is no capital duty on the introduction of new capital to a Swedish company or branch.

Local Holding Company

Profits and losses within a Swedish group of companies may be equalized by means of group contributions.

Group contributions may be made between a parent company and its subsidiaries if more than 90 percent of the share capital is owned. Group contributions can also be made between such subsidiaries, subject to certain other conditions. Group contributions are tax-deductible in the hands of the payer and taxable to the recipient.

A deduction may also be granted for group contributions between Swedish subsidiaries of a foreign parent company, based on the non-discrimination clause of a tax treaty. Group contributions between Swedish subsidiaries of a foreign parent company are granted under Swedish law, provided the foreign company is situated in a country within the European Union (EU) or in Norway, Iceland, or Liechtenstein. A foreign company's permanent establishment in Sweden is regarded as equivalent to a Swedish subsidiary in this respect.

Foreign Parent Company

The foreign purchaser may choose to make the acquisition itself, perhaps to shelter its own taxable profits with the financing costs. This should not cause any tax problems in Sweden, because the capital gains of non-residents disposing of Swedish shares are not taxed.

The purchaser may also choose to buy the Swedish shares through a foreign holding company. Sweden has double tax treaties (DTTs) with over 80 countries, including all industrialized and almost all important developing countries, and it is common for purchasers

to review them for favorable withholding tax (WHT) clauses. Sweden levies WHT on dividends, but not on interest or royalty payments. In practice, however, WHT is often eliminated under domestic rules or EU directives. Please note that royalty payments may imply a Swedish permanent establishment for the receiver and, as such, be taxed at the statutory income tax rate of 26.3 percent. This rate is often reduced or eliminated under a DTT.

Non-Resident Intermediate Holding Company

If the foreign country taxes capital gains and dividends received from overseas, an intermediate holding company resident in another territory could be used to defer this tax and perhaps take advantage of a more favorable tax treaty with Sweden.

Local Branch

As an alternative to the direct acquisition of the target's shares, a foreign purchaser may structure the acquisition through a Swedish branch. Sweden does not impose additional taxes on branch profits remitted to an overseas head office. The branch will be subject to Swedish tax at the same standard corporate rate as a subsidiary, currently 26.3 percent. Although the choice of the legal form of an enterprise should be determined on a case-by-case basis, certain factors should always be considered from a tax point of view. These factors include:

- Profits of a branch are currently taxed in Sweden (the source country) as well as in the home country (the source country tax will normally be credited against the home country tax, unless an exemption applies), while profits of a subsidiary are taxed in Sweden only. If profits are distributed by a subsidiary, the dividend taxation of the owner must be examined separately in each case.
- Tax is not withheld on branch profits in Sweden, but distributions from a Swedish subsidiary can be subject to WHT. The WHT in the latter situation is often reduced or eliminated under Swedish law or tax treaties.
- A subsidiary is not subject to net-wealth tax; nor is a branch.
- The disposal of a branch is taxed in Sweden, but the disposal of shares is not.
- Filing requirements are more extensive for subsidiaries than for branches.

Joint Ventures

No special tax legislation applies to joint ventures.

Choice of Acquisition Funding

A purchaser using a Swedish acquisition vehicle to carry out an acquisition for cash will need to decide whether to fund the vehicle with debt or equity, or even hybrid instruments that combine the characteristics of debt and equity.

Debt

Interest on loans is normally deductible for the purpose of calculating the net profits from business activities and when the loan is taken out for the purpose of acquiring shares from an external party. The deduction is made on an accrual basis. Sweden has no thin-capitalization rules.

Deductibility of Interest

Very broadly, a company's accounting treatment of interest will be followed for tax purposes. However, there are a number of situations in which deductibility of interest can be denied. Under Swedish transfer pricing regulations, an arm's length interest rate must be charged for intra-group debt. The Swedish transfer pricing regulations apply where the parties to an international transaction are related. In particular, deductibility can be partially denied if the interest rate charged by a foreign entity to a Swedish entity is higher than the arm's length interest. Although there are no Swedish thin-capitalization rules, the Swedish tax agency may rely on the arm's length principle to reject aggressive tax planning. When both parties to the transaction are Swedish entities, transfer pricing regulations are normally not relevant since group relief schemes can be applied if more than 90 percent of the capital is held the entire year. For more information, please refer to the section on Group Relief/Contribution.

Tax deduction for interest payments to an affiliated company may be denied if the intercompany loan is for the purpose of buying shares in an affiliated company. The restriction also applies on back-to-back loans; that is, if the loan is routed through a third party, related or unrelated. There are two exemptions to this restriction of interest deduction. It should not apply if:

- the interest income would have been taxed at a minimum effective rate of 10 percent in the state where the beneficial owner of the interest income is tax resident if the interest is its only income; or
- the purchase of the shares as well as the underlying debt are motivated mainly (at least 75 percent) by business reasons.

Withholding Tax on Debt and Methods to Reduce or Eliminate

No WHT is imposed on interest payments from Sweden to a non-resident recipient and there is no WHT or capital tax on repayment of debt.

Dividends paid from a Swedish company to a non-resident (but not a resident) shareholder are generally subject to a WHT of 30 percent. However, many foreign companies are exempt from WHT under Swedish law. Dividends paid by a Swedish resident company to a foreign company on business-related shares are exempt from WHT. A foreign company is defined as a foreign legal entity subject to taxation in its country of residence similar to the taxation to which Swedish resident companies are subject. A foreign legal entity is generally deemed to be subject to similar taxation, if it is subject to a corporate tax rate of at least 10 percent to 12 percent on its profits calculated under Swedish tax rules. A foreign company covered by a tax treaty is always deemed a qualifying foreign company. The foreign company must also be deemed equivalent to a Swedish limited company.

Unquoted shares are normally deemed to be business-related (and qualify for the exemption) if they constitute fixed business assets. Quoted shares are deemed to be business-related if they:

- constitute fixed business assets of the non-resident company;
- have been held by the non-resident company, at the time of the dividend payment, for at least one year; and
- represent at least 10 percent of the voting rights, which must have been held for at least one year, in the resident company.

If not exempt under Swedish rules, the tax is normally reduced or waived under a DTT. Treaty reduction or exemption is normally given at the time of payment of the dividend (often subject to the filing of a form), but some treaties provide for a refund procedure. Royalties paid from Sweden to a non-resident recipient are not subject to WHT. However, such income is deemed to be business profits derived through a permanent establishment in Sweden if the income is considered business income for the recipient. Thus, tax is levied on a net basis after a normal assessment procedure based on the recipient's tax return. In the course of the normal assessment procedure, treaty reduction or exemption is given on the application of the taxpayer in his/her tax return.

The implementation of the provisions of the European Commission's Interest and Royalties Directive (2003/49/EC) precludes taxation on interest and royalty payments to associated EU companies (direct ownership of at least 25 percent of the capital between the companies concerned) within the state of source.

Checklist for Debt Funding

The use of an external bank debt may avoid transfer pricing problems. However, companies may miss out on advantageous planning opportunities, which may be possible by applying a proper interest rate to arrive at a more optimal tax position.

Furthermore, considering the restrictions of deduction of interest expenses to an affiliated party on loans for the purpose of purchasing of shares in an affiliated party, any debt structuring should be carefully monitored.

Claims and debts in foreign currency attributable to the business activities must be valued at the exchange rate prevailing on the balance sheet date. In the case of companies, exchange gains and losses are, respectively, fully taxable or deductible. However, gains/losses are not taxable/deductible if hedge accounting is applied.

Waiver of third party debt will normally give rise to taxable income in the hands of the borrower if the borrower is not considered insolvent. Waiver of external debt may also be considered as composition with creditors that will have an impact on any tax losses carried forward. If considered a composition with creditors, any losses would be forfeited to the extent they correspond to the amount subject to composition.

Equity

A feature of the Swedish tax system is that dividends and capital gains are tax-exempt in certain situations. Sweden has participation exemption rules on dividends and capital gains on shares held by companies for business purposes.

Dividends and capital gains on business-related shares can be received tax exempt. All non-quoted shares in certain domestic companies (that is, Swedish limited companies) or corresponding foreign companies are deemed to be business-related. Quoted shares are deemed to be business related if:

- the owner holds at least 10 percent of the votes or the shares are otherwise necessary for the business conducted by the shareholder or any of its affiliates; and

- the shares are held for at least one year.

A Swedish limited liability company may issue different classes of shares, such as preferential rights to profit distribution, etc., which should be considered when capitalizing a company. All classes of shares are subject to the same tax treatment.

In Sweden, tax neutral mergers are available under certain conditions. In a situation where these conditions are met a so-called qualifying merger is achieved. This means that assets and liabilities together with all related rights and obligations are transferred from the transferring company to the receiving company and recorded in the books of the receiving company at the same taxable values as they had in the transferring company. Thus, no gain is recognized on the assets transferred. As a reciprocity, as no capital gain tax is triggered for the transferring company no step-up in values is available for the receiving company.

Hybrids

Convertible debentures can be an alternative method of raising capital. The convertible debentures may be converted into shares at the option of the holder within a certain period.

Convertible debentures are treated as debt until converted into shares; thus, any interest paid is deductible. Once converted into shares, any distribution paid out is treated as a non-deductible dividend. The conversion itself does not give rise to any tax consequences.

Deferred Settlement

An acquisition often involves an element of deferred consideration, the amount of which can only be determined at a later date on the basis of the business' post-acquisition performance. The tax treatment of deferred considerations normally follows the accounting treatment.

Other Considerations

Concerns of the Seller

A total closing-down sale involving all the assets of a company normally constitutes the last transaction of business activity. Accordingly, hidden reserves in various assets, including untaxed reserves, are dissolved and subjected to tax. Where hidden reserves exist, the inevitable consequence for the seller is a tax burden that he/she cannot postpone.

The tax consequences when all the assets of a business carried on in corporate form are sold can be divided into two stages:

- the sale of the assets; and
- the transfer of the remaining after-tax capital to the owner.

Normally, when all the assets of a company are sold, the entire gain is taxed. If the company has unused tax losses, these losses may be used to reduce the taxable profits. Any remaining profits would be taxed as business income at the corporate tax rate of 26.3 percent.

The stamp tax on the transfer of real property is payable by the buyer and is normally not a concern for the seller.

After the conclusion of the transaction, the remaining capital may be distributed to the owner of the company by means of dividends, liquidation, or sale of the shares.

Dividends paid to a parent company by its subsidiary would normally be exempt from tax if the shares were deemed business-related.

Capital gains on business-related shares are tax exempt. However, capital gains on portfolio shares and other non business-related shares is taxed on the difference between the consideration received less the tax basis of the shares at the normal corporate rate of 26.3 percent. No indexation allowance is granted.

Capital losses on business-related shares are non-deductible. Capital losses on other shares can be offset against capital gains on corresponding shares. The latter losses are also deductible against capital gains on corresponding shares within a group where tax-deductible group contributions are possible. Remaining capital losses may be carried forward indefinitely.

A foreign corporate seller is normally not taxed in Sweden on the sale of shares in a Swedish limited company.

When shares are sold, the seller cannot take advantage of unused tax losses from earlier years in the company disposed of. The buyer will also normally find it difficult to use such losses in the first five years after the acquisition.

The Swedish legislation also contains rules on special taxation when disposing of shares in shell companies. A company is regarded as a shell company if the total amount of the liquid assets exceeds half of the consideration paid for all the shares. If a company (Swedish limited company) disposes of shares in a shell company, the taxable amount is the consideration paid for the shares. To avoid taxation on the sale of shares in

a shell company, the shell company has to prepare a special tax return that must be sent to the tax authorities within 30 days of the disposal. When the company disposed of is a foreign company, shell company taxation may only arise if the foreign company is liable to tax in Sweden at the time of the disposal of its shares, or if the foreign company holds a share, directly or indirectly, in a non-quoted Swedish limited company, or a Swedish economic association.

Company Law and Accounting

The Companies Act prescribes how Swedish companies may be formed, operated, re-organized, and dissolved. For the most part the tax law complies with the Companies Act. Domestic mergers are common in Sweden and both tax and civil law include rules for handling European Economic Area (EEA) cross-border mergers in line with developments within the European Union. A Swedish merger is an amalgamation, as described later in the chapter.

Amalgamation is a special form of merger in which two or more companies amalgamate into a single entity, which then holds all the property and rights, and is subject to the same liabilities as the previous companies. The Companies Act differentiates between three forms of amalgamation:

- Absorption generally
- Combination
- Absorption of a wholly-owned subsidiary

In all forms of amalgamation, one limited company, the transferor – or in the case of a combination, several limited companies – assigns all its assets and liabilities to another limited company, the transferee, following which the transferor is dissolved without formal liquidation. Absorption of a subsidiary is the most common form of amalgamation in Sweden and is usually the last step in a takeover in which the acquirer does not wish the acquired company to continue in existence as a separate entity. When a parent company holds more than 90 percent of the capital and 90 percent of the voting power in a subsidiary, a compulsory purchase of the remaining shares is possible. This is also the easiest form of merger both from an administrative and a merger accounting perspective. Merger accounting is complex in Sweden.

It is also possible, under the Companies Act, to carry out a de-merger of a company.

De-merger means that:

- a limited company is divided into two or more limited companies; or
- some of a limited company's assets are transferred to one or more other limited companies (partial de-merger).

In the first situation one limited company, the transferor assigns all its assets and liabilities to two or more limited companies, the transferees, following which the transferor is dissolved without formal liquidation. The second situation implies that some of a transferor's assets and liabilities are assigned to one or several other limited companies without the transferor being dissolved.

Another important feature of Swedish company law concerns the ability to pay dividends. Distributions of profit may be made only out of a company's audited unrestricted equity. A formal decision is made at the annual general meeting (or an extraordinary general meeting) to distribute. If all unrestricted equity has been distributed, the next dividend can first be made when the next year end accounts have been audited. Hence, interim dividends are not possible.

Finally, a common issue on transaction-structuring is the provisions concerning financial assistance. Broadly, these say that it is illegal for a target company to give financial assistance, directly or indirectly, for the purpose of the acquisition of that company's shares.

Group Relief/Consolidation

Sweden does not have tax consolidation. However, the law allows for the transfer of profit within an affiliated Swedish group through group contributions. In the case of a qualifying group contribution, the company making the contribution deducts the amount from its taxable income and the recipient company includes the contribution as taxable income for the same financial year.

A profit-making company can also make a group contribution to another profit-making company, thereby pooling taxable profits in one company.

Companies giving and receiving contributions must make full disclosure of the contributions in their tax returns for the same year. There is no requirement that the group contributions must be paid in cash; it is sufficient that the contribution is booked in the accounts as a claim/receivable by the companies involved. However, it is important to recognize the transfer of value in the books.

The main condition for an allowable group contribution is that the parent holds more than 90 percent of the shares of the subsidiary for both the parent's and the subsidiary's entire financial year or since the subsidiary started to conduct business (qualifying period)

Transfer Pricing

When the acquisition is financed by intra-group debt, failure to charge interest on that debt may give rise to transfer pricing adjustments in the relevant jurisdiction. For example, if the balance is owed to the target and an arm's length interest rate is not charged, the Swedish Tax Agency could impute interest on the debt and assess the income of the relevant party.

Foreign Investments of a Local Target Company

Sweden introduced CFC (Controlled Foreign Corporation) rules on 1 January 2004. A legal entity liable to tax in Sweden that holds, directly or indirectly, at least 25 percent of the capital or the voting rights in a foreign legal entity at the end of the taxable entity's financial year will be subject to CFC taxation, if the foreign legal entity is deemed low-taxed. The foreign legal entity is deemed low-taxed, if it is not taxed on its income or if it is taxed at a tax rate below 14.5 percent. This tax rate is computed on the net income calculated using Swedish tax rules.

Legal entities resident in certain areas (countries) mentioned in a white list are deemed not to be CFCs. Those legal entities do not have to fulfill the criterion of being taxed at a rate of at least 14.5 percent. However, certain activities in some areas/countries are not covered by the white list, such as banking, financing, other financial activities, and insurance. Any activities of this kind excluded from the white list in areas/countries within the EEA are excluded only if conducted intra-group.

In 2008, Sweden eased the CFC-rules slightly and excluded companies within the EEA, even if low-taxed, if substance can be proved.

Comparison of Asset and Share Purchases

Advantages of Asset Purchases

- The goodwill element in the purchase price can be depreciated or amortized for tax purposes.
- A step-up in the cost base for capital gains tax purposes is obtained for certain fixed assets.
- No previous liabilities of the company are inherited.

- It is possible to acquire only part of a business.
- There is greater flexibility in funding options.
- Profitable operations can be absorbed by loss companies in the acquirer's group, thereby effectively gaining the ability to use the losses.

Disadvantages of Asset Purchases

- Possible need to renegotiate various types of external agreements.
- A higher capital outlay is usually involved (unless debts of the business are also assumed).
- It may be unattractive to the seller, especially if a share sale would be tax exempt, thereby increasing the price.
- Three-percent transfer tax, if real property is included (corporations).
- The benefit of any losses incurred by the target company remains with the seller.

Advantages of Share Purchases

- Likely to be more attractive to the seller, especially if a share sale would be tax exempt. May benefit from tax losses of the target company (but note that there are many exceptions).
- May gain benefit of existing external contracts.
- No capital or transfer duties payable on net assets acquired (if the assets consist of real property).

Disadvantages of Share Purchases

- Liable for any claims or previous liabilities of the entity.
- No deduction for the goodwill element in the purchase price.
- Losses incurred by any companies in the acquirer's group in years prior to the acquisition of the target can only be offset against any profits made by the target company after five years.

Withholding Tax Rate Chart

The chart specifies the applied tax rate under current tax treaties. Please note, however, that under Swedish domestic tax law, the withholding tax is eliminated if certain criteria are met. The rate information and footnotes contained in this table are from the 2009 IBFD/KPMG Global Corporate Tax Handbook.

Country	Dividends		Royalties ¹
	Individuals, Companies (%)	Qualifying Companies ² (%)	
Albania	15	5	5
Argentina	15	10	3/5/10/15 ³
Australia	15	15	10
Austria	10	5	0/10 ⁴
Bangladesh	15	10 ⁵	10
Barbados	15	5 ⁵	5
Belarus	10	5/0 ⁶	3/5/10 ⁷
Belgium	15	5	0
Bolivia	15	0	15
Bosnia and Herzegovina ⁸	15	5	0
Botswana	15	15	15
Brazil	25/- ⁹	- ⁹	25/- ¹⁰
Bulgaria	10	10	5
Canada	15	5	0/10 ¹¹
Chile	10	5 ¹²	5/10 ¹³
China (People's Rep.)	10	5	6/10 ¹⁴
Croatia ⁸	15	5	0
Cyprus	15	5	0
Czech Republic	10	0	0/5 ¹⁵
Denmark	15	0 ⁵	0
Egypt	20	5	14
Estonia	15	5	5/10 ¹³
Faroe Islands	15	0 ⁵	0
Finland	15	0 ⁵	0
France	15	0 ⁵	0
The Gambia	15	0/5 ¹⁶	5/12.5 ¹⁷
Germany	15	0 ⁵	0
Greece	0	0	5
Hungary	15	5	0
Iceland	15	0 ⁵	0
India	10	10	10
Indonesia	15	10	10/15 ¹⁸
Ireland	15	5 ⁵	0
Israel	15	5 ¹⁹	0/- ²⁰
Italy	15	10 ²¹	5
Jamaica	22.5	10	10
Japan	15	0/5 ²²	10
Kazakhstan	15	5 ⁵	10
Kenya	25	15	20
Korea (Rep.)	15	10	10/15 ¹¹
Latvia	15	5	5/10 ¹³
Lithuania	15	5	5/10 ¹³
Luxembourg ²³	15	0 ⁵	0
Macedonia	15	0	0
Malaysia	15	0 ⁵	8
Malta	15	0 ⁵	0
Mauritius	15	5 ⁵	15
Mexico	15	0/5 ²⁴	10
Montenegro ⁸	15	5	0
Namibia	15	0/5 ²⁵	5/15 ¹⁷
Netherlands	15	0	0

Country	Dividends		Royalties ¹
	Individuals, Companies (%)	Qualifying Companies ² (%)	
New Zealand	15	15	10
Nigeria	10	7.5 ⁵	7.5
Norway	15	0 ⁵	0
Pakistan	26	15	10
Philippines	15	10	15
Poland	15	5	5
Portugal	10	0 ²⁷	10
Romania	10	10	10
Russia	15	5 ²⁸	0
Serbia ⁸	15	5	0
Singapore	15	10	0
Slovak Republic	10	0	0/5 ¹⁵
Slovenia ⁸	15	5	0
South Africa	15	0/7.5 ²⁹	0
Spain	15	10 ¹⁹	10
Sri Lanka	15	15	10
Switzerland	15	0	0
Taiwan	10	10	10
Tanzania	25	15	20
Thailand	26	15/20 ³⁰	15
Trinidad and Tobago	20	10	0/20/- ³¹
Tunisia	20	15	5/15 ¹¹
Turkey	20	15	10
Ukraine	10	0/5 ³²	0/10 ¹⁷
United Kingdom	5	0 ⁵	0
United States	15	0/5 ³³	0
Venezuela	10	5	7/10 ³⁴
Vietnam	15	5/10 ³⁵	5/15 ¹⁷
Zambia	15	5	10
Zimbabwe	20	15	10

Notes

- Royalties paid to non-residents are not subject to WHT, but are taxed as Swedish-source income at the normal corporate rate of 26.3 percent. Under certain treaties, the rate may be reduced.
- Unless otherwise indicated, the reduced treaty rates given in this column apply if the non-resident company owns directly or indirectly (as the case may be) at least 25 percent of the capital or the voting power (as the case may be) of the Swedish company. Special conditions may apply (such as holding periods).
- The rate is 3 percent on news, 5 percent on copyrights (excluding films, etc.), 10 percent on industrial royalties, and 15 percent in other cases.
- The 10-percent rate applies only if the Austrian company owns more than 50 percent of the capital of the Swedish company.
- The rate applies if the recipient company owns at least 10 percent of the capital or the voting power (as the case may be) of the Swedish company. Special conditions may apply (such as holding periods).
- The 5-percent rate applies if the Belarusian company owns at least 30 percent of the capital of the Swedish company; the zero rate applies if the Belarusian company owns 100 percent and the subsidiary's profits are derived from qualified activities.
- The rate is 3 percent on patent royalties, 5 percent on equipment leasing, and 10 percent in other cases.
- The treaty concluded between Sweden and the former Yugoslavia.
- The domestic rate applies to payments to companies (the treaty limitation has expired).
- The 25-percent rate applies to trademarks; the domestic rate applies in other cases.
- The lower rate applies to copyright royalties, excluding films, etc.
- The rate applies if the Chilean company controls at least 20 percent of the voting power of the Swedish company.
- The lower rate applies to equipment leasing.
- The 6-percent rate applies to equipment leasing (10-percent tax on 60 percent of payment).
- The lower rate applies to copyright royalties, including films, etc.
- The 5-percent rate applies if the Gambian company owns at least 15 percent of the voting stock of the Swedish company; the zero rate applies if it owns at least 80 percent of the capital stock.
- The lower rate applies to industrial royalties.
- The lower rate applies to equipment leasing and know-how.
- The rate applies if the recipient company owns at least 50 percent of the capital or the voting power of the Swedish company. Special conditions may apply (such as holding periods).
- The domestic rate applies to mining royalties and to payments for films, etc.
- The rate applies if the Italian company owns directly at least 51 percent of the capital of the Swedish company.
- These rates apply if the Japanese company has owned at least 25 percent of the voting power of the Swedish company for at least six months; a further condition for the zero rate is that the shares of the Japanese company are traded on a Japanese stock exchange or that more than 50 percent thereof is owned by Japanese residents being individuals, companies whose shares are traded on a Japanese stock exchange, or companies more than 50 percent of whose shares are owned by individuals resident in Japan.
- The treaty does not apply to income paid to exempt Luxembourg holding companies.
- The 5-percent rate applies if the Mexican company owns directly at least 10 percent of the voting power of the Swedish company; the zero rate applies if it owns at least 25 percent of the voting power of the Swedish company and at least 50 percent of the Mexican company is owned by residents of Mexico.
- The 5 percent rate applies if the Namibian company owns directly at least 10 percent of the capital of the Swedish company; the zero rate applies if it owns more than 50 percent of the capital of the Swedish company and more than 50 percent of the Namibian company is owned by residents of Namibia.
- The domestic rate applies; there is no reduction under the treaty.
- Under this treaty, the exemption applies to dividends qualifying for the EC Parent-Subsidiary Directive.
- The rate applies if the Russian company owns 100 percent of the capital of the Swedish company (or in the case of a joint venture, at least 30 percent of the capital of such a joint venture) and the foreign capital invested exceeds USD 100,000.
- The zero rate applies if the dividends are exempt in South Africa (see also note 2).
- The 15-percent rate applies if the dividends are paid by an industrial company (see also note 2).
- The zero rate applies to copyright royalties, excluding films, etc.; the domestic rate applies to mining royalties.
- The 5-percent rate applies if the Ukrainian company owns directly at least 20 percent of the capital of the Swedish company; the zero rate applies if it owns directly at least 25 percent of the voting power of the Swedish company and at least 50 percent of the Ukrainian company is owned by residents of Ukraine.
- The 5-percent rate applies if the U.S. company owns at least 10 percent of the voting power of the Swedish company. The zero rate applies if the U.S. company owns 80 percent or more of the voting stock of the Swedish company for the 12-month period ending on the date the dividends are declared and qualifies under certain provisions of the limitation on benefits article of the treaty.
- The higher rate applies to copyright royalties, including films, etc.
- The 5-percent rate applies if the Vietnamese company owns directly at least 70 percent of the capital of the Swedish company or has invested at least USD 12 million in that company's capital; the 10-percent rate applies if it owns less than 70 percent but at least 25 percent.

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