TAX MANAGEMENT
PORTFOLIOS™

FOREIGN INCOME

Business Operations in Sweden

by

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PORTFOLIO DESCRIPTION

Tax Management Portfolio, *Business Operations in Sweden*, No. 7370, contains information enabling foreign businesses to determine the best method of conducting their operations in Sweden from both the tax and general legal points of view and addresses the practical problems confronting foreign businesses operating in Sweden. It analyzes in detail the statutory and procedural framework of Swedish income taxation as it applies to individuals and corporations, both resident and nonresident. The analysis also covers many of the other legal details vital to the organization of a Swedish company. In addition to a detailed explanation of the Swedish system of income taxation, the Portfolio discusses the local taxes, the value added tax, other taxes and, as the context requires, the relationship of Swedish law to EU law based on Sweden's status as a Member State of the European Union.

The Worksheets contain various tax forms and also include a sample articles of association. A complete list is shown in the Table of Worksheets.

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DETAILED ANALYSIS

I. Sweden — General Background

A. Political/Government Organization

Sweden is a constitutional monarchy, but the current Swedish Constitution, adopted in 1974, provides for the institution of a single-chamber Parliament (the *Riksdagen*), and expands the executive functions of the Prime Minister (*Statsministern*) and the Speaker (*Talmannen*), at the expense of the powers previously conferred on the King, at least as a formal matter. The role of the King, as Head of State, is largely ceremonial, but the prestige of the King's position is particularly significant in connection with his representative functions at an international level. Parliamentary elections are held in Sweden every four years on the second Sunday in September. Based on which political party — or coalition of parties — that receives the majority of votes, the parliament appoints a prime minister who then forms the government. The term for a minister and members of the parliament is 4 years unless they are re-elected for another term.

To be assigned any seats in the Swedish parliament, a party must receive at least four percent of the votes or at least 12% of the votes in any of the country's 29 constituencies. The parliament has 349 seats. After an election, the election authority distributes the seats proportionally, depending on the number of votes that each party has received. To make sure that the whole country is represented, the distribution of seats also takes into account the election results in each constituency.

The *Riksdag*, which has the power to pass legislation, represents the people at the national level. The government governs Sweden by executing decisions taken by the *Riksdag* and initiating new laws and legislative amendments. It is supported in this by the various government offices and agencies.

The Swedish government takes joint decisions on all government business at government meetings, which are held weekly. At least five ministers must be present for the government to be able to take a decision. Government decisions are the formal and final stage of a long decision-making process. A government decision is often preceded by several months of work at official level. Sometimes an item of business can involve the areas of responsibility of several ministers. In that case, their staff prepares it jointly.

The government offices are a government agency that acts as the government's staff and supports it in governing and realizing its policies. The government offices include the Prime Minister's Office, the ministries and the Office for Administrative Affairs. The government offices have approximately 4,500 employees, some 200 of whom are political appointees. When there is a change of government, the political appointees resign while the non-politically recruited officials retain their positions. The Prime Minister's Office leads and coordinates work in the government offices and is responsible for coordinating Sweden's EU policy. The Prime Minister's Office is headed by the Prime Minister.

Each ministry is headed by a minister. In addition, a ministry may have other ministers with responsibility for specific portfolios. Every minister has a staff of politically appointed officials, for example state secretaries, political advisers and press secretaries.

Below the ministerial level, a ministry's operations are directed by the ministers' immediate subordinate, the state secretary. Each ministry also has a director-general for administrative affairs responsible for ensuring that administrative matters that come before the government are properly managed, and a director-general for legal affairs responsible for drafting legislative proposals and ordinances. Most government business is prepared by officials in the various departments and divisions within the ministries. All ministries are involved in some aspect of European Union (EU) work, and officials from every ministry represent Sweden in the European Union and prepare issues ahead of EU meetings. Each ministry is responsible for several government agencies tasked with applying the laws and carrying out the activities decided on by the *Riksdag* and the government. The Swedish Migration Board and the Swedish Tax Agency are examples of government agencies.

Every year the Swedish government issues appropriation directions for the government agencies. These set out the objectives of the agencies' activities and how much money is available to them. The government therefore has quite substantial scope for directing the activities of government agencies, but it has no powers to interfere with how an agency applies the law or decides in a specific case. The agencies take these decisions independently and report to the ministries. In many other countries, a minister has the power to intervene directly in an agency's day-to-day operations. This possibility does not exist in Sweden, as 'ministerial rule' is prohibited.

Sweden is divided into 21 counties. Each county has a regional central government authority, the county administrative board. There are 20 county councils. They are led by political assemblies elected by the people. The main task of county councils is health care. Counties and county councils cover the same geographical area so they are usually regarded jointly as the regional level. The highest decision-making bodies are the county council assemblies or regional councils. The county councils' activities are governed by the Local Government Act, but there is scope for autonomy, i.e., decisions in each municipality, county council or region are taken in the sector in question.

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Sweden has 290 municipalities. The municipalities are responsible for the majority of public services in their respective areas. Their most important responsibilities include operating preschools and schools and providing social services and elderly care. Politicians elected by the people govern the municipalities. The highest decision-making bodies are the municipal councils/city councils. The municipalities' activities are governed by the Local Government Act, but as at the regional level there is some scope for autonomy. Sweden is covered by the EU regulatory framework and participates in the process whereby new common rules are drafted and adopted. The Prime Minister has overall responsibility for developing and coordinating Sweden's EU policy and represents Sweden in the Council of the European Union.

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B. Sources of Law

1. Statutes

The Swedish Constitution of 1974 consists of four fundamental laws: the Instrument of Government, the Act of Succession, the Freedom of the Press Act, and the Fundamental Law on Freedom of Expression. In addition, there is a law that governs the work and procedures of the Parliament (*Riksdag*). The Constitution takes precedence over all other laws. In other words, the content of other laws may never be in conflict with what is stipulated in the Constitution.

New laws can only be made by the *Riksdag*. A law that has been adopted can only be stopped or amended if the *Riksdag* passes a new law. The legislative process normally starts with the government submitting a proposal — a bill. Members of the *Riksdag* can also submit proposals for consideration. The members' proposals are known as private members' motions.

After a proposal has been submitted, the Speaker informs the Chamber. The proposal is then forwarded to one of the parliamentary committees. The committee examines the proposal in greater detail and in turn submits a proposal on the decision it considers the *Riksdag* should take. The committees can also submit a proposal for a decision by the *Riksdag* on their own initiative. This is called a committee initiative. A debate is then held in the Chamber, where members from the various political parties represented in the *Riksdag* present their opinions on the committee's proposal. The 349 members of the *Riksdag* then adopt a position on the committee's proposal for a decision. They can vote yes, no or abstain. For a legislative proposal to be adopted, a majority of members who are voting must vote in favor of it.

The government can also adopt rules that everyone residing in Sweden must follow, without having to present a proposal to the *Riksdag* first. Such rules are known as ordinances. The Instrument of Government, which is one of Sweden's fundamental laws, sets out what must be decided by law and what can be decided in an ordinance.

2. Judicial System

In outline, the Swedish judicial system is as follows:

General Courts	Administrative Courts
• Supreme Court (*Högsta Domstolen*)	• Supreme Administrative Court (*Högsta Förvaltningsdomstolen*)
• Courts of Appeals (*Hovrätt*)	• Administrative Courts of Appeals (*Kammarrätt*)
• District Courts (*Tingsrätt*)	• Administrative County Courts (*Förvaltningsrätten*)

The District Court is the Court of First Instance in civil and criminal cases.[1] The Administrative County Court is the court of first instance for the assertion of public rights and claims, including rights and claims relating to tax matters, driver's licenses, and social security matters.[2] Unlike U.S. courts, the courts in Sweden have no trial jury, with one exception in the case of proceedings of a press-act suit.

In the Courts of First Instance, judgments are handed down by one registered judge accompanied by two to four lay assessors. In the Courts of Appeals, the judgments are handed down by three or four registered judges; there are six general appellate courts in Sweden. In the Supreme Court and the Supreme Administrative Court, the judgments are handed down by five registered judges. In especially advanced and important cases, judgments are handed down in plenary session, which means that all members of the Supreme Court or the Supreme Administrative Court participate in the ruling.

There are also several specialized courts in Sweden. These include the Labor Court (*Arbetsdomstolen*),[3] which retries adjudication in employer/employee conflicts (following the District Court decision). Decisions of the Labor Court are not subject to appeal. The Patent and Market Court (*Patent- och Marknadsdomstolen*), adjudicates questions relating to several different acts, of which the Marketing Act, the Patent Act, the Competition Act, and the Act Prohibiting Unreasonable Contract Terms are the most significant ones.[4] The court's decisions can be appealed to the Patent and Market Court of Appeal and, in some instances, to the Supreme Court. Concerning taxation, it is also possible to have a matter tried by the National Tax Board's Private Advanced Ruling Department (*Skatterättsnämnden*),[5] whose decisions can be appealed to the Supreme Administrative Court.

Sweden's membership in the European Union and the European Convention on Human Rights (ECHR) also impacts the judicial system, which is required to meet certain standards as regards impartiality, short turnaround time and the right of persons to have access to judicial review. Membership in the European Union also means that the Supreme Court and the Supreme Administrative Court must yield to judicial decisions

[1] Procedure Act (*Rättegångsbalk* (1942:740)), Ch. 1, Sec. 1.

[2] Public Administrative Courts Act (*Lag* (1971:289) *om allmänna förvaltningsdomstolar*), Sec. 1, Sec. 14.

[3] Act for Trials in Labor Disputes (*Lag* (1974:371) *om rättegång i arbetstvister*).

[4] Patent and Market Court Act (*Lag* (2016:188) *om Patent- och Marknadsdomstolar*), Sec. 1.

[5] Act on Advanced Ruling in Tax Matters (*Lag* (1998:189) *om förhandsbesked i skattefrågor*).

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and preliminary rulings of the CJEU in areas in which the European Union has legislative sovereignty.

3. Arbitration

Since Sweden historically has been regarded as a politically neutral state, it often hosts international arbitration proceedings at which the Arbitration Institute of the Stockholm Chamber of Commerce (SCC) resolves domestic and international business disputes.

Arbitrations seated in Sweden are governed by the Arbitration Act of 1999.[6] The Arbitration Act is essentially based on party autonomy. Consequently, the conduct of an arbitration under the Act is primarily decided by the parties themselves and only secondarily by the arbitral tribunal. The Act imposes very few compulsory rules. The Swedish legislature has promoted flexible and straightforward legislation. However, the Act is not applicable in tax disputes. For international disputes regarding double taxation, arbitration may be available under the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (90/463/EEC).

Sweden has not adopted the United Nations Commission on International Trade Law (UNCITRAL) Model Law. Although the Arbitration Act does not follow the Model Law in form, lawyers who are familiar with the Model Law will thus find very few material differences between the two.

The Arbitration Act applies to both domestic and international arbitrations. The parties are free to agree on the composition and the appointment of the arbitral tribunal. If the parties have not specified the number of arbitrators, the Act provides for three arbitrators as the default rule. If the SCC Rules apply, there is no default rule regarding the number of arbitrators. Consequently, unless the parties have agreed otherwise, the SCC will decide — in light of the complexity of the case, the amount in dispute, and other circumstances — whether the matter is to be determined by a panel of three arbitrators or by a sole arbitrator. The SCC Rules for Expedited Arbitrations provide only for a sole arbitrator, although the parties are free to agree differently.

The Arbitration Act contains very few mandatory procedural rules. Similarly, the SCC Rules only outline the various steps to be taken in arbitration. Instead, based on party autonomy, the arbitral procedure is primarily established by the parties' agreement and, failing such agreement, by directions from the arbitral tribunal. When establishing the process, there are two sets of rules that will decide the conduct of arbitral proceedings. First: the (few) mandatory rules set out in the Arbitration Act. Second (in the absence of compulsory such rules): the arbitration agreement, including any institutional rules specified therein, such as the SCC Rules.

As an alternative to traditional arbitration, the SCC has adopted a specific set of rules for fast-track arbitration. For the Expedited Rules to apply, the parties' arbitration agreement must refer to them. Hence, the ordinary SCC Rules contain no rule-based, for example, on monetary value under which the fast-track rules become automatically applicable. There is, however, a possibility to agree that the SCC Board shall decide which set of rules shall apply. The types of disputes most commonly referred to SCC fast-track arbitration are disputes related to relatively simple service and supply agreements. Complex technical cases or multiparty cases are generally not suited to fast-track arbitration. The same applies to disputes involving a substantial monetary value, as this will often in and of itself drive the case towards increased complexity.

The main feature of fast-track arbitration is, of course, speed. The set time limit for rendering an award under the SCC rules on expedited arbitration is three months from when the case is referred to the arbitrator. However, the Board of the SCC can grant extensions of time at the arbitrator's request. Such extensions are not uncommon.

A Swedish arbitral award is final and binding as of the day it is rendered and cannot be challenged on the merits. An award thus cannot be challenged due to an incorrect assessment of the evidence or due to an incorrect application of substantive law. However, in common with most jurisdictions, a Swedish arbitral award may be challenged on certain, narrowly defined formal and procedural grounds. In general, only awards constitute final and binding rulings by an arbitral tribunal and may be challenged by the parties before the courts. Decisions are usually not final and binding and cannot be challenged separately by the parties.

Any arbitral award containing an order directed against one of the parties for payment of money or for specific performance may be enforced in Sweden. The same applies to rulings included in an award by which a party is ordered to compensate the opposing party for its legal costs or, as between the parties, to bear the ultimate responsibility for payment of the arbitrators' fees.

Sweden ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards as early as 1972 without any reservations. The provisions of the New York Convention have subsequently been incorporated into the Arbitration Act. The Swedish Supreme Court has also repeatedly stressed the importance of respecting the New York Convention's intentions to facilitate the enforcement of foreign arbitral awards.

[6] *Swe: Lag (1999:116) om skiljeförfarande.*

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II. Operating a Business in Sweden

A. Foreign Investment Regulations

Under the terms of Sweden's international commitments,[7] foreign persons have the right to travel in Sweden, to enter into commercial and trade activities in Sweden and, specifically, to be afforded "national treatment" by the Swedish authorities with regard to such activities.

While Sweden has adopted no positive legislative or regulatory measures to encourage foreign investments, there is generally no announced policy limiting foreign investments.

Sweden has legislation[8] regarding foreign direct investment based on EU Directive 2019/452. According to the legislation, the Inspectorate of Strategic Products (ISP) has the authority to review foreign direct investment that may jeopardize Sweden's security or public safety and, if necessary, prohibit the investment.

The law will cover investments in Swedish companies (limited liability companies, partnerships, sole proprietorships, economic associations and foundations based in Sweden) that carry out activities in the specific protected areas if the investment gives the investor certain influence over the activity or constitutes an acquisition of the company that carries out the activity.

According to the law, protected activity means:

- Significant activities in society;
- Security-sensitive operations;
- Activities relating to critical raw materials or inputs;
- Activities that process sensitive personal data and location data; and
- Activities relating to strategically protectable products and technologies.

B. Currency and Exchange Controls

The Swedish currency is the *krona* (plural *kronor*), normally abbreviated SEK or kr. Sweden currently has a wait-and-see policy with regard to the European Monetary Union (EMU) and the euro. The general view is that Sweden will join the euro system in due course, because Sweden is committed to do so under the EC Treaty of Amsterdam. At present, the euro issue is not subject to an active debate among the politicians. Consequently, it is likely that it will take many more years before the Swedish population is ready to adopt the euro.

Sweden's exchange controls are almost completely abolished, except for controls related to criminal activities, money laundering, and terrorism. Investments; transfers; the repatriation of capital or earnings; payments of royalties, interest, fees and salaries; and payments against invoices may be freely made without any prior or subsequent authorization.

Like other EU Member States and Members of the European Economic Area (EEA),[9] Sweden has adopted a number of regulations designed to prevent criminal activity and improve security by cracking down on money laundering and terrorism. In particular:

(i) Any person entering or leaving Sweden (or any other EU Member State) who holds €10,000 or more in cash, or its equivalent in other currencies, or in easily convertible assets (for example, bonds, shares, traveler's checks) must declare the sum to Swedish Customs.[10]

(ii) Financial institutions (banks, etc.) are required to obtain certain information from the payer in any transaction the amount of which exceeds €15,000.[11] The same requirement applies with respect to transactions in which the payer makes a cash transfer or a deposit in excess of €1,000.[12] The information pertains basically to the identity of the payer, which is then connected to the transaction/transfer concerned to make it possible for the authorities to trace the transaction/transfer if necessary.

(iii) Swedish banks and other financial institutions that act as agents for cross-border transactions involving Swedish residents, whether individuals or corporate entities, are also required to report such transactions to the Swedish Tax Agency, where their amount exceeds SEK 150,000.[13] This requirement applies whether the transaction concerned is entered into directly or indirectly, and whether the SEK 150,000 threshold is attained by means of a single transaction or a series of smaller transactions the amounts of which taken together exceed SEK 150,000. The reporting obligation also applies with respect to transactions exceeding SEK 150,000 taking place in Sweden between a Swedish resident and a nonresident.

If an individual resident in Sweden has a bank account with a financial institution in another EU Member State, Directive 2014/107/EU requires that the EU Member State obtain information from the financial institutions and exchange that information with the Member State of residence of the taxpayer on an annual basis. The EU financial institution is obliged to report the income credited to the account (dividends, interest, gross proceeds from the sale or redemption of financial assets, and cash-value insurance contracts) and account balances.

C. Trade and Commerce Regulation

1. Imports and Exports

a. Licenses and Quotas

As a consequence of Sweden's EU membership and international commitments, general import controls have been al-

[7] As expressed, for example, in the EU Treaty, the General Agreement on Tariffs and Trade (GATT), and the Organisation for Economic Cooperation and Development (OECD) accession document.

[8] Act on review of foreign direct investments (*Lag* (2023:560) *om granskning av utländska direktinvesteringar*).

[9] The Members of the European Economic Area (EEA) are the Member States of the European Union (EU) plus Iceland, Liechtenstein and Norway.

[10] The obligation is based on the European Regulation (EC) No. 1889/2005.

[11] Act on Measures Against Money Laundering (*Lag* (1993:768) *om åtgärder mot penningtvätt*), Secs. 2 and 4.

[12] EC Regulation 1781/2006 of the European Parliament and the Council of November 15 on information on the payer accompanying transfers of funds, Sec. 11.

[13] Tax Procedure Act (*Skatteförfarandelag* (2011:1244)), Ch. 23, Sec. 1.

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most completely abolished. However, licenses, permits or allocation of quotas may be required to be obtained for certain imports and exports.

b. Customs Duties and Other Taxes

Even prior to Sweden's accession to the European Union, as a member of the European Free Trade Association (EFTA), Sweden already exempted from customs duties goods originating from either an EU Member State or a member of EFTA. Furthermore, the establishment of the EEA resulted in broader cooperation between the European Union and EFTA.

Import duties are imposed on certain goods originating from non-EU Member States, according to a tariff common to all Member States (the Common Customs Tariff).[14]

Sweden levies excise taxes on a small number of products, including advertisements,[15] tobacco,[16] malt beverages and soft drinks,[17] gasoline and electric power,[18] and passenger vehicles.[19]

c. Documentation

An importer must clear goods imported into Sweden from countries outside the European Union through customs. Before the goods can be used or sold, an import declaration must be submitted, and fees for customs duties, VAT, and other applicable tax must be paid. If the importer is registered for VAT in Sweden, no VAT must be paid to Swedish Customs. Instead, the importer reports it to the Swedish Tax Agency in the VAT return. The import declaration may be submitted electronically. An authorization must be obtained from Customs to send a declaration electronically. There are two available electronic systems: EDI (Electronic Data Interchange) or TID (Customs Internet Declaration). The declaration can also be made using a paper form (Single Administrative Document).[20] An authorized representative can submit the declaration. No general permit is required to begin exporting goods from Sweden to countries outside the European Union. However, tickets are required to export certain goods, such as agricultural products, cultural objects, and endangered species of animals and plants. Before exporting goods, an export declaration must be submitted to Swedish Customs. All export declarations must be submitted electronically. It is worth bearing in mind that the European Union has signed a number of free trade agreements with various countries. If a Certificate of origin is included with the export, the goods may be imported duty-free or with a tariff reduction in the importing country.

2. General Regulation of Business

a. Monopolies

The Competition Act in force corresponds to the competition rules of the European Union and, in applicable parts, to the competition provisions of the EEA Agreement.

The law prohibits cooperation with a view to competitive restrictions in general[21] as well as abuse of a dominant position affecting the Swedish market.[22] The government Competition Authority (*Konkurrensverket*) supervises compliance with the terms of the Competition Act. An agreement that is prohibited is deemed invalid. The effect of violating a prohibition will normally be liability to pay penalties (competition fines) and/or damages.[23] In more severe cases, the court may issue a business ban for persons accountable for the violation decision.[24] To avoid preventing normal commercial trade, certain individual and block exemptions have been developed.[25] These exemptions in principle permit certain types of anticompetitive contract clauses. The block exemptions apply for a limited time.

If a company violates Section 1 (prohibition on competitive restrictions) or 7 (abuse of a dominant position) of Chapter 2 of the Competition Act, the Competition Authority may issue a decision requiring the company to cease the violation.[26] Such a decision may be appealed to the Patent and Market Court.[27]

b. Mergers

Any Swedish company agreement involving a merger with another Swedish company must be filed and registered with the Swedish Companies Registration Office. In the absence of a registration, the legal consequences of a merger do not occur. The merger may also be subject to court approval if one or several creditors oppose the merger.[28] The potential effect of a projected merger may be subject to examination by the Competition Authority in light of the considerations discussed in a., above.

The Competition Act also sets out antitrust rules applicable to corporate acquisitions. The statute enables the authorities to prevent acquisitions that will cause the investor to acquire a dominant position in the market or to strengthen further an already existing dominant position.

A party to a transaction may clear the transaction by notifying the Competition Authority and seeking a formal decision as to whether the Competition Authority intends to investigate the transaction. Should the Competition Authority decide not to investigate, the notifying party would be stopped from later challenging the transaction, unless there was a misrepresentation of facts. Should the Competition Authority decide to investigate, it has three months to determine whether the transaction should be prohibited, if a company or part of a company should

[14] Common Customs Tariff can be obtained from the Taric Query System online or by subscribing to Tariff File Distribution.

[15] Act on Tax on Advertisements (*Lag* (1972:266) *om skatt på annonser och reklam*), Secs. 1 and 12.

[16] Act on Tobacco Tax (*Lag* (1994:1563) *om tobaksskatt*), Secs. 1 and 2.

[17] Act on Beverage Tax (*Lag* (1994:1564) *om alkoholskatt*), Secs. 1–6 and 8.

[18] Act on Energy Tax (*Lag* (1994:1776) *om skatt på energi*), Secs. 1–2.

[19] Act on Road Transportation Tax (*Vägtrafikskattelag* (2006:227)), Ch. 1, Sec. 1 and Ch. 2, Secs. 1 and 4.

[20] The SAD can be downloaded from the following link: https://taxation-customs.ec.europa.eu/single-administrative-document-sad_en.

[21] Competition Act, Ch. 2, Sec. 1.

[22] Competition Act, Ch. 2, Sec. 7.

[23] Competition Act, Ch. 3, Secs. 5–6 and 25.

[24] Competition Act, Ch. 3, Sec. 24.

[25] Competition Act, Ch. 2, Sec. 2–5.

[26] Competition Act, Ch. 3, Sec. 1.

[27] Competition Act, Ch. 7, Sec. 2; Patent and Market Court Act.

[28] Companies Act (*Aktiebolagslag* (2005:551)), Ch. 23, Secs. 14, 20 and 23–25.

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be divested, if any other pro-competitive measures shall be implemented, or close the matter without further actions.

c. Restrictive Trade Practices

Restrictive trade practices in general are covered by the Marketing Act.[29] Restrictive trade practices in special areas, including the advertising of tobacco products, alcoholic beverages, drugs and food products, are subject to special regulation.

d. Price Controls

Price control can, under emergencies, such as wartime, be exercised by the Government. If for any reason other than war or danger of war, there is a risk of a severe rise in prices within the country for one or more essential goods or services, price control can also be implemented.

e. Securities Regulation

The issue of shares in general and rights connected with shares is regulated by the Companies Act. All shares in a Swedish company must be registered shares; bearer shares are not permitted. Shares can be issued in the form of a stock certificate or certificates or, if the Charter of the corporation so provides, under a registration system operated by a special semi-official agency, Euroclear Sweden or under another authorized Securities Legal Custodian (*Central värdepappersförvarare*), which can be a Swedish limited liability company (*aktiebolag*) that has been approved by the Swedish Financial Supervisory Board (*Finansinspektionen*). Euroclear Sweden is today a part of the Nordic CSD-group and has the approval of the Swedish Financial Supervisory Board. The registration system is regulated by the Account Management of Financial Instruments Act.[30]

Only shares in public companies may be offered to the public and listed on a stock exchange. The regulated marketplaces in Sweden are Nasdaq Stockholm and Nordic Growth Market (NGM). The Swedish legislation on trading in securities and the securities business,[31] which has been harmonized with EU law and regulations,[32] is extensive and contains many details and exceptions.

As a general rule, a prospectus is required when transferable securities are offered to the public. The essentials of not having to set up a prospectus are summarized below.

> The obligation to publish a prospectus set out in Article 3(1) of Regulation EU 2017/1129 (Ch. 1 Article 1, paragraph 4) shall not apply to any of the following types of offers of securities to the public:[33]
>
> a) An offer of securities addressed solely to qualified investors;
>
> b) An offer of securities addressed to fewer than 150 natural or legal persons per Member State, other than qualified investors;
>
> c) An offer of securities whose denomination per unit amounts to at least 100,000 euros;
>
> d) An offer of securities addressed to investors who acquire securities for a total consideration of at least 100,000 euros per investor, for each separate offer;
>
> e) Shares issued in substitution for shares of the same class already issued, if the issuing of such new shares does not involve any increase in the issued capital;
>
> f) Securities offered in connection with a takeover employing an exchange offer provided that a document is made available to the public following the arrangements set out in Article 21(2) of Regulation (EU) 2017/1129, containing information describing the transaction and its impact on the issuer;
>
> g) Securities offered, allotted or to be allotted in connection with a merger or division, provided that a document is made available to the public under the arrangements set out in Article 21(2) of the Regulation (EU) 2017/1129, containing information describing the transaction and its impact on the issuer;
>
> h) Dividends paid out to existing shareholders in the form of shares of the same class provided that a document is made available containing information on the number and nature of the shares and the reasons for and details of the offer;
>
> i) Securities offered, allotted, or to be allotted to existing or former directors or employees by their employer or by an affiliated undertaking provided that a document is made available containing information on the number and nature of the securities and the reasons for and details of the offer or allotment;
>
> j) Non-equity securities issued in a continuous and repeated manner by a credit institution, where the total aggregated consideration in the Union for the securities offered is less than €75 million per credit institution calculated for 12 months, provided that those securities:
>
> i) are not subordinated, convertible or exchangeable; and
>
> ii) do not give a right to subscribe for or acquire other securities and are not linked to the derivative instrument.

According to Article 1(5) of the Regulation (EU) 2017/1129 the obligation to publish a prospectus set out in Article 3(3) does not apply to the admission to trading on a regulated market if any of a number of exemptions apply, including the following (non-exhaustive list):

> (a) Securities fungible with securities already admitted to trading on the same regulated market provided that they represent, for 12 months, less than 20% of the number of securities already admitted to trading on the same regulated market;

[29] Marketing Act (*Marknadsföringslag* (2008:486)).

[30] Account Management of Financial Instruments Act *(Lag* (1998:1479) *om värdepaperscentraler och kontoföring av finansiella instrument*).

[31] Act on Trade in Financial Instruments (*Lag* (1991:980) *om handel med finansiella instrument*).

[32] Regulation (EU) 2017/1129 of The European Parliament and The Council on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market.

[33] Act on Trade in Financial Instruments, Ch. 1, Secs. 2–7, Ch. 3, Sec. 1.

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(b) Shares resulting from the conversion or exchange of other securities or from the exercise of the rights conferred by other securities, where the resulting shares are of the same class as the shares already admitted to trading on the same regulated market, provided that the resulting shares represent, for 12 months, less than 20% of the number of shares of the same class already admitted to trading on the same regulated market (The exemption is subject to certain limitations under the regulation. For example, the exemption does not apply where the securities giving access to the shares were issued before July 20, 2017).

(c) Shares issued in substitution for shares of the same class already admitted to trading on the same regulated market, where the issuing of such shares does not involve any increase in the issued capital;

(d) Securities offered in connection with a takeover by means of an exchange offer provided that a document is made available to the public in accordance with the arrangements set out in Article 21(2) of Regulation (EU) 2017/1129, containing information describing the transaction and its impact on the issuer;

(e) Securities offered, allotted or to be allotted in connection with a merger or a division, provided that a document is made available to the public in accordance with the arrangements set out in Article 21(2) of Regulation (EU) 2017/1129, containing information describing the transaction and its impact on the issuer;

(f) Shares offered, allotted, or to be allotted free of charge to existing shareholders, and dividends paid out in the form of shares of the same class as the shares in respect of which such dividends are paid, provided that the said shares are of the same class as the shares already admitted to trading on the same regulated market and that a document is made available containing information on the number and nature of the shares and the reasons for and details of the offer or allotment;

(g) Securities offered, allotted, or to be allotted to existing or former directors or employees by their employer or an affiliated undertaking, provided that the said securities are of the same class as the securities already admitted to trading on the same regulated market and that a document is made available containing information on the number and nature of the securities and the reasons for and detail of the offer or allotment.

Public trading in securities and financial instruments is governed by the Securities Market Act,[34] the Financial Instruments Trading Act,[35] and EU Regulation 2017/1129.[36] Stockbrokers and other persons rendering services in the securities business are regulated by the Securities Market Act. As noted above, a permit from the Swedish Financial Supervisory Board is required to carry on securities business. In addition, foreign persons conducting such business on the Swedish market need a permit. A permit is usually available if the foreign person is subject to satisfactory supervision in connection with securities business in his or her country of residence. A foreign person resident in the EEA does not need such a permit if that person already has a permit in his or her country of residence.

Collective investment in the form of mutual funds is regulated by the Act on Investments Funds.[37]

Insider trading is subject to regulation under the Criminal Act on Abuse of Powers when Trading with Financial Instruments.[38]

3. *Intellectual Property Rights*

a. *General*

Intellectual property rights refer to the legal area within the civil law dealing with legal protection for intellectual achievements and designs. The available legal provisions offer a broad range of protection against various forms of imitation and infringement. This legal protection is codified and developed in a series of bodies of laws. The laws have a number of features in common, *inter alia*, the fact that they create exclusive rights. The most important laws are the Patents Act,[39] the Designs Act,[40] the Act on Copyright in Literary and Artistic Works,[41] the Trade Marks Act,[42] and the Act on Company Names.[43]

It is highly advisable to register the relevant domain name in Sweden immediately for purposes of protecting intellectual property rights. The process for and available registrars of the .se domain can be found on the Swedish Internet Foundation's website: https://internetstiftelsen.se/en/.

b. *Patents*

Patents are governed by the Patents Act. The process of obtaining a sole proprietary right to an invention is initiated by way of an application to the relevant registration authority, the Swedish Patent and Registration Office (*Patent-och Registreringsverket*). To be patentable, an invention must meet a number of formal and material requirements. The two fundamental requirements are that the invention must be absolutely new, i.e., not previously known anywhere in the world, and that it must have sufficient "disparity," i.e., it must be distinctly different from any techniques that are known at the time of application ("the state of the art").[44] A patent can be applied for through:

(i) The Swedish Patent and Registration Office by way of a regular national patent application;

(ii) The European Patent Office (EPO) in the form of a European patent application;[45] or

[34] Securities Market Act (*Lag* (2007:528) *om värdepappersmarknaden*).

[35] Financial Instruments Trading Act (*Lag* (1991:980) *om handel med finansiella instrument*).

[36] EU Regulation 2017/1129 of The European Parliament and of The Council.

[37] *Lag* (2004:46) *om investeringsfonder.*

[38] Securities Market Act (2016: 1307) (*Lag* (2016:1307) *om straff för maktmissbruk vid handel med finansiella instrument*).

[39] Patents Act (*Patentlag* (1967:837)).

[40] Designs Act (*Mönsterskyddslag* (1970:485)).

[41] Act on Copyright in Literary and Artistic Works (*Lag* (1960:729) *om upphovsrätt till litterära och konstnärliga verk*).

[42] Trade Marks Act (*Varumärkeslag* (2010:1877)).

[43] Act on Company Names (*Lag* (2018:1653) *om företagsnamn*).

[44] Patents Act, Ch. 1, Sec. 2.

[45] Patents Act, Ch. 11, Sec. 80.

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(iii) An international patent application in accordance with the Patent Cooperation Treaty (PCT) system.[46]

If all requirements are met, the result is the same under all three procedures: the applicant obtains a patent with validity for Sweden and the legal consequences that follow from the Swedish Patents Act. The maximum period of validity of a patent is 20 years from the time the application was filed (unlike under the U.S. system where the validity period begins when the patent is granted).[47] Through the registered patent, the owner obtains an exclusive right to use his or her invention commercially.

Sweden has ratified the PCT and the European Patent Convention (EPC). In addition, Sweden has acceded to the Paris Convention for the Protection of Industrial Property. For purposes of the Paris Convention, the rules of priority have a certain relevance. These rules make it possible for the inventor to apply for patent protection in a number of jurisdictions. If the requirement for novelty is met at the time of the first application, it is deemed to have been met in relation to subsequent applications filed within 12 months.[48]

c. Designs

Exclusive rights over a design are acquired through an application procedure that is similar to the patent application procedure. A written application is submitted to a registration authority, the Swedish Patent and Registration Office.[49] As in the case of patents, the application is examined for purposes of ensuring that it meets the requirements of absolute novelty and sufficient disparity *vis-à-vis* prior designs.[50] Legal protection is afforded with respect to the physical and visible appearance of a product. The design registration is valid for a period of five years from the date of the application.[51] The registration can be renewed for four additional periods of five years each. The right over the design gives the proprietor the exclusive right to make use of the design on a commercial basis. Because Sweden is a party to the Paris Convention for the Protection of Industrial Property, a design for which a protection application was filed in a Member State is afforded protection with respect to subsequent applications filed in other Member States as if they were filed at the time of the original application. This priority period lasts for six months from the date of the first application.[52]

d. Copyrights

Copyright arises without any formal procedures such as registration having to be completed. Sole and exclusive rights arise when the work is created. The fundamental principle is that the work must be original. In other words, it must be the creator's own work and not an imitation. In addition, the work must express the author's creativity. The copyright lasts for 70 years after the year of the originator's death.[53] The exclusive right comprises both an economic and a personal right. The economic side of copyright relates to the right to reproduce the work and to make it available to the general public.[54] The personal right concerns the right to be identified as the author in connection with various permitted exploitations of the work and a right to object to prejudicial alterations to the work.[55]

The two most important international conventions in the copyright field are the Bern Convention and the Universal Copyright Convention. Sweden has ratified both these conventions. In addition, Sweden has ratified the Rome Convention for, *inter alia*, performing artists and record producers.

e. Trademarks

The exclusive right to a trademark is obtained by way of registration or establishment in the marketplace.[56] Registration takes place after completion of a registration procedure with the Swedish Patent and Registration Office. This authority investigates whether the mark applied for is registrable per se, i.e., if the mark distinguishes the goods of the proprietor from the goods of other tradesmen. Furthermore, the examination aims at finding out if the mark conflicts with prior trademark rights.[57] The applicant does not need to make actual use of the trademark at the time of the application. On the other hand, the owner must commence using the trademark commercially within five years from the expiration of the registration procedure.[58]

Exclusive rights to a trade symbol may also be obtained as the result of extensive use *vis-à-vis* consumers. The requirement is that the symbol has become known as a trademark to a substantial part of the circle of consumers to which it is directed.[59] The required level of establishment is deemed to have been reached if one-third of the consumer group has knowledge of the mark. A trademark right can in principle be unlimited in time. When a trademark right has been established based on a registration, the exclusive right is valid for 10 years.[60] The registration rights can be renewed for additional periods of 10 years for an unlimited time. The exclusive right to a trademark means that the owner has protection against competitors' written or verbal use of their own or confusingly similar trademarks in their business activities.[61] Normally, "confusing similarity" requires the existence of similar marks and related goods or services. However, there is one exception to this principle for well-reputed trademarks. In that case, the protection goes beyond related goods or services if the use of the other mark takes unfair advantage of the reputation of the first mark or in some manner damages its distinctiveness.[62] The expanded protection for well-reputed trademarks flows from Swedish harmonization with EU law.[63]

[46] Patents Act, Ch. 3, Sec. 28.
[47] Patents Act, Ch. 4, Sec. 40.
[48] Patents Act, Ch. 1, Sec. 6.
[49] Designs Act, Secs. 9–10.
[50] Designs Act, Sec. 2.
[51] Designs Act, Sec. 24.
[52] Designs Act, Sec. 8.
[53] Act on Copyright in Literary and Artistic Works, Ch. 4, Sec. 43.
[54] Act on Copyright in Literary and Artistic Works, Ch. 1, Sec. 2.
[55] Act on Copyright in Literary and Artistic Works, Ch. 1, Sec. 3.
[56] Trade Marks Act, Ch. 1, Secs. 6–7.
[57] Trade Marks Act, Secs. Ch. 1, 13–15.
[58] Trade Marks Act, Ch. 3, Sec. 2.
[59] Trade Marks Act, Ch. 1, Sec. 7.
[60] Trade Marks Act, Ch. 2, Sec. 34.
[61] Trade Marks Act, Ch. 1, Sec. 10.
[62] Trade Marks Act, Ch. 1, Sec. 10. Paragraph 3.
[63] Directive 2008/95/EC of the European Parliament and of the Council.

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Sweden has implemented rules regarding an international registration procedure pursuant to the Madrid Protocol. It has also adopted regulatory provisions with respect to the European Community Trademark. Both the Madrid Protocol and the Community Trademark concern international registration procedures that result in large savings and shortened procedures. These international registration procedures have proven to be efficient tools for Swedish export industries seeking trademark protection for their business activities in international markets. Sweden has regulations regarding the control of counterfeited goods. The enforcement of this control is mainly carried out by Swedish Customs. The regulations can be found in the Customs Act.[64]

f. Domain Names

Sweden's national top-level domain is .SE. It can be registered with any .SE domain reseller, such resellers being known as "accredited registrars." Essentially, any natural person or legal entity with a personal identification number or corporate registration number (or that can be identified via a registration designation in a register maintained by a governmental authority), may apply for registration of an .SE domain name, as long as the chosen domain name is available.

The domain name .SE must contain at least two, and at most 63, characters and may contain the letters A through Z, Ä, ä, ö, é and ü, numbers 0 through 9, dash, any of the characters of the official Swedish minority languages, or Sweden's Nordic neighbors' languages. Domain names are allocated in the order in which the applications are entered in the .SE register. The application must provide for a complete company name, the corporate identity number (or in case of individuals, the first and last name, and personal identification number), VAT registration number (only for legal entities within the EU), address, city and postal code, telephone number, and e-mail address.

The owner of a registered domain is required at all times to ensure that the selected domain name neither constitutes an infringement of the rights of another party nor in any other way constitutes a violation of applicable statutes or public order and is not intended to cause offense.

g. Company Names

The exclusive right to a company name is obtained by way of registration or establishment.[65] The rules regarding company names correspond almost exactly to the provisions and principles regarding trademarks under the Swedish Trademark Act, as described at e., above. Protection for a trade name lasts for an unlimited time.

h. Sanctions

All Sweden's intellectual property laws contain rules on prohibitions and corresponding fines in the case of violations by third parties of protected intellectual property rights. Such prohibitions can also be made in the form of interlocutory injunctions. Sanctions may include compensation for damages for the holder of the right concerned. The maximum penalty under each Swedish intellectual property law is six years imprisonment.

D. Immigration Regulations and Labor Laws

1. Moving to Sweden

Citizens of the European Union have the right to work, study or live in Sweden without a residence permit and start and operate a private business. The right of residence applies without permission or registration with the Swedish Migration Agency if the person is employed, self-employed, a student, or has sufficient means to support living costs. When entering Sweden, a valid passport or ID card showing citizenship must be presented.

A person moving to Sweden for one year or more is advised to register with the Swedish Population Register (administrated by the Swedish Tax Agency, *Skatteverket*), and thereby receive a Swedish personal identity number (*personnummer*).[66] It is possible to reside in Sweden, without a personal identity number. However, to communicate with government authorities in Sweden, pay tax, or register a company, a personal number or a coordination number (*samordningsnummer*) is required. The Tax Agency issues a coordination number. A personal number can be obtained by giving proof of a plan to stay in Sweden for longer than one year. A coordination number is often granted to, for example, foreigners who are not yet eligible for a personal identity number. A personal identity number or a coordination number is used in many different aspects of Swedish life, such as (for example) the opening of Swedish bank accounts, internet banking, access to medical records, and file a tax return.

2. Visiting Sweden

If aliens from countries other than the EU or the EEA member countries or the Nordic countries want to visit Sweden for more than 90 days, they must apply for a visitor's permit. The application must be submitted at a Swedish embassy or consulate-general outside Sweden. If the stay is for less than 90 days, aliens should apply for a visa rather than a visitor's permit. Visas are issued for short-term visits. A visa is a permit that must be applied for before entering the Schengen area (including Sweden). The aim of the visit may be to visit relatives or friends, a tourist visit, a business visit, participate in a conference, or travel through (transit). A visitor's permit requires a valid passport (the passport must be valid for at least three months after the end date of the visit), a return ticket, or proof of money to buy a ticket together with a financial statement that supports the cost of living during the visit period.

3. Working in Sweden

Aliens from countries other than the EU or EEA member countries or the Nordic countries may not be employed in Sweden without having work permits. A permit must be obtained before entering Sweden.[67] A permit can only be granted if an employment agreement has been signed. An exception to this

[64] Customs Act (*Tullagen* (2000:1281) Ch. 4).

[65] Act on Company Names, Ch. 1 Sec. 2.

[66] See: https://www.skatteverket.se/servicelankar/otherlanguages/inenglish/individualsandemployees/movingtosweden.4.7be5268414bea064694c40c.html.

[67] Act on Foreigners, Ch. 2, Secs. 7 and 8.

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applies to researchers, seasonal workers, and au pairs, where it is still sufficient to just have an offer from the employer. The applicant cannot enter Sweden before the permit has been granted. Under certain circumstances, a permit can be applied for while the applicant is in Sweden when extending a current permit or applying for a new permit when changing employers or occupations.

A work permit requires the following criteria to be satisfied:

(i) The applicant must have a valid passport.

(ii) The applicant must have been offered terms of employment that are at least on par with those set by Swedish collective agreements or that are customary in the occupation or industry concerned.

(iii) The applicant must have been offered a salary that is at least on par with that set by Swedish collective agreements or that is customary in the occupation or industry concerned.

(iv) The applicant must have been offered a position that will adequately cover his or her financial needs. To satisfy this support requirement, the salary for the position must be at least SEK 31,920 per month before taxes.[68]

(v) The employer must provide insurance covering health, life, employment and pension.

Certain occupations and citizens of certain countries are subject to special regulations to work in Sweden and are subject to additional or different requirements.

The applicant must be able to show sufficient funds to support family members who want to stay in Sweden with him or her. This means that the applicant's income must be large enough to cover the entire household's accommodation and living expenses. This support requirement applies the first time the family members apply for a residence permit, and not in the event of an extension.

4. Citizenship

On application, Swedish citizenship can be conferred by naturalization on an alien who:

(i) Is 18 years of age and has proved his or her identity;

(ii) Has been a resident of Sweden for at least five years (two years for citizens of the Nordic countries and four years for refugees;

(iii) Has led an honest life; and

(iv) Has obtained residential rights in Sweden.[69]

These conditions need not be met in certain cases, for example, where the alien is married to a Swedish citizen. Sweden accepts dual citizenship.

5. Labor Laws

The labor market is considerably self-regulated by employers' organizations and trade unions. Mandatory laws and regulations in collective bargaining agreements provide a comprehensive framework for the terms and conditions of employment. Disputes are generally settled by the Swedish Labor Court. However, most disputes are solved through consultations and negotiations.

Statues and case law regulate the Swedish employment law, and collective bargaining agreements are concluded with trade unions. Collective bargaining agreements are of great importance, and they often contain regulations deviating from statutory provisions to better suit the type of business they apply to.

Regulations regarding employment protection are found in the Employment Protection Act. Senior management is not covered by the law but will usually require a contract. Other essential statutes are, for example, the Discrimination Act (*Diskrimineringslagen* (208:567)), the Annual Leave Act (*Semesterlagen* (1977:480)), the Parental Leave Act (*Föräldrarledighetslagen* (1995:584)), the Working Hours Act (*Arbetstidslagen* (1982:673)), the Work Environment Act (*Arbetsmiljölagen* (1977:1160)) and the Sick Pay Act (*Lag* (1991:1047) om sjuklön).

The Act on Protection of Employment[70] provides that employment may be terminated only on specific objective grounds, including serious misbehavior on the part of the employee or general redundancy.[71] The purpose of these regulations is to protect workers against unjustified dismissals. If there is a shortage of work in the legal sense, which constitutes a factual basis for dismissal, the employer must comply with rules of precedence to decide who can be dismissed first. In short, the priority rules mean that employees with a more extended period of employment have priority over employees with a shorter period of work. However, Sweden's employment protection is characterized as being relatively strong concerning permanent employment but relatively weak concerning fixed-term employment.

When terminating an employment agreement, the notice period may not be shorter than one month and ranges, according to the seniority of the employee, from one to six months.[72] A trial period of, currently, up to six months is permitted. During this period, an individual is an employee at will.

According to the Act on Codetermination, an employer is in many cases under an obligation to negotiate with and inform employees of circumstances and changes with regard to its business, including changes of management and material investments.[73] These rules apply only if the workplace is a "unionized plant," in other words, if the employer is a member of an employers' association for the job market and if a collective bargaining agreement applies. The Act on Codetermination does not apply to foreign investors, which usually conduct their Swedish investment by means of the acquisition of the shares of Swedish corporate wholly owned vehicles.

The work week is normally 40 hours and the annual vacation period (with special vacation pay in addition to full compensation) is 25 working days. The vacation period can be

[68] Aliens Ordinance Act Sweden (Utlänningsförordning (2005:97)), Ch. 5, Sec. 8a.

[69] Act on Swedish Citizenship (*Lag* (2001:82) *om svenskt medborgarskap*), Sec. 11.

[70] *Lag* (1982:80) *om anställningsskydd.*

[71] Act on Protection of Employment, Sec. 7.

[72] Act on Protection of Employment, Sec. 11.

[73] Act on Codetermination (*Lag* (1976:580) *om medbestämmande i arbetslivet*), Secs. 10, 11, 19 and 19 a.

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claimed by an employee even before the employee has completed a year's qualifying period.[74]

E. Financing the Business and Incentives

The Government's policy over the years has been to create a favorable Swedish business climate generally, rather than to provide selective incentives for the benefit of particular sectors or industries. Because of the country's geography and climate, however, some regional incentives are given in the Western interior and the North of Sweden. This makes it financially feasible to retain a reasonable employment level in remote areas, thereby stemming the migration of people to the more densely populated regions. As in most other industrialized countries, agriculture is supported by various means. Foreign and domestic investors have equal access to incentives. The state, municipality, or county council can, under certain conditions, support certain activities with public funds. With specific exceptions, public support may not be provided until the European Commission has approved it in advance. The purpose of the rules is to ensure that competition within the EU's internal market is not distorted. EU state aid rules set the framework for Member States' ability to use public funds for this cause.

Public support can be, for example, grants, loans on favorable terms, guarantees, rent reductions, sale of public property on non-market terms, or reduced public fees and taxes. For the most common support areas, such as regional aid, broadband aid, energy, environmental aid, and aid for research, innovation, and development, approved guidelines make distribution easy and efficient.

The public sector can also provide aid of less than a maximum of €200,000 over three years per beneficiary without having to wait for the approval of the European Commission, provided that the requirements of the *de minimis* Regulation are met.[75]

The majority of incentives are managed by The Swedish Agency for Economic and Regional Growth (*Tillväxtverket*).[76] The agency is responsible for promoting entrepreneurship and regional growth and the implementation of structural funds programs. The agency manages and distributes funds from the European Social Fund and the European Regional Development Fund to support projects that promote growth and jobs.

[74] General Act on Working Hours (*Arbetstidslag* (1982:673)), Secs. 3 and 5; Act on Vacation (*Semesterlag* (1977:480)), Secs. 4, 5, 16, and 27.

[75] Commission Regulation (EU) No 1407/2013.

[76] Available programs can be found on the public website at: https://tillvaxtverket.se/tillvaxtverket/inenglish.2908.html.

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III. Forms of Doing Business in Sweden

A. Principal Business Entities

The following are the principal business entities available in Sweden:

(i) Limited liability company (*Aktiebolag, AB*):

- Public limited liability company (*Publika aktiebolag*);
- Private limited liability company (*Privata aktiebolag*); and
- Private limited liability company with limitation of distribution of dividends;

(ii) Sole proprietorship (*Enskild firma*);

(iii) Partnership:

- Limited partnership (*Kommanditbolag*); and
- General partnership (*Handelsbolag*);

(iv) Branch of a foreign corporation (*Filial*);

(v) Economic Association (*Ekonomisk förening*); and

(vi) European Company (*Societas Europaea*).[77]

B. European Company

The European Company (*Societas Europaea*, SE)[78] is intended to be a European corporate form for intra-European Union (EU) cooperation.

Under the Directive, an SE is a legal entity that has a capital divided into shares. The shareholders are subject to the principle of limited liability up to the amount of share capital subscribed to. The capital of an SE must be expressed in euro and must be at least €120,000. Otherwise, national Member State provisions as to share capital and shares will apply to an SE. An SE must have its seat in an EU Member State. The corporate seat and the main office must be in the same Member State. The corporate seat may be moved from one Member State to another without the company having to be dissolved in the first state and then recreated in the other. The corporate name must include the abbreviation "SE."[79]

It should be noted that individuals may not form an SE. An SE may be formed by two public companies that are residents of at least two Member States and that merge into one SE or, alternatively, that create a holding company or a subsidiary in the form of an SE. Moreover, a national corporation in a Member State may be recast as an SE provided it has had, for two years, at least two subsidiaries or a branch in another Member State. Finally, an SE may form another SE by the creation of one or more subsidiaries in that form.

The Swedish tax treatment of an SE that has its corporate seat registered in Sweden is consistent with the corporate tax treatment of a Swedish limited liability company. The SE's shareholders are treated in the same way as shareholders of Swedish limited liability companies. To the extent that taxes are withheld on dividends payable by an SE with its corporate seat in Sweden, the SE is treated in the same way as a Swedish limited liability company and can claim benefits under the terms of an applicable tax treaty.

C. Limited Liability Company

The Companies Act applies to all Swedish limited liability companies (LLCs), both private and public. A Swedish LLC is defined as a company that is registered with the Swedish Companies Registration Office.[80] Prior to registration, an entity is not a recognized company; this means that before registration, the entity may not acquire rights or be subject to obligations.[81] Nevertheless, an LLC is considered to be formed when the basic formation document has been signed by all the founders so that, prior to registration, an entity is a partnership and the founders are partners.[82] Companies that are publicly traded, i.e., traded on a recognized stock exchange or a public market and that have a minimum capital of SEK 500,000, are automatically regarded as public LLCs. All other companies are automatically regarded as private LLCs, unless they have registered a resolution to become public with the Swedish Companies Registration Office. A change from one classification to the other (i.e., from private limited company to public limited company and vice versa) requires a resolution at a meeting of the shareholders, adjustment of the corporate capital, and the sending of the requisite notice to the Swedish Companies Registration Office.[83]

The basic principle of limited responsibility for shareholders is maintained under the Companies Act.[84] In the unusual case of an LLC having issued shares with different voting powers, these differing powers may be maintained under the Companies Act.[85]

Under the Companies Act, the minimum capital is SEK 25,000[86] for private limited liability companies and SEK 500,000 for public limited liability companies.[87] The corporate capital of both private and public LLCs may be stated in euro. Capital stated in euro must be at least the euro counter value established by the European Central Bank corresponding to SEK 25,000 in the case of a private LLC or SEK 500,000 in the case of a public limited liability company.[88] For U.S. federal income tax purposes, under the "check-the-box" regulations, only Swedish public LLCs (*publika aktiebolag*) are treated as *per se* corporations. By contrast, private limited companies may be subject to a different entity classification (as flow-through entities) under the "check-the-box" regulations.

1. Formation

A standard route to speed up the formation process is to acquire an existing dormant Swedish corporate entity instead of

[77] Act on European Companies (*Lag* (2004:575) *om europabolag*); Act on Employee Influence in a European Company (*Lag* (2004:559) *om arbetstagarinflytande i europabolag*).

[78] 2001/86/EC of October 8, 2001.

[79] Act on European Companies, Sec. 3.

[80] Companies Act, Ch. 2, Sec. 25.

[81] Companies Act, Ch. 2, Sec. 25.

[82] Companies Act, Ch. 2, Sec. 4.

[83] Companies Act, Ch. 26.

[84] Companies Act, Ch. 1, Sec. 3.

[85] Companies Act, Ch. 4, Sec. 5.

[86] Companies Act, Ch. 1, Sec. 5.

[87] Companies Act, Ch. 1, Sec. 14.

[88] Companies Act, Ch. 1, Secs. 5 and 14.

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going through the entire formation process. After the acquisition, the articles of incorporation can easily be changed to suit the specific requirements.

Comment: The purchase of an existing dormant Swedish corporate entity is a perfectly safe route to pursue and there are many service providers on the market that provide dormant desk-drawer companies.

Under Swedish law, corporate status is conferred on an LLC on registration with the Swedish Companies Registration Office (*Bolagsverket).* The LLC is created only when the Office grants approval of the application for registration. Short of registration, the agreement of the prospective shareholders and the drafting of the articles of incorporation imply merely the existence of a business partnership that is to be incorporated.

a. Incorporators and Procedure

An LLC may be formed by one or more competent founders. There is no requirement that a founder must be resident in the European Union or a legal entity registered in the EU.[89] The founders prepare, execute, and date the deed of formation. The deed must contain: draft articles of incorporation, personal information on the board members and auditor(s), and statements as to the amount to be paid in for each share (at least par value), and whether the capital is to be paid by means other than cash.[90] No notice is required for the founders' meeting if all shares are to be subscribed for at the meeting and all accepted subscribers are stated to be in agreement.

The articles of incorporation must contain the following elements: the corporate name, the corporate seat (registered office), the corporate purpose, the amount of capital, the number of shares, the number of directors, the number of auditors, the manner of calling the annual general meeting of the shareholders, and the company's financial year.[91] In the case of a public LLC, the abbreviation "publ" must appear after the corporate name.[92]

Share subscription is made either in the deed of formation or in a subscription list that contains a copy of the deed of formation. The founders determine whether a subscription will be accepted and the number of shares to be issued to the subscriber. A founder need not become a shareholder, unless this is required by the deed of formation. After the founders' meeting, minutes must be prepared. The minutes must specify the number of subscribed shares, the distribution of the shares among the subscribers, and the amount paid in with respect to the shares. At the founders' meeting, the terms of the articles of incorporation may be changed and the amount of the capital may be increased by resolution, provided all the founders and subscribers agree. It should be noted that a decrease in the amount of capital in this connection is not allowed. Thereafter, the draft articles of incorporation are adopted at the meeting and a decision to form the LLC is taken. Finally, directors and auditors must be elected. The formation of the LLC is complete and final when all founders have signed the deed of formation.

If capital is paid in cash, the entire amount subscribed (the nominal amount including any premium) must be paid in before registration of the LLC. The money must be paid into a blocked account, opened for this purpose, with a financial institution in a European Economic Area (EEA) member country.[93]

When the proposed articles of incorporation are finalized, a meeting of the shareholders is normally convened, at which time resolutions must be adopted to elect one or two members of the board of directors, including at least one deputy director, and an independent auditor. If the capital stock is SEK 1 million or more, at least three members of the board must be appointed. Corporate status in accordance with Swedish law confers a limitation of the company's liability to its capital.[94]

An application for registration with the Swedish Companies Registration Office must be filed no later than six months after the deed of formation is signed for the LLC to be registered. An authorized person can act on behalf of an LLC "in formation" (i.e., after the shares have been subscribed for, but before registration). Such a person will be held personally liable for claims or debts of the company incurred before registration if the registration formalities are not completed.[95] On registration, any liability is assumed by the company.[96]

The application for the registration of the LLC must contain the following:[97]

(i) Company name: It is possible to suggest up to five different name proposals that differ from each other so that one of the names can be approved if similar names are already registered.

(ii) Business description: A clear description of the business of the company must be attached. The business must be clearly described and demarcated. Overly general descriptions will not be approved.

(iii) Board and signatories: Persons on the board and their roles must be stated, including name, personal identity, and place of residence. The signatory rules of the company must be disclosed together with the name of the elected CEO of the company and any person who has the power of signature on behalf of the LLC.

(iv) Auditor: There is no requirement for an auditor for small companies unless two of the following conditions are met:

(I) The company has more than three employees;

(II) The company's turnover is more than SEK 3 million;

(III) The company's balance sheet totals more than SEK 1.5 million.

If it is decided not to appoint an auditor, it must be stated in the articles of association. Companies that have elected an auditor or that must by law appoint an auditor, must

[89] Company Act, Ch. 2. Sec. 1.
[90] Companies Act, Ch. 2, Sec. 1.
[91] Companies Act, Ch. 3, Sec. 1.
[92] Companies Act, Ch. 3, Sec. 11.
[93] Companies Act, Ch. 2, Secs. 16–17.
[94] Companies Act, Ch. 1, Sec. 3.
[95] Companies Act, Ch. 2, Secs. 24–27.
[96] Companies Act, Ch. 2, Sec. 25–26.
[97] Companies Act, Ch. 2, Secs. 5 and 22.

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display the auditor's name, personal identity number, and place of residence.

(v) Founders and share capital: The registration must include a statement regarding the size of the company's share capital, the number of issued shares and how many shares each shareholder holds, and the nominal price for shares.

(vi) Address and contact details: The address of the company and who the contact person is regarding the registration of the company must be stated.

(vii) Information from the articles of association: Information from the articles of association regarding the company's seat, where board meetings and general meetings will occur, how the notice for general meetings will be given, and the financial year of the company must be mentioned in the application.

(viii) Bank certificate: A bank certificate confirming that the share capital has been paid, whether available in an electronic format or on paper, must be attached.

(ix) Registration for taxes: After registration, the company needs to apply for an F-tax certificate from the Swedish Tax Agency.[98] The F-tax certificate is mandatory for conducting business. Approved for F-tax means that the company itself is liable to pay preliminary tax to the Tax Agency. Accordingly, it is important to make sure that a counter party has the certificate or the burden of paying tax may be assumed.

The Swedish Tax Agency has the authority to approve or deny applications for F-tax status and to revoke this status if a company fails to meet its obligations, such as paying taxes and fees on time or submitting accurate tax declarations. Starting January 1, 2025, new restrictions will be implemented regarding the approval of F-tax applications. An application may be denied if the applicant (or their representative) has not complied with the Swedish Tax Agency's decisions on repayment obligations. This same criterion may lead to the revocation of F-tax status for existing entrepreneurs who have already received approval.

Comment: These new regulations aim to prevent companies that neglect their financial obligations from continuing to operate under F-tax status. Additionally, temporary F-tax approvals will be introduced to accommodate modern business structures. Companies or individuals planning to conduct business for a limited period can receive F-tax approval, which will automatically expire after the specified duration. The goal of this change is to reduce the risk of inactive companies retaining their F-tax status and potentially misusing the system.

The company also needs to register for VAT and employer contributions if the company has employees.

b. Company Name

A Swedish company name, which may be expressed in any language, must officially contain the word *aktiebolag* or the abbreviation "AB."[99]

A public LLC must state "(publ)" after the company name, unless the name contains the word "*publikt*,"[100] and a private LLC with limitation of distribution of dividends must state "SVB" after the company name.[101]

c. Capital Stock

The minimum capital of a private limited liability company is SEK 25,000 (or its counter value in euro) and of a public limited liability company, SEK 500,000 (or its counter value in euro). Before an LLC is registered, the entire amount of the authorized capital must be fully paid into a blocked account, established for this purpose, with a recognized commercial bank in an EEA member country. The capital is, of course, an asset that may be used for purposes of the company's activities. There is no requirement as to the minimum par value of each share.

A Swedish LLC may issue stock classified as either common or preferred shares.[102] A Swedish LLC may also issue convertible bonds and bonds, including options and warrants.[103] Only a public LLC, however, has the right to offer to the public the opportunity to subscribe for shares and acquire shares and other securities that the company issues.[104] Nonpublic LLCs and shareholders in such companies may not offer shares or other securities to more than 150 persons.[105]

The rights of each class of shares are determined by the articles of incorporation.[106] Each share entitles its owner to at least one vote and, in principle, it is not possible under corporate law to separate voting rights and ownership rights.[107] The voting right of one class of stock may not, however, exceed 10 times the voting right of another class of stock.[108] A stock certificate may represent any number of shares but not part of a share. Only registered shares are permitted; bearer shares may not be issued.[109] An LLC must keep a stock register disclosing the names of the owners of the shares, their addresses, and the number of shares held.[110] The stock book is a public document.[111] All the shares in a Swedish LLC may be held by a single shareholder, whether a Swedish or non-Swedish company or an individual.[112]

Swedish public LLCs may hold treasury stock, up to a maximum of 10% of their issued stock, provided the stock is registered and publicly traded on a market in Sweden or abroad. The percentage of voting stock is immaterial for these purposes, on the grounds that such publicly traded limited liability companies may not vote their treasury stock.[113] A private

[98] Tax Procedures Act, Ch. 9, Sec. 1 (Swe: Skatteförfarandelagen (2011:1244)).

[99] Companies Act, Ch. 28, Sec. 1. *See also* Act on Company Names.
[100] Companies Act, Ch. 28, Sec. 7.
[101] Companies Act, Ch. 32, Sec. 17.
[102] Companies Act, Ch. 4, Sec. 2.
[103] Companies Act, Ch. 14–15.
[104] Companies Act, Ch. 1, Sec. 7.
[105] Regulation (EU) 2017/1129.
[106] Companies Act, Ch. 4, Secs. 1–2.
[107] Companies Act, Ch. 4, Sec. 1.
[108] Companies Act, Ch. 4, Sec. 5.
[109] Companies Act, Ch. 6, Secs. 1–2.
[110] Companies Act, Ch. 5, Sec. 5.
[111] Companies Act, Ch. 5, Sec. 10.
[112] Companies Act, Ch. 2, Sec. 1.
[113] Companies Act, Ch. 7, Sec. 7 and Ch. 19, Sec. 15.

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LLC may hold treasury stock for a maximum period of three years.[114] The acquisition of such stock must be by way of:

(i) No consideration for the stock;

(ii) An acquisition of a business, provided the treasury stock represents an insignificant portion of the stock issued;

(iii) The cancellation of own stock;

(iv) The purchase of own stock at a public auction of such stock seized for the company's claims; or

(v) The passing of ownership to the company when a shareowner's holding of shares does not correspond to the actual number of new shares.[115]

No government permit is required for the acquisition by a foreign person of any Swedish LLC. It should be noted, however, that certain transactions must be notified to the Swedish Competition Authority under the merger control principles of the Competition Act.

2. Operation

a. License

Once it has met the registration requirement, a Swedish limited liability company does not need a license to carry on a trade or business.

b. Amendment of Articles and Increase or Reduction of Company Capital

Decisions as to changes in the articles of incorporation and the amount of the capital must be made by resolution of a meeting of the shareholders and must subsequently be registered with the Swedish Companies Registration Office.[116] A company's share capital can be increased by the following:

• A bonus issue;[117]

• A new issue of shares subscribed for against payment;[118]

• A new issue of shares subscribed for against payment in kind;[119]

• A new issue of shares subscribed for against payment using warrants issued by the company;[120]

• A new issue of shares in exchange for convertibles issued by the company.[121]

The increase may be effected:[122]

(i) As a consequence of the transfer of an asset to the capital account; or

(ii) By the revaluation of fixed assets.

The capital stock may be reduced for purposes of:[123]

(i) Covering a net loss;

(ii) Transferring a portion of the capital to a reserve as resolved by a meeting of the shareholders; or

(iii) Distributing capital to the shareholders.

A reduction of capital stock may be effected by:[124]

(i) The cancellation of outstanding shares without payment;

(ii) The reduction of the value of the shares; or

(iii) The purchase and subsequent cancellation by the limited liability company of a portion of the issued shares.

c. Acquisition of Own Stock

In general, a Swedish private LLC may only own treasury stock or accept such shares as security for a period of up to three years. Publicly-traded limited liability companies may hold up to 10% of their issued stock as treasury stock.[125]

d. Corporate Officers and Directors

Swedish corporate law does not contemplate the appointment of officers of an LLC in the U.S. sense. Subject to the terms of its articles of incorporation, individuals who may act on behalf of a company include members of the board and the general manager.[126]

Both the preparation and adoption of a working order plan for the board are the directors' responsibility and must be confirmed by the board, unless the board comprises only one director.[127]

A Swedish public LLC must have a board comprising at least three directors. In the case of a private limited liability company, the board may consist of a single director, provided an alternate director is appointed. The term of office of a director may not exceed one year unless the articles of association allow four years.[128] It is possible for the shareholders to reelect the director upon the expiration of the one- or four-year term. A public LLC must appoint a general manager (*verkställande direktör*) who is responsible for the company's day-to-day current business.[129] The appointment of a general manager in the case of a private LLC is optional. If a general manager is appointed by a private LLC, the same individual may be appointed chairman of the board at the same time. In the case of a public LLC, the offices of managing director and chairman of the board may not be simultaneously held by the same individual.[130] The general manager may be, and in many cases is, but is not required to be, a member of the board. The general manager and at least one-half of the members of the board must be resident (irrespective of citizenship) in an EU Member State or an EEA member country.[131] An individual who is underage or in bankruptcy, or who is subject to a trade prohibition, may not

[114] Companies Act, Ch. 19, Sec. 6.
[115] Companies Act, Ch. 19, Secs. 4–5.
[116] Companies Act, Ch. 3, Secs. 4 and 5, Ch. 11, Sec. 2, and Ch. 20, Sec. 3.
[117] Companies Act, Ch. 12.
[118] Companies Act, Ch. 13.
[119] Companies Act, Ch. 13.
[120] Companies Act, Ch. 14.
[121] Companies Act, Ch. 15.
[122] Companies Act, Ch. 12, Sec. 1.
[123] Companies Act, Ch. 20, Sec. 1.
[124] Companies Act, Ch. 20, Sec. 2.
[125] Companies Act, Ch. 19, Secs. 5–6, 15 and 30.
[126] Companies Act, Ch. 8, Secs. 1, 27, 35–36.
[127] Companies Act, Ch. 8, Sec. 5.
[128] Companies Act, Ch. 8, Sec. 13.
[129] Companies Act, Ch. 8, Sec. 50.
[130] Companies Act, Ch. 8, Sec. 49.
[131] Companies Act, Ch. 8, Secs. 9 and 30.

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be a general manager or a member of the board. No other permit is required to be elected as a director of a Swedish LLC, provided the number of non-Swedish directors does not exceed the number of directors resident in the European Union or the EEA. The Swedish Companies Registration Office may grant an exemption with respect to these provisions.[132]

Should all the directors happen to be nonresidents of Sweden, an individual who is a resident of Sweden must be appointed for purposes of being a person who can be served on behalf of the company. It is also a requirement that the board of a public LLC adopt a written working order. The working order must specify how the work will be distributed among the board members, the frequency with which the board will meet, and the extent to which the alternate directors will participate in the board's work.[133]

Private LLCs or groups of private companies with 25 or more employees may have to (if bound by a collective agreement) appoint two employee representatives as directors and two employees as deputy directors if the employees so request.[134] For companies with at least 1,000 employees, the employees may appoint three directors and deputies. The representatives are elected by the employees.[135] Once the right to appoint representatives is established, the employees may retain that right even if the number of employees of the company, or the group, falls below 25 or 1,000 during the appointment term.[136]

e. Shareholders' Meetings

The rights of a shareholder, whether an individual or a corporation, are exercised at a meeting of the shareholders (*bolagsstämma*, i.e., extraordinary shareholders' meetings, or *årsstämma*, i.e., the annual ordinary shareholders' meeting).[137]

The board of directors may call an extraordinary meeting of shareholders at any time.[138] Shareholders representing at least 10% of the outstanding shares or the auditor may apply in writing to the board to call an extraordinary meeting of shareholders at any time.[139]

The annual meeting of the shareholders of a Swedish LLC must be held at least once a year in the municipality in which the registered office of the LLC is located, unless the articles of incorporation state another location.[140] In principle, the meeting must be held in Sweden and within six months after the close of the fiscal year.[141] The articles of incorporation must stipulate a place within Sweden for this purpose although a shareholders' meeting may validly be held outside of Sweden on an occasional basis. The shareholders may be present in person or represented by proxy.[142] Such a proxy is only valid for one year from the date of issue.[143] The annual meeting adopts customary resolutions, including the election of directors and auditors, the adoption of the reports of the directors and auditors, and the financial statements, including the disposition of profits and any other items of business that may have been indicated in the notice of the meeting.[144] A resolution at a meeting of shareholders is adopted by a simple majority of the votes represented at the meeting.[145] In the event of a tie, the vote of the chairman of the meeting is decisive, except in the case of the election of a director or an auditor, in which case the impasse is decided by lot.[146] To be adopted, certain resolutions must be supported by a qualified majority of the votes present or represented at the meeting.[147] For example, a resolution to alter the rights of a class of shares outstanding requires the unanimous approval at a meeting at which the holders of 90% of the shares are present.

A resolution to amend the articles of incorporation is valid only if at least two-thirds of the votes support the resolution, provided they represent at least two-thirds of the shares present or represented at the meeting. A resolution to alter the articles of incorporation for purposes of limiting the number of shares with respect to which a shareholder may vote at a general meeting of the shareholders requires the approval of shareholders representing two-thirds of the votes cast at a meeting in which the holders of 90% of the shares are present.

From January 1, 2024, shareholders' meetings can be held digitally.[148] The articles of association need to be changed to facilitate a digital meeting unless there is a *force majeure* situation that also allows a digital meeting to be held. A digital meeting is understood to be held entirely digitally, meaning there is no physical meeting place where the meeting is conducted and where shareholders can attend. A digital meeting encompasses meetings where all participants can see and hear each other in real-time.

The articles of association may contain further provisions on how a digitally held meeting must or may proceed, for example, whether a digital meeting is to require that shareholders also have the opportunity to exercise their voting rights by mail. It is also possible to provide that only certain types of meetings (for example, extraordinary general meetings) may be conducted digitally. Like a traditional meeting, a digital meeting must be organized so that all shareholders can participate and exercise their rights according to the law and the articles of association. There must also be appropriate procedures for identifying participants and for vote counting. In a digital meeting, technical problems may arise that prevent shareholders from connecting to the digital meeting or result in their being excluded during the meeting. If such an issue is caused by the technical solution resorted to by the company, it may constitute an obstacle to conducting the digital meeting. However, not every technical problem necessarily constitutes an obstacle to conducting the meeting. For example, issues stemming from

[132] Companies Act, Ch. 8, Secs. 9 and 30.
[133] Companies Act, Ch. 8, Sec. 46 a.
[134] Act on Board of Directors' Representation by Employees of Private Corporations (*Lag* (1987:1245) *om styrelserepresentation för de privatanställda)*, Sec. 4.
[135] Act on Board of Directors' Representation by Employees of Private Corporations, Secs. 6–9.
[136] Act on Board of Directors' Representation by Employees of Private Corporations, Sec. 5.
[137] Companies Act, Ch. 7, Sec. 1.
[138] Companies Act, Ch. 7, Sec. 13.
[139] Companies Act, Ch. 7, Sec. 13.
[140] Companies Act, Ch. 7, Sec. 15.
[141] Companies Act, Ch. 7, Secs. 10 and 15.
[142] Companies Act, Ch. 7, Sec. 3.
[143] Companies Act, Ch. 7, Sec. 3.
[144] Companies Act, Ch. 7, Sec. 11.
[145] Companies Act, Ch. 7, Sec. 40.
[146] Companies Act, Ch. 7, Secs. 40–41.
[147] Companies Act, Ch. 7, Secs. 41–45.
[148] Companies Act, Ch. 7, Secs. 15, 24.

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a participant not ensuring that the relevant equipment or internet connection is functioning should not constitute obstacles to conducting the meeting.

f. Directors' Meetings

The board of directors has the highest executive power in a Swedish LLC.[149] A quorum of the directors is present if more than half of the entire board, or any higher number of directors as provided by the articles of incorporation, is present or represented at the meeting.[150] The board acts through the adoption of resolutions that are adopted by a simple majority, unless the articles of incorporation provide otherwise.[151] The vote of the chairman of the board breaks a tie.[152] As a matter of practice, it is possible to adopt valid resolutions on the telephone or by sending the minutes to the directors appointed to sign the minutes, for their respective signatures.

g. Books and Records

An LLC must maintain accounting records as it is registered with the Swedish Companies Registration Office. A Swedish LLC must keep a journal in which daily transactions are entered. In addition, a set of ledgers must be prepared and kept on a recurring basis. The accounting information must be archived in an orderly state and a satisfactory and transparent manner for seven years.[153] The requirement implies that the LLC must comply with the Book-keeping Act (*Bokföringslagen*), the Annual Accounts Act (*Årsredovisningslagen*), and the standards of the Swedish Accounting Standards Board (BFN).

As a general rule, all accounting information must be kept in Sweden.[154] In principle, both documents and machine-readable media must be stored in Sweden. However, supporting vouchers in paper form may be temporarily stored abroad if the document is needed for management, processing, or bookkeeping abroad or if the record is required to reclaim tax or needs to be presented as an original for other reasons.

Machine-readable media and machinery and systems may, under certain conditions, be stored in an EU country if reported to the Swedish Tax Agency.[155] The same applies to a non-EU country if, in addition, there are agreements regarding mutual assistance. If the general requirements for storing abroad are not met, the Tax Authority may, if particular circumstances apply, authorize the company to keep machine-readable media and systems abroad. Such authorization may carry terms and conditions and may be time-limited.

h. Financial Statements

Annual financial statements (a balance sheet and a profit and loss (P&L) statement) must be prepared and presented to the auditor, who must render an audit opinion.[156] The statements and the auditor's opinion must be filed with the Swedish Companies Registration Office, where they are available for public inspection.[157] The Accounting Act contains detailed provisions as to the valuation of assets and liabilities and the manner in which the financial statements are to be presented.

A Swedish LLC's reports may express its share capital in euros. However, all Swedish fiscal reporting, including income tax returns and value added tax (VAT) returns, must be expressed in Swedish kronor. Thus, euro-based financial reporting involves a double reporting system: one for book purposes and one for tax purposes.

i. Dividends and Other Distributions of Profits

A dividend (other than a liquidation dividend) may only be paid out of earnings and profits, including retained earnings, but net of any accumulated loss.[158] Furthermore, a dividend may not be declared in excess of consolidated retained earnings.[159] The disposition of profits, including the payment of a dividend, is decided by resolution of the shareholders.[160]

Shareholders that, alone or in combination with any indirect holding in the LLC, hold at least 10% of the capital stock may require that at least 50% of the net income available for payment be distributed as a dividend. However, the distribution in this case may not exceed 5% of the company's capital.[161]

A Swedish LLC is prohibited from granting loans to its shareholders, directors or general manager.[162] The prohibition does not apply to a debtor that is part of the corporate group to which the creditor belongs or if the loan is exclusively intended for the business of the debtor and the creditor grants the loan for purely commercial reasons.[163] Anyone who intentionally or through negligence violates these provisions is sentenced to a fine or imprisonment.[164]

3. Statutory Mergers

A company takeover can take the form of a merger, in which case the target stock company is dissolved, and its assets and liabilities are assumed by the surviving stock company (absorption).[165] A takeover also can be effected by means of a consolidation whereby a new corporate entity is established that acquires the assets and liabilities of the stock companies intending to merge (combination).[166]

Both mergers and consolidations must be approved by a resolution of a meeting of shareholders[167] and a merger or consolidation agreement must be prepared and approved by the Swedish Companies Registration Office.[168] The absorbed company is deemed to be dissolved and its assets and liabilities transferred to the surviving company when the merger is ap-

[149] Companies Act, Ch. 8, Sec. 4.
[150] Companies Act, Ch. 8, Sec. 21.
[151] Companies Act, Ch. 8, Sec. 22.
[152] Companies Act, Ch. 8, Sec. 22.
[153] Accounting Act, Ch. 2, Sec. 1, Ch. 4, Sec. 1 and Ch. 5, Sec. 1.
[154] Tax Regulation SKV A 2004:16, SKV A 2004:17, SKV M 2005:1.
[155] Bookkeeping Act, Ch. 7, Sec. 3 a.
[156] Accounting Act, Ch. 6, Secs. 1–2; Companies Act, Ch. 9, Sec. 5.
[157] Companies Act, Ch. 27, Sec. 1; Act on Annual Reports (*Årsredovisningslag* (1995:1554)), Ch. 8, Secs. 1 and 3.
[158] Companies Act, Ch. 17, Secs. 1–3.
[159] Companies Act, Ch. 18, Sec. 1.
[160] Companies Act, Ch. 7, Sec. 1 and Ch. 18, Sec. 1.
[161] Companies Act, Ch. 18, Sec. 11.
[162] Companies Act, Ch. 21, Sec. 1.
[163] Companies Act, Ch. 21, Sec. 2.
[164] Companies Act, Ch. 30.
[165] Companies Act, Ch. 23, Sec. 1.
[166] Companies Act, Ch. 23, Sec. 1.
[167] Companies Act, Ch. 23, Secs. 15 and 31.
[168] Companies Act, Ch. 23, Secs. 14, 20, 23–25, 30 and 33.

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proved, i.e., at the time the decision of the Swedish Companies Registration Office is registered.[169]

4. Liquidation

A meeting of shareholders may decide by resolution, supported by a simple majority, on the liquidation of a Swedish LLC.[170] The resolution is effective immediately, unless a later date is specified.[171]

Apart from a voluntary liquidation as decided by the shareholders, an LLC can be put into liquidation by the Swedish Companies Registration Office on certain formal grounds, for example, if no proper board of directors or managing director is registered, or if the statutory accounts for the last financial years have not been submitted to the Swedish Companies Registration Office.[172] A court holding jurisdiction over the company can also put a company into liquidation, but such a decision may be reversed if the determining factors are remedied in time.[173]

If more than half of the equity of an LLC has been lost, action must immediately be taken by the board of directors and the shareholders to avoid an involuntary liquidation. In this situation, the board of directors is under a legal obligation to refer the question of a liquidation to a meeting of the shareholders.[174] If at the time of a meeting of the shareholders within eight months after the referral, the stock capital does not amount to the stated capital, and if the shareholders do not resolve to liquidate the LLC, the board must file for liquidation to prevent personal liability for the obligations that might arise for the company.[175]

D. Other Corporate Entities: Economic Association

Besides the LLC, the only other form a corporate entity can take is that of an economic association (*ekonomisk förening*).

The similarities and differences between a Swedish economic association and a Swedish LLC may be summarized as follows: like an LLC, an economic association is a separate entity, established with the intention of furthering the economic interest of its members and making a profit. An economic association has separate management powers vested in a board of directors and the liability with respect to the association's debts is limited to the amount of its assets.[176] The fundamental difference is that no capital is paid in and that no shares are issued in an economic association. As a consequence, a change in the ownership structure, or a disposal of an ownership interest, takes the form of withdrawal from the association.

[169] Companies Act, Ch. 23, Secs. 26 and 34.
[170] Companies Act, Ch. 25, Secs. 1 and 2.
[171] Companies Act, Ch. 25, Sec. 3.
[172] Companies Act, Ch. 25, Sec. 11.
[173] Companies Act, Ch. 25, Secs. 17 and 45.
[174] Companies Act, Ch. 25, Secs. 13 and 15.
[175] Companies Act, Ch. 25, Secs. 16 and 18.
[176] Economic Associations Act (*Lag* (2018:672) *om ekonomiska föreningar*).

E. Partnerships

1. Formation

Both general and limited partnerships are formed when the partners express their intention to do business together, either on an occasional (joint venture) or a permanent basis.[177] A commercial partnership must be registered with the Swedish Companies Registration Office before it commences operations.[178] A partnership is a legal entity and does business under a special trade name, disclosing the form of partnership: *handelsbolag*, for a general partnership; and *kommanditbolag*, for a limited partnership.[179]

2. Administration

Each partner may, as far as third parties are concerned, represent and bind a partnership.[180] As a legal entity, a partnership can acquire rights and incur liabilities, and can, as such, act as plaintiff or defendant in a court of law.[181] In a general partnership, each partner is jointly and severally liable for the debts and commitments of the partnership.[182] If the assets of a partnership are insufficient, the personal assets of the partners may be used to cover the deficiency. This also applies to general partners in a limited partnership.[183] The silent or limited partners, however, are liable only for a partnership's debts to the extent of their vested interest.[184] A limited partner may not bind a limited partnership *vis-à-vis* third parties.[185]

3. Dissolution

A general or limited partnership may be voluntarily terminated, either when the joint venture is completed or after six-month's notice of termination is given by a partner, provided the partners have not reached a different understanding as to the notice period.[186] A partnership may be terminated involuntarily as a consequence of certain events. These include the death or bankruptcy of a partner, the disposition of the assets of the partnership by a partner for his own account, and "serious cause."[187]

4. International Aspects

A permit from the Swedish Board of Trade is not required for a foreign entity or individual to become a partner in a Swedish general or limited partnership.

[177] Partnerships Act (*Lag* (1980:1102) *om handelsbolag och enkla bolag*), Ch. 1, Secs. 1–2.
[178] Act on Commercial Registration (*Handelsregisterlag* (1974:157)), Secs. 1–2.
[179] Act on Commercial Registration, Sec. 6; Partnerships Act, Ch. 1, Sec. 4.
[180] Partnerships Act, Ch. 2, Sec. 17.
[181] Partnerships Act, Ch. 1, Sec. 4.
[182] Partnerships Act, Ch. 2, Sec. 20.
[183] Partnerships Act, Ch. 1, Sec. 2.
[184] Partnerships Act, Ch. 1, Sec. 2 and Ch. 3, Sec. 3.
[185] Partnerships Act, Ch. 3, Sec. 7.
[186] Partnerships Act, Ch. 2, Sec. 24.
[187] Partnerships Act, Ch. 2, Secs. 25–28.

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F. Branch of a Foreign Corporation

1. Registration

Once a resolution has been adopted by the board of directors of a non-Swedish corporation to open a branch office in Sweden, an application for branch registration must be filed with the Swedish Companies Registration Office.[188] Documents to be filed include a certificate of good standing of the foreign corporation, information regarding the business of the corporation and information regarding the branch manager.[189] The name of the Swedish branch must disclose the name of the foreign corporation and its country of incorporation, and must contain the word "*filial*" (branch).[190]

The branch manager must be resident in the European Union irrespective of his or her nationality.[191] A government agency may grant an exception to this provision. An individual who is underage or in bankruptcy, or who is subject to a trade prohibition, may not be a branch manager.[192]

2. Liability

Because a Swedish branch is considered to be the unincorporated extension of a foreign corporation's activity into the jurisdiction of Sweden, any debts or liabilities incurred by the branch are deemed to accrue to the head office.

3. Books and Records

A Swedish branch applies the same set of rules as a Swedish company (see III.C.2.g., above) with a few amendments. Specifically, the branch must keep its accounts separate from the accounts of the foreign company. The financial statements of a branch office must also be audited annually by an independent auditor, who is required to issue an opinion thereon. The financial statements and the opinion must be filed with the Swedish Companies Registration Office on an annual basis.[193]

G. Beneficial Ownership Register

According to the EU anti-money laundering directive, all EU countries must have a register of beneficial owners.

In Sweden, the registration of beneficial ownership information is done via an e-service, *Bolagsverket*.[194] An authorized representative for the company or an agent (a person with Swedish e-identification and power of attorney) logs into the e-service and fills in the relevant information. It should be noted that the e-service is in Swedish only. If the notification is incomplete, not submitted, or contains incorrect information, the authorities may impose a conditional fine on the legal entity, the managing director, a board member, or other equivalent executives.

Foreign companies and associations with business activities in Sweden may need to register beneficial ownership information with the Swedish Companies Registration Office (*Bolagsverket*). They are subject to the same rules as the equivalent Swedish company type. Foreign companies and associations within the European Economic Area (EEA) do not need to register information in Sweden if they will be registering this information in the beneficial ownership register of another EEA country. Once the foreign company has identified whether there are any beneficial owners and who this or these individuals are, they must register the information with the Swedish Companies Registration Office. They must still register even if they cannot identify who the beneficial owners are.

[188] Act on Foreign Branch Offices (*Lag* (1992:160) *om utländska filialer m.m.*), Sec. 15.

[189] Regulations on Foreign Branch Offices (*Förordning* (1992:308) *om utländska filialer m.m.*), Secs. 4–5.

[190] Act on Foreign Branch Offices, Sec. 5.

[191] Act on Foreign Branch Offices, Sec. 9.

[192] Act on Foreign Branch Offices, Sec. 9.

[193] Act on Foreign Branch Offices, Secs. 12–13.

[194] Act on Registration of Beneficial Ownership (*Lag* (2017:631) *om registrering av verkliga huvudmän Bolagsverket*). See: https://bolagsverket.se/en/omoss/flerverksamheter/omverklighuvudman.2539.html.

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IV. Principal Taxes

A. Sources of Authority in Tax

1. Legislative

a. Organization of the Tax Law

The Swedish income tax legislation is mainly enshrined in the Income Tax Act. The Income Tax Act is divided into 12 sections:

- Section 1 — Content and definitions
- Section 2 — Tax liability
- Section 3 — Tax-free income and non-deductible expenses
- Section 4 — Earned income
- Section 5 — Business income
- Section 6 — Capital income
- Section 7 — Capital gains and capital losses
- Section 8 — Closely held companies and closely held trading companies
- Section 9 — Pension savings
- Section 10 — Common provisions
- Section 11 — General deductions, basic deductions, sea income deductions
- Section 12 — Calculation of tax

Comment: New tax legislation and changes to the existing tax law are continuously incorporated into the Income Tax Act. To ensure that new legislation is incorporated, it is vital to use a digital edition of the Income Tax Act.[195]

In addition to the Income Tax Act, there are several other essential legislative acts such as the Value Added Tax Act, the Coupon Tax Act, the Act on Settlement of Foreign Tax, the Act on Special Income Tax for Residents Abroad, and the Act on Pricing Notices for International Transactions. There is also specific legislation for social security contributions, excise duties, real estate, tax enforcement, and accounting.

b. Statutory Interpretation

The legal text itself takes precedence in the interpretation of its content. Primarily, the law is subjected to semantic analysis to determine the general meaning of a provision. The purpose of the legislation is normally stated in the law's preparatory work, which has significant value in the interpretation. Investigative reports, submitted by a group of experts elected by the government and tax committee statements will also be used as a secondary source for interpretation in case the preparatory work is unclear or insufficient. Sometimes the government has endorsed the views expressed in the investigative report to increase the value of certain issues in the interpretation process. The purpose of the views expressed in the report may be that they should be purely convincing, indicative, or even, in fact, binding. However, a motive statement never has the same weight as a law.

Tax authorities and administrative courts often comply with preparatory statements. Statements relevant to the interpretation are usually reproduced in tax manuals and other tax law literature. If the authorities know that a statement is usually followed, they also know that they contribute to a uniform application of the law by doing the same.

Judgments of the HFD on a specific legislative issue acquire independent value as a source of law. According to the doctrine, a consistent position by the HFD concerning the interpretation of an unclear statutory provision carries greater weight than the preparatory work.

In interpreting the law, the courts may also consider skilled and convincing argumentation published by legal writers in various books and magazine articles within the tax area if other sources of interpretation are not available.

To provide guidance to taxpayers regarding certain transactions and structures, the tax authorities publish so-called positions as well as so-called statements regarding undesirable tax arrangements, which are not binding. The purpose of the positions and the statements is to interpret a law that is not sufficiently clear in a consistent way. The essence is to warn taxpayers contemplating certain transactions as the tax authorities will not approve them and will initiate legal proceedings if such transactions are carried out. A disapproved transaction is usually a transaction that is deemed by the Tax Authority to be in conflict with a specific tax code provision that has not yet been challenged in court. The tax authorities thus become a proactive interpreter of the legislature's intentions. Tax assessments will be based on such interpretations, unless challenged in court.

Comment: There is a risk that the public and judges without special knowledge of tax law may perceive the tax authorities' positions and statements as legal text and may therefore tend to follow them during the course of their exercise of authority. This undoubtedly gives positions and statements an additional legal function in the process of interpretation, albeit indirect and informal. A prevailing principle under the Swedish constitution is that no one should step into the legislator's shoes in an attempt to "correct" presumed incorrect or unclear legislation and, therefore, the practice is controversial.

c. Legislative Process

(1) Budget Process

Twice a year, the Swedish Minister of Finance submits the government's proposal on economic policy and the state budget to the parliament. In the spring, the Minister of Finance will submit the government's economic spring bill and a spring amendment budget and the more comprehensive budget bill and an autumn amendment budget will be submitted in the autumn. The economic spring bill contains proposals for economic policy and budgetary policy guidelines, an assessment of the development of the economy, an account of the challenges that policy faces, and follow-ups of government policy. The content of this bill thus constitutes a starting point and a platform for the work on the autumn budget bill.

[195] Sources for tracking Swedish legislation are available at: https://www.notisum.se (subscription fee) or https://lagen.nu (free).

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In the budget bill to be submitted in the autumn, the government presents its overall proposal for how central government expenditure is to be distributed between different activities and its calculation of how large the revenue is expected to be. This part also presents proposals for new tax legislation and amendments to existing tax legislation. The budget bill also contains a financial plan in which the government's fiscal policy is described, and a profit and loss account for the budget's 27 expenditure areas.

The government can also submit proposals for changes in the state budget during an ongoing budget year. These proposals are grouped in so-called amending budgets. Such can be submitted in the spring connected with the economic spring bill (spring amendment budget) and in the autumn in connection with the budget bill (autumn amendment budget).

When the government has submitted its budget proposal to the parliament, the parliament's consideration begins. It is divided into two steps:

- Step 1: The parliament decides on the guidelines for economic policy and the economic framework for the central government budget. The framework decision includes, among other things, a calculation of all central government revenue and decisions on the framework for how large expenditures may be for each of the budget's 27 areas of expenditure. The framework decision then governs the continued parliamentary deliberations, as the expenditure limits must not be exceeded.

- Step 2: The parliament takes a position on how the expenses are to be distributed within each area of expenditure, i.e., how much money (appropriations) different activities are to receive. The budget bill is finalized when the parliament has taken a position on the proposals for all 27 areas of expenditure. Then the parliament compiles the state budget.

When the parliament consideration is completed, it is the government's responsibility to implement the parliament's decision, i.e., to ensure that all authorities receive the money that the parliament decides on for their various activities and that they are given the tasks and assignments required to secure the budget and achieve the political goals.

(2) General Legislative Process

The Swedish parliament decides on new laws and amendments. Many of the laws introduced are based on EU decisions. Some decisions made within the EU, regulations, become directly applicable. Directives, on the other hand, must be transposed into Swedish law. Laws usually begin with a proposal from the government, a so-called bill, which may propose new legislation or amendments to existing laws. A bill can also come from one or more members of the parliament, in which case the proposal is called a motion.

When the Swedish Government wants to introduce a new law, it usually follows a specific process. First, a state inquiry to investigate the matter is commissioned. Then, a committee or a person, a special investigator, is tasked with examining the conditions for what the government wants to implement. When the investigation is complete, the investigator or committee writes a proposal for a law/amendments to the law submitted to the government, a so-called report. The report is sent for consultation to relevant authorities, organizations, municipalities, and other stakeholders who may submit comments, so-called consultation responses. Other parties may also submit comments. Negative comments may be taken into account to amend or even drop the proposal. Following the consultation process, the government processes the proposal in the report and writes a draft law.

In more complex legislative matters, the proposal is then submitted to the Law Council, a so-called Law Council referral, which examines the government's proposal. The government then processes the proposal further and submits it as a bill to parliament. One or more of the parliament's committees may submit comments on the proposal (committee report). The parliament votes on the proposal. If a majority in the parliament votes in favor of the proposal, the new legislation will be published in Sweden's Code of Statutes, SFS.

(3) Tax Legislation Process

Tax legislation is adopted by the Swedish Government in a manner consistent with the adoption of legislation in other fields of law. Tax bills are referred to the Parliamentary Tax Committee for preparation, where substantive parliamentary considerations, along party lines, are negotiated. Normally, parliament adopts the Tax Committee's proposals as drafted by the Committee.

Comment: The drafting of new laws involves a lengthy process, which can take a few years if all steps are to be carefully considered. However, tax laws sometimes go through an expedited process, whether for political, national, or tax economic reasons or for other reasons. It is argued that the resulting pressure occasionally results in a legislative instrument of poor quality. In exceptional cases, legislation will have retroactive effect or will be adopted without Law Council's referral.

d. Constitutional Challenges

Sweden does not have a special Constitutional Court. Instead, there is a Council on Legislation (*Lagrådet*) that scrutinizes draft bills which the Government intends to submit to Parliament. The Council on Legislation's view is of an advisory and non-binding nature. The Council's statement of opinion is a public document that is included in the government bill or standing committee statement, together with the draft text.

The Council on Legislation consists of one or more divisions up to a maximum of five divisions. Each division has three members, of whom at least one must be a justice of the Supreme Court and at least one a justice of the Supreme Administrative Court.

Draft bills are presented to the Council by civil servants or parliamentary officials who have been involved in the preparation process. One important feature of the Council's work is to consider whether the draft bill is compatible with the Constitution and general legal principles.

Examples of constitutionally interesting issues that have been subject to review by the Council on Legislation several times include the scope of property protection, limitation of taxation, and the prohibition on retroactivity. The most common and controversial issue over the years has been the retroactivity of tax legislation. To avoid a conflict with the Constitution, parliament usually adopts transitional rules that only allow

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a change of the tax legislation to apply to future events from the date of the announcement of the new legislation.

2. Administrative

a. General

The Ministry of Finance takes no part in the work of assessing taxpayers and collecting taxes. The Swedish Tax Agency (*Skatteverket*) is in charge of tax administration and collection. The Swedish Tax Agency, which currently has representative offices in 100 different locations throughout Sweden, acts independently as an autonomous public authority within the limits laid down in the laws. To promote the uniform implementation of the tax provisions, the Swedish Tax Agency issues supplementary instructions and guidelines on the application of tax provisions.

The Swedish Tax Agency handles the registration for tax purposes of individuals in Sweden and holds the records of personal identity numbers. It also handles all tax registrations for business entities liable to tax in Sweden, such as registration for income tax, for VAT and the employer registration.

A board of directors heads the Swedish Tax Agency. The head of the tax authority is the director-general, which together with the chief executive director forms the executive management.

The Swedish Tax Agency consists of 10 departments, covering the following functions:

- Taxation;
- Large corporate;
- People and real estate;
- Customers;
- Communications;
- Legal;
- IT;
- Human resources;
- Finance, control, and analysis;
- Administrative.

The Board of the Swedish Tax Agency has full responsibility for general issues and policy issues and for establishing the authority's rules of procedure. The Director-General is responsible for and leads the day-to-day operations following the Board's directives and guidelines. The Director-General is a member of the Board. The Swedish Tax Agency does not openly disclose the names of the officers and employees working at the agency.

The Swedish Tax Agency also has a Public Attorney General (*Allmäna ombudet*). This role has a particular function within the Swedish Tax Agency that can, among other things, appeal the Agency's decisions in individual cases. The Public Attorney General is appointed by the government and has an entirely independent position vis-à-vis the Swedish Tax Agency.

The Swedish Tax Agency is also the host authority for three independent authorities: the Election Authority, the Tax Law Board, and the Research Tax Board.

b. Advance Rulings

Sweden has a system that allows taxpayers to request advance rulings on the tax consequences of proposed transactions. Under the Advance Tax Ruling Act,[196] at the request of a taxpayer, a special body, the National Tax Board's Private Ruling Department (*Skatterättsnämnden*), may issue a ruling that will be binding on the Swedish tax authorities if the transaction is carried out. The National Tax Board's Private Ruling Department may accept, at its discretion, to issue a binding ruling if it believes that the ruling is of importance to the applicant or is suitable for a uniform interpretation or application of the law. To this end, there is a list of tax legislation that can be subject to a ruling. The list is complete and covers (for example) income taxation (individual and legal entities), excise duties, VAT, real estate taxation and withholding tax. The ruling will only cover legal issues, i.e., it will not apply to issues pertaining to valuation or evidence matters. The fact that the question is essential to the applicant usually means that the applicant is facing a real situation and has acceptable reasons for not awaiting an examination through the ordinary taxation process.[197] A ruling is issued after formal proceedings (by correspondence) in which both the taxpayer and an official of the Swedish Tax Agency are represented. Decisions of the National Tax Board's Private Ruling Department may be appealed to the Supreme Administrative Court.[198]

The turnaround time for an advance ruling is normally six months. A fee is charged for a ruling. The amount of the fee depends on the scope of the ruling and on whether the applicant is an individual or a company. The fee ranges from SEK 1,000 to SEK 20,000 (2025). It is also possible to obtain an advanced ruling on the future pricing of international transactions.[199] (For further discussion, see XII.D., below.)

The EU Directive 2011/16/EU enables competent authorities in the EU Member States to exchange information regarding certain advanced rulings without having to present a formal request to the other state. The motive behind the legislation is to prevent tax evasion, aggressive tax planning,[200] and harmful tax competition within the European Union.

3. Courts

The taxpayer can appeal decisions of the Swedish tax authority. The first step is to request a reconsideration of the decision from the Swedish Tax Agency. A request for reconsideration of the decision must be in writing, and the request must state which decision is being appealed and what in the decision is to be changed. When the Tax Agency receives a request for reconsideration, they must go through the decision again to see if they have misjudged the first time they decided on the matter. If the Tax Agency concludes that they have made the wrong de-

[196] *Lag* (1998:189) *om förhandsbesked i skattefrågor.*

[197] Advance Tax Ruling Act, Secs. 5, 6 and 6a.

[198] Advance Tax Ruling Act, Sec. 22.

[199] Act on pricing decisions in international transactions (*Lag* (2009:1289) *om prissättningsbesked vid internationella transaktioner*).

[200] The European Commission describes aggressive tax planning as "taking advantage of the technicalities of a tax system or of mismatches between two or more tax systems for the purpose of reducing tax liability." While it is theoretically possible to draw a line between acceptable tax planning and aggressive tax planning, the boundaries will in reality be somewhat blurred.

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cision, they will issue a new decision. If they do not think they have made the wrong decision, the old decision will continue to apply, and in that case, the decision must be appealed to the administrative court. The main rule is that a decision must be appealed no later than the sixth year after the end of the calendar year in which the tax year has expired. When receiving an appeal, the Tax Agency must first determine whether the appeal has been received in due time. If the appeal is received late, it will be rejected and thus not tried by the administrative court. If the appeal has arrived on time, the Tax Agency must first make a mandatory reconsideration (see above for more information on reconsidering the Tax Agency's decision). If the tax authorities do not change the decision, they submit the appeal to the administrative court, which shall then try the question. The decision can be tried in turn by three different courts:

- First Level: Administrative County Court;
- Second Level: Administrative Court of Appeals;
- Third Level: Supreme Administrative Court.

The Administrative County Court is the first instance. There are 12 Administrative County Courts. The place of registration or the company's seat determines to which Administrative County Court the appeal should be sent to. The handling of tax cases is mainly in writing. It differs from the process in a general court (district court, court of appeal, and the Supreme Court), where oral hearings usually supplement the processes. First, an exchange of letters usually occurs wherein the parties receive and provide the information they deem necessary, until the court considers the case to be ready for decision.

When the judgment is completed, it is sent to the person who has appealed the decision. The appendix to the judgment shows the deadline for appealing the judgment. In most tax cases, there is an appeal period of two months. If neither party appeals, it becomes final. That means it can no longer be changed and the decisions holding becomes applicable.

The Administrative Court of Appeals is the second instance. This is where the case ends up after The Administrative County Court judgment has been appealed. If neither party appeals against the judgment, it becomes final. The Supreme Administrative Court is the final instance and can review a decision that has been appealed to the Court of Appeal. The Supreme Administrative Court must agree to hear a case and, in that case, it will grant a trial permit. Permission to appeal is granted if the Supreme Administrative Court's decision can be significant as a precedent or if there are special circumstances, i.e., if new information has emerged that puts the case in a completely new light or if the outcome in the Court of Appeal is due to gross oversight or gross error. The appellant must argue that the decision meets one of the requirements for obtaining a trial permit. Statistics show that only a low percentage of all appeals obtain a permit. As a precedent, the judgment can be used to decide how similar cases will be assessed in the future.

Five judges vote on the decision. Once issued, the decision is sent to the person who has appealed the decision. The time it takes for the court to decide the case depends on the type of case at hand. Simpler cases generally take less time but take at least six months. The Supreme Administrative Court is the last instance within the administrative courts. The court's decision cannot be appealed to any other court within Sweden. On the other hand, a judgment or decision can be appealed to the Court of Justice of the European Union (CJEU) if it is contrary to the European Convention for the Protection of Human Rights.

B. Income Tax

The taxation of individuals, business entities, and trusts, as well as of nonprofit associations, is governed by the same legislative framework, i.e., the Income Tax Act of 1999.[201]

Individuals are subject to two types of income taxes: municipal income tax, the rate of which ranges from 28.98% to 35.3% (2025) depending on the municipality; and national income tax at the rate of 20%. The national income tax is levied on income exceeding SEK 625,800 (2025). The rate applies to earned income and active business income; a separate flat rate of 30% applies to "capital income." Tax on capital income attributable to shares in closely-held companies is levied at rates ranging from 20% to 55.3% (2025) on shares held by active shareholders and at the rate of 25% on shares held by passive shareholders.[202]

Limited liability companies, economic associations and nonprofit associations (to the extent they are engaged in business activities) are subject to tax at the flat corporate rate of 20.6% (2025). The effective tax rate, however, is approximately 15.45% during the first five years, taking into account the fact that 25% of net profit can be allocated to a tax-free reserve (*periodiseringsfonder*). The allocation can be reversed (and become taxable) to cover any losses that may be incurred during subsequent fiscal years, up to the sixth year, when the recapture is mandatory. The allocation is subject to an interest payment in the form of a fictitious income.

Partnerships and limited partnerships are not recognized as taxable entities; instead, the net income accrued by these entities is taxed at the level of the partners.

Individuals and business entities that are not resident in Sweden are subject to Swedish tax only to the extent their income derives from a source in Sweden. The Swedish-source earned income of nonresident individuals is subject to a final flat rate of 25% imposed by the "SINK" legislation.[203] No deductions are allowable. Nonresident individuals may, however, choose to be taxed as residents, i.e., to be subject to ordinary income tax rates, with the ability to take certain deductions.[204]

Foreign business entities are taxed in Sweden on business income deriving from a permanent establishment (PE) in Sweden, to which the ordinary corporate tax rate of 20.6% applies.

C. Estate and Gift Tax

Inheritance and gift tax was completely abolished in 2004. Of the Organisation for Economic Cooperation and Development (OECD) and European Union (EU) Member States and

[201] Income Tax Act (*Inkomstskattelag* (1999:1229)).

[202] Active shareholders are shareholders with substantial involvement in the management of the company. Dividends received by such a shareholder are considered to derive from the shareholder's effort and personal engagement in the company's business and are taxed as if derived from employment, i.e., they are subject to higher tax rates. Dividends received by passive shareholders are considered to be derived as a yield on capital investment (rather than as the result of performance attributable to the shareholders) and can, therefore, benefit from the capital income tax rate of 25%.

[203] Special Income Tax Act for Persons Residing Abroad (*Lag* (1991:586) *om särskild inkomstskatt för utomlands bosatta* (the "SINK Act")).

[204] SINK Act, Sec. 4.

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Switzerland, Sweden is one of the few countries that do not levy gift or inheritance taxes.

D. Net Wealth Tax

There is presently no net wealth tax in Sweden. The net wealth tax was abolished in 2007.[205]

E. Value Added Tax

The legislative framework for value added tax (VAT) in Sweden is the Value Added Tax Act.[206]

The VAT is calculated on the basis of the consideration, i.e., the price paid for the supply of goods or services, exclusive of VAT. VAT is payable on all supplies of goods and services made within Sweden by entrepreneurs in their commercial activity, unless those supplies are specifically exempted from VAT. For example, the supply and letting of immovable property; medical, social, and dental care; education; banking and financial services and insurance transactions; and specific sporting activities are exempt from VAT. Exempt supplies do not entitle the supplier to deduct input VAT.

If the total output VAT, i.e., VAT received, is greater than the total input VAT, i.e., VAT paid, the difference must be remitted to the state. If the input VAT is greater than the output VAT, for example, in the case of a more extensive inventory purchase or if the company makes a loss, the difference will be paid out by the Tax Authorities.

The VAT is levied at a standard rate of 25%.[207] Reduced rates of 12% and 6% apply, however, to certain transactions.

For further detailed discussion within this Portfolio, see V.C., or see also the VAT Navigator.

F. Capital Investment Tax

The Act on Stamp Duty covers taxes levied on real estate transactions. Stamp duty is levied on the acquisition of real property and leasehold rights, and on the grant of a mortgage on real property.[208]

On acquiring real property, individuals and legal entities must apply for an entry into the land register within three months from the date of the acquisition. Stamp duty is levied on the registration. For corporate owners, the tax amounts to 4.25% of the acquisition price; the rate for individuals is 1.5%. Tax deferral may be obtained when the real property is sold between affiliated companies, in which case the payment of tax is postponed until the real property is sold to a third party or until the owner company is dissolved by means of liquidation or bankruptcy.

G. Real Property Tax and Real Property Fee

Every item of Swedish *situs* real property carries an "assessed value." This value corresponds in principle to 75% of market value.[209] The assessed value is the basis for the real property fee.[210] Real property tax is levied on commercial premises, including offices, shops and industrial buildings. The tax rate is 1% on premises such as offices and shops, and 0.5% on industrial buildings.[211]

For residential houses (one or two families) a real property fee has replaced the former real property tax.[212] The tax amounts to the lower of either SEK 10,074 (2025) or 0.75% of the assessed value of the real property. For apartment blocks, the fee is reduced to SEK 1,724 (2025) or a maximum of 0.3% of the assessed value.

H. Trade Tax

There is no Swedish tax on a trade or business other than the tax on income. Excise taxes are, however, levied on a number of products, including gasoline, tobacco, and alcohol.

I. Gambling Tax

All gambling operators on the Swedish market are required to have an appropriate license. The Gambling Act[213] has separated gambling into two sectors: a competitive, open market sector and a non-competitive sector. The non-competitive sector includes land-based casinos in designated premises, token gaming machines, lottery and scratch cards, and land-based bingo, while the open market primarily includes online gaming, sports betting, and horse betting.

Gambling subject to licensing is taxed at the rate of 22%.[214] The parliament increased the tax from 18% to 22% on May 2, 2024, effective July 1, 2024. Gambling tax is paid on a net basis, calculated as the difference between the total contributions received from gambling participants and the total pay-off paid out by the operator. Gambling for non-profit purposes will continue to be tax exempt.

J. Inheritance and Gift Tax

Inheritance and gift taxation was abolished in 2004. There has never been an estate tax in Sweden.

K. Net Wealth Tax

The net wealth tax was abolished in 2007.

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[205] Act on Net Wealth (*Lag* (1947:577) *om statlig förmögenhetsskatt*).

[206] Value Added Tax Act (*Mervärdesskattelag* (2023:200)).

[207] Value Added Tax Act, Ch. 9 Sec. 2.

[208] Act on Stamp Duty with the Registry Office (*Lag* (1984:404) *om stämpelskatt vid inskrivningsmyndigheter*), Sec. 1.

[209] Act on Real Property Assessment (*Fastighetstaxeringslag* (1979:1152)), Ch. 5, Sec. 2.

[210] Act on Real Property Tax (*Lag* (1984:1052) *om statlig fastighetsskatt*), Sec. 3.

[211] Act on Real Property Tax, Sec. 3.

[212] Act on Municipal Property Fee (*Lag* (2007:1398) *om kommunal fastighetsavgift*).

[213] Gambling Act (*Spellag* (2018:1138)).

[214] Act on Gambling Tax (*Lag* (2018:1139) *om skatt på spel*).

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V. Taxation of a Resident Corporation

A. Resident v. Nonresident Corporation

A Swedish limited liability company registered with the Swedish Companies Registration Office is deemed to be a resident of Sweden for tax purposes.[215]

Under Swedish tax law, a foreign legal entity is an association registered in a foreign country that is a valid carrier of rights and liabilities and has standing in the courts and with public authorities, and the assets of which may not be freely disposed of by the shareholders. A foreign legal entity is normally treated as a separately taxed legal entity if Sweden has a tax treaty with the jurisdiction in which the entity is resident and the entity qualifies as a company under the terms of the applicable treaty, or it is subject to taxation that is sufficiently similar to Swedish corporate taxation.[216] For the tax treatment of such foreign legal entities, see VI., below.

B. Corporate Income Tax

1. Taxation of Worldwide Income

A Swedish resident limited liability company is liable to Swedish taxation on its income from both Swedish and foreign sources,[217] subject, however, to the Swedish foreign tax credit provisions and any other relevant provisions contained in an applicable tax treaty.

2. Accounting

a. General

A principle of the Swedish tax system is that the income of a corporate taxpayer (which is required by law to keep books of account) is determined based on the income or loss reflected by the bookkeeping system used by the taxpayer.[218] For tax accounting purposes, the books that have been kept in accordance with the Accounting Act must be restated taking into account the inventory valuation and depreciation rules set out in Swedish tax law.[219] Because the accounting requirements under the Accounting Act and those for purposes of the tax law are basically consistent, the contents of the books kept by a corporate taxpayer have an important significance for the determination of the taxpayers' income or loss for tax purposes. The Accounting Act requires a corporate taxpayer to draw up and maintain its books in accordance with generally accepted accounting principles and based on sound business practice.[220] Books kept in accordance with these principles will provide the starting point for the determination of a company's results for tax purposes. The journals and ledgers need not be registered or filed as such with the government or any authority. However, they must be retained for a period of seven years after the relevant accounting year[221] and must be available for inspection by a tax agent. A Swedish limited liability company need not keep a separate accounting system for any of its branches in Sweden.

To summarize, a set of financial statements of a Swedish limited liability company prepared in accordance with the requirements of the Swedish accounting legislation is, in principle, acceptable both for accounting purposes and for purposes of preparing and filing a corporate income tax return. It should be noted, however, that the tax and the accounting legislation are not identical and, thus, a specific review for tax purposes is always necessary to file a tax return correctly. Nevertheless, the two sets of legislation are over time becoming progressively aligned so that fewer adjustments are now required for tax purposes.

b. Accounting Periods

The period for which net income must be computed for tax accounting purposes is normally 12 months and corresponds to the calendar year.[222] A fiscal year that differs from the calendar year may be chosen with the special permission of the tax authorities.[223] The fiscal year selected must end on April 30, June 30, or August 31, unless the Swedish Tax Agency grants permission for the adoption of another date as the end of the fiscal year. Such permission is given in special circumstances.[224] One example of such a circumstance (which is specifically referred to in the legislative history) is where the Swedish company is a subsidiary of a foreign company.

The longest accounting period allowable is 18 months.[225] Government permission is not required to use an 18-month accounting period when changing the accounting period(s) of a Swedish company or its parent company.

c. Accounting Methods

A Swedish limited liability company must keep its books using the accrual method of accounting.[226]

d. Consolidated Returns

Companies that are members of a corporate group may not file tax returns on a consolidated basis. In other words, each corporate taxpayer must file its own return.[227] Nonetheless, the same result as is achieved by the filing of consolidated returns can be achieved by a system of company group contributions, which are deductible for the transferor and taxable in the hands of the transferee.[228] By way of such group contributions, the profits of one company can be offset with the losses of another company. The group contributions are then reflected in the respective company accounts and the tax returns.

For accounting purposes, all parent companies must set up a consolidated financial statement. The consolidated statement is a separate annual report that a parent company prepares in addition to its ordinary yearly annual report. The consolidated financial statement includes the parent and all its subsidiaries and describes their financial position as a single eco-

[215] Income Tax Act, Ch. 6, Sec. 3.
[216] Income Tax Act, Ch. 6, Secs. 7–9.
[217] Income Tax Act, Ch. 6, Secs. 4.
[218] Income Tax Act, Ch. 14, Sec. 2; Accounting Act, Ch. 1, Sec. 1.
[219] Income Tax Act, Ch. 14, Secs. 5–6.
[220] Accounting Act, Ch. 2 and 4.
[221] Accounting Act, Ch. 7, Sec. 2.
[222] Accounting Act, Ch. 3, Sec. 1.
[223] Accounting Act, Ch. 3, Sec. 2.
[224] Accounting Act, Ch. 3, Secs. 1, 2, and 6.
[225] Accounting Act, Ch. 3, Sec. 3.
[226] Income Tax Act, Ch. 14, Sec. 2.
[227] Tax Procedure Act (*Skatteförfarandelag* (2011:1244)), Ch. 30, Sec. 4.
[228] Income Tax Act, Ch. 35, Sec. 1.

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nomic entity. There are three exceptions from the requirement of preparing a consolidated financial statement, i.e., in the case of a smaller group, if the parent is also a subsidiary, and if the subsidiaries are of no material importance or can be excluded.

e. Act on Annual Reports

Legislation requiring the filing of annual reports[229] implements the EU Directives within the field of accounting. Late filing penalties are either SEK 5,000 or SEK 10,000 for private limited liability companies and either SEK 10,000 or SEK 20,000 for public limited liability companies, depending on the length of the delay. The company may have to pay up to three late filing fees, as described below. Penalties apply even in the event of a one-day delay.

A company must pay a late penalty charge of SEK 5,000 if the annual report has not been submitted within seven months after the end of the financial year. An additional penalty charge of SEK 5,000 is charged if the annual report has not been submitted after nine months, and a third and last penalty of SEK 10,000 is charged if the annual report has not been filed after 11 months. For public (listed) companies, the respective fines are doubled.

If the company does not pay the fee, a request to pay is sent. If the fee is still not paid, the case is sent to the Enforcement Officer. The Swedish Companies Registration Office cannot extend the time for when the annual report is to be submitted. It may be possible to get a waiver of the late fee if specific reasons are at hand for the delay. If a complete annual report has not been submitted within 11 months from the end of the financial year, the company risks receiving an order of liquidation. If the company still does not submit a complete annual report, the Swedish Companies Registration Office may decide that the company shall go into liquidation. A liquidator is then appointed to terminate the company's operations. The board members of the company risk becoming personally liable for payment of the company's debts if a complete annual report has not been submitted within 15 months from the end of the financial year. In addition, it may be an accounting violation not to prepare the annual report within six months from the end of the financial year. This applies regardless of when the annual report is submitted to the Swedish Companies Registration Office.

3. Calculation of Gross Income

a. General

The taxable gross income of a Swedish company comprises income from worldwide sources.[230] Corporate taxable gross income includes all gross receipts within the scope of the business in the form of monies, goods, or benefits paid or accrued in the normal course of the operation of a company's business.[231] Such gross income includes royalties, interest, and capital gains.[232] Dividends received by a Swedish company from another company, whether Swedish or non-Swedish, are, however, excluded from the taxable base, provided certain criteria are satisfied (this is further discussed at c., below).[233]

For purposes of arriving at a company's net income, deductions are allowed for all normal business expenses.[234] It should be noted, however, that the tax authorities look closely at overhead costs allocated to a Swedish subsidiary by a foreign parent, as well as at costs related to intra-group payments. See XII., below.

b. Capital Gains

Sweden has no special capital gains tax for corporate taxpayers in the sense of the U.S. federal capital gains tax. Capital gains are in principle subject to tax at the normal corporate tax rate, unless specific participation exemption rules apply. Any gain from the occasional sale of a capital asset must be included in the taxable income of a Swedish company. The amount of the gain is any positive difference between the gross proceeds and the seller's basis in the asset. Losses on the disposal of shares and securities by way of warrants, options, debentures and the like, are available only for loss carryforward against capital gains on the same types of assets.[235] A different set of rules apply if the shares qualify for the participation exemption, i.e., no tax on capital gains and no deduction for losses (see d. below).[236]

c. Dividend Income

If the dividends received are not tax-exempt under either domestic legislation or the EC Parent-Subsidiary Directive, the general rule is that the gross amount of the dividends (i.e., before the deduction of any foreign withholding tax) is included in taxable income. Withholding tax may be credited against Swedish income tax attributable to the dividend received. The same rule generally applies when a tax treaty is in force between Sweden and the source country. If the investment qualifies for the participation exemption, the dividend is not taxable in the hands of the recipient (see d., below).[237]

d. Participation Exemption for Qualifying Shares

(1) General

As described in b. and c., above, Sweden has a participation exemption regime under which capital gains and dividends relating to "business-related shares" (*näringsbetingade andelar*) may be tax-exempt.[238] Losses arising on the disposition of such shares are not deductible. The rules regarding tax-exempt dividends and capital gains with respect to qualifying shares apply without any specific legal or administrative actions having to be taken. The participation exemption is often used in international structures in which a Swedish holding company is inserted between the investors and the target company. If the requirements for the application of the participation exemption are met, any Swedish limited liability company may receive tax-free capital gains and dividends from a Swedish limited li-

[229] Act on Annual Reports (*Årsredovisningslagen* (1995:1554)).
[230] Income Tax Act, Ch. 6, Sec. 4.
[231] Income Tax Act, Ch. 15, Sec. 1.
[232] Income Tax Act, Ch. 15, Sec. 1.
[233] Income Tax Act, Ch. 24, Secs. 12–22.
[234] Income Tax Act, Ch. 16, Sec. 1.
[235] Income Tax Act, Ch. 48, Sec. 26.
[236] Income Tax Act, Ch. 25a, Sec. 33.
[237] Income Tax Act, Ch. 24, Sec. 35.
[238] Income Tax Act, Ch. 24, Secs. 32–42 and Ch. 25 a, Secs. 5–8.

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ability company, an EU company or a legal entity in another country (if the entity is similar in form and function to a Swedish limited liability company).

As regards the level of the holding company, the legislation allows the following kinds of legal entity to hold business-related shares:

(i) A Swedish limited liability company (*aktiebolag*) or a Swedish economic association (*ekonomisk förening*) that is not an investment company;

(ii) A Swedish trust (*stiftelse*) or a Swedish nonprofit association (*ideell förening*) that is subject to unlimited tax liability;

(iii) A Swedish savings bank (*sparbank*);

(iv) A Swedish mutual insurance company (*ömsesidigt försãkringsbolag*); and

(v) A foreign company resident in the European Economic Area (EEA) that is the equivalent of any of the kinds of legal entity listed at (i) to (iv), above, and that is subject to corporate income tax in Sweden.

The participation exemption applies to business-related shares. Shares in an unlisted company are always regarded as business-related shares. Capital gains received from such a company are always exempt from tax when received by a Swedish limited liability company. The exemption applies irrespective of the size of the holding and the period for which it has been held.[239]

Shares in listed companies are regarded as business-related shares only if the holding represents at least 10% of the voting rights or if the holding is otherwise deemed necessary for the business conducted by the owner or any of its affiliates. An additional condition is that the shares must have been held for a minimum period of one year.[240]

The general requirements described above also apply to companies within the European Union (EU). As an EU Member State, Sweden has implemented the EU Parent-Subsidiary Directive.[241]

Dividends distributed by a company (listed in the Appendix to the Directive) within the European Union may be received tax-free under the EU Directive. To qualify, the company must be subject to the specific tax mentioned in Article 2 of the Directive. If the holding in the EU company is 10% or more, the participation exemption rules will apply even if the holding does not meet all the requirements set out under the Swedish domestic participation rules. Thus, under the EU Directive, a holding of 10% of the company's equity suffices, and a holding of 10% of the voting rights, as required under Swedish domestic law, is not necessary.

In principle, there is no difference between a holding in a Swedish subsidiary and a holding in a foreign subsidiary. If the foreign subsidiary is resident outside the European Union, the Swedish company will have the burden of proving that the subsidiary is similar in form and function to a Swedish limited liability company.[242] If the subsidiary meets the form and function requirements and the shares are business-related, the Swedish holding company will apply the participation exemption rules, no matter what jurisdiction the subsidiary is located in. Thus, even dividends received from a subsidiary in a tax haven country will not be subject to Swedish income tax under the dividend rules. The participation exemption does not contain requirements regarding the level of taxation in the country from which the dividend is distributed. However, if the Swedish company's holding in the distributing company exceeds 25% of the capital or votes, the Swedish controlled foreign corporation (CFC) legislation can be applied (see XII., below), and the Participation Exemption regime rule is not applicable if the distributing company is subject to tax below 10% to 12%.[243]

The Swedish Tax Agency has published a statement regarding the application of the rules on business-related shares with respect to the form and function test, i.e., if a foreign legal entity corresponds to a Swedish limited liability company. The Tax Agency is of the opinion that the requirement for tax liability can be met even if the foreign legal entity has low-taxed income. The fact that the effective tax rate is less than 12.5% does not prevent a foreign legal entity from being considered an income tax subject in the home country. The fact that corporation tax in certain jurisdictions is levied only at the time of a dividend distribution does not prevent a foreign legal entity from being considered an income tax subject there since the purpose of the rules on business-related participations is fulfilled despite deferred corporate taxation. The foreign legal person can actually be considered an income tax subject if the home country applies the principle of territoriality and only taxes income that has its source in the country, provided that there is a real establishment from which a commercially motivated business is conducted. It is irrelevant for tax assessment purposes whether CFC taxation has taken place because CFC taxation means that co-owners, not the foreign legal entity, become taxable on the CFC company's income. A legal entity that is not subject to income tax in its home country cannot be considered a real income tax subject. The same applies to a foreign legal person who is in principle liable to pay income tax but who is not actually liable to pay the tax (due to, for example, a zero tax rate or due to exemption from tax). Furthermore, a foreign legal entity that is not covered by an income tax system in its home country cannot be considered an income tax subject there.

Because of the application of the nondiscrimination clause in Sweden's tax treaties, even a foreign company established in a non-EEA country can qualify as a holder of business-related shares, provided it has a permanent establishment (PE) in Sweden. Such a company is, therefore, able to receive tax-free dividends from Swedish, as well as foreign, subsidiaries. Most of Sweden's tax treaties provide that Sweden will treat dividends received by a PE in Sweden as if they were dividends received by a Swedish company.

In general, every Swedish company is subject to the same tax rules, regardless of whether the company's primary purpose

[239] Income Tax Act, Ch. 24 Sec. 33.
[240] Income Tax Act, Ch. 24 Sec. 33.
[241] EC Parent-Subsidiary Directive 90/435/EEG.
[242] Income Tax Act Ch. 24, Sec. 32 and Ch. 25a, Secs. 3, 5–8. In an advance ruling published November 26, 2004, an Irish Ltd. company was considered equivalent to a Swedish limited liability company (AB).
[243] *Internationell Beskattning*, Mattias Dahlberg, 5th Edition.

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is to act as a holding company or to conduct trading activities. This means that all companies receiving dividends or deriving capital gains may avail themselves of the participation exemption if the specified conditions for its application are met.

A partnership is treated as a transparent entity for income tax purposes and is recognized as a separate taxable entity only with respect to the real property tax and the special security premiums on pension costs. The participation exemption also applies with respect to holdings in partnerships as well as on disposal of holdings by partnerships in qualified entities. In the latter case, the partners themselves must be qualified entities to benefit from the participation exemption. See VIII., below.

A restriction on the availability of the participation exemption applies in connection with the sale of "shell companies."[244] A shell company is a company for which the market value of its cash, shares, and other financial instruments (other than those held for a functional business purpose) and assets similar to such assets exceeds 50% of the amount of the consideration paid by a buyer of the shares issued by the shell company. If such a company is sold, the seller may have to recognize the total consideration as income. However, taxation can be avoided provided a particular tax return for the company disposed of is submitted to the tax authorities. Specifically, the auditors must file the shell company's financial statement as of the disposal date using a unique form. In addition, the seller may have to provide a guarantee to the tax authorities for any potential tax costs that may encumber the company's disposal. In certain circumstances, it is also possible for the taxpayer to file a request for the rules on shell companies not to apply, giving specific reasons for the request. In such cases, the tax authorities will examine whether the causes provided by the taxpayer justify the non-taxation of the capital gains. In this respect, the tax authorities will consider the reasons for the sale and how the consideration for the shares was determined. The rules on shell companies will normally not apply in the case of "minority sales"[245] as the significant influence over the company will not be passed over to the new shareholder. On the disposal of shares representing less than 50% of the voting rights in the shell company, the capital gains will be taxed only in exceptional circumstances. What these circumstances are is not, however, specified in the legislation.

(2) Application of the Participation Exemption Rule in an International Context

(a) U.S. DISC Company

The Swedish National Board of Advanced Rulings (the Board) tried a case regarding the classification of a Delaware domestic international sales corporation (DISC) under the participation exemption rules.[246] The Supreme Administrative Court[247] stated that, since the purpose of the provisions on tax exemption for dividends and capital gains on business-related shares is to avoid double taxation within the corporate sphere, a foreign company must correspond to a Swedish limited liability company and be subject to tax in its home country. As applied to a DISC company, the civil law test comparison did not give rise to any doubt that a Delaware company is considered to be similar to a Swedish limited liability company. The issue at hand in the case was the taxation status of the DISC company. Neither the wording nor the meaning of the U.S. tax rules concerning a DISC company gave, in the opinion of the Board, support to the fact that the entity would be a separate tax subject. Instead, according to the Board, the regulations showed that the taxation of a DISC's income was made at the level of the shareholders as a result of the tax exemption applied at the company level. Such a company did not correspond to a Swedish limited liability company being a separate tax subject.

(b) Russian OOO Company

A Russian OOO (*obchtchestvo s ogranitschennoy otvetstvennostuy*) company is considered to correspond to a Swedish limited liability company for the purposes of applying the provisions on business-related shares.[248]

(c) British Virgin Islands Company

A company limited by shares formed in the British Virgin Islands does not correspond to a Swedish limited liability company, therefore, the provisions on business-related-shares are not applicable.[249]

(d) Jersey Private Limited

In an advanced ruling case, both the Tax Court and the HFD concluded that shares in a company located in Jersey could be considered as business-related shares. The HFD pointed out that the company was taxed at a rate of 20% on property income attributable to Jersey and on revenue from importing and selling certain fossil fuels. The company was, thus, subject to tax. The fact that other income was taxed at a 0% tax rate did not change this assessment. In its decision, the HFD did not consider relevant the fact that the company could sell its property and, as a result, no longer be taxed on any income in Sweden.[250]

e. Income from Foreign Sources

Income from foreign investments through a local company will only be subject to Swedish taxation if profits are distributed or if the holding is sold. In the majority of cases, such income will, however, be tax-exempt as a result of the application of the participation exemption. A direct investment by a Swedish company in the form of a PE abroad is incorporated in the financial statement of the Swedish company and subject to Swedish taxation under Swedish rules.[251]

f. Stock Options

When a Swedish company exercises a stock option, the market value of the shares, at the date of exercise of the option, must be reflected as an asset of the company. The tax treatment of any gain resulting from the transfer of such shares is similar

[244] Income Tax Act, Ch. 25a, Secs. 9–18.

[245] Minority sales are defined as the passing over of significant influence with no specific percentage given. It can be assumed that it means the transfer of less than 50% of the votes.

[246] Ruling Nr 35-18/D, published January 14, 2019.

[247] HFD 2019 ref. 49.

[248] RÅ 2009 ref. 100.

[249] HFD 2017 ref. 29.

[250] HFD Case: 3421-21.

[251] Income Tax Act, Ch. 6, Sec. 3–4.

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to the capital gains treatment of shares in general. See b. and d., above.

g. Company Group Contributions

Consolidated balance sheets are not recognized for tax purposes in Sweden. However, tax law does allow the shifting of income through a system of company group contributions.[252] The payer of a qualifying group contribution can deduct the amount of the contribution from its taxable income and the payee (the recipient company) must include the amount of the contribution in its taxable income. This means, inter alia, that losses of one company may indirectly be set off against profits of another company in the same group.[253] The most important conditions[254] that must be satisfied for a group contribution to be allowable are:

(i) Both the paying and recipient companies must be resident in Sweden (see below with respect to foreign companies);

(ii) The parent company must hold more than 90% of the shares of the subsidiary for the entire tax year. Where the contribution is made between sister companies, the sister companies must have a common 90% parent;

(iii) The paying and recipient companies must openly report the contribution during the same year; and

(iv) Neither of the companies may be an investment company or a company whose sole purpose is to provide its members or shareholders with a residence.[255]

If the contribution is made by a subsidiary to its parent company, an additional requirement must be met, i.e., the parent company must not be liable to tax for dividends received from the subsidiary in the same year.

Where a sister company makes a contribution to another sister company, the requirements to be met (in addition to those mentioned above) are as follows:[256]

(i) The parent company of the sister companies must be an investment company. An investment company is defined as a company that solely, or almost solely (the threshold for meeting the "solely or almost solely" requirement is not quantified in the legislation and there is no case law clear enough to enable such quantification) holds securities or similar assets, the goal of which is to offer a spreading of risks by a well-allocated investment in securities, with a large number of owners;

(ii) A distribution of dividends by a subsidiary to its parent company in the same year in which the subsidiary makes a contribution to its sister subsidiary will not be taxable at the level of the parent company; or

(iii) A distribution of dividends by the subsidiary that has received a contribution, will be taxable at the level of the parent company.

The group contribution regime may also apply in relation to foreign companies with PEs in Sweden. To meet the requirements of the EU Treaty, a special provision places foreign companies established in the EEA on an equal footing with Swedish companies in this respect, provided these companies have PEs in Sweden.[257] The company group contribution regime is also available to foreign companies resident in countries that have concluded tax treaties with Sweden. The application of the nondiscrimination clause in tax treaties[258] enables intra-group contributions to be made between a Swedish subsidiary and a Swedish branch of a foreign parent company. According to case law, the nondiscrimination clause also means that a deduction should be available for group contributions between two resident companies that have a common nonresident parent company.[259] Whether the nonresident company is owned by a resident company is of no importance. Moreover, if a resident company owns a nonresident company that owns another resident company, group contributions between the two resident companies are deductible at the level of the paying company.[260]

As a result of the decisions in the CJEU *Marks & Spencer*[261] and *Oy AA*[262] cases, Sweden changed the domestic tax legislation regarding tax-deductible intra-group contributions. A contribution from a Swedish parent company to foreign subsidiaries, with finalized losses, is now permitted.[263] A loss is final if it has not been possible to utilize and cannot be used by the subsidiary or anyone else in the State where the subsidiary is resident. However, the subsidiary cannot use as justification the fact that there is no legal possibility to do so or that this possibility is limited in time.

The primary conditions that have to be met for such a deduction are the following:

(i) The subsidiary has been put into liquidation, and the liquidation has been closed;

(ii) The parent company has wholly-owned the subsidiary throughout the tax year of the parent until the liquidation was closed or the parent company has wholly-owned the subsidiary since it started operating until the liquidation was closed;

(iii) The deduction is made at the time of taxation for the tax year in which the liquidation was closed;

(iv) The parent must disclose the deduction openly in the income tax return; and

[252] The system of company group contributions is governed by Income Tax Act, Ch. 35.

[253] RÅ 1989 ref. 31. Deductions for intra-group contributions to a parent company that at the same time made a shareholder's contribution are not permitted under the Tax Evasion Act, on the grounds that the intra-group contribution in these circumstances was made for the purpose of creating additional deficit in the subsidiary before a sale of the subsidiary. RÅ 2000 ref. 21. Deductions for intra-group contributions are not permitted, according to the Tax Evasion Act, when the contributions aimed at creating a deficit in a Swedish AB before a sale of the corporation.

[254] Income Tax Act, Ch. 35, Sec. 3.

[255] RÅ 1999 ref. 30: The conditions that apply at the end of the assessment year are decisive.

[256] Income Tax Act, Ch. 35, Sec. 4.

[257] Income Tax Act, Ch. 35, Sec. 2a.

[258] I.e., a clause based on OECD Model Convention, Art. 24(5).

[259] RÅ 1987 ref. 158.

[260] RÅ 1993 ref. 91 I.

[261] C-446/03.

[262] C-231/05.

[263] Income Tax Act, Ch. 35a.

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(v) There are no associated companies with the parent company operating a business in the State where the subsidiary is resident upon closing the liquidation.

The allowable group contribution is granted based on the lower of either the actual loss incurred in the country of origin or the loss calculated in accordance with Swedish tax rules, i.e., the allowable group contribution from a Swedish parent company to a foreign subsidiary will never exceed what it would have been had the losses been incurred by a Swedish subsidiary in a similar situation.

Comment: The scope of the Swedish group contribution, in an international context, has been challenged by the CJEU, as seen in the two cases discussed below. Sweden lost the court cases and, consequently, it is likely that the Swedish tax law will need to be adjusted to comply with EU law.

(1) Memiria Holding AB

The first case involved a cross-border merger, where a German subsidiary with losses would merge into its Swedish parent company.[264] The question was whether deductions could be allowed in the Swedish parent company for the losses in the German subsidiary. The CJEU said that deductions could be granted in Sweden, but only if the Swedish parent company could show that it would likely be impossible to deduct, or otherwise exploit, the losses in Germany in the future.

(2) Holmen AB

The second case[265] mainly concerned issues of losses carry forward in indirectly owned Spanish subsidiaries and whether these losses would be deductible in Sweden after the Spanish subsidiaries had been liquidated. The CJEU declared that losses that have arisen in indirectly owned foreign subsidiaries would normally not be deductible for the Swedish parent company. However, the CJEU clarified that deductions were allowed in Sweden, as all companies located between the Swedish parent company and the foreign subsidiary with losses were domiciled in the same Member State.

h. Packaging of Real Property

A well-known scheme to avoid corporate income tax in connection with the sale of real property consists in dropping real property into a Swedish AB and then selling the shares tax-free under the participation exemption rules. The government, in line with its intention to restrict such tax planning structures, has introduced legislation to end the possibility to make such "packaging structures," at least to the extent of a tax-free transfer of real property (classified as business property) in the form of a donation from the assignor to a company owned by the assignor or his relatives. The legislation deems the real property to have been sold rather than transferred through a tax-free donation, if it is transferred to a legal entity for compensation equal to the difference between the property's residual tax value and the actual purchase price.

Comment: Following the government's examination and analysis of packaging structures, it was expected that new legislation would be presented. As of the time of writing, no bill has been introduced and, therefore, it is still possible to obtain substantial tax benefits using the "packaging structure" other than structures using donations as part of the transaction.

i. Exclusions from Gross Income

Under Swedish law, Swedish companies may exclude items of income from taxation in limited circumstances. Examples of items that do not have to be included in taxable income include: revaluations of assets, intercompany dividends (as discussed at c., above), contributions from shareholders, gifts or damages paid to a company in certain defined circumstances, and Government incentives.

4. Business Expenses

a. General

Expenses incurred by a Swedish company are generally deductible, provided they are incurred in the ordinary course of business.[266] To promote research and development (R&D) in general in Sweden, there is a more liberal policy with respect to the tax deduction of R&D expenses. The legislation gives companies the right to deduct costs for R&D that goes beyond the core business of the company. Consequently, it is also possible to deduct costs that may have an impact and be of interest to the company.[267]

b. Organizational Costs

Expenses incurred in connection with establishing a Swedish company are generally not deductible since these expenses are considered to be costs of the owners.[268] Expenses incurred in connection with dividend distributions, changes of share capital, shareholders' meetings, and the issuance of new shares, are all examples of tax-deductible costs.

c. Travel and Entertainment

Travel expenses incurred in connection with business travel are deductible without limitation. For income year 2025, no entertainment expenses are deductible. A deduction for VAT is still available for expenses up to 300 SEK. A deduction of SEK 180, exclusive of VAT, is still available for the cost of theater tickets, green fees, etc., if the purpose of incurring these expenses is to initiate or maintain business relations.

d. Rents

Payments under a lease agreement for office space are deductible items for Swedish companies without any limitation.[269]

e. Salaries, Wages and Directors' Fees

Compensation paid to an employee is deductible without limitation, even if the employee has an ownership interest in the paying company.[270] Directors' fees are also deductible items, irrespective of whether they are taxable income of the director concerned and whether the director has an ownership interest in the company.

[264] CJEU C-607/17.
[265] CJEU C-608/17.
[266] Income Tax Act, Ch. 16, Sec. 1.
[267] Income Tax Act, Ch. 16, Sec. 9.
[268] Income Tax Act, Ch. 16, Sec. 1.
[269] Income Tax Act, Ch. 16, Sec. 1.
[270] Income Tax Act, Ch. 16, Sec. 1.

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Comment: It is not uncommon for the CEO or members of the board of directors to desire to receive their remuneration as business income in their own private companies. The main reason for such a structure is to obtain a tax credit as the tax rate on a company is much lower than on earned income. This is generally not possible under Swedish law since only natural persons can be on the board or be a CEO under the Companies Act, but there are a few exceptions. For a CEO, the possibility to invoice a company is likely to be limited to assignments such as reconstructions, mergers, downsizing or other similar and well-defined projects. It is no longer possible for a board member to invoice for the services he or she rendered as they must be declared as earned income from employment.[271]

f. Interest and Royalties

Royalty payments under a licensing agreement are deductible without limitation, provided the rate of royalty is not deemed to be unreasonable.[272] As in the case of interest payments, excessive royalty payments made to a related licensor may be reclassified as dividends.[273]

(1) General Limitations for Interest Deductions

Interest expenses payable by a Swedish company are, in general, fully deductible. There is no withholding tax on interest or other financial expenditure payments from Sweden. However, restrictions apply with respect to the deductibility of interest paid between related companies. An ordinary loan may be an effective way of funding the cash flow of a company, but not a remedy for strengthening the equity of a Swedish company. Interest is tax deductible irrespective of the ratio between the equity and the debt in the company. A number of countries have fixed a legally accepted ratio between the two, where the effect of exceeding the ratio is that the interest paid is deemed to be a distribution of dividends and, as such, not tax deductible. Sweden does not recognize such "thin capitalization" rules.

To prevent tax planning by setting off interest payments against income attributed to a Swedish company, interest payments to related companies are not tax-deductible. The legislation explicitly specifies that interest payments to companies resident in non-cooperative countries[274] are not deductible. There are three exceptions from the general interest limitation rule. For the deduction to apply, it is sufficient for only one of these exceptions to be met:

i) The company is resident in a State within the EEA;

ii) The company is resident in a State outside the EEA with which Sweden has entered into a tax agreement. The tax treaty cannot be limited to certain income and the company must be covered by the provisions regarding restrictions on the right of taxation and be domiciled in that State under the agreement; or

iii) The interest income is taxed by at least 10% under the legislation of the State in which the interest receiving company is resident.

Interest deductions will not be allowed unless one of the above exceptions applies. Furthermore, even if the exemptions above are met, a deduction will be denied if the primary reason (approximately 75% or more) of the debt is to obtain a significant tax advantage. The interest deduction is also rejected for interest on loans to acquire shares within an affiliated group unless it is substantially (approximately 40% or more) commercially motivated.

Comment: The HFD ruled in two cases related to interest deduction limitations.[275] The first case concerned a Swedish company (Lexel). Both the tax authorities and the lower courts denied a tax deduction for interest costs paid to a French group company with a deficit, even though the 10% rule applied. The tax authorities applied the tax benefit rule that states that, interest expenses relating to a debt to a company that is part of the same community of interest, may not be deducted if the *main reason* (2013 rules) for the debt structure is to obtain a substantial tax benefit. The HFD confirmed that Lexel and the French lender were in a community of interest with each other and, therefore, the interest paid from Sweden to France was not deductible. However, based on the judgment of the CJEU, it was not compatible with Article 49 of the Treaty on the Functioning of the European Union (TFEU) to refuse Lexel the deduction of the interest expenses based on the tax benefit rule. Consequently, the HFD announced that the appeal should be upheld and, therefore, the deduction of the interest expenses could proceed.

In the second case, a Swedish company (Husqvarna) had applied for an advance ruling regarding the right to deduct interest payments on a loan to an Irish company within the same group. According to the 2019 rules, deductions are allowed for interest payments within the community of interest provided the entity entitled to the interest payment is resident within the EEA. However, deductions can still be denied if such interest payments have *exclusively or almost exclusively* arisen in order for the community of interest to receive a significant tax advantage. The 2013 rules stated that deductions could be denied if the tax advantage was the *main reason* for the transaction. The HFD tested the compatibility of these rules with EU law and concluded that the CJEU's reasoning in the Lexel case described above[276] (which concerned the 2013–2018 interest deduction limitation rules), is fully transferable to the current applicable regulations on deductions for intra-group interest payments (2019 rules). Furthermore, the HFD noted, with reference to the preparatory work, that the intention of the 2019 exception rule is based on the same circumstances as the previous 2013 rule. Therefore, guided by the Lexel case, the HFD confirmed that the interest was deductible.

(2) The EBITDA Rule

In addition to the general interest limitation rule for interest payments to affiliate companies, a limitation sets a ceiling for the interest deduction of 30% of EBITDA.[277] The limita-

[271] HFD Case Nr. 3978-18.
[272] Income Tax Act, Ch. 16, Sec. 1.
[273] Income Tax Act, Ch. 16, Sec. 1.
[274] Income Tax Act, Ch. 24. Sec. 15b.
[275] HFD 2021 ref.68 (*Husqvarna*), HFD 2021 Not 10 (*Lexel*). HFD 2022 ref.49 shares.
[276] CJEU (C-484/19).
[277] Income Tax Act, Ch. 24 Sec. 18, 24.

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tion applies to negative net interest expenses as defined under Swedish law, i.e., the difference between interest income and interest expenses. Negative net interest that may not be deducted in one year may be carried forward during a period of a maximum of six years, but it is lost in the event of change of ownership. Net interest expenses up to SEK 5 million per group may be deducted without applying the EBITDA rule.

(3) The Leasing Rule

In the case of financial leasing, an interest component shall be calculated for tax purposes.[278] The interest component is decisive for calculating the deductible interest. The provisions do not apply if the total lease payments that the entity, or companies belonging to the same community of interests, have for financial leases are less than SEK 1 million.

(4) The Anti-Hybrid Rules

Under the anti-hybrid rules,[279] there is an absolute prohibition of interest deductions and other expenditures in the case of so-called hybrid mismatches. The hybrid restrictions apply in relation to associated companies and cover deductions/non-inclusion, imported mismatches, and double deduction situations:

(i) The deduction/non-inclusion rules aim to cover deductions for expenses without the corresponding income being included in taxation. Swedish legislation addresses five specific situations:

- Differences in the classification of financial instruments and payments thereunder;
- Differences in the classification of paying companies;
- Differences in the classification of the recipient company;
- Differences in the assessment of the existence of a permanent establishment;
- Differences in the allocation of income for a PE.

(ii) Imported mismatches cover deductions of expenditures paid to companies outside the European Union. The rule aims to stop hybrid mismatches that occur when mismatches originate in states that have not imposed restrictions against hybrid mismatches, which are then introduced into states with a regulatory framework against hybrid mismatches, for example, if a company in Sweden with a deductible expense can offset the income corresponding to the cost thereby resulting in a hybrid mismatch.

(iii) Double deduction covers four different scenarios under which double deductions for the same expense occurs. The situations covered are:

- Deduction of the same expenditure in different companies;
- Deduction of the same expenditure by a PE;
- Reversal of deductions; and
- Dual-domiciled companies.

g. Shareholders' Contributions and Profit

No Swedish stamp taxes or duties are levied on capital contributions, nor is any corporation tax levied on the injection of capital, since this is considered to be a capital contribution (i.e., a gift).

(1) Conditional and Unconditional Contributions

Two kinds of shareholders' contributions are available in Sweden as a means of refinancing and strengthen the equity of a Swedish company (apart from the usual new issue of shares at a premium), namely, conditional and unconditional contributions. Normally, when granted, both contributions will be booked directly as unrestricted equity at the level of the receiving company. From a Swedish (and grantor's) perspective, an unconditional contribution will be treated as an additional and definitive investment in the Swedish recipient company. For a Swedish grantor, it will be added to the cost base of the shares for capital gains tax purposes. As such, it is not repayable.

Also from a Swedish perspective, a conditional contribution will, from the grantor's viewpoint, be treated as a latent or conditional receivable, and may be repayable when the recipient company once again is profitable and attains a dividend-paying position. The future repayment of the contribution is based on an agreement between the shareholders and is effected by them at a shareholders' meeting. Technically, the shareholders give up their right to a distribution of a dividend in exchange for the repayment of the conditional contribution.

The repayment of a conditional contribution is (from a Swedish tax perspective) not treated as a dividend but rather as a repayment of a loan. From a Swedish company law perspective, however, it still represents a dividend distribution. The conditional nature of the contribution must be shown in the documentation, enabling a "repayment of future unrestricted earnings according to the adopted balance sheet." Further, the contribution must be noted in the balance sheet of the Swedish recipient company as a latent or contingent liability. When the recipient company subsequently attains a profit position (enabling it to distribute dividends), its shareholders may decide either to distribute the profits or to book the originally contributed amount (or part of it) as a liability and repay it (or to keep it as a liability, which normally would trigger tax-deductible interest charges). According to case law, the repayment of a conditional shareholders' contribution is to be treated as the repayment of a loan for tax purposes.[280] "Interest" payments relating to a shareholder's contribution is not considered to constitute a distribution of dividends for Swedish tax purposes. Interest on a conditional shareholder's contribution is only tax deductible following the adoption of a resolution by the shareholders' meeting to reimburse the contribution.[281]

(2) Equity Participation Loans

Another form of financing is through equity participating loans.[282] An equity participating loan is a debt instrument in

[278] Income Tax Act, Ch. 24 a.
[279] Income Tax Act, Ch. 24b.
[280] RÅ 1985 ref. 1:10.
[281] RÅ 1987 ref. 145.
[282] Companies Act, Ch. 11, Sec. 11.

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which the underlying obligation to repay the capital amount and the interest of the loan, in whole or in part, is made dependent upon economic factors such as dividend distributions, the share price at a particular time, the issuer's profit level or the issuer's financial position taken as a whole.

The equity participating loans will enable Swedish companies to issue an instrument that, from a financial perspective, in all material aspects, can be made to resemble an equity-related instrument (for example, shares). However, it is important to note the very significant exception to this proposition, to the effect that the participating loan will not allow its holder any administrative rights (such as voting rights and other shareholder rights).

(3) Profit Participation Loans

The interest rate of profit-sharing loans is generally divided into a fixed and a variable part. The variable interest rate is usually related to the company's dividend or its profit.

The tax treatment of the two forms of participating loans differs. For the fixed interest rate on the profit participation loan, general provisions for interest deduction apply. The company may deduct the variable interest only if the loan has been offered for subscription on the open market. If the loan has been issued to shareholders, management, or relatives of the shareholders, or management in a closely held company,[283] the variable interest is not deductible.

As regards equity participation loans under which the repayment of the principal depends on the results of the borrowing company, any interest on the loan is treated in the same way as that on any other loan, i.e., as a tax-deductible cost for the borrower and as taxable income for the lender. A profit or loss made in connection with the repayment of the loan itself is neither taxable income nor a tax-deductible cost for the borrower.[284] For the lender, the profit is taxable and the loss is tax deductible. A limitation also applies to losses if the loan is given to a so-called company in community of interests.[285]

h. Taxes

All taxes (except Swedish income tax and VAT) and public levies and charges may be deducted for income tax purposes.[286] Taxes levied by foreign countries may also be deducted. Foreign taxes may be deducted only if actually paid, but do not need to have been finally assessed.[287] However, if a foreign tax has been finally assessed, the company is allowed to choose to credit the tax against Swedish tax instead of taking a deduction.[288] (For a discussion of the foreign tax credit, see 8.a., below.)

i. Obsolete Equipment

Because obsolete equipment is deemed to have no useful life, immediate and full depreciation may be taken in the year in which the equipment becomes obsolete.[289]

j. Charitable Contributions and Dividend Donations

As a general rule, corporate taxpayers are not allowed a deduction for contributions to charities. The only statutory exceptions are deductions for contributions made to the Foundation of the *Tekniska Museet* (a technical museum) and certain regional development companies controlled by the state or regional bodies.[290]

The HFD has established that a shareholder cannot be taxed on dividends when it is clear, at the time that the dividend can be disposed of, that the shareholder has given away his or her right to dividends. The principle applies both to dividends on shares in listed companies and sole proprietorships and whether the donor's shares, on which the dividend is based, are qualified or not.[291] The right applies to any donation by either an individual or a corporation to any third party.

k. Capital Losses

Capital losses arising from the disposal by a company of assets that are connected with the pursuit of a trade or business may be fully set off against taxable income of the company, as discussed in 3.b., above. Losses on the disposal of shares and securities akin to shares may either be set off against current income or be set off only against taxable capital gains, depending on whether the asset concerned is connected with the business. Any resulting loss may be carried forward indefinitely.[292] A capital loss arising on the sale or disposition of shares or other securities that are taxed as shares is only deductible against a capital gain on such shares or securities. A capital loss on securities that are taxed as shares may be deductible against capital gains on such securities that arise within the same group of companies, provided the requirements for a group contribution are met (see 3.g., above). Capital losses not set off against such gains within the same financial reporting year may be carried forward by a company indefinitely for set off against future capital gains.

l. Casualty Losses

A loss resulting from an uninsured casualty is a deductible item.[293] If insurance proceeds are paid as a consequence of the casualty, the proceeds must be included in taxable income, provided they relate to property that, if sold, would generate taxable income (for example, inventory).[294]

m. Bad Debts

Appropriations to a reserve for bad debts are not deductible for corporate tax purposes. For the taxable amount to be reduced (and VAT repaid) due to bad account receivables,

[283] As defined in Income Tax Act, Ch. 2, Sec. 22 and Ch. 24, Secs. 5–10.
[284] Income Tax Act, Ch. 48, Secs. 6b and 28.
[285] Income Tax Act, Ch. 25a, Sec. 19. Companies in community of interests are companies that are mainly under joint management, or where one of the companies has, directly or indirectly, through an ownership interest or otherwise, a significant influence over the other company.
[286] Income Tax Act, Ch. 16, Secs. 16–17.
[287] Income Tax Act, Ch. 16, Secs. 18–19.
[288] Foreign Tax Credit Act (*Lag* (1986:468) *om avräkning av utländsk skatt*).
[289] Income Tax Act, Ch. 18, Secs. 4–5.
[290] Income Tax Act, Ch. 16, Secs. 10 and 12.
[291] RÅ 2006 ref. 45, RÅ 2009 ref. 68, and HFD 2011 ref. 24.
[292] Income Tax Act, Ch. 40.
[293] Income Tax Act, Ch. 16, Sec. 1.
[294] Income Tax Act, Ch. 15, Sec. 1.

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the company must demonstrate that payment is likely not to be made. The reason for such an event may be due to the customer's inability to pay or, in an exceptional case, that the claim is in practice impossible to recover for other reasons.

n. Depreciation and Amortization

No distinction is made, for Swedish corporate income tax purposes, between the depreciation of a tangible asset and the amortization of an intangible asset.[295] Two depreciation methods are available. Thirty percent of the cost of an asset may be depreciated on a declining balance basis. Alternatively, 25% of the cost may be depreciated on a straight-line basis. Subject to the maximum percentage rates allowed under these provisions, a corporate taxpayer has the right to make an annual election as to the method that is most advantageous to it.[296] As a consequence, the capital cost of machinery and equipment is usually recovered in five years.

If a piece of equipment has an expected life of three years or less, the entire amount may be depreciated in the year of acquisition.[297] It is not allowed to include interest expenses in the cost for assets when accounting for depreciation and amortization.

o. Inventory

Inventory is defined as assets used in the pursuit of a trade or business that are intended for resale or for use as raw materials.[298] Inventory is valued in accordance with its lowest value in accounting terms.[299] The lowest value means the lower of acquisition value or real value. Real value is the lower of net sale value or repurchase value after a reduction for actual worthless inventory.[300] The first-in-first-out (FIFO) method is used to determine the value of inventory.[301]

As an alternative, certain inventory may be valued at 97% of acquisition value, i.e., at acquisition value less a deduction for unsalable inventory equal to 3%.[302] The 3% unsalable deduction assumes that the entire inventory has been valued in accordance with the lowest value principle. If inventory has been acquired as a matter of contract, but not yet delivered, any actual reduction in price may be deducted. No deduction for a risk of price reduction is allowed in this connection.[303]

p. Reserve Accounts

Taxpayers liable to Swedish income tax based on business activity are entitled to make appropriations, for accounting and tax purposes, to an accrued fund (*periodiseringsfond*).[304] Excluded from this benefit are, for example, investment companies and investment funds.[305] The maximum appropriation is equal to 25% of the annual income (30% in the case of individuals) and, the appropriation constitutes a deductible item for the company (individual).[306] In the case of legal entities, the allocation is subject to an interest payment in the form of a fictitious income (*statslåneräntan*) calculated based on a reference interest rate used for tax purposes, as of the end of November of the year before the allocation is made. For allocations made in 2025, the interest charged is 1.96%.[307]

The appropriation for each year creates a separate amount or fund.[308] The appropriation thus made must be reversed and exposed to corporate taxation by the sixth taxable year, at the latest, after the year in which the appropriation was made.[309] The amount of the reversal of earlier appropriations to the accrued fund is included in the basis for any renewed appropriation. There is no requirement for any payment in cash to a separate account for any purpose. There is no relationship between an appropriation to the accrued fund and the use of the proceeds thereof for any investment by the company or the amortization of any asset.

The accrued fund is an appropriation available to corporate taxpayers and could be regarded as a potential carryback. In the case of a merger, the surviving company may take over the appropriation made and that amount may be used or reversed by the surviving company in accordance with the rules that apply to the company that made the appropriation.

The Swedish tax system affords corporate taxpayers another reserve and consolidation opportunity in the form of the replacement reserve.[310] This reserve allows certain taxable income to be set aside for tax purposes. The income concerned comprises compensation for property that has been damaged by fire or other accidents, expropriations, or events tantamount to acts of God. The amount appropriated to the replacement reserve must be reversed in the third taxable year after the year in which the appropriation was made.[311]

5. Tax Consequences of Mergers and Liquidations

a. Mergers

Generally, no gain or loss is recognized (by either company) on a merger transaction, provided the companies concerned merge under the terms of the Companies Act and the Income Tax Act. The Income Tax Act states that the vendor company before the merger must be taxable in Sweden on its profits and that the same profits must be taxable in Sweden in the hands of the surviving company after the merger. Otherwise, any gains attributable to the merger will be taxable.[312] In the case of a merger, the surviving company is entitled to claim the deductions and carryovers to which the absorbed company would otherwise have been entitled.[313]

According to Swedish case law, goodwill resulting from a merger between a parent company and its subsidiary will not give rise to a taxable event provided the amount of the goodwill

[295] Income Tax Act, Ch. 18, Secs. 1 and 13.
[296] Income Tax Act, Ch. 18, Sec. 13.
[297] Income Tax Act, Ch. 18, Sec. 4.
[298] Income Tax Act, Ch. 17, Sec. 3.
[299] Income Tax Act, Ch. 17, Sec. 3.
[300] Act on Annual Reports, Ch. 4, Sec. 9.
[301] Act on Annual Reports, Ch. 4, Sec. 11.
[302] Income Tax Act, Ch. 17, Sec. 4.
[303] Income Tax Act, Ch. 17, Sec. 22.
[304] Income Tax Act, Ch. 30, Sec. 1.
[305] Income Tax Act, Ch. 30, Sec. 1.
[306] Income Tax Act, Ch. 30, Secs. 5–6.
[307] Income Tax Act, Ch. 30, Sec. 6a.
[308] Income Tax Act, Ch. 30, Sec. 4.
[309] Income Tax Act, Ch. 30, Sec. 7.
[310] Income Tax Act, Ch. 31, Sec. 1.
[311] Income Tax Act, Ch. 31, Sec. 19.
[312] Income Tax Act, Ch. 37, Secs. 1 and 17–18.
[313] Income Tax Act, Ch. 37, Secs. 21–25.

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does not correspond to an asset recorded in the subsidiary's financial statements prior to the merger.[314]

For a merger to be effective, a contract must be prepared and approved by the Swedish Companies Registration Office.[315] The absorbed company is deemed to be dissolved and its assets and liabilities transferred to the surviving company when the merger is approved, i.e., at the time the decision of the Swedish Companies Registration Office is registered.[316] The EC Merger Directive[317] and the EC Parent-Subsidiary Directive,[318] as implemented in Swedish law through various provisions in the Income Tax Act, must also be considered in this context.

b. Exchange of Shares

In accordance with the terms of the EU Merger Directive, as reflected in Chapter 49 of the Income Tax Act, an exchange of shares does not result in taxable income in the hands of the transferee and the old basis in the stock is carried forward to the transferor. It is a requirement for deferral that the transferee be a resident Swedish legal entity or a Swedish PE with which the shares are connected.

If the acquiring company is a resident of an EU Member State (unless it is a company that, under the terms of a tax treaty, is deemed not to be a resident of a Member State), deferral will be granted under these provisions. Other foreign entities, including U.S. entities, must be classified as "foreign corporations" for Swedish income tax purposes in order to qualify under the tax deferral provisions.[319] As described in VI.A., below, a foreign entity resident in a tax treaty partner country of Sweden (and covered by the relevant tax treaty) is always deemed to be a foreign corporation. Hence, under this approach, U.S. corporations, for example, are classified as "foreign corporations" for this purpose.

Similarly, in accordance with legislative action the Income Tax Act, intra-group transfers and reorganizations also normally qualify for the deferral of capital gains taxation of the transferee. Furthermore, under related legislation,[320] the basis in the stock of the transferee is carried over, without any step-up in basis or recognition of capital gain, on certain business transfers.

c. Liquidation

A resolution to liquidate a Swedish company is adopted at a meeting of the shareholders by a simple majority of the shareholders, unless provided otherwise in the charter.[321] At that time, a liquidator is appointed to whom all of the powers of the organs of the company are transferred.[322] The principal duties of the liquidator are to pay off all debts of the company and to distribute any remaining assets to the shareholders.[323] Capital returned to a shareholder is subject to tax as a capital gain if the capital returned exceeds the capital invested by the shareholder as equity or shareholder's contribution (see 3.b., above).[324]

6. Capital Expenditure

The amount of a capital expenditure may not be taken as a current deduction, except when the capital asset concerned has an expected life of less than three years.[325] Other capital costs must be expensed over a number of years.[326]

7. Loss Carryforward and Carryback

Net operating losses incurred in a taxable year may, as a general rule, be carried forward indefinitely by a Swedish corporate taxpayer.[327] However, in the case of a change of ownership of the loss-making company, certain restrictions may apply as to the buyer utilizing the tax losses carried forward.

If the acquisition involves multiple loss-making companies within the same group, the capacity for deductions shall be distributed among them according to their share of the group's total accumulated loss.[328] The restrictions on controlling influence do not apply if the company gaining control was already part of the same corporate group as the loss-making company prior to the ownership change.

There are exceptions to these restrictions in the following situations:[329]

(i) Changes in controlling influence occur due to inheritance, a will, property division, or changes in family circumstances;

(ii) The individual who has gained control has served as a company manager in the loss-making company during the two years leading up to the ownership change; or

(iii) The person who has gained control had prior influence over the loss-making company before the ownership change.

The Swedish Tax Council (Skatterättsnämnden) has clarified in an advance ruling[330] that the exemption for company managers applies solely to managers of closely held companies. The definition of a company manager is outlined in the regulations for closely held companies, specifically in Chapter 56, Section 6 of the Income Tax Act (IL). Therefore, for the exception to be valid, the loss-making company must be classified as a closely held company.

These restrictions affect the ability to utilize losses in two different ways:

(i) Tax losses exceeding 300% of the purchase price are forfeited;[331] and

[314] RÅ 2003 ref. 47.
[315] Companies Act, Ch. 23, Secs. 14, 20, 23, 30 and 33.
[316] Companies Act, Ch. 23, Secs. 1, 26 and 34.
[317] Council Directive 90/434/EEC of July 23, 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States.
[318] Council Directive 90/435/EEC of July 23, 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States.
[319] Income Tax Act, Ch. 6, Sec. 8.
[320] Income Tax Act, Ch. 49, Sec. 9.
[321] Companies Act, Ch. 25, Secs. 1–2.
[322] Companies Act, Ch. 25, Secs. 28 and 30.
[323] Companies Act, Ch. 25, Secs. 35 and 38.
[324] Income Tax Act, Ch. 44, Secs. 7 and 13.
[325] Income Tax Act, Ch. 18, Sec. 4.
[326] Income Tax Act, Ch. 18, Sec. 4.
[327] Income Tax Act, Ch. 40, Sec. 2.
[328] Income Tax Act, Ch. 40, Sec. 15.
[329] Income Tax Act, Ch. 40, Sec. 13.
[330] SRN 2009-05-28, 147-08/D.
[331] Income Tax Act, Ch. 40, Sec. 15.

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(ii) Tax losses up to the 300% limit are restricted for company group contribution purposes during a five-year period after the ownership change takes place, i.e., the old losses cannot be offset against profits in the purchasing company or its affiliates.[332]

The HFD[333] has decided against both the Swedish Tax Agency and the lower courts concerning the calculation of the purchase price under the limitation rule. The HFD determined that transaction costs may be included as part of the buyer's purchase price for the shares and ruled that it was irrelevant to assess whether the buyer's payment refers to the purchase price for the shares or transaction expenses connected with the share purchase.

The restrictions do not apply to losses accrued during the financial year in which the change of ownership occurred. Only losses carried forward from previous fiscal years are affected.

A change of ownership occurs if:

(i) A company has acquired, directly or indirectly, shares representing decisive control of a company with tax losses; or

(ii) A company with tax losses (or the parent of such a company) has acquired decisive control of a new company, in which case the ability to use tax losses against group contributions will be restricted.[334]

Decisive control is normally defined as more than 50% of the voting power of the company; however, decisive control may also be obtained through agreements between the shareholders.

If the losses at the time of the acquisition were the predominant reason for the change of ownership, the loss-making company's right to deduct losses from previous tax years ceases in its entirety.[335]

8. Tax Credits

a. Foreign Tax Credit

Under Swedish domestic tax legislation, Swedish companies can avail themselves of a credit for foreign income taxes instead of treating such taxes as deductions for income tax purposes (for the deduction of foreign taxes, see 4.h., above).[336] Foreign taxes are available for credit against the national income tax and also the municipal tax, computed before credit, attributable to the foreign-source income subject to the foreign tax (i.e., taxable income attributable to a PE; income from foreign situs real property; and interest, royalties or dividends from foreign legal entities that are not otherwise exempt from Swedish tax).[337] The amount of the credit may not exceed the amount of foreign tax actually paid and is limited to the amount of Swedish tax due on the foreign-source income.[338]

In the case of business entities, the foreign tax credit limitation amount is calculated based on an overall approach, i.e., all types of foreign income from all countries are aggregated, except for CFC income subject to the rules on current taxation. This means that, if a taxpayer receives CFC income, two separate limitation amounts must be calculated.

If there is an applicable tax treaty, the treaty will override domestic law so that the credit will be given under the terms of the treaty. However, the domestic rule providing for a general overall limitation may be more generous that the per item method applicable under certain tax treaties. To the extent domestic legislation provides for a more beneficial credit method than a particular tax treaty, the domestic legislation will be applied instead of the rule provided for under the treaty.

In the case of individuals, because different tax rates apply to capital income and ordinary income, separate foreign tax credit limitation amounts must be calculated for capital income and for income from business activities and employment. As in the case of business entities, foreign income from all countries is aggregated and put in the appropriate basket (i.e., the basket for capital income or the basket for income from business activities and employment).

The foreign tax may be credited only when it has been finally assessed.[339]

b. Other Tax Credits

No credits are allowable against corporate income tax apart from those available under the foreign tax credit provisions.

9. Tax Rates and Calculation of Taxable Income

The basic national income tax rate is 20.6% (2025), which applies to the income of all Swedish taxable entities (except "securities funds").[340] The rate is a flat rate and applies irrespective of the amount of corporate net income. However, special provisions regarding the "accrued reserve" (*periodiseringsfond*) allow annual tax deferral allocations of 25% of a company's profits to be made for a period of a maximum of six years (see 4.p., above).[341] These allocations can then be used to offset eventual losses. As a result of this tax allocation reserve facility, the effective corporate tax rate is lowered to 15.45% (2025).

A few businesses are not subject to ordinary corporate taxation with regard to the rate and/or the basis for the calculation of the tax. For example, insurance companies, investment companies and investment funds, economic associations, and some real estate companies holding real estate for housing purposes are subject to specific rules.

Swedish investment companies are subject to a special income tax rate of 1.5% (2025). Investment companies are defined as companies that exclusively or mainly manage securities or similar assets with the intention of offering the spreading of risk to a larger circle of individual investors by means of the holding of widely spread securities.[342] Taxpayers are free to choose whether to set up a business investment in Sweden as an

[332] Income Tax Act, Ch. 40, Sec. 18.
[333] HFD 605-606-19.
[334] Income Tax Act, Ch. 40, Secs. 10–14.
[335] Income Tax Act Ch. 40 Sec. 17a.
[336] Foreign Tax Credit Act (*Lag (1986:468) om avräkning av utländsk skatt*).
[337] Foreign Tax Credit Act, Ch. 1 Sec. 1.
[338] Foreign Tax Credit Act, Ch. 2 Sec. 9.
[339] Foreign Tax Credit Act, Sec. 3.
[340] Income Tax Act, Ch. 65, Sec. 14.
[341] Income Tax Act, Ch. 30, Secs. 5 and 7.
[342] Income Tax Act, Ch. 39, Sec. 15.

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ordinary corporate structure taxable at a flat tax rate of 20.6% (2025) on profits or to apply the specific investment company taxation rules, provided all the relevant requirements are met.

10. Assessment and Filing

Final assessment of corporate income tax is made in the year immediately after the income year. A Swedish company is required to make advance payments of corporate tax every month, the amounts of which are calculated by reference to the tax assessed in the preceding year. The annual corporate tax return is due by July 1 of the year after the end of the calendar year, if the calendar year is the fiscal year and for those companies filing electronically, the filing is one month later.[343] The deadline depends on the selected financial year.

If the company's income tax return is submitted late, there will be a penalty charge of SEK 6,250. Additional charges will be made with the same amount after three and five months. The Swedish Tax Agency may assess the company, at its discretion, if no tax return is submitted. In the worst-case scenario, the outcome may be a higher tax charge. Delay fees due to the late annual report or income tax return are not deductible.

Comment: A late filing will most likely trigger a note in the auditor's report that the income tax return has not been handled correctly. A remark for auditing companies is public and can be seen by anyone. This can, for example, lead to poorer credit ratings. If the company does not submit its income tax return on time or otherwise neglects to pay and report its taxes on time, it can lead to the Swedish Tax Agency deciding to de-register the company for F-tax which can lead to significant problems for the company to continue its operations.

In combination with not filing the annual report, the Board of Directors and other senior-level executives can be prosecuted for accounting crimes. In most cases, the punishment is a fine, but the penalty scale goes from a fine up to imprisonment for up to six years. Delays of less than three months are generally not prosecuted.

C. Value Added Tax

1. Main Principles

a. General

The main principle of the Swedish value added tax (VAT) system is that VAT is levied only on goods and services transacted in Sweden.[344]

For services, or ancillary services, related to cultural, artistic, sporting, scientific, educational, entertainment events or activities, or to fairs and exhibitions that are streamed or otherwise made available virtually and provided to a non-taxable person, the place of supply is Sweden if the recipient is established, resides, or has a habitual residence in Sweden.[345] In other cases, the services are considered supplied abroad. This means that these services are treated the same way as electronic services regarding the place of taxation, i.e., taxation occurs in the country of consumption.

Liability to VAT arises at the time goods are delivered or services are rendered.[346] Taxable events must be accounted for and returns filed for three-month periods, if the total amount of input VAT does not exceed SEK 40 million, or for one-month periods, in other cases, to secure the deductions for input VAT paid by a taxpayer on each taxable transaction.[347]

The standard Swedish VAT rate is 25% on the VAT-exclusive price, and 20% on the VAT-inclusive price.[348] The mechanism for recovering VAT paid at earlier stages (input VAT) has the effect that the tax is not a cost for the VAT taxpayer, but a sales tax payable by the final consumer. VAT rates are discussed further at V.C.2. below.

b. Exemption Threshold

A taxable person is exempt from VAT on sales of goods and services within the country during a financial year if the turnover does not exceed SEK 120,000, and has not exceeded SEK 120,000 for either of the two immediately preceding financial years. The amount will be adjusted accordingly if the financial year is longer or shorter than twelve months. The exemption from tax liability in Sweden may be invoked by taxable persons established in Sweden as well as by taxable persons established in another Member State of the European Union. For taxable persons established in another EU Member State, the exemption requires that their annual turnover within the EU does not exceed EUR 100,000 during the current calendar year, or did not exceed EUR 100,000 during the preceding calendar year.[349] Furthermore, the taxable person must be identified for VAT purposes in the Member State of establishment in accordance with provisions equivalent to Article 284(3) of the VAT Directive. Accordingly, the taxable person must apply for and obtain such identification from the Member State in which they are established.

c. Deductibility of VAT in Mixed Businesses

When a purchase is made for a business that is only partially subject to VAT (so-called mixed business), the deduction for input VAT is only applicable for the VAT liable part of the business. The right to deduct VAT will be assessed for each purchase according to the proportion of the input VAT related to the VAT liable business. Accordingly, the allocation must be made according to the use of the goods or services acquired in the mixed business on a reasonable basis.

The allocation of input VAT between VAT and non-VAT activities on a reasonable basis, according to Swedish law, follows Article 173(2)(c) of the VAT Directive (the Directive). The VAT Directive stipulates that the deductible proportion of input VAT may also be based on the turnover method (Article 173(1) and 174), which is the main rule for allocating input VAT under the EU VAT Directive.

In 2023, HFD examined whether the apportionment can be based on turnover, even though this principle has yet to be incorporated into Swedish legislation (HFD case no. 7254–7255-22). HFD states that the provision for the apportionment of input VAT on a reasonable basis was introduced in

[343] Tax Procedure Act (*Skatteförfarandelag* (2011:1244)), Ch. 28 and Ch. 32, Sec. 2.
[344] Value Added Tax Act, Ch. 3, Ch. 5 Secs. 1–2.
[345] Value Added Tax Act, Ch. 6 Secs. 46–47.
[346] Value Added Tax Act, Ch. 7, Sec. 12 and 13.
[347] Tax Procedure Act, Ch. 26, Sec. 11.
[348] Value Added Tax Act, Ch. 9.
[349] Value Added Tax Act, Ch. 18 Secs. 4–5.

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the legislation before Sweden became a member of the European Union and that the provision is not designed to be transposed into EU law. The reasonable basis provision does not state that the turnover method should be used as a general rule. Nor does it specify for which transactions another method should or may be used. HFD concludes that the reasonable basis provision does not meet the requirements of clarity and precision established by the CJEU.

HFD states that the main rule of the directive regarding allocation based on turnover has not been incorporated into Swedish law. HFD further states that the provisions of the directive regarding allocation based on turnover, Article 173.1 and 174, have direct effect, allowing individuals to rely directly on these provisions to allocate input tax based on the directive's turnover method.

HFD's decision provides clear guidance on an individual's ability to invoke the directive's main turnover-based allocation method rule with direct effect. Invoking the directive's provisions should enable an individual to apply the turnover-based method to determine the deductible portion of input tax in his or her mixed business.

In the *Morgan Stanley & Co. International plc* case,[350] the CJEU addressed the question of how a taxpayer's VAT deductions for a mixed business (i.e., a company engaged in a line of business that is subject to VAT and another that is not subject to VAT) should be determined when input VAT has arisen in a branch in an EU country. Still, the input VAT was wholly or partly attributable to activities in the head office established in another EU country. The CJEU first stated that a branch and its head office in another EU Member State are the same taxable person. Accordingly, input VAT for costs arising for a branch that can be linked to transactions that the head office has made, according to the CJEU, shall be considered in calculating deductible VAT for the branch. The CJEU held that calculating a turnover-based allocation basis for the right to deduct the costs incurred for a branch but exclusively related to the head office's transactions must be based solely on the head office's turnover to the extent that it is subject to VAT.

For further research on Sweden's VAT system, see also the VAT Navigator.

2. VAT Rates

a. Standard Rate

The VAT is levied at a standard rate of 25%.[351] VAT is levied at all stages of the process of production and distribution of goods and services. VAT is deductible by business customers (entrepreneurs) until the final consumption. Accordingly, the final users (the consumers) bear the tax burden, as they cannot deduct the VAT charged to them by entrepreneurs. Reduced rates of 12% and 6% apply, however, to certain transactions.

b. 12% Reduced Rate

The reduced rate of 12% applies to:

(i) Hotel accommodation;

(ii) The letting of camping sites;

(iii) Foodstuffs and food additives, with the exception of tap water (not bottled water);

(iv) Spirits;

(v) Wine;

(vi) Strong beer and tobacco products;

(vii) Works of art supplied by the artist or his or her successor in title;

(viii) The importation of works of art, collector's items, and antiques; and

(ix) Restaurants and catering services, not including alcohol.[352]

c. 6% Reduced Rate

The reduced rate of 6% applies to:

(i) Books, newspapers and magazines;

(ii) Electronic books and newspapers;

(iii) Admission to concerts, cinemas, theatres and the like;

(iv) Assignments or transfers of copyright with respect to literary or artistic works (subject to certain exceptions);

(v) Assignments or transfers of authors', artists' or performers' presentations of a literary or artistic nature and rights relating to sound or visual recordings of such presentations;

(vi) Admission to sporting events and other services in the field of sport that are not exempt from VAT; and

(vii) Passenger transport, including tourist trips and sightseeing tours, with the exception of services with respect to which transport is ancillary.[353]

3. Electronic VAT Reporting

For companies in Sweden selling electronic services, telecommunication services or broadcasting services to private individuals in other EU countries, VAT will be charged according to the rules that apply in the country where the buyer is located. This type of sale can be accounted for electronically with the Swedish Tax Agency through the e-service One Stop Shop (OSS).[354] The OSS e-service also covers the distance selling of goods and other kinds of services.

Registration with OSS must take place in the EU Member State in which the company has its registered office or a permanent establishment (PE).

Companies whose sales of electronic services to private individuals in other EU Member States do not exceed 10,000 euros for one year do not need to be registered for the OSS scheme but can instead report their Swedish VAT on the turnover on the usual tax return. If sales of electronic services

[350] C-165/17.

[351] Value Added Tax Act, Ch. 9 Sec. 2.

[352] Value Added Tax Act, Ch. 9, Secs. 3–7.

[353] Value Added Tax Act, Ch. 9 Sec. 6.

[354] Available at: https://skatteverket.se/servicelankar/otherlanguages/inenglishengelska/businessesandemployers/startingandrunningaswedishbusiness/declaringtaxesbusinesses/vat/reportvatunderthespecialscheme-soss.4.1997e70d1848dabbac92128.html.

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to private individuals in other EU countries exceed 10,000 euros excluding VAT for one year, the company is obliged to charge VAT according to the VAT rate in the EU member State in which the buyer resides.

The OSS schemes are also available to taxable persons located outside the EU. Without the OSS schemes, a supplier that supplies goods or services to customers in different EU Member States must register for VAT in each of those States. The use of OSS schemes is optional, but a taxable person that chooses to use an OSS scheme must apply the scheme to all supplies that fall under it in all relevant Member States. Thus, the taxable person cannot choose to use the OSS scheme for some Member States and not for others. Once a taxable person has opted into the scheme, the scheme applies to all supplies that person makes to consumers in all Member States.

4. International Transactions

a. Intra-EU Transactions

The Swedish VAT system is harmonized with the system applying within the European Union by Directive 2006/112/EC. Within the EU, no VAT is generally paid on a company's purchase of goods or services from another company in another EU country. VAT should still be reported (reverse charge) in the Swedish VAT declaration, provided that a company is VAT registered in another EU country and invokes a VAT registration number (VAT number). A VAT-free sale can also take place within the EU, with no reporting requirements.

As regards intra-EU transactions, taxable events must be accounted for and returns issued monthly.[355] A foreign company that does not have a PE in Sweden and that carries out transactions in Sweden that are subject to VAT may collect Swedish VAT due to activities and imports attributable to business transactions outside Sweden, which are theoretically subject to Swedish VAT.[356]

The rules governing intra-EU transactions in goods are based on the principle that no VAT is payable in Sweden if:

(i) Goods produced in Sweden are transported to another EU Member State; and

(ii) The purchaser is identified by an individual EU number.[357]

The arrival of goods in another EU Member State means that VAT is chargeable at the rate applicable in that other State. In the case of intra-EU transactions of services, the services are taxable in the Member State in which the purchaser is domiciled or in the State in which the services are rendered.[358]

Supplies of goods made by nonresident entrepreneurs from another EU Member State to customers registered for VAT in Sweden are treated as intra-EU supplies and require the Swedish customer to account for input VAT through the periodic filing of VAT returns. This system of taxation prevents nonresident suppliers of goods from being registered in Sweden.

However, nonresident entrepreneurs supplying goods from another EU Member State to non-registered customers in Sweden must account for Swedish VAT if the total value of their supplies exceeds the annual distance selling threshold of SEK 320,000. In these circumstances, the foreign entrepreneur must be registered in Sweden and account for VAT on the supplies.[359] As of July 1, 2021, companies with total e-commerce sales exceeding 10,000 euros to consumers in other EU Member State must charge the buyer country's VAT on the sale. To avoid VAT registration in each EU country where there are purchasing consumers, the seller can choose to declare VAT in the OSS e-service with the Swedish Tax Agency.

b. EU Cross-Border Transactions for Electric Vehicle Charging

The European Court of Justice[360] has assessed how value-added tax (VAT) should be handled in the sale of electricity for charging electric vehicles when an intermediary is involved.

The case involves the German company Digital Charging Solutions GmbH (DCS), which offers a service that provides electric vehicle owners in Sweden access to a network of charging stations. Through DCS, users can register and obtain a charging card or an app to charge their vehicles at various stations. When a charging session occurs, the local Swedish charging operator supplies the electricity and invoices DCS, and DCS, in turn, invoices the Swedish user.

The question the ECJ had to examine was whether DCS, from a VAT perspective, should be regarded as the seller of the electricity or merely as an intermediary. The court reached three important conclusions. First, it was established that electricity is goods under the EU VAT Directive, Articles 14.1 and 15.1, just like other physical products. When a customer charges their vehicle at a station, the right to dispose of the goods — in this case, electricity — is transferred from the seller to the buyer. This means that electricity must be treated as tangible goods for VAT purposes.

Second, the court ruled that DCS both purchases and sells electricity despite not operating any charging stations themselves. Since they act in their own name towards customers and handle billing as if they were the seller, they are classified under Article 14.2(c) of the VAT Directive as the seller of the good. As a result, DCS must account for and pay VAT on the entire electricity sale rather than being considered a mere intermediary. Finally, the court determined that subscription fees and other services charged by DCS are separate from electricity sales. Customers pay these fees to gain access to the charging network, regardless of whether they charge their vehicles. Since these services are not directly linked to the electricity supply, they must be taxed separately.

Comment: The ruling has significant implications for the electric vehicle industry, clarifying that companies like DCS, which act as intermediaries between charging stations and customers, cannot be regarded merely as facilitators but must assume full responsibility for VAT reporting on electricity sales. At the same time, the ruling makes it clear that fixed fees and subscriptions for access to the charging network constitute sep-

[355] Tax Collection Act, Ch. 10, Sec. 14.
[356] Value Added Tax Act, Ch. 14, Secs. 3–6.
[357] Value Added Tax Act, Ch. 6.
[358] Value Added Tax Act, Ch. 5.
[359] Value Added Tax Act, Ch. 6, Secs. 6–7.
[360] ECJ case C-60/23.

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arate services that should be taxed differently from electricity sales. This decision could have consequences for all companies involved in electric vehicle charging via intermediaries, requiring industry players to review their VAT reporting to comply with EU regulations. In summary, the ECJ's ruling means that DCS must report VAT for electricity sales and related services, but these must be taxed separately. The decision provides more precise guidelines on how VAT on electric vehicle charging should be managed within the EU and may impact other businesses operating with similar business models. The Supreme Administrative Court has referred the case back to the National Tax Board to reassess whether Digital Charging Solutions GmbH's transactions are conducted within Sweden based on the new legal interpretations provided by the ECJ's ruling.

c. Non-EU Transactions

The importation of goods and services from non-Member States is subject to Swedish VAT and the exportation of goods and services to those countries is exempt from VAT.[361]

An importer that is registered for VAT in Sweden must pay and report the input VAT on the import of goods to the Swedish Tax Agency. If the imported goods are required in connection with a business subject to VAT, the ordinary rules for recovering the input VAT apply. The importer does not need to disburse input VAT. Instead, import VAT is recovered in the Swedish VAT return as input VAT on the same return on which the liability is declared (a mechanism similar to that applicable to the reverse charge).

Nonresident entrepreneurs are normally entitled to a refund of VAT on goods and services purchased in Sweden, provided they use the goods and services for the purpose of carrying on an economic activity outside Sweden that, were it to be carried on in Sweden, would be subject to VAT.[362]

Exports of goods to a non-EU Member State (as well as intra-EU supplies of goods transported to another Member State, as discussed in V.C.4.b. above) are not covered by the VAT framework, which means that the exporter does not account for VAT on those supplies but, on the other hand, is entitled to deduct input VAT.

Nonresident entrepreneurs making supplies of goods and services for which they are liable to remit Swedish VAT to the Swedish Tax Agency must be registered in Sweden.

d. CESOP

On 1 January 2024, new legislation was introduced requiring payment service providers to provide information on certain cross-border payments. The legislation is incorporated in the Tax Procedures Act.[363] The purpose of CESOP is to prevent VAT fraud and ensure fair competition among businesses.

The requisite information must be submitted to the Tax Agency, which then sends it to the European Commission, where data is collected in a central electronic system, the central electronic system on payment information (CESOP).

The obligation to provide information encompasses payment service providers the number of whose cross-border payments in Sweden is at least 26 per quarter for the same payee. A payment is deemed to be a cross-border payment when the payer is located in one Member State, and the payee is located in another Member State, a third territory (as defined in Article 6 of the Value-Added Tax Directive) or a third country.

A payment service provider must provide information on, among other things:

(i) Its corporate identity number;

(ii) The payment recipient's name, address, and VAT number; and

(iii) Details of payments made such as their date, their amount, the currency used, and the Member State from which the payment is made.

The data must be submitted to the Tax Agency by the end of the month following the calendar quarter to which the data relate. The data must be provided in a defined electronic form.

In addition to a reporting obligation, the proposal introduces a documentation requirement for payment service providers for purposes of fulfilling their data obligation. A payment service provider must document in electronic form the details of cross-border payments made so the Tax Agency can verify the transactions concerned. A payment service provider will be required to keep records of all cross-border payments it makes, regardless of whether there is a data obligation with respect to the payments.

5. VAT Representatives

Businesses established outside the European Union and the EEA, including U.S. businesses, must appoint and maintain VAT representatives. The representatives will have a mandate to file and collect, on behalf of the nonresident undertakings, any Swedish VAT due from those undertakings.

A foreign undertaking that supplies goods or services subject to Swedish VAT may reverse a VAT charge that would otherwise have to be included in a VAT return or dealt with via a VAT representative. Instead, the Swedish purchaser may disclose and charge the input VAT, in its VAT return, thereby rendering the transaction VAT neutral from the standpoint of both the supplier and the purchaser.

6. VAT Groups

In general, each taxable subject is taxed separately. This also applies to VAT. However, a VAT group enables two or more companies to be treated as a single taxable entity for VAT purposes and submit just one VAT return for each reporting period helping to simplify the process. The companies are, consequently, assigned with a unique registration number and taxed together. As a result, the transactions between them are not deemed as sales subject to VAT, and all the activities conducted by the various group members are regarded as a single activity carried out by the VAT group.

In case C-812/19, Danske Bank A/S, the CJEU clarified certain VAT matters for branch structures that had established VAT groups. The circumstances in the case were that a bank based in another Member State provided its Swedish branch with services and allocated the costs of those services to the

[361] Value Added Tax Act, Ch. 3, Sec. 1.

[362] Value Added Tax Act, Ch. 14.

[363] Tax Procedures Act (Skatteförfarandelagen (2011:1244)) Ch. 33 c, Ch. 38 Sec. 4, Ch. 39 Sec. 3, Ch. 49 b Sec. 3–5, Ch. 49 c Secs. 7–11, Ch. 52 Secs. 8 c and 8 d, Ch. 66 Sec. 24 a.

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branch. The bank was included in a VAT group in the other Member State, while the branch was not included in any VAT group in Sweden. The question was whether the branch was considered to constitute its own taxable person in relation to the VAT group for the purposes of the services received, with the consequence that, if so, the branch's sales would be subject to VAT and, thus, to reporting obligations. The main rule is that supplies between different establishments of the same legal entity usually constitute non-taxable events for VAT purposes. The matter in the case at hand was whether the presence of a foreign VAT group changed this rule. The CJEU declared in the so-called Skandia case (C-7/13) that a Swedish VAT group constitutes its own taxable person in relation to a foreign establishment.

Based on this, the CJEU ruled that, the head office of a company located in a Member State and part of a VAT group (formed under Article 11 of the VAT Directive), and the branch of this company established in another Member State, are to be considered separate taxable persons when the head office provides services and allocates its costs to a branch.

7. *Special Cases*

a. *VAT Adjustments for Real Property Investments*

Special rules have been introduced for property owners with an obligation to reverse and repay the input VAT deductions, in some instances, to prevent abuse of the right to deduct input VAT through unjustified deductions and sham transactions. Reversal will take place when the conditions for tax liability have ceased. A reversal is also triggered in connection with a transfer of the property.

The CJEU has stated[364] that it is contrary to the VAT Directive to have rules in the national legislation which mean that a buyer of a property is obliged to make a refund (payback) of the VAT previously deducted by the seller of the property. This means that the Swedish VAT rules in this respect conflict with the VAT Directive. The CJEU rejected the Swedish adjustment rules for VAT: Only those who have taken a VAT deduction can be obliged to return the deduction through adjustment.

b. *VAT on Staffing of Medical Care Personnel*

Healthcare services, such as medical care, dental care, or social care, are generally exempt from VAT. In the past, the hiring of care staff, provided that the staff is hired out to provide care services, has also been exempt from VAT with reference to the underlying exemption for care services. For tax exemption, it is required that the care has been provided either in a hospital or by someone with a license to practice a profession in healthcare.

The HFD determined that a staffing agency's contracting out of medical care personnel is subject to VAT.[365] The contracting includes everything from individual temporary staff to the staffing of entire departments, units and hospital surgery teams. The HFD's decision determined that a staffing agency's contracting of medical care personnel is always liable to VAT regardless of the purchaser of the services. The HFD is of the opinion that, with the contracting of personnel, it is the contracted service, itself, which is to be tested in determining exemption from VAT and not the work duties executed by the contracted personnel. The HFD motivated its decision with reference to the CJEU's practice regarding the VAT exemption on educational services and social services. On the other hand, the judgment indicates that the contracting of medical care personnel under certain circumstances can be VAT-exempt if the entity contracting the personnel is comprised of such a medical care facility as defined in the EU VAT Directive[366] (i.e., a hospital, a center for medical treatment or diagnosis and other established, recognized facilities of a similar nature). However, the decision does not provide more detailed information as to the exact premises under which such contracting is to be VAT exempt.

A second case from the HFD[367] confirmed the above with a detailed analysis of EU legislation and the conditions that need to be fulfilled for a VAT exemption to apply. Article 132.1 a–q of the VAT Directive provides exemptions for certain activities based on public interest considerations (e.g., health care, nursing and education). According to Article 132.1 b, Member States shall exempt hospital care, medical care and transactions closely related to them from VAT. Article 132.1 c states that healthcare treatment provided by medical or paramedical professionals, as defined by the relevant Member State, shall be exempted. Article 134 further states that the provision of services shall not be covered by the exemption referred to in Article 132(1) b when the activities are not absolutely necessary for the exempted transactions to be carried out, or when the primary purpose of the transactions is to gain additional revenue through services carried out in direct competition with commercial companies that have to pay VAT. The CJEU has clarified that Articles 132.1 b and c have different areas of application, and that the purpose of the provisions is to regulate the entire system of exemptions for medical services in a strict sense. Article 132(1)(b) refers to services performed in a hospital, while Article 132(1)(c) refers to medical services performed outside this framework, both in the home of the healthcare provider and in the patient's home or elsewhere.[368] In this specific case the exemption was denied, as the company providing the medical professionals did not operate a healthcare facility, as defined in the Directive and, therefore, the provision cannot constitute a transaction closely linked to healthcare.

Comment (1): The HFD's decision will have a major effect on many medical care operators. The decision implies, among other things, that it will be more expensive for private medical care companies with VAT exempt operations to hire qualified medical care personnel from staffing agencies as, in addition to the fees for the contracting, there will be a cost in the form of non-deductible VAT. For private medical care companies it may, therefore, be more beneficial from a VAT point of view to employ one's own personnel compared with hiring the personnel from a staffing agency. Furthermore, unfair competition can also arise if the contracting of qualified

[364] CJEU, case C787/18 of November 26, 2020.

[365] HFD 2018 ref. 41.

[366] Directive 2006/112/EU.

[367] HFD 2020 ref. 5.

[368] See: Kügler, C-141/00, EU:C:2002:473, para. 36, *PFC Clinic*, C-91/12, EU:C:2013:198, para. 24 and *Peters*, C-700/17, EU:C:2019:753, para. 21 and the judgments cited therein.

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medical care personnel from a medical care facility is seen to be VAT exempt, as the HFD indicates, while the equivalent contracting from a staffing company is VAT liable. The decision can also lead to unfair competition between private and public medical care providers as the municipalities and county councils, in contrast to private medical care companies, can usually obtain VAT compensation via the so-called municipality VAT system. The HFD's decision can also have an effect on public medical care providers as VAT compensation is calculated in a variety of ways depending on whether the purchased services are VAT liable or VAT exempt.

Comment (2): The VAT on staffing of medical care personnel has created turmoil in the Swedish market. The government has therefore decided to conduct an inquiry (Dir 2020:20) to examine the conditions under EU law to amend the VAT legislation, in order to exempt from VAT the hiring of medical, dental, and social care staff, and, if an amendment to the VAT Act is not deemed possible, to examine the options to neutralize the consequences of a changed VAT liability and, if needed and possible, to submit a proposal for legislation. The inquiry was ready in June 2021 and a proposal was presented to the government for the legislative work, but no legislation has been proposed as of April 1, 2025.

c. Transactions Between Partners in Partnerships and Limited Partnerships

A prerequisite for an entity to be considered a general or limited partnership is that the partners have agreed to conduct a joint business activity within the partnership. When the economic activity is carried out jointly in a general or limited partnership, the partner's provision of services for compensation to the partnership is subject to value-added tax (VAT) if the partner independently provides the services in their capacity as a taxable person.

If the partner undertakes to provide services to the partnership other than those considered part of necessary management, the partner is deemed to be providing the services independently. This includes services beyond the general organization and operation of the partnership.

A partner does not act independently in relation to the general or limited partnership when they, in their role as a partner, perform necessary actions as part of the partnership's management solely in exchange for a share of the partnership's profits. These actions must be part of the partnership's economic activity in accordance with the partnership's purpose and follow the partnership and shareholder agreements. Such services are not provided between independent parties. Instead, the services are performed by the partners within the framework of the general or limited partnership. They are, therefore, considered to be carried out by the partnership on its behalf. However, if the partner receives a guaranteed remuneration for services performed in connection with necessary management actions, it is considered a provision of services for compensation.

This position, Dnr. 8-3192283,[369] replaces the previous position "Transactions between partners and general/limited partnerships," dated 2021-02-11, Dnr. 8-758752. The position does not entail any substantive changes but serves only as a clarification regarding when a partner in a general partnership receives guaranteed compensation. This clarification is based on recent case law.

d. Real Estate Transactions

A recent VAT case from the Court of Justice of the European Union (CJEU), applicable to the data center market in Sweden, where several big U.S. companies, such as Facebook, Google, Amazon, and Microsoft, have set up big data centers, is noteworthy. On July 2, 2020, the CJEU issued a preliminary ruling in case C 215/19, *A Oy*. The CJEU stated that a data center's supply of lockable equipment cabinets holding customers' servers is not regarded as letting of immovable property. The supply at hand, in addition to the physical storage, included electricity and other ancillary components to have optimal conditions for the servers. The customers did not have their own keys to the cabinets but could, upon proper identification, receive such access from the third-party security supplier monitoring the data center. Although the data center operator had access to the storage facility as such, it did not have direct access to the customer cabinets.

In support of its conclusion, the CJEU held that the service did not appear limited to the passive activity of making immovable property available to customers as if they were the owners thereof and to exclude any other person from exploitation of such a right, which typically defines letting of immovable property. Nor did the customers have the right to control or limit the access to the building where the cabinets were stored. Furthermore, there were no indications that the cabinets qualified as immovable property in their own right as they were neither an integral part of the property without which the building would be incomplete, nor was it plausible that the property would be destroyed or significantly altered if the cabinets were removed.

In addition to the question of VAT liability of the service, the CJEU also held that the service should not be regarded as a supply connected with immovable property, where the place of supply is the location of the property. Consequently, the supply should fall under the main rule for business-to-business (B2B) services, i.e., subject to taxation at the place where the customer has established its business.

Comment (1): The CJEU ruling appears to contradict existing Swedish case law. In two rulings from the HFD in 2008 and 2016,[370] the court ruled that the supply is to be regarded as letting of immovable property. The HFD held that the main component of a supply of co-location services is the exclusive right to a separate and specifically tailored area for storing servers. It seems reasonable to conclude that the Swedish position may change and that co-location services supplied in a similar way as in the CJEU ruling going forward should be regarded as a mandatory taxable supply.

Suppliers with Swedish data centers who have suffered irrecoverable VAT may now have the opportunity to apply for reassessments to recover such VAT.

Comment (2): The rental of property is generally exempt from VAT. However, the Supreme Administrative Court

[369] https://www4.skatteverket.se/rattsligvagledning/edition/2025.2/390214.html.

[370] HFD 2008 not. 48 and HFD 2016 ref. 75.

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(HFD) has examined in a case whether the VAT exemption also applies to activity-based workplaces ("co-working places").[371]

This case refers to two companies that provide co-working spaces through memberships and subscriptions, respectively, who applied for an advance ruling regarding the application of the VAT exemption. The set-up for the co-working spaces was 24-hour access to the premises, access to Wi-Fi, reception services, coffee, cleaning and security. In addition, the customers also got access to the companies' social network and community. A community manager, whose task was to assist customers in getting in touch with each other, would also be available in the future.

The Board of Advanced Rulings concluded that the companies mainly provided their customers with access to premises, including supplies, and the co-working places were, therefore, exempt from VAT.

The HFD, however, stated that the memberships and two of the available subscriptions did not give customers any guaranteed right to a workplace or a particular area. Customers, therefore, did not have the right to take possession of a space and exclude others from the area. Thus, the criteria, established by the CJEU, for a rental of immovable property to be considered exempt from VAT, were not met.[372] Accordingly, these co-working places were considered taxable and subject to VAT.

One of the subscriptions guaranteed customers the right to a particular workstation and this was considered to be an element that could constitute a real estate rental. However, the subscription was described as a combination of the right to access a workstation and receive other services. As exemptions from tax liability must be interpreted restrictively, the HFD stated that this specific subscription was taxable. Another subscription entitled the customer to a specific lockable space, and the customer could, thus, exclude others from accessing that space. According to the HFD, the right to use these specific premises constituted the dominant element of that subscription and was, therefore, deemed exempt from VAT.

e. Intra-Group Services by Holding Companies

A holding company whose sole purpose is to hold shares in other companies without directly or indirectly participating in the management of these is not regarded as a taxable person for value-added tax. On the other hand, if the management activities in the holding company consisting of, e.g., administrative services, financial services, business services, and technical services, the business qualifies for VAT.

In June 2019, the Administrative Court of Appeal decided upon a case regarding VAT deduction on costs for an initial public offering (IPO) and a new share issue for a holding company that provided services to operating subsidiaries.[373] The holding company considered was of the opinion that it was an active holding company, based on the services provided, qualifying for deduction of input VAT on general expenses in the business. The Court of Appeal found that, according to the case law of the CJEU (*Larentia* and *Minerva,* C-108/14 and C-109/14 paragraphs 19–21), a holding company is considered to be engaged in economic activity when providing taxable supplies to its subsidiaries for compensation. If the holding company has chosen not to invoice its services, it is not a taxable provision and, in that case, the holding company has no right to deduct VAT (MVM, C-28/16). The Court of Appeal considers that "the participation of a holding company in the management of the subsidiary" shall be deemed to include all transactions which constitute economic activities within the meaning of the EU VAT Directive and which the holding company provides to its subsidiary. This is on condition that the service is provided continuously, for remuneration, that the service is subject to tax, and that there is a direct connection between the service provided by the holding company and the quid pro quo obtained from the subsidiary.

f. Sale of Shares in Subsidiaries

In a 2017 decision, the Supreme Administrative Court made it clear that a company may deduct input VAT on costs arising in conjunction with the sale of shares.[374] Previously, costs in conjunction with the sale of shares in subsidiaries had been considered non-deductible in terms of VAT. In the decision, the court stated that the CJEU during recent years has developed a practice towards a more purpose-oriented and almost functional view when assessing whether a transaction that has been undertaken can objectively be seen to be related to the taxable person's economic activity as a whole. In addition, the Court concluded that it was to be presumed that the costs for the consulting services in connection with the sales of shares (regarding which the company had claimed deduction of input VAT) could not be passed on to the purchasers of the subsidiaries. In other words, the costs were not seen to be associated with the sale of shares, but, instead, were seen to be included in the price of the company's products. Against this background, the Court determined that the costs in conjunction with the sale of shares were to be seen to have a direct and immediate link with the company's economic activity as a whole, as the sale aimed at improving the effectiveness of the remaining (VAT taxable) operations and at freeing up capital for these operations.

In the *Ryanair EC* case,[375] the CJEU concluded that a company that intends to acquire all the shares of another company in order to pursue an economic activity consisting of the provision of management services subject to VAT to that other company, has the right to deduct input VAT paid on expenditure relating to the consultancy services. The deduction applies even if, ultimately, the economic activity in relation to the other company was never carried out as the transaction was not fulfilled, provided that the exclusive reason for the expenditure was the intended economic activity (i.e., the provision of services subject to VAT to the other company).

[371] HFD, Case No.: 2021 ref. 6 I and II.

[372] See: *Veronsaajien oikeudenvalvontayksikku,* C-215/19, EU:C:2020:518.

[373] Marle Participations, C-320/17.

[374] HFD 2017 ref. 20., HFD case nr. 1041–1043-22.

[375] C-249/17 of October 17, 2018.

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D. Other Taxes

1. Dividend Tax

The Swedish corporate tax system is a "classical" system. Dividend payments and payments reclassified as dividends are nondeductible for tax purposes (except in the case of certain corporate group contributions).

In general, if a dividend is paid, whether to a Swedish resident or to a nonresident, a withholding tax of 30% must be withheld at source and remitted to the tax authorities.[376] The withholding tax rate for nonresident persons is often reduced under the terms of a tax treaty. In general, corporate shareholders are not subject to tax on dividends as a result of the application of the withholding tax exemption.[377] Unless the withholding tax exemption applies, where a dividend is paid by a Swedish company to a nonresident shareholder in a treaty country, the treaty rate will usually be applied at the time of payment, rather than the usual rate being applied followed by a refund.[378]

The tax is reduced according to the applicable rate under the tax treaty, provided that a certificate of residence for the person entitled to dividends is submitted together with the request Form SKV 3700, including Form 18b to the tax authorities. The competent authority or a bank in the country of residence must issue the certificate. Larger companies, that are registered with Euroclear, usually take into account the withholding rate reductions under Sweden's tax agreements when paying dividends from Sweden. The dividend recipient is obliged to update information on the country of residence and address on an ongoing basis so that the paying company can apply the tax treaty rate directly when deducting the withholding tax. The paying company must submit a dividends report to the Swedish Tax Agency within four months of the dividend payments.

2. Capital Investment Tax

A capital tax is levied on real property transactions, in the case of corporate taxpayers at the rate of 4.25% (2025) of the assessed value of the property[379] For further discussion, see IV.F., above.

3. Risk Tax for Credit Institutions

The risk tax for credit institutions[380] aims to compensate for costs that can affect Swedish society in the event of a new global financial crisis. The tax applies to bank and credit institutions whose liabilities linked to Swedish operations exceed a threshold of SEK 184 billion. All liabilities within a group must be included, except the following:

(i) Intra-group debt;

(ii) Provisions and untaxed reserves; and

(iii) Debt that is not attributable to Sweden (i.e., debt in a non-Swedish group company that is not attributable to the business of a Swedish branch or Swedish operation).

The tax is levied at the rate of 0.06% (for fiscal year 2025) on all gross debt linked to Swedish operations.

A foreign credit institution is liable for the risk tax if it has liabilities at the beginning of the tax year that are attributable to operations that it conducts from a branch in Sweden and they exceed the mentioned threshold.

In January 2025, the Ministry of Finance published a memorandum (FI2025/00018)[381] proposing the introduction of a basic deduction in the Risk Tax Act for credit institutions. This basic deduction would align with the tax liability threshold applicable for each tax year. The implication of this legislative change is that the risk tax will only be levied on the portion of credit institutions' liabilities that exceeds the threshold value, rather than being applied from the first krona, as it is today. To maintain tax revenues, the proposal also included an increase in the risk tax rate from 0.06% to 0.07%. These changes are scheduled to take effect on January 1, 2026.

According to available sources, this proposal is still in the referral stage and has not yet been addressed by the Swedish Parliament.

4. Trade Tax

Apart from certain excise taxes levied in certain specified circumstances, there is no trade tax in Sweden.

5. Real Property Tax

See IV.G., above.

6. Local Taxes

No municipal or other local taxes are levied on corporations or other legal entities conducting business in Sweden. For municipal taxes on individuals see X.G., below.

7. Social Security Contributions and the New Start Jobs Subsidy

Sweden operates a social security payment system[382] that places responsibility for timely payments of all social security charges on employers. Accordingly, in contrast to the position in other European countries, there are no "employee" social security portions in connection with these charges. The normal social security charges for 2025 are equal to 31.42% of the basis for the charge per employee, i.e., the employee's salary plus benefits. Foreign employers that do not have PEs in Sweden must register to pay social security contributions or may elect to reach an agreement with their employees to pay and report the contributions monthly. It is important to note that the rates for each option may vary.

A number of state subsidies are available in the form of lower social contributions for persons who at the beginning of the year have reached the age of 66, in whose case the contribution is 10.21%, and for persons born in 1937 or earlier, in whose case no employer contributions are to be paid at all.

[376] Tax Procedure Act (*Skatteförfarandelag* (2011:1244)), Ch. 10, Withholding Tax Act, Secs. 5, 7, and 14.

[377] Withholding Tax Act, Sec. 4.

[378] Withholding Tax Act, Sec. 27.

[379] Act on Stamp Duty at the Registry Office, Sec. 8.

[380] Act on Risk Tax for Credit Institutions (Lag (2021:1256) om riskskatt för kreditintitut).

[381] https://www.regeringen.se/rattsliga-dokument/departementsserien-och-promemorior/2025/01/ett-grundavdrag-i-lagen-om-riskskatt-for-kreditinstitut/.

[382] Social Security Act (Socialavgiftslag (2000:980)).

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Another available subsidy is the Growth support (Swe: "Växa support,") which reduces the social security contributions that employers must pay. This reduction applies to employer contributions during the first 24 months of a new employee's employment. The rules permit support for a maximum of two employees per employer. Under Växa support, the employer is only required to pay the old-age pension contribution of 10.21% on salaries up to 35,000 SEK. For salaries exceeding 35,000 SEK, the standard employer contribution rate of 31.42% applies. It's important to note that shareholders and related parties in limited companies and partnerships are not eligible for Växa support. Additionally, if an employer operates multiple businesses, they can only receive support for one of them. There is no need to submit a separate application for this support; it is automatically processed by marking box 063 in the employer declaration.[383]

The tax incentives for research and development (R&D) allow a 20% deduction of social security contributions to companies hiring people working in R&D based on the employees' salaries.[384] When assessing the right to deduct, taxpayers who are part of the same group, and meet the conditions to be allowed to make deductions, are considered to be one taxpayer. A prerequisite for the deduction is that the persons concerned must have worked on R&D for at least 50% and at least 15 hours of their actual working time during the calendar month. The total reduction of the employer social contributions can amount to a maximum of SEK 3,000,000 (2024) per calendar month, i.e., SEK 36,000,000 per year (to get a maximum deduction, the total wage base in the company must be at least SEK 180,000,000). These deductions apply to Swedish and foreign companies that pay employer social contributions in Sweden. The form or extent of how the company conducts its business does not matter, i.e., the person can be employed in the company that performs the R&D project or in another company, e.g., a consulting company or a staffing company. There are no formal restrictions on which industries are covered by the deduction, however, the nature of the work is decisive for assessing the deduction, i.e., systematic, and qualified research or development work at the company conducting the R&D project.

[383] Act (2016:1053) on special calculation of certain fees for growth companies. (Swe: Lag (2016:1053) om särskild beräkning av vissa avgifter för växa-företag.

[384] Social Security Act Ch. 2 Secs. 29–31.

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VI. Taxation of a Foreign Corporation

A. What Is a Foreign Corporation?

Corporate residence status for Swedish company law and tax law purposes is determined based on the registration principle, which results in a straightforward categorization. Companies registered in Sweden are treated as domestic entities, while companies registered abroad are treated as foreign entities. One effect of the registration principle is that only companies registered in Sweden are subject to unlimited tax liability, i.e., they are taxed on worldwide income. Consequently, entities registered abroad are only subject to limited tax liability, i.e., taxed only on Swedish-source income, irrespective of whether they have their place of effective management in Sweden.

Foreign entities are categorized under three main groups in the tax legislation: foreign legal entities (*utländsk juridisk person*); foreign corporations (*utländskt bolag*); and foreign legal entities taxed at the level of the partners (*delägarbeskattad utländsk juridisk person*). A foreign legal entity is an entity registered in a foreign country that is a valid carrier of rights and liabilities, including standing with the courts and public authorities, and the assets of which may not be freely disposed of by the shareholders.[385]

The majority of foreign legal entities may qualify as foreign corporations. Pursuant to Chapter 2, Section 5a of the Income Tax Act, a foreign corporation is a foreign legal entity that is subject to taxation in the jurisdiction of its registration, provided that taxation is comparable to the taxation of a Swedish limited liability company. A foreign entity resident in a tax treaty country (and covered by the relevant tax treaty) is always deemed to be a foreign corporation.

Foreign corporations are in many aspects placed on the same level as Swedish limited liability companies and, as such, can benefit from the rules on company group contributions, the withholding tax exemption rules, and various rules concerning company restructuring measures. Furthermore, foreign legal entities taxed at the level of their partners are all foreign legal entities that are not regarded as separate taxable entities, but whose income is taxed at the level of their partners in the foreign jurisdictions in which the entities are resident.[386]

B. Determination of Taxable Income

A foreign legal entity, including a foreign corporation, that does not have a permanent establishment (PE)[387] in Sweden is subject to Swedish taxation only on certain items of income from Swedish sources.

Income from Swedish sources such as royalties, including royalties for patent licenses and copyrights, and other periodic payments in consideration for rights to use secret processes, formulae, technical knowledge, know-how, and trademarks may be subject to Swedish tax even if the entity does not have a Swedish PE (see VI.D. and VI.E., below).

Dividends on shares in Swedish limited liability companies paid to foreign legal entities are subject to withholding tax of 30% (reduced to 5% to 15% under applicable tax treaties) unless the withholding tax exemption applies. Foreign legal entities are also liable to tax on income from real property and dividends on participation rights in Swedish economic associations.[388]

C. Permanent Establishment for a Foreign Business

1. General

A foreign legal entity is liable to tax on income from a permanent establishment in Sweden (Chapter 6, Section 11 of the Income Tax Act). Individuals with limited tax liability are also liable to tax on income from a permanent establishment in Sweden (Chapter 3, Sections 17 and 18 of the Income Tax Act).

A permanent establishment for business activities refers to a fixed place of business from which operations are wholly or partly carried out (Chapter 2, Section 29 of the Income Tax Act). To make the application of both domestic law and tax treaties easier, the Swedish provision is based on the principles of the OECD Model Tax Convention (Government Bill 1986/87:30, p. 42). In case law, the commentary on Article 5 of the OECD Model Convention has been used when interpreting domestic law (e.g., RÅ 1998 not. 188 and RÅ 2009 ref. 91).

2. Definition of Permanent Establishment

A permanent establishment is a fixed place of business from which the business is wholly or partly conducted. Three conditions must be met for a permanent establishment to be considered present:

(i) There must be a specific place for business activities;

(ii) The place must be used permanently; and

(iii) Business activities must be wholly or partly conducted from the place.

Suppose an individual conducts business activities in Sweden and has been granted and regularly exercises authority to enter into contracts for the business owner. In that case, a permanent establishment is also considered to exist.

However, a permanent establishment is not considered to exist in Sweden merely because someone conducts business here through a broker, commission agent, or another independent representative, provided this is part of the representative's ordinary business activities.

If the foreign company or business operator is domiciled in a country with which Sweden has a tax treaty, for the foreign company to be liable to pay income tax in Sweden, a permanent establishment must exist both according to Swedish domestic law and according to the rules in the tax treaty.

3. Definition of Place

A place where the company conducts its business activities can be premises or another space. The place must be geographically defined, commercially cohesive, and used by the company. It does not matter whether the company owns, rents,

[385] Income Tax Act, Ch. 6, Sec. 8.

[386] Income Tax Act, Ch. 5, Sec. 2a.

[387] The concept of "permanent establishment" under the Income Tax Act is discussed at XI.B., below.

[388] Income Tax Act, Ch. 6, Sec. 11.

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or otherwise has access to the place. The determining factor is whether business activities are conducted from the place.

Examples of a place include:

(i) A home office;

(ii) A place of management;

(iii) A workplace in another company's premises;

(iv) A factory;

(v) A workshop; and

(vi) A place for construction, assembly, or installation activities.

4. Home office

A place in a home can be considered a permanent establishment if an employee continuously conducts the company's business from that location. Due to the COVID-19 pandemic, the OECD Secretariat has published guidance on how the pandemic may affect the existence of a permanent establishment under tax treaties (April 3, 2020, and January 21, 2021). The Secretariat emphasizes, among other things, that an employee's work from home is typically not due to the employer requiring it but to public health measures (mandatory or recommended).

If a person continues working from home after public health measures have ceased to apply or are no longer recommended by the government, the home office may be considered to have a certain degree of permanence. However, this change alone will not necessarily lead to the home office creating a permanent establishment.

A further examination of facts and circumstances is required to determine whether the home office is now at the company's disposal following this permanent change in the person's work conditions. The Secretariat refers to paragraphs 18 and 19 in the commentary on Article 5 and states that an important factor in the assessment is whether the company requires the employee to work from home.

The Swedish tax Agency set out more detail on its views in statement Dnr: 8-1677220 in 2022,[389] which considers factors including:

(i) If the foreign company pays rent for office space in the employee's home, this may be indicative of the company having a fixed place of business at its disposal;

(ii) If it just provides equipment including a computer, other office equipment and materials this does not constitute renting office space;

(iii) If there is a specific requirement from the company on the employee to work at their home, this may indicate towards the home being at the company's disposal;

(iv) Implicit requirements such as the company not having office space available for the employee to work at may amount to an equivalent requirement but other factors such as the extent of other business activities in Sweden may need to be taken into account;

(v) If the work from home arises because of government requirement or mandation, such as during the COVID-19 pandemic, this will not be considered the company requiring the work to be done from home and will not result in the property being considered at the company's disposal;

(vi) Similarly if the working from home is only at the employee's request and does not otherwise produce a business advantage, this may not be considered to be at the requirement of the company; and

(vii) The fact that working from home may be attractive to hiring or retaining employees is not a relevant factor to consider the above.

5. Permanence

A business is generally considered permanent when it lasts for six months or more. Business activities that recur annually at the same location can also be considered permanent, even if they last for less than six months per year. To be regarded as permanent, business activities must be conducted for more than two to three months per year for at least three years.

It is the foreign business activities that must be conducted from the permanent location. To determine whether business activities are conducted, one must understand what constitutes the actual business operations, i.e., the business model and core functions of the company. These business operations must be wholly or partially conducted from the permanent location.

Examples of functions that typically constitute the core of a company's business operations include:

(i) Corporate management;

(ii) Sales;

(iii) Research and development; or

(iv) Production.

Even if only part of the foreign business activities occur in Sweden, there may still be a permanent establishment.

If corporate management is located at a permanent place in Sweden, it constitutes a permanent establishment if management exercises any part of the company's activities at that location. It does not have to be the company's top management. Examples of key personnel include the CEO, the board of directors, or supervisory leadership.

A company's business activities should be distinguished from activities that are preparatory or auxiliary in nature. If the activities conducted in Sweden are exclusively of such nature, a permanent establishment does not exist.

Examples where this applies include when a business:

(i) Has its accounting or payroll department in Sweden;

(ii) These functions are not the company's core operations; and

(iii) Only these functions are present in Sweden.

Another example of preparatory or auxiliary activities is if a person is employed in Sweden by a foreign business solely to investigate the possibility of a future establishment of the foreign business, for example, through market research or market analysis. Once customer contact is made for sales, the activities are no longer considered preparatory.

[389] Dnr: 8-1677220 https://www4.skatteverket.se/rattsligvagledning/edition/2025.3/411692.html.

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6. Dependent Representative

A permanent establishment may exist even if the foreign company does not have a permanent location from which business is wholly or partially conducted. This applies when a person is engaged on behalf of a foreign company in Sweden and regularly exercises authority to enter into contracts for the foreign company's operations. This person is called a dependent representative. Such a person may be:

(i) An employee;

(ii) The company's managing director; or

(iii) A contractor.

There is no specific regulation regarding how the authority to conclude contracts must be structured, but it must involve agreements concluded for the company's core business operations. For a permanent establishment to exist, the dependent representative must have a presence in Sweden for at least six months. The authority must be exercised regularly. To determine whether the authority has been exercised regularly, consideration must be given to the type of agreements involved and the nature of the business operations.

7. Special Rule for Construction Activities

Tax treaties contain a special rule that applies when a foreign company conducts construction, assembly, or installation work in Sweden (these activities are referred to here as construction activities). This rule is known as the construction rule.

In construction activities, a permanent establishment cannot be created through a dependent representative.

8. Responsibilities if a Permanent Establishment Exists in Sweden

If a foreign business has a permanent establishment in Sweden, this affects the company's taxation, employees, and bookkeeping obligations.

A business with a permanent establishment in Sweden:

• Is taxed on income derived from the permanent establishment.

• Pays special payroll tax on pension costs for employees.

• Pays full employer contributions for employees covered by Swedish social security.

• Deducts tax from salaries paid for work performed in Sweden.

• Employees are taxed in Sweden on income from Swedish work.

A foreign company with a permanent establishment that meets the criteria for a branch must keep full bookkeeping records for its Swedish operations. A foreign company with a permanent establishment that does not qualify as a branch must meet general documentation requirements.

9. Responsibilities if No Permanent Establishment Exists in Sweden

If a foreign business does not have a permanent establishment in Sweden, taxation, employee obligations, and bookkeeping requirements are different.

A foreign business that does not have a permanent establishment in Sweden:

(i) Is not taxed on income from a permanent establishment but may be liable for taxation in Sweden on other grounds, for example, if it owns property in Sweden;

(ii) May be required to submit specific information to the Swedish Tax Agency;

(iii) Pays reduced employer contributions, meaning that the general payroll tax is not paid;

(iv) Withholds tax on compensation for work performed in Sweden;

(v) May enter into an agreement with the employee working in Sweden, allowing the employee to report and pay employer contributions to the Swedish Tax Agency on behalf of the employer (this is called a social security agreement); and

(vi) Some employees residing abroad may be exempt from income taxation in Sweden for the work they perform here.

10. Profit Allocation to a Permanent Establishment

Foreign businesses with a permanent establishment in Sweden need to determine the portion of their income attributable to the permanent establishment and declare it in Sweden.

Profit allocation for a permanent establishment must be calculated as if it were an independent and separate entity.

11. Examples

a. German Company with a Sales Representative for the Nordic Market

The German company (B) has hired Boris as a salesperson to introduce the company's products and acquire customers in the Nordic market. Boris' work involves frequent travel within Sweden, Denmark, Finland, and Norway, as well as office-related tasks such as planning and customer communication. Company B does not have an office in any Nordic country, so Boris works from his residence in Stockholm.

Customer visits take up approximately 75% of Boris' working hours, while 25% is spent working from home.

The Swedish Tax Agency may conclude that Company B has a permanent establishment in Sweden. Even though the company does not explicitly require Boris to work from home, there is an implicit requirement, as the company does not provide office space despite the nature of the work requiring it. Since Boris was hired to operate within the Nordic market, his location in Stockholm provides a business advantage for the company. Consequently, his residence is deemed to be at the company's disposal.

It does not matter if Company B has an office in Germany, as Boris' work cannot reasonably be performed from there. Boris is conducting the company's core business, not preparatory or auxiliary activities.

The assessment remains the same even if Company B does not have customers in Sweden, and Boris' role is limited to selling in Denmark, Norway, and Finland. Even in that case,

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Stockholm's central location within the Nordic market is an advantage for Company B.

b. French Company with a System Developer in Sweden

Claudia works as a system developer for the French company C. The company is a consulting firm that sells services to other businesses, but Claudia does not work directly with customers. Instead, she focuses on the expansion and maintenance of the company's internal IT systems. Her work does not need to be performed in the company's offices in France, and Claudia does not want to relocate to France. Company C pays rent for an office room in Claudia's residence in Gothenburg, from where she works.

The Swedish Tax Agency may consider that Company C does not have a permanent establishment in Sweden. Since the company pays rent for an office room in Claudia's residence, the home is deemed to be at the company's disposal. However, Claudia's work is not part of the company's core business but rather of an auxiliary nature, which means no permanent establishment arises.

c. British Company with an Investment Fund Manager in Sweden

David works as a fund manager for the British company D. The company manages investment funds, and David is part of a team responsible for specific funds that invest in certain industries. He has no customer contact but works with analyzing investment opportunities and managing existing investments. David usually works at the office in London but, for personal reasons, wishes to move to Sweden and work from there. Company D agrees, and it is decided that David will work three weeks per month from his residence in Malmö and one week per month at the office in London.

The Swedish Tax Agency may accept that Company D does not have a permanent establishment in Sweden. David's residence is not considered to be at the company's disposal. The company has not required David to work from home and has no business interest or advantage in the work being performed in Sweden.

d. Danish Company with an IT Consultant in Sweden

The Danish company E has employed Emma as an IT consultant. Company E is a consulting firm hired by its clients to develop existing IT systems or create new ones. Emma works on such customer assignments. Company E only has clients in the Danish market and has no plans to expand into Sweden. The company has office premises in Aarhus, and Emma is offered a position there, but the nature of her work allows her to work from anywhere. Since the office premises are not within commuting distance and Emma does not want to move to Denmark, she requests to work from her residence in Växjö, Sweden. Company E accommodates Emma's request.

The Swedish Tax Agency may accept that Company E does not have a permanent establishment in Sweden. Emma's residence is not considered to be at the company's disposal. The company has not required Emma to work from home and has no business interest or advantage in the work being performed in Sweden.

e. Danish Company with a Travel Sales Representative in Sweden

Frank works for the Danish company F. Company F is a travel agency that sells ski trips and sun vacations, primarily to Danish customers. During the COVID-19 pandemic, the company was forced to downsize its office space in Copenhagen. After the pandemic, Company F decided to retain the smaller office space and required employees to work from home two days per week according to a specific schedule to accommodate the new office setup. As a result, Frank works two days per week from his residence in Malmö. Frank sells travel packages and custom travel solutions to the company's customers.

The Swedish Tax Agency is likely to consider that Company F has a permanent establishment in Sweden. Frank's work from home is due to an explicit requirement from the company, making his residence available to the company. Since Frank is engaged in the company's core business activities, his work is not considered preparatory or auxiliary in nature, which leads to the establishment of a permanent establishment in Sweden.

12. Key Case Law and Rulings

Some key case law decided in the Swedish Administrative Court and rulings on permanent establishment matters:

(i) Appeal by DAM Deutsche Angelgeräte Manufaktur Hellmuth Kuntze GmbH & Co. KG The Supreme Administrative Court found that work tasks involving outreach activities with potential customers could not be considered exclusively preparatory or auxiliary in nature under the tax treaty with Germany.[390]

(ii) Advance ruling for X AS, a Norwegian company managing shares: A person residing in Sweden owns and makes investment decisions for a Norwegian asset management company. The owner's residence was considered a permanent establishment for the company under the Swedish Income Tax Act and the tax treaty between the Nordic countries.[391]

(iii) In an application for an injunction by the Bill and Melinda Gates Foundation, the foreign foundation planned to conduct parts of its activities from an office in Sweden. The Supreme Administrative Court (HFD) ruled that even though the activities were of a non-profit nature, they could be considered business activities and thus result in a permanent establishment in Sweden.[392]

(iv) An advanced ruling for a Polish company carrying out construction work in Sweden during two separate periods with a break in between. HFD examined whether the break should be considered temporary, which would affect whether a permanent establishment had been created. The court found that the break was not temporary and that the company, therefore, did not have a permanent establishment in Sweden.[393]

[390] RÅ 1998 not. 188.
[391] RÅ 2009:91.
[392] HFD 2018:78.
[393] HFD 2019:36.

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(v) An advanced ruling, foreign company without its own office in Sweden had an employee working from home under an employment contract. The Tax Law Board ruled that the company had a permanent establishment in Sweden due to the employee's remote work.[394]

(vi) An advanced ruling, the issue was whether a foreign company established a permanent establishment in Sweden by placing a server in a rented facility. HFD overturned the advance ruling and emphasized that the assessment must be made based on the circumstances of the specific case.[395]

13. Permanent Establishments and the Digital Economy

As concerns the digital economy, the Swedish Tax Agency published a statement (*Server som fast driftställe*) in November 2018 regarding PEs for digital businesses.[396] One of the questions covered by the statement is whether a physical server in Sweden can result in a PE for a foreign company when the foreign company has no staff or any other business activities in Sweden. The Swedish tax authorities are of the opinion that a PE exists if a foreign company has one or more servers located in Sweden and the business consists of providing space and data capacity on the server to customers.

However, according to the tax authorities, a PE does not exist if the foreign company rents the entire server to another company that uses it in its operations. In an e-commerce business, however, a PE would arise if a foreign company has access to a server in Sweden that has published the e-commerce site and the site visibly provides customers the range of products, allows them to place an order and pay, and have the digital product delivered through the server.

A PE also arises in an e-commerce business where the server and the website are used to show the products and receive orders, if binding agreements are entered in connection with the order, even if the goods are delivered from another place and payment not made through the website. However, a PE would not arise if the customer can only see the products while the order process is excluded from the website.

Furthermore, a PE may also arise even if the server is not used in direct contact with customers, e.g., if the foreign company's business operations consist of storing and processing information on a server in Sweden. The statement of the tax authorities closes by saying that the Statement is not in contradiction with what would be the outcome applying existing tax treaties.

Comment (1): The statement of the Swedish Tax Agency gives rise to a number of questions, which most likely will be challenged in court at some point. As of this writing, no cases have reached the HFD, therefore, it is too early to say what impact the statement will have on the future interpretation of the Swedish PE rules.

Comment (2): The OECD and the European Union are working on adapting Member States' taxation systems to make them fit the digital age. The tax is based on turnover, not profit, calculated on the basis of the arm's length principle. The digital services specifically mentioned are search engines, social media platforms, digital marketplaces, streaming services, games, and cloud services, but also all online sales of goods and services. An important principle is that taxation should take place where the value is created. In the proposal from the European Commission,[397] this is considered to a greater extent to be where consumption takes place, not where production and the head office are located. Sweden has been critical of a digital tax and it is unclear when a proposal can be expected.

14. Digital Tool PE Evaluation

A digital tool provided by the Tax Authorities is available online to assess whether there is a PE at https://skatteverket.se/servicelankar/otherlanguages/inenglishengelska/businessesandemployers/nonswedishbusinesseswithoperationsinsweden/guidetodeterminewhetheryouhaveapermanentestablishmentinsweden.4.96cca41179bad4b1aa90db.html.

D. Method of Taxation

Swedish-source income is subject to tax at the ordinary corporate income tax rate of 20.6% (2025) or at a rate of up to 30% by way of withholding at source, depending on the nature of the income.

Income from real property and dividends on participation shares in Swedish economic associations is taxed at the general corporate tax rate of 20.6% (2025) (unless otherwise provided for by an applicable tax treaty). For the rates of source country taxation applying to investment income, services income and capital gains under Sweden's domestic law and tax treaties and the context for the application of those rates, see the Withholding Tax Chart.

Royalties paid by a Swedish licensee to a nonresident corporation are regarded as income derived by the nonresident corporation from a PE in Sweden and, thus, subject to the national income tax by assessment. The corporate tax rate of 20.6% (2025) is in most cases waived or reduced by virtue of the royalties article in an applicable tax treaty. Foreign entities deriving income that is taxed by means of ordinary tax assessment must file income tax returns in Sweden.[398]

Dividends, unless tax exempt, are subject to withholding tax at the rate of 30% in the absence of a tax treaty, or at the applicable treaty rate of 5% to 15%.[399] No filing requirement applies with respect to the recipient; instead, the withholding tax is reported and paid by the dividend distributing company.[400]

E. Interest and Royalties Paid Among Related Companies of Different EU Member States

The Directive 2003/49/EC (the Interest/Royalties Directive) provides for the abolition of taxes (whether by way of withholding or assessment) on interest and royalties in the EU Member State in which they arise. As Sweden does not levy any withholding tax on outbound interest payments, the provi-

[394] 2016-02-01 (Dnr 127-14/D).

[395] 2013-12-06 (HFD 2013, not. 78).

[396] Dnr: 202 493137-18/111, available at: https://www4.skatteverket.se/rattsligvagledning/372979.html (in Swedish).

[397] Proposal for a COUNCIL DIRECTIVE laying down rules relating to the corporate taxation of a significant digital presence, Brussels, 21.3.2018 COM (2018) 147 final 2018/0072 (CNS).

[398] Tax Procedure Act, Ch. 30, Sec. 4.

[399] Withholding Tax Act, Sec. 5.

[400] Withholding Tax Act, Sec. 14.

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sions of the Directive are only relevant in Sweden with respect to outbound royalty payments.

The Interest/Royalties Directive allows a tax exemption if the beneficial owner of the interest or royalties is a company of another Member State or a PE situated in another Member State of a company of a Member State. The transferor must be a company of a Member State or a PE situated in another Member State. Only payments between related parties qualify under the Directive and only to the extent that they are at arm's length. Related parties for the purpose of the Directive are defined as two companies, where one company holds 25% or more of the share capital of the other company, or another company within the European Union holds 25% or more of the share capital of both companies.

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VII. Taxation of a Branch

A. Determination of Taxable Income

A Swedish branch of a foreign company is taxable on net income attributable to the branch. The definition of a taxable branch is the same as that of a permanent establishment (PE).[401] As a matter of both domestic law and treaty law, a branch is taxed as if it were a separate entity distinct from the head office of which it is a part. As a consequence, the existence of a branch in Sweden does not prejudice, from a tax standpoint, the existence of another activity of the foreign company in Sweden.

The tax legislation does not provide any specific rules as regards the calculation of the profits of a branch. In determining the taxable income or loss of a branch, the same set of rules is applicable as for other business forms (for a more detailed analysis, see V., above). A branch must prepare financial statements in accordance with Swedish Generally Accepted Accounting Principles (GAAP) and the profits or losses shown in the statements constitute a starting point for the determination of taxable profits or losses. In the tax return, the profits or losses stated in the financial statements are subject to adjustments in so far as tax provisions on nontaxable items and corresponding nondeductible expenses deviate from the accounting rules.

Besides the general rules on the deduction of business expenditures, a branch can also benefit from other rules such as those on the allocation reserve (see V.B.4.p., above), group contributions (V.B.3.g.), and the participation exemption (see V.B.3.d., above). In this respect, neutrality between a limited liability company and a branch is achieved. One important difference applies, however, with respect to interest and royalty transactions with a branch's foreign head office. Because a branch and its head office constitute one legal entity, these "inter-company" interest and royalty payments are not deductible. Service fees for general overhead costs are, however, deductible for Swedish accounting and tax purposes.

After the properly allocable deductions are taken, the net income is subject to tax at the corporate income tax rate.

B. Method of Taxation

The net income attributable to a branch is subject to corporate income tax at the rate of 20.6% (2025). Profits of a branch can be remitted to the foreign company of which it is a branch without any withholding tax being imposed.

Losses can be carried forward indefinitely and may be utilized to offset profits made during subsequent years. Limitations apply, however, in the case of a change of ownership as well as in the case of other corporate re-structuring measures (see V.B.7., above).

C. Subsidiary v. Branch

The choice between establishing a subsidiary and establishing a branch in Sweden seems to depend on one factor from a general tax perspective: the ability to utilize losses. If a branch is established initially, the start-up losses frequently associated with a new business venture may often be set off against the profits in the owner's foreign jurisdiction. When the branch starts making profits, it can be converted into a Swedish subsidiary without triggering tax consequences in Sweden.

From a purely Swedish tax perspective, the only difference between the treatment of a branch and that of a subsidiary relates to "inter-company" interest payments. Interest on loans to a branch from its head office (i.e., financing that is not provided by another separate legal entity or a third party) is not deductible for Swedish tax purposes. The reason for this restriction is that a branch constitutes the same legal entity as its head office, and hence a loan transaction between the two as such is not recognized (a similar approach is used in Article 7 of the Organisation for Economic Cooperation and Development (OECD) Model Convention).

On the other hand, a subsidiary has two essential advantages. If its operations in Sweden are profitable, the subsidiary will be able to retain earnings at the corporate level. Additionally, as a corporate law matter, the liability of the foreign corporation is limited to the amount of capital injected into the subsidiary.

Net income attributable to a Swedish branch is deemed to be distributed annually by the branch to its head office. This deemed distribution of profits is also not subject to Swedish withholding tax.[402] The conclusion may, thus, be drawn that, as far as taxation in Sweden is concerned, there is neutrality for the foreign investor as to the choice between a Swedish branch and a Swedish subsidiary in that the income of, and the distribution of income by, a branch and a subsidiary is similarly treated.

Thus, when choosing the appropriate entity for a Swedish venture, the single consideration is that Swedish-source branch losses may be available for current deduction under the applicable law of the jurisdiction of the head office.

[401] Income Tax Act, Ch. 2, Sec. 29.

[402] Inferred, *a contrario*, from Withholding Tax Act, Sec. 1.

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VIII. Taxation of Partnerships

With some minor exceptions, neither a partnership (*handelsbolag* or HB) nor a limited partnership (*kommandithandelsbolag* or KB) is a taxable entity as such.[403] The income attributable to a partnership must, however, be computed separately and disclosed to the Swedish Tax Agency in an income tax return, which must be filed annually. Each partner of a partnership is subsequently taxed based on his or her distributive share of the income of the partnership.[404] The Swedish tax treatment of a foreign partner depends on whether the partnership, or any of the partners, constitutes a permanent establishment (PE) in Sweden.[405] If it does, income attributable to the PE is fully taxable at the corporate income tax rate.[406] In the absence of a PE, the income of the partnership is not subject to Swedish taxation.

Investors can benefit from the participation exemption using partnerships as investment vehicles.

[403] Partnerships as well as limited partnerships are only treated as taxable entities with respect to municipal fees levied on real property, special salary tax on pension costs, and profit tax on pension attributions.

[404] Income Tax Act, Ch. 5, Secs. 1–3.

[405] Income Tax Act, Ch. 5, Secs. 1–3 and tax treaty provisions.

[406] Income Tax Act, Ch. 6, Secs. 3–4.

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IX. Taxation of Other Business Entities

A. *Economic Associations*

An economic association (*ekonomisk förening*) is a frequently used business form for certain types of economic activity, such as condominiums, cooperatives, and similar organizations where the members of the association are more or less active and have an economic interest in making use of the services of the association. An economic association is formed by a minimum of three individuals or legal entities. Unlike a Swedish limited liability company (*aktiebolag* — AB), an association is open to anyone and, in principle, it cannot refuse anyone membership. Apart from the amount contributed, the members of an economic association are not personally liable for the debts and other obligations of the association. The purpose of an association is to promote the financial interests of its members.

Economic associations are taxed in the same manner as Swedish limited liability companies, i.e., the method of determining profits, the corporate income tax rate, and the ability to make an allocation reserve are the same for both (see in this respect V.B., above). Economic associations may also benefit from the participation exemption regime, as well as the rules on company group contributions.

A special form of economic association, a cooperative (*kooperativ förening*) is, however, subject to a different set of rules. To the extent that the rules on the participation exemption do not apply, economic double taxation is eliminated with respect to cooperatives by means of deductions of dividends that were distributed to the members of the cooperative (for instance, in the form of price discounts).[407]

B. *Private Businesses (Sole Proprietorships)*

A private business arises when an individual starts to pursue business activities on a permanent and independent basis. The conduct of a private business as such does not constitute a legal or taxable entity. Instead, the owner is liable for all the rights and liabilities arising out of contracts entered into in the name of the business.

Private businesses must be registered for income and value added tax (VAT) purposes and must keep books of account. No financial statements are required to be filed. The calculation of taxable income or loss is made on the basis of the bookkeeping, subject to certain adjustments for tax purposes. Besides the general rules on the deductibility of business expenses, a private business can benefit from certain rules on the allocation of profits into an accrued account (*periodiseringsfond*) (see V.B.4.p., above),[408] as well as a split-up into a "negative and positive interest allocation," by means of which the profits of the business are taxed partly as capital income (at a tax rate of 30%) and partly as business income (*positiv och negativ räntefördelning*) (see X.C.2., below).[409]

Any profits and losses made by a private business are reported in the tax return of the individual proprietor. For a detailed description of the rules on the taxation of individuals, see X., below.

C. *Trusts*

As a general rule, Swedish trusts (*stiftelser*) are treated as legal entities subject to worldwide taxation.[410] In this respect, trusts are taxed in a manner similar to limited liability companies, in particular with respect to business income, which is taxed at the corporate tax rate of 20.6% (2021); the rules on the participation exemption, which apply to dividends; and capital gains on business-related shares (see V.B.3.d., above).

A special set of rules applies, however, to certain tax-exempt or partially tax-exempt trusts:

(i) Pension trusts are tax exempt for income tax purposes;[411]

(ii) Certain trusts known as catalogue trusts (*katalogsubjekt*) are subject to tax only on income derived from real property;[412] and

(iii) Certain public trusts (*kvalificerat allmännyttiga stiftelser*) are subject to tax only on income derived from business activities if they meet the following requirements:[413]

- The trust must fulfill a qualifying public interest purpose;[414]
- The circle of beneficiaries of the trust cannot be limited to a certain family/families or otherwise limited to a particular number of persons;[415]
- The profits of the trust must be used almost exclusively for qualifying purposes;[416] and
- The profits of the trust must be distributed on a permanent basis.[417]

In general, for purposes of requirement (IV), at least 75% to 80% of net profits of qualifying public trusts must be distributed over a five-year period.

D. *Nonprofit Organizations*

Nonprofit organizations regarded as Swedish legal entities are generally subject to tax on *all* types of income derived by them.[418] Like public trusts, however, nonprofit organizations can meet certain qualifying requirements and achieve tax ex-

[407] Income Tax Act, Ch. 39, Secs. 22–23. The calculation of deductions in this context is very complex and technical and is, therefore, not discussed here.

[408] Income Tax Act, Ch. 30.

[409] Income Tax Act, Ch. 33.

[410] Income Tax Act, Ch. 6, Sec. 4 and Ch. 7, Secs. 1 and 3–6.

[411] Income Tax Act, Ch. 7, Sec. 2. Pension funds are, however, subject to the so called yield tax, which is calculated on a standardized basis (Yield Tax Act, (*Lag* (1990:661) *om avkastningsskatt på pensionsmedel*), Sec. 1.

[412] "Catalogue" because they are enumerated in a catalogue under Income Tax Act, Ch. 7, Secs. 16–17 (e.g., academies, certain royal and state trusts, etc.).

[413] Income Tax Act, Ch. 7, Sec. 3.

[414] I.e., promoting the care and good education of children, granting subsidies for teaching activities or education, granting assistance to persons in need, promoting academic research, promoting Nordic cooperation, and strengthening the defense of the nation in cooperation with the military or other state bodies. Income Tax Act, Ch. 7, Sec. 4.

[415] Income Tax Act, Ch. 7, Sec. 4.

[416] Income Tax Act, Ch. 7, Sec. 5.

[417] Income Tax Act, Ch. 7, Sec. 6.

[418] Income Tax Act, Ch. 6, Secs. 3–4.

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emption for certain specific types of income so that they are only taxed on real estate and business income. Revenue relating to membership fees, grants, and gifts are tax-exempt, as well as capital income that is not assignable to business activity, such as interest, dividends, and capital gains.

For a nonprofit organization to be regarded as a nonprofit, it must meet four different requirements: purpose, activity, openness, and fulfillment. The purpose requirement implies that the association's primary goal is to promote nonprofit purposes[419] such as sports, outdoor life, art, music, religious activities, and political parties, and more. To meet the activity requirement, 90% to 95% of the activities must satisfy the public benefit purpose. The transparency requirement means that the association must be open to everyone and may not refuse any person's entry.[420] Finally, the association must use at least 80% of its income for nonprofit activities to qualify.

Income from other business activities is taxed at the ordinary corporate tax rate of 20.6% (2025), after allowing deductions for business expenses and a general deduction allowance of SEK 15,000.[421]

E. Insurance Companies

The income of life insurance companies derived from insurance activities is tax exempt for income tax purposes.[422] Instead, the capital managed by the company on behalf of the beneficiaries is subject to yield tax at a rate of 15% calculated on a standardized basis. The net market value of the capital at the beginning of the year is multiplied by the Swedish Government official interest rate on bonds (*statslåneräntan*) for the preceding year. The result calculated in this standardized manner constitutes the taxable base subject to yield tax at the rate of 15%.[423]

A life insurance company's own business, i.e., the part of the business that is not assignable to the management of capital, is taxed in accordance with the general tax rules applicable to limited liability companies and is thus subject to corporate tax at the rate of 20.6% (2025). An exception may, however, apply depending on the type of insurance activities the company carries on. Thus, in the case of life insurance contracts — by contrast with health, casualty and group insurance contracts — premiums are tax-exempt and insurance amounts paid are nondeductible.[424]

Property insurance companies are taxed in accordance with the general income tax rules; however, they are allowed to take deductions for certain special types of security reserves related to their insurance business.[425]

[419] Income Tax Act, Ch. 7, Secs. 4–5.
[420] Income Tax Act, Ch. 7, Sec. 10.
[421] Income Tax Act, Ch. 63, Sec. 11.
[422] Income Tax Act, Ch. 39, Sec. 3.
[423] Yield Tax Act, Secs. 3 and 9.
[424] Income Tax Act, Ch. 39, Sec. 3.
[425] Income Tax Act, Ch. 39, Secs. 6–9.

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X. Taxation of Individuals — Residents

A. Income Tax Scope

A Swedish resident individual is liable to Swedish taxation on the basis of his or her worldwide income.[426] International double taxation is, however, mitigated or eliminated under provisions contained in an applicable tax treaty, or the domestic foreign tax credit provisions in cases where there is no applicable tax treaty.[427]

B. Residency

An individual is deemed to be a resident of Sweden if the individual has his or her principal place of abode in Sweden.[428] Normally, this is the place of a taxpayer's home where his or her family (spouse and/or dependent children) is resident and where the taxpayer is registered for various purposes. This is not, however, the sole criterion for determining residence. Even in the absence of a principal place of abode in Sweden, physical presence in Sweden for a period of more than 183 days during the taxable year amounts to residence.[429]

An individual who no longer has his or her principal place of abode in Sweden or who is no longer physically present in Sweden will still be considered to be a Swedish resident as a consequence of maintaining an essential tie with Sweden. The facts in each case must be weighed to determine with which country a taxpayer has the strongest ties. Relevant elements include the location of real property owned by the taxpayer, the abode of the taxpayer's family, the nationality of companies in which the taxpayer holds stock, the countries in which the taxpayer holds bank accounts, and the location of other personal property.[430] The existence of a mere summer residence in Sweden or substantial passive investment income from Sweden, is usually not, as such, deemed to constitute an essential tie with Sweden.

Under the "five-year rule," a citizen of Sweden or an individual who has had his or her principal place of abode or has been physically present in Sweden for a period of 10 years, is considered to be resident in Sweden during the five years following the day of his or her departure from Sweden, unless the individual proves that he or she no longer has essential ties with Sweden.

After five years, such an individual is deemed not to be a resident of Sweden, unless the fiscal authorities are able to prove otherwise.[431]

Comment: The question of residence has been the subject of numerous court cases, which have led to the development of a more case-based application of the specific rule. One could conclude that individuals having a pattern of regular annual visits to Sweden of three months plus approximately 30 days of irregular visits does not result in permanent stay status in Sweden. By contrast, regular visits to Sweden of five months or longer, without interruption, would imply permanent stay. Other cases from the HFD[432] indicate that it is not possible to draw up general conclusions regarding what is deemed to constitute a permanent stay. The number of cases in recent years shows the difficulties in applying a general approach and that each case is assessed on an individual basis. The tax resident issue regarding permanent stay is still unclear after new decisions from the HFD.

1. The Case of 111 Overnights

In 2016, the National Tax Board's Private Ruling Department found that 111 overnight stays in Sweden during a year triggered residence. This ruling changed old practice, which had been based on the main requirement for a continuous period of stay in Sweden of at least six months. According to the ruling, 111 overnight stays during a 12-month period, are considered to constitute a permanent stay (habitual abode) in Sweden under certain circumstances. In this specific ruling, a Swedish citizen, A, had sold his permanent place of residence in Sweden in connection with moving from Sweden. After the move, A served as a non-executive chairman of the board of directors in a Swedish company and A and his wife owned two holiday homes in Sweden. The visits to Sweden lasted between two to eight weeks each. The Council for Advance Tax Rulings concluded that A visited Sweden regularly on the basis of a certain pattern of visits. Although the periods abroad were longer than the visits in Sweden, they were not longer than approximately two months at a time. The Council was of the opinion that the visits in Sweden were of such a scope and regularity that they constituted a permanent stay in Sweden.

2. The Portugal Case

In Case 6736.17 from the HFD, a couple was planning, after moving to Portugal, to regularly visit Sweden during the summers between June and August, that is, during a period of three months. In addition to this, the couple estimated that it would travel to Sweden irregularly in order to visit relatives and friends for a total of approximately 30 days a year in Sweden. The HFD determined, first, that a regular visit of three consecutive months per year would not be considered to comprise a permanent stay. The HFD also deemed that the additional irregular stays totaling 30 days (a total of approximately 120 overnight stays), would not be seen to incur permanent stay status in Sweden.

3. The Lengthy Visits Case

In Case 6034.17 from the HFD, an individual asked if he could visit Sweden during five months during the summer (between May 1 and September 30), three weeks during the Christmas period, plus two visits of four days each per year, for a total of 182 days per year, without these visits being seen to comprise permanent stay. The HFD determined that the repetitive summer visit of five months was of such a length, and was to take place on such a regular basis, that in and of itself it caused the individual to have permanent stay status in Sweden.

[426] Income Tax Act, Ch. 3, Secs. 3 and 8.
[427] Foreign Tax Credit Act, Sec. 1.
[428] Income Tax Act, Ch. 3, Sec. 3.
[429] Income Tax Act, Ch. 3, Secs. 3 and 9.
[430] Income Tax Act, Ch. 3, Secs. 3 and 7.
[431] Income Tax Act, Ch. 3, Secs. 3 and 7.
[432] HFD cases nr. 236-19 and 2659-19, June 2019.

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C. Determination of Gross Income/Earned Income

Gross income is computed based on the nature of the income. Swedish tax law distinguishes between three sources of income: business, employment, and capital.[433] Each item of income is separately accounted for under the applicable rules. The aggregate of the net amount from the business and employment sources constitutes the adjusted gross income of the taxpayer, which is subject to progressive rates that may reach approximately 55.3% (2025).[434] Capital income is subject to a separate flat tax rate of 30%.[435]

1. Employment Income

Employment income consists of all cash payments by way of salary and vacation pay, and any and all payments made by an employer as a result of an employer-employee relationship.[436] All benefits-in-kind are reflected as income at market value.[437] The law provides that all income from employment is taxable unless it is expressly excluded from income under the terms of the law or it is classified as income from capital or business.

a. Personnel Care

Personnel care benefits are tax-free for the employee. On such a benefit, the employer does not have to make tax deductions or pay social contributions. To be treated as an employment care benefit, the benefit must be of lesser value and target the entire staff. A wellness allowance with a value of a maximum of SEK 5,000 yearly, used for physical activities that include exercise, is classified as such a benefit. The fitness allowance can be used for activities such as personal training, lift passes, golf, and lessons in horseback riding, sailing, and scuba diving.

Benefits-in-kind not subject to tax include day-to-day employee benefits in the form of coffee and bread, certain working clothes or uniforms, and small gifts. Otherwise, benefits in-kind are generally included in earned income at market value.

Costs incurred by an employer intended to keep employees healthy, including the costs of providing nutritional and eating habits advice, smoke cutting programs, and reducing stress in the workplace, are not taxable in the hands of the employees.

b. Company Cars

A company car that is used only for purposes of one's employment is not a benefit and therefore not taxed. However, whereas the use of a company car by an employee for private purposes is allowed, it is limited to 100 kilometers and to a maximum of 10 occasions per year; beyond this threshold, the benefit is subject to taxes and penalties.[438]

Calculating the value of a car for this purpose is a technical procedure and to this end a lengthy list of all makes and models is prepared each year by the tax authorities.[439] The calculation can be made using a calculator on the website of the Swedish Tax Agency.[440]

c. Free Meals

Free meals provided by an employer are a taxable benefit and included in income at a *per diem* rate of SEK 305 (2025) (where at least three free meals a day are provided), SEK 122 (2025) (where only one free meal a day is provided), and SEK 61 (2025) (where only a free breakfast is provided).[441]

In connection with "external entertainment" (i.e., hospitality expenses involving company customers or clients) and internal representation (for instance, meals in connection with employee discussions and meetings), a "free" meal is in general not a taxable item.[442]

Meals that are paid for by an employer in connection with business trips (i.e., domestic or foreign trips outside the place of business), external conferences, and speeches must generally be included in the employee's income. Exceptions apply for meals that are included in the price of transportation and breakfast meals that are included in the price of staying at a hotel.[443] Employees traveling on an official business trip within the territory of Sweden can benefit from a tax-free allowance amounting to SEK 290 per day (2025). Tax free allowances for foreign business trips vary depending on the country visited.

d. Employee Stock Options (Not Assessed as a Security for Tax Purposes)

Employee stock options are taxed as employment income. Taxation is triggered at the time the stock options are exercised (as opposed to at the time of grant or vesting).[444] Employees are taxed on the benefit arising from the exercised options, calculated as the market value of the acquired shares less the exercise price and premiums paid, if any. The benefit is taxed as income from employment subject to tax at the rate of approximately 30% to 55% (2025) to be withheld by the employer and paid to the Swedish Tax Agency on behalf of the employee. The employer, on the other hand, is required to pay social security contributions on the taxable benefit arising on the exercise of the stock option as well as to report the benefit in the employee's annual statement of income.

e. Ordinary Stock Options (Assessed as a Security for Tax Purposes)

It is common to use stock options in startups and other smaller companies as part of a reward system where key employees can be given the right to subscribe to shares for a specific price for a certain period. Taxation takes place when the stock options are issued. If the market price is paid at the acquisition time, there is no benefit to tax. Any increased value of the stock option is treated as capital income and taxed if it were to be sold. Stock options can be transferred to someone

[433] Income Tax Act, Ch. 10, 13 and 41.
[434] Income Tax Act, Ch. 65. Secs. 3 and 5.
[435] Income Tax Act, Ch. 65, Sec. 7.
[436] Income Tax Act, Ch. 11, Sec. 1.
[437] Income Tax Act, Ch. 11 and Ch. 61, Sec. 2.
[438] Income Tax Act, Ch. 65, Sec. 5.
[439] Income Tax Act, Ch. 11, Sec. 1, Ch. 12, Sec. 5 and Ch. 61, Sec. 5.
[440] https://www.skatteverket.se/privat/skatter/arbeteochinkomst/formaner/bilforman/bilformansberakning.4.3f4496fd14864cc5ac9539d.html.
[441] Income Tax Act, Ch. 11, Sec. 1 and Ch. 61 Secs. 3–4.
[442] Income Tax Act, Ch. 11, Secs. 1–2.
[443] Income Tax Act, Ch. 11, Secs. 1 and 2. As for internal conferences, the costs of travel, accommodation, and meals are not taxable, provided conference time corresponds to normal office hours.
[444] Income Tax Act, Ch. 10, Sec. 11.

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else and have no limitations similar to employee stock options. The option must be priced correctly, or both the employee and the employer risk tax consequences. It is also essential that the terms are formulated precisely so that the option is assessed as security for tax purposes and not an Employee Stock Option.

The Swedish Tax Agency has issued a statement regarding the valuation and determination of volatility of unlisted stock options. If an employee acquires stock options on favorable terms, not being employee stock options with specific requirements attached, the benefit will be taxed at the time of the acquisition. The benefit will be valued at market value. For listed securities, the valuation is normally not an issue as relevant data is available to form the basis for calculating the value. On the other hand, if there are non-listed stocks, it has been unclear what calculation model to use and what data to look at. There are different models for theoretical pricing of unlisted options. The Tax Agency considers that the "Black & Scholes model" should be used primarily in calculating the market value of unlisted options. The Tax Agency states that if the underlying share is unlisted, the overall assessment of the future volatility of the option must be based on the implicit volatility of listed options for comparable listed companies. If there is no information on the implicit volatility, the forecast for future volatility must be based on studies of the historical volatility of comparable listed companies.

Additional clarification comes from a 2018 decision of the Administrative Court of Appeal in Gothenburg,[445] which, reversing a prior decision, held that a taxable benefit is triggered for employees who have been offered to acquire shares with a guaranteed allocation in connection with an initial public offering (IPO). The value of the benefit will be determined by the difference between the opening price of the shares and the price paid by the employees.

f. Qualified Employee Stock Options (Assessed as Hybrid Security for Tax Purposes)

The Qualified Employee Stock Option (QESO)[446] will not be taxed in the hands of the employee when it is received or exercised. Taxation occurs when the shares, which the employee has purchased by exercising the QESO, are sold. The capital gain is taxed as capital profit (under the "3:12 regulations," at progressive income tax rates ranging from 30% to 55.3%), which means that the employer does not have to pay social contributions. To benefit from this scheme, the worker must work 30 hours per week, must have a salary income of at least 13 times the base value (*inkomstbasbeloppet*, i.e., SEK 80,600 in 2025), and the employee in the company or group that issues the QESO must not be a partner, or related to a partner, in the company for a period of two years prior to the purchase. There are also requirements regarding the company issuing the QESO. The company/group may have existed for a maximum of 10 years, must have fewer than 50 employees, and must have a maximum of SEK 80 million in net sales or total assets. The issued QESO may not have a market value of more than SEK 3 million per employee with a total value of a maximum of SEK 75 million for all employees.

[445] Case 2976-18.

[446] Income Tax Act. Ch. 11a.

2. Business Income

For an individual who operates a private business, i.e., a sole proprietor, the income of the private business is determined as annual revenue minus annual business expenses incurred in the operation of the business. Additionally, the owner of a private business may choose to take advantage of certain tax allocation mechanisms that are designed to create tax neutrality between a private business and a limited liability company:

(i) Like a limited liability company, a sole proprietor may deduct part of the annual profit and allocate it to a tax-free accrued reserve *(periodiseringsfond)* over a period of five years.[447] The allocation amounts to 30% of the profit (before the deduction of certain items). Allocations must be reversed and thus become taxable at the latest in the sixth year.

(ii) By application of the rules on interest allocation (*positiv och negativ räntefördelning*), the profits of a private business are partly taxed as capital income (at a tax rate of 30%) and partly as business income.[448]

(iii) A sole proprietor may make allocations to an "expansion reserve" *(expansionsfond)*, in which case the allocations are taxed at the same tax rate as is applicable to a limited liability company, i.e., 20.6% (2025).[449]

(iv) A private business is not subject to any corporate tax since it is not a separate legal entity. Instead, the business income, after the allowance of deductions for business expenses and subject to tax allocations (if any), is taxed at the same tax rates as apply to employment income (i.e., to municipal and national tax that together can amount to 55.3% (2025)). Additionally, a sole proprietor must pay individual social security contributions (*egenavgifter*) of 28.97% (2025).

3. Capital Income

Capital income is any yield from capital investment, including capital gains, interest, dividends, and rental income.[450] The basic tax rate is 30%.

The tax on capital investments can be reduced by establishing an Investment Savings Account (ISK). Taxation is based on a standardized income calculated from the account's value. This standardized income is determined by the reference rate (Swedish: "statslåneräntan") plus one percentage point, with a minimum of 1.25%. The tax rate on an ISK is 30% of this standardized income, meaning account holders must pay taxes regardless of whether they make a profit. Starting in 2025, a tax-free threshold of 150,000 SEK per person will be implemented.

Any capital up to this limit will not be subject to standardized taxation. In 2026, this threshold will increase to 300,000 SEK. Capital exceeding this amount will be taxed according to the regular ISK rules. ISK accounts offer great flexibility, al-

[447] Income Tax Act, Ch. 30.

[448] Income Tax Act, Ch. 33.

[449] Income Tax Act, Ch. 34.

[450] Income Tax Act, Ch. 41, Secs. 1–5.

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lowing deposits and withdrawals to be made freely without tax consequences. The tax is based on the total value of the account, and individual gains, dividends, and sales do not need to be reported. Assets eligible for an ISK include stocks, funds, and other listed securities; however, unlisted shares and private investments are not permitted.[451]

For the sale of real estate and apartments, a tax rate of 22% applies. Under certain circumstances, it is possible to defer the taxation of gains when selling private real property and when a new house or apartment (a "replacement home") is bought in Sweden or the EU/EEA area. The maximum deferral amount is SEK 3 million for the property divided between the owners. A Replacement Home must be bought, which must be as expensive as the one being sold, to receive the maximum deferral amount. The replacement home must be purchased no later than December 31 of the year following the sale. If a cheaper replacement home is bought, the deferral will be reduced proportionally.

When selling foreign currency and receivables in foreign currency, capital gains tax is triggered. The provisions cover all receivables, such as bonds, debentures, deposit accounts in foreign banks (bank books), private promissory notes/reverse notes and banknotes, and coins in foreign currency.

a. Holdings in Non-Listed Swedish Companies

Dividends and capital gains on shares that are not listed on the market are subject to tax at the rate of 25%.[452] A capital loss on such shares is correspondingly deductible to 25%. The loss is set off against profit on the same category of assets. If there is no profit to absorb the losses, 70% of the loss can be set off against any other capital profit. There is no carry forward of losses.

b. Holdings in Non-Listed EU Companies

The HFD has determined that a Swedish private person receiving dividends from a non-listed Cyprus company is to be taxed at the rate of 25% and not 30%, as the Swedish regulations are in conflict with EU law.[453]

For the 25% tax rate to apply, Swedish Law requires the foreign legal entity to be subject to an income tax comparable to the tax applying to Swedish companies. The Cyprus company had been taxed in Cyprus at a rate of 10%, which was not deemed comparable by the Swedish Tax Agency. The shareholder appealed the decision on the grounds that the requirement of comparable taxation is in conflict with EU law as it infringes on the free movement of capital.

The HFD first considered the comparability requirement and concluded that it is in conflict with the right of free movement of capital as dividends from foreign companies paid to private individuals in Sweden are taxed less advantageously than dividends from companies established in Sweden, which can result in individuals refraining from investing capital in foreign companies. Second, the HFD considered whether the rule could be justified on other grounds. This would be the case under EU practice if the differing tax rules for foreign and domestic capital income could be justified on grounds that the underlying situations were not objectively comparable. The Tax Agency argued that an individual receiving a dividend from a low taxed company is not in an objectively comparable situation as a person receiving a dividend from a Swedish company. The HFD, however, disagreed with the Tax Agency. According to the HFD, the 25% rate is intended to relieve the economic double taxation of corporate income, which applies to both Cyprus and Swedish companies. Consequently, against the background of EU practice, the HFD held that the shareholder receiving the dividend from a Cyprus company can be deemed to be in an objectively comparable situation with an individual receiving a dividend from a Swedish company and is entitled to the 25% rate.

c. Holdings in a Closely-Held Company

Special tax rates apply to dividends and capital gains derived from "qualifying shares" in closely held companies. The relevant rules increase the tax burden from 30% to a maximum of approximately 55%. The purpose of the legislation is to impose tax on employment income on corporate profits earned as a result of a shareholder's activity in a company.

Dividends and capital gains derived from "qualified" shares in closely held companies are taxed either as investment income at the rate of 20% or as earned income at approximately 55%. The percentage taxed in each category depends on the size of a calculated threshold amount (known as "spared dividends"). The threshold amount is calculated with either a simplified rule or a rule based on the capital invested in the company and a salary-based margin (The "Main Rule"). The salary based margin comprises 50% of the total salary base, which is calculated based on wages disbursed to employees of the company and its subsidiaries, and the simplified rule is calculated annually based on a standard amount (which is equal to 2.75 multiplied by the income base amount, *inkomstbasbeloppet*). The Main Rule is only available for partners who own at least 4% of the shares in the company (the equity share requirement) and who receive a salary of not less than the specific amount stipulated under the legislation, known as the salary withdrawal requirement.

In the case of capital gains and dividends, the amount subject to tax as employment income is limited to 100 base amounts, which in 2025 corresponds to SEK 8,060,000. If the entire threshold amount is not utilized in a single year, the remaining margin is saved and used in subsequent years.

A closely-held company exists where a limited liability company (or an economic association) has one to four owners that together own a least 50% of the company's shares or where the business activity of the company consists of other business activities that are independent from each other but in reality are controlled by one individual.[454] It should be noted that a number of individuals can be deemed to be one person, so that a company with ostensibly more than four owners can be brought within the definition of a closely-held company.[455] If an individual (or his/her relative) has been active to a significant extent, whether directly or indirectly, in a closely-held company in which he or

[451] Act (2011:1268) on Investment Savings Accounts, (Swe: Lag (2011:1268) om investeringssparkonto).

[452] Income Tax Act, Ch. 42, Sec. 15 a.

[453] HFD 2017 ref. 57.

[454] Income Tax Act, Ch. 56, Sec. 2.

[455] Income Tax Act, Ch. 57, Sec. 3.

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she is a shareholder, his or her shares are deemed to be qualified.[456] "Has been active to a significant extent" means that the individual concerned has had a real influence in the managing of the company and its profit-making.

d. Foreign Holdings of 30% in a Closely-Held Company

In the event that at least 30% of the shares are controlled by a external silent partner, the rules relating to closely-held companies will not apply.

The Supreme Administrative Court has ruled in a case addressing whether it is the actual ownership or the economic outcome of ownership that is decisive for the application of the external ownership rule. In the case at hand,[457] almost 90% of the total number of shares in the company were held by active shareholders and the remaining approximately 10% of the shares by external silent partners. The silent partners had received more than 30% of the agreed dividends from the company (although they only owned 10% of the shares). The HFD came to the conclusion that it is the actual ownership which is decisive for the application of the external ownership rule.

e. Holdings in an Investment Fund Structure — Carried Interest

Under a traditional investment fund structure, the advisers' work is invoiced by the venture capital company (where the advisors are employed) while the return on capital (including carried interest) goes to the management companies and their owners (i.e., the advisors and the investors). As a shareholder in management companies, the carried interest received by the advisors is taxed under the rules for closely-held companies.

The HFD has confirmed that a person can be deemed to be significantly active in a closely-held company, in which the person holds shares, even if the person is fully employed by another company, if the person is performing services for the closely-held company as an employee of the other company.[458] In the specific case, a person owned shares in three companies that in turn indirectly owned shares in management companies that managed venture capital funds. The person was employed by a venture capital company that provided management services with advisory services. The person received a dividend, which came from so-called carried interest in the management companies. Under the income tax act, dividends on so-called qualifying shares in a limited liability company, are taxed partly within the services income category and partly as income within the capital income category. The person liable to tax had claimed it was purely capital income.

f. Cryptocurrency

The taxation of cryptocurrencies has not yet been specifically regulated under Swedish tax legislation. However, certain guidance on its taxation is provided by the tax authority and practice. As of 30 December 2024[459] Sweden has enacted new legislation to implement two key EU regulations, supplemented by national provisions:

(i) The Markets in Crypto-Assets Regulation (MiCA) — Regulation (EU) 2023/1114 of 31 May 2023, on markets in crypto-assets and amending Regulations (EU) No 1093/2010 and No 1095/2010, and Directives 2013/36/EU and (EU) 2019/1937; and

(ii) The Transfer of Funds Regulation (TFR) — Regulation (EU) 2023/1113 of 31 May 2023, on information accompanying transfers of funds and certain crypto-assets, amending Directive (EU) 2015/849.

The legislation aims to establish a harmonized legal framework across the European Union to enhance consumer protection, combat money laundering and terrorist financing, and strengthen financial stability in the growing market for digital assets.

The legislation introduces new obligations for private individuals who invest in or trade crypto assets. Entities providing crypto services must ensure that pre-contractual information is clear, accurate, and not misleading. The Swedish Financial Supervisory Authority (Finansinspektionen) is authorized to intervene against deceptive marketing and publish corrective information, reinforcing consumer protections. Furthermore, under the revised Transfer of Funds Regulation, all transfers of crypto-assets, including peer-to-peer transfers between individuals, must include identifying information about both the sender and the recipient. This requirement aims to eliminate anonymous transactions that may facilitate illicit activity. As a result, private individuals will be subject to increased traceability and must use regulated platforms or service providers.

The Swedish Financial Supervisory Authority is designated as the competent supervisory authority and is tasked with ensuring that crypto service providers operating in Sweden comply with the regulations. Providers must be authorized, and breaches may result in administrative sanctions such as warnings, fines, or the revocation of licenses. Entities operating without proper authorization may be required to cease operations or transfer client contracts to authorized providers.

In conclusion, the legislation introduces a significantly stricter regulatory framework for crypto assets within Sweden and the EU. It enhances legal certainty, investor confidence, and market integrity while safeguarding against misuse of crypto assets through increased oversight of private individuals and commercial actors.

In general, crypto-transactions are taxed as capital income with a flat rate of 30%. The complexity regarding taxation of cryptocurrencies lies in the determination of the taxable event and the calculation of the taxable amount.

The Swedish tax authority has published a number of positions and legal guidance regarding the taxation of crypto currencies:

[456] Income Tax Act, Ch. 57, Sec. 4.
[457] HFD 6458-17.
[458] HFD 2018 ref. 31.
[459] (Act with Supplementary Provisions to the EU Regulation on Markets in Crypto-Assets (Swe: Lag (2024:1159) med kompletterande bestämmelser till EU:s förordning om marknader för kryptotillgångar).

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(i) Taxation of bitcoin and other "virtual currencies" in the capital income category;[460]

(ii) Taxation when mining bitcoin and other virtual currencies;[461]

(iii) Capital gains taxation on the transfer of crypto-assets to a platform for lending, exchange or custody;[462]

(iv) Staking of ether in Ethereum 2.0;[463] and

(v) Legal guidance regarding crypto assets.[464]

The HFD has ruled in a case[465] regarding a divestment of Bitcoin and the calculation of the cost amount. The main issue in this case concerned which provisions in the Income Tax Act (IL) should form the basis for calculating the cost amount. The answer to this question depended on whether Bitcoin could be classified as a share ownership right or a foreign currency asset. The HFD did not consider Bitcoin a share ownership right nor a foreign currency asset. It argued that Bitcoin could not constitute a foreign currency in the sense referred to in Ch. 48, Sec. 4, paragraph 2 of the Income Tax Act, because it has no issuer and it does not constitute legal tender in any state. The court's overall conclusion was, thus, that Bitcoin is covered by the provision in Ch. 52, Sec. 3, paragraph 1 of the Income Tax Act, namely, it considered the divestment of Bitcoin as a capital gain on disposal of assets other than personal assets, and the cost amount must be calculated according to the average method in Ch. 48, Sec. 7 of the Income Tax Act.

Comment: In September 2021, El Salvador introduced Bitcoin as an official currency alongside the US dollar. The circumstances on which the HFD based its judgment have partially changed and, therefore, the HFD's interpretation on the nature of Bitcoin might change in future cases.

D. Allowable Deductions and Credits

1. Basic Deduction

Individuals are entitled to a zero-bracket amount on an annual basis. The zero-bracket amount for the income year varies with the level of income. For 2025, the tax allowance rises from SEK 24,800 (on the lowest income level) to SEK 45,300 (on the highest); it then reduces again, with the allowance on income over SEK 462,700 being SEK 17,300.[466]

2. Job Tax Deduction

To encourage job creation in general and promote people to work after the age of 65, a monthly "job tax deduction" applies with respect to individuals earning employment income which reduces the final tax. This deduction is allowed to individuals in addition to the tax allowance referred to above. The general job tax reduction in 2025 reaches a maximum of SEK 3,941 when monthly income is between SEK 15.900 and SEK 39,700. A more favorable deduction scheme applies to people who are 65 years of age and older.

3. Personal Expenses

Costs that are not deemed to constitute personal expenses and that exceed an aggregate amount of SEK 5,000 (SEK 11,000 in the case of costs of commuting to work) (2025) are deductible. Cost amounts are in most cases calculated using standardized methods provided in legislation.[467] When an employee travels by car for work-related purposes, the employer may pay a tax-free car allowance of:

(i) SEK 25.00 per every 10 km when a private car is used;

(ii) SEK 12.00 per every 10 km when a car provided by the employer is used, if the car runs on diesel, gasoline or ethanol or is a hybrid; and

(iii) SEK 9.50 per every 10 km when a car provided by the employer is used, if the car runs on electricity.

An employee who does not receive any remuneration from his or her employer for a business trip may deduct the above amounts.

4. Capital Losses

Limitations apply with regard to the deductibility of capital losses. Individuals may deduct interest either in the category of business income or in the category of unearned income. Interest allocable to business income is deductible in that category. All other interest should be deducted in the unearned income category. This means that in the unearned income category, deductions are made both for interest allocable to capital investments and for interest that is not a cost incurred in earning income (i.e., that is a living expense). The main rules for the unearned income category are that: interest, dividends, rent from mainly owner-occupied residences, capital gains, and other unearned income is taxed in the unearned income category; all interest is deductible for a resident taxpayer, irrespective of the use that is made of the loan; expenses other than interest are deductible if they are incurred in acquiring unearned income; and if the unearned income category produces a deficit, this may be used to reduce the tax on employment and business income. The reduction allowed is 30% of the deficit up to SEK 100,000 and 21% of the deficit in excess of this amount.[468]

From January 1, 2025, new regulations have been introduced that limit private individuals' right to interest deductions in the category of capital income.

A full interest deduction is only granted for loans secured by real estate, vehicles (such as cars, boats, ships, or aircraft),

[460] *Beskattning av bitcoin och andra s.k. virtuella valutor i inkomstslaget capital. 2014-04-23. Dnr: 131 212709-14/111,* https://www4.skatteverket.se/rattsligvagledning/327766.html.

[461] *Beskattning vid mining av bitcoin och andra virtuella valutor. 2015-04-24. Dnr: 13 191846-15/111,* https://www4.skatteverket.se/rattsligvagledning/338713.html?q=131+191846-15%2F111.

[462] *Kapitalvinstbeskattning vid överföring av kryptotilgångar till en platform för utlåning, byte eller förvaring. 2021-11-09, Dnr: 8-1302842,* https://www4.skatteverket.se/rattsligvagledning/398415.html.

[463] *Staking av ether i Ethereum 2.0. 2021-12-14. Dnr: 8-1369233,* https://www4.skatteverket.se/rattsligvagledning/401273.html?date=2021-12-14.

[464] https://www4.skatteverket.se/rattsligvagledning/edition/2024.1/409288.html.

[465] HFD No. 2674-18.

[466] Income Tax Act, Ch. 63, Secs. 2–3.

[467] Income Tax Act, Ch. 12, Sec. 2.

[468] Income Tax Act, Ch. 67, Sec. 10.

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or financial instruments that are traded on a regulated market or an MTF platform within the EEA.

During 2025, deductions may be made for 50 percent of interest expenses on loans that do not meet the requirements for underlying security. From 2026 onwards, deductions will only be allowed for interest expenses on loans secured by the specified assets, and no deduction will be granted for other interest expenses.

5. Household Services and Labor Costs for Maintenance and Construction

The Swedish Government has introduced a partial tax deduction for costs related to household services (RUT) and labor cost for renovation, maintenance and construction on a privately-held house or apartment (ROT). Under the RUT deduction, 50% of such costs, including value added tax (VAT), can be deducted from tax on earned income, and under the ROT, 30% of such costs, including VAT, subject to a maximum deduction limitation of 50,000 SEK per year.[469] The deductions are subject to an annual total limitation of SEK 75,000 per year (2025),[470] One of the conditions that must be fulfilled is that the performer of the services must be registered for business tax purposes, i.e., must hold an F-tax card.

6. Investment Deduction

A partial deduction for investments in small companies is available for private individuals.[471] The taxpayer is not eligible for the deduction if he/she, directly or indirectly, owned shares in the company at any time during the two calendar years before the fiscal year of the acquisition or during the year of the acquisition up to the investment day. A company is deemed small if it has fewer than 50 employees and if the gross sales or the balance sheet total is under SEK 80 million. Shares may not be admitted to trading on an MTF platform or equivalent trading venue outside the EEA. A deduction is also denied if shares are acquired in companies that have been active on the market for seven years or more. Those who obtain shares in a small company will be eligible for a deduction of up to 50% of the cost of acquiring the shares. The deduction has a maximum limit of SEK 650,000 per individual per annum, which corresponds to a total investment of SEK 1.3 million. An investment of SEK 1.3 million may give the taxpayer a reduced tax of SEK 195,000.

E. Rates and Calculation of Taxable Income

All employment income and business income is subject to municipal tax (see further at G., below).[472] The municipal tax is a local income tax that the municipalities levy at fairly high rates (approximately 29% to 35%).

National tax at a flat rate of 20% must be paid if net income exceeds certain amounts (not factoring in zero bracket amounts) listed below.[473] This means that the top combined municipal and national tax rate on earned income will affect annual income exceeding SEK 625,800 (income year 2025).

Taxable Income	National Tax
Below SEK 625,800	0%
Above SEK 625,800	20%

Capital income is taxed separately at the flat national tax rate of 30% and no municipal tax is due thereon.[474]

Taking the average municipal tax rate in Stockholm of 30% and the national tax of 20% into account, the combined top marginal tax rate on income is equal to approximately 50% (2025).

F. Assessment and Filing

Spouses are taxed separately on both employment and unearned income.[475] The tax on the year's employment income and on unearned income in the form of interest from banking institutions is collected by means of withholding.[476] The final assessment is made during the subsequent year after taxpayers are notified of refunds and claims for additional tax payments (usually in August or December, depending on the source of the income. If the final assessment is made in August, the due date for claims is November 14, and if the assessment is made in December, the due date is March 13 the year after). The deadline for filing tax returns is May 2 (or the first following working day if May 2 happens to fall on a Saturday or Sunday. It is, however, possible to apply for an extension to file a tax return at a subsequent date. The latest date to which such an extension may be granted is June 15 (or the first following working day).

To file tax returns on the internet, taxpayers must first file for an "e-legitimization." Once this electronic verification process is completed, taxpayers can sign and file their tax returns with the Swedish Tax Agency via the internet. Taxpayers must access the tax authority's home page at www.skatteverket.se to have access to the electronic services available, including security codes and the e-legitimization, and access to their tax accounts, i.e., back-taxes or refunds in the files of the authorities. If no changes in the pre-printed tax return are required, a tax return can also be filed via Short Message Service (SMS). The taxpayer sends a security code via SMS and in this way confirms the pre-printed income information, which then constitutes the basis for the Swedish Tax Agency's final tax decision.

If a tax return is submitted later than the regular tax return date, there will be a penalty charge of SEK 1,250. Additional charges with the same amount will be triggered after three and five months. No late penalty charge will be charged for those who live abroad if the declaration is submitted within approximately four weeks from the regular declaration date.

If no declaration is submitted, there will be a risk of a discretionary assessment carrying the risk of exposure to a higher tax charge than would have been imposed if a declaration

[469] Act on Tax Deductions on Construction Labor for Private Homes (*Lag* (2004:752) *om skattereduktion för utgifter för byggnadsarbete på bostadshus*).

[470] Act on Tax Deductions on Household Labor (*Lag* (2007:346) *om skattereduktion för hushållsarbete*), Secs. 6–7.

[471] Income Tax Act, Ch. 43.

[472] Income Tax Act, Ch. 1, Sec. 3.

[473] Income Tax Act, Ch. 65, Sec. 5.

[474] Income Tax Act, Ch. 65, Sec. 7.

[475] Income Tax Act, Ch. 1, Sec. 3 and Ch. 60.

[476] Tax Procedure Act (*Skatteforfarandelag* (2011:1244)).

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had been submitted. In the event of a discretionary assessment being made, tax surcharges can also be payable. The tax surcharges can be as high as 40% of the calculated tax.

G. Local Taxes

Swedish municipal taxes (which are levied on individuals only) are, by international standards, rather high, ranging from 28.98% to 35.3%. The rate in Stockholm, for example, is 30.60%; in Solna (an industrialized municipality in the vicinity of Stockholm) the rate is 29.75%; in Gothenburg, 32.60%; and in Malmo, 32.42% (all figures relating to 2025).

H. European Commission Infringement Notice

The European Commission opened an infringement procedure against Sweden in July 2023 focusing on the potential incompatibility of Sweden's legislation on preliminary income taxation with EU law.[477] A Swedish client paying for work carried out by a contractor established in another EU Member State or an EEA country is obliged to withhold a preliminary income tax at a rate of 30% on the remuneration concerned unless the foreign contractor has been approved by the Swedish tax authority for preliminary income tax purposes (commonly known as "F-tax approval"). The Commission deems that the obligation to withhold preliminary income tax in a situation in which a foreign contractors has no Swedish permanent establishment (PE) — and hence no income tax liability in Sweden — could infringe the freedom to provide services under Article 56 of the TFEU and Article 36 of the EEA Agreement.

The Swedish Government's position is that the rule in Chapter 10, Section 6 of the SFL is compatible with Articles 56 and 57 of the TFEU and Articles 36 and 37 of the EEA Agreement. In the Government's view, the rule that tax must be deducted from payments of remuneration to foreign recipients for work carried out in Sweden does not constitute a restriction on the free movement of services.

A decision has yet to be reached by the European Commission.

[477] (INFR (2023) 4007/C(2023) 4143 Final — https://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement_decisions/?version=v1&typeOfSearch=byCase&langCode=EN&refId=INFR(2023)4007&page=1&size=10&order=desc&sortColumns=refId.

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XI. Taxation of Individuals — Nonresidents

A. General

As a general rule, a nonresident for tax purposes is an individual who has his or her residence, i.e., who is domiciled, outside Sweden.[478] The place of residence is not, however, the only criterion when determining the scope of tax liability. An individual residing outside Sweden who is deemed to have "considerable connection" to Sweden will still be treated as a resident of Sweden for tax purposes, subject to unlimited tax liability. Instead, the status of a nonresident is determined on an *e contrario* basis, i.e., a nonresident is an individual who is not subject to unlimited tax liability.

Nonresident individuals are subject to Swedish tax only to the extent they derive certain types of income from Swedish sources. It should be noted, however, that the taxes imposed under the Swedish domestic legislation applicable to nonresident individuals are subject to reduction, and in some case even entirely waived, under the terms of an applicable tax treaty. Swedish tax law embodies the principle that the provisions of tax treaties override the provisions of domestic Swedish law. This is sometimes expressed by saying that a tax treaty may only be used as a shield, never as a sword.

The taxation of employment income is governed by the "SINK" legislation.[479] The SINK legislation imposes tax at a flat rate of 25% (2025) that is withheld at source by the employer (i.e., no filing requirements are imposed on the employee). No deductions are allowed. However, to the extent the imposition of SINK tax, with no deductions, would lead to a higher tax burden than that resulting from ordinary income tax imposed under the Income Tax Act (which allows certain deductions), a nonresident individual may opt to be taxed under the ordinary income tax regime.

B. Business Income

The treatment of the business income of a nonresident individual is similar to the treatment of the business income of a nonresident corporate taxpayer.

Foreign persons, whether individuals or corporations, are taxed on income from operations in Sweden pursuant to concepts similar to the U.S. federal income tax concept of being engaged in a trade or business. In practice, a foreign person will be deemed to do business in Sweden for income tax purposes only if the person maintains a fixed place of business in Sweden.[480] Only if there is such a fixed place does the possible existence of a PE (which is a tax treaty concept) need to be investigated. A PE, as applied to business operations in Sweden, includes a place in Sweden with which the foreign person's name is identified — normally an office. Such a place must furthermore be intended for permanent business use by the foreign person, as may be the case with an office, factory, workshop, or any other fixed place of business for the sale of goods or merchandise.[481] The purpose of the establishment must be related to commercial activities carried out on behalf of the foreign person. Thus, a Swedish branch office established only for purposes of collecting information, scientific research or preliminary information, and transmitting the information to the foreign principal, is not considered to amount to a taxable PE in Sweden of the foreign person.[482]

The Swedish tax authorities issued a statement in March 2015 (No. 131 160469-15/11)[483] clarifying the likelihood of a person residing in Sweden and working from home for a foreign company and creating a PE in Sweden for the foreign company. However, this position has been replaced by a new one issued in May 2022 (2022-05-13, No. 8-1677220), adapted to the OECD's commentary on Article 5 of the 2017 Model Tax Convention. This new position triggers fewer PE situations.

The commentary on Article 5 gives importance to whether the company requires the employee to work from home or if there is no such requirement. It also states that the employee's home is not considered to be at the company's disposal if it is only a matter of temporary work. It is, therefore, only when the employee works from home to a larger extent and for a long period of time (at least six months) that it becomes relevant to assess whether the home is at the company's disposal and, therefore, whether a PE could arise.

A home office shall be deemed to be at the disposal of the foreign company if the company pays rent or otherwise compensates the employee for a space in their home from where they can work. However, the fact that the foreign company reimburses or contributes towards the cost of a computer, specific office equipment, and other necessary materials required when working from home does not lead to the home office being considered to be at the foreign company's disposal.

If the foreign company does not provide an office space from where the employee can carry out their work, an assessment should be made of whether the work conducted from home is a requirement of the company, implicit or otherwise. An example of such a requirement could be when a company decides that the employee must work partly from home as the office space is not large enough to accommodate all employees simultaneously.

An implicit requirement may exist where the foreign company does not provide office space, but the work to be performed requires such a space. When assessing if an implicit condition exists, one factor to consider is whether the foreign company benefits from or, in other ways, has a commercial interest in the work that is being carried out from Sweden. This could be the case if, for example, the company has customers in Sweden that the employee is dealing with or if the work includes sales activities through which the foreign company wishes to establish itself in the Swedish market or other markets close to Sweden, as this shows a connection and significance between the foreign company's business activity and the geographical location of the employee. The assessment should be made based on the actual foreign company's business model and way of operating, and not on what is written on paper, i.e.,

[478] Income Tax Act, Ch. 3, Sec. 17.

[479] Special Income Tax Act for Persons Residing Abroad (*Lag* (1991:586) *om särskild inkomstskatt för utomlands bosatta* — referred to as SINK).

[480] Income Tax Act, Ch. 6, Secs. 7 and 11.

[481] Income Tax Act, Ch. 2, Sec. 29 and Ch. 6, Secs. 7 and 11.

[482] Income Tax Act, Ch. 2, Sec. 29 and Ch. 6, Secs. 7 and 11.

[483] Available at: https://www4.skatteverket.se/rattsligvagledning/337845.html?date=2015-03-16 (in Swedish).

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the mere fact that the company states that working from home is not a requirement should not be considered sufficient.

Where an employee is working from home purely because he or she wishes to do so, and the foreign company neither has any commercial interest in, nor benefits from the employee's work being carried out from home, the home office should not be considered to be at the foreign company's disposal. For example, a foreign company has no presence in the Swedish market, but has an office in its state of residence from where the employee could work, however the foreign company accepts the employee's wish to work from home in Sweden. According to the Swedish Tax Agency, this is not a factor that should be considered when assessing whether there is a commercial interest in or benefit from the work being performed in Sweden. The Swedish Tax Agency believes that the outcome should be the same even if the office is not within commuting distance.

Where an employee has a leadership role in a closely held company, and he or she is part of a foreign company's management and, as a result, can influence how the business is carried out, other factors may need to be considered when assessing the risk of the employee's home office creating a PE. As expressed in the updated statement, the Swedish Tax Agency's views cannot be assumed to apply automatically in such situations. Individuals acting as dependent agents are not covered by the updated statement.

The use of an independent agent in Sweden by a foreign principal does not constitute a PE in Sweden. Only if certain rights are conferred on an agent in Sweden, including signature rights and the authority to conclude contracts, other than on an occasional basis, on behalf of the foreign principal, will the agent attract liability for the foreign principal as a PE in Sweden.[484]

The standard language of international tax treaties to the effect that the existence of a subsidiary in Sweden does not constitute a PE of the parent company in Sweden, is tacitly adopted by Swedish domestic tax law. Only if a subsidiary maintains an office in the name of the foreign parent company or takes on assignments and powers on behalf of it, can it then be considered to be a PE.[485]

Business income also includes rental income derived by nonresidents from real property held for business purposes, i.e., property that is not classified as a pure capital asset under the definition of private real property.[486] Rental income, as well as the taxpayer's free use of real property as a residence, constitutes taxable income, subject to deductions for interest expenditure and other costs related to the management of the real property. The tax liability for business income relating to real property is calculated in the same manner as in the case of resident individuals and the tax rates applied are the same.

C. Investment Income

1. Royalties

Where no tax treaty applies, a nonresident who receives royalties from Swedish sources is subject to taxation in Sweden on the royalties in accordance with the principles applying to the taxation of business income (see B., above) The person receiving the Swedish source royalty income, whether an individual or a corporation, is deemed to receive income from a PE in Sweden.[487] This somewhat peculiar rule means that Sweden will levy corporate tax at the ordinary rate on Swedish-source royalty payments derived by nonresidents. Unlike the method of taxation applied in many other countries, royalty income is not subject to Swedish withholding tax. Imposition of ordinary corporate tax rates requires foreign recipients of royalties to disclose the receipt of such income in a regular Swedish income tax return.[488] In calculating taxable income, the foreign person is entitled to deduct business costs related to the royalties in the same way as a Swedish taxpayer.[489] These costs may be either direct (for example, patent expenses), or indirect, in the form of the share of costs incurred by the person's home office that are attributable to the Swedish royalties (for example, a portion of foreign office expenses).

The scope of the relevant provisions extends not only to nonresident licensees but also to holders of patent licenses and copyrights and recipients of other periodic payments in consideration for the right to use secret processes, formulae, technical knowledge, know-how, and trademarks.[490] It is sometimes difficult to distinguish between such payments, which are subject to tax, and consecutive rental payments, which are not subject to Swedish corporate tax or withholding tax, in the absence of a PE of the recipient in Sweden. A borderline example is income in the form of periodic rental payments to nonresidents by Swedish persons arising from office equipment leasing, including computers, which are not subject to Swedish income tax, provided no PE is present. Under normal tax treaty provisions, such rental and lease payments are not taxable in Sweden.

An information return, form KU70 (see the Worksheet 16), with respect to royalties paid from Swedish sources must be filed by nonresidents, whether individuals or legal entities.[491] The requirement also applies to recipients who are residents of European Union (EU) Member States. While source taxation of intra-EU royalty payments has been abolished pursuant to the EC Interest and Royalty Directive, the name of the licensor/payee may still be required as a matter of international exchange of information.

A lump-sum payment from Swedish sources received by a nonresident from the sale, or other disposition, to a Swedish taxpayer of the right to use a foreign patent is not taxable in Sweden in the absence of a taxable establishment in Sweden of the nonresident recipient.[492]

[484] Income Tax Act, Ch. 2, Sec. 29.
[485] Income Tax Act, Ch. 2, Sec. 29.
[486] Income Tax Act, Ch. 3, Sec. 18. The distinction between real property held for business purposes or as capital asset follows from Income Tax Act, Ch. 2, Secs. 14–15.
[487] Income Tax Act, Ch. 6, Sec. 11.
[488] Tax Procedure Act (*Skatteförfarandelag* (2011:1244)).
[489] Income Tax Act, Ch. 6, Sec. 11 and Ch. 16, Sec. 1.
[490] Income Tax Act, Ch. 6, Sec. 11.
[491] Tax Procedure Act (*Skatteförfarandelag* (2011:1244)), Ch. 23.
[492] Income Tax Act, Ch. 6, Sec. 11.

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2. Dividends

In the absence of an applicable tax treaty, Swedish-source dividends payable to a foreign recipient are generally subject to withholding tax at the rate of 30%. The tax is deducted at source, usually by the Securities Register Centre or a Swedish commercial bank as agent for the tax authorities, which collects and remits the tax on behalf of the foreign recipient.[493] The withholding usually constitutes a final payment of tax and, if the recipient has no other form of income from Swedish sources and no taxable establishment in Sweden, no tax return is required to be filed in Sweden. If a tax treaty applies, the treaty must be consulted for purposes of establishing the exact applicable withholding tax rate on dividends. The standard rate of withholding tax on dividends is generally reduced under the terms of Sweden's tax treaties (unless withholding tax is waived by application of domestic rules).

In portfolio investments, tax is withheld on dividends at the lower treaty rate rather than being withheld at the maximum 30% non-treaty rate, followed by a refund of the amount representing the excess over the treaty rate. For example, the rate of withholding tax on dividends paid with respect to such investments is reduced to 15% under Article 10 of the 1994 Sweden-U.S. tax treaty.

Article 10(3) of the 1994 Sweden-U.S. tax treaty, as amended by a 2005 Protocol, provides for eliminating withholding tax paid between companies resident in the two Contracting States. In this respect, however, it is important to stress that, in practice, the 2005 Protocol only has any impact on dividends paid by a U.S. subsidiary to a Swedish parent company, since, in 2004, Sweden adopted domestic provisions waiving the withholding tax on most cross-border dividend payments. As a result of the 2005 Protocol, from 2006, Swedish investments in the United States receive the same beneficial tax treatment granted to U.S. holdings in Sweden.

3. Interest

Under Swedish domestic law, interest from Swedish sources received by a nonresident is not subject to Swedish tax, unless the recipient has a PE in Sweden.[494]

4. Rentals

Rental income from private real property[495] constitutes taxable capital income of nonresidents.[496] In calculating the tax liability, all rental income received is subject to a statutory deduction of SEK 40,000 (2025) per year, plus a deduction of either 20% of the total rental income received (in the case of family houses) or the total cost of rental fees paid by the taxpayer (in the case of cooperative apartments).[497] Unlike resident individuals, nonresidents are generally not allowed to deduct interest expenses related to real property, unless the person is resident within the EEA.[498] However, according to case law, such interest expenses are deductible to the extent they pertain to the time period during which the property was rented out.[499]

The net capital income is subject to tax at the rate of 30%.

Sweden's tax treaties usually provide that income from Swedish-situs real property is taxable only in Sweden, any residual effects of international double taxation being resolved by the method adopted under the applicable tax treaty.

D. Capital Gains

The Swedish tax treatment of capital gains depends on the nature of the capital asset concerned. Except for real property and shares capital gains are normally subject to 30% tax.

1. Real Property

If a nonresident receives income in the form of a capital gain from the sale of Swedish real property, the income is subject to capital income tax. The tax base is calculated separately for real property held as a business asset and for real property held as a capital asset. In the first case, only 90% of net income is taxable, reducing the ordinary capital income tax rate to 27% (30% × 90%). In the latter case, only 22/30 of net income is taxable, reducing the tax rate to 22% (22/30 × 30%).[500] Capital losses are deductible to the extent of 50% in the case of capital assets and 63% in case of business assets (to the extent the taxpayer has other taxable income in Sweden).[501]

2. Shares

Income that a nonresident receives on the disposal of shares in a Swedish limited liability company (whether private or public, listed on the stock exchange or family-owned) is not subject to Swedish tax, unless the nonresident is an individual who has been a resident of Sweden at any time during the 10-year period preceding the sale of the shares.[502] The 10-year rule covers shares in foreign companies as well.[503] However, it is important to stress that the application of the 10-year rule is in many cases limited in time (generally to five years) or even completely eliminated under an applicable tax treaty.

E. Compensation Income and Directors' Fees and Salaries

Compensation income is taxable in Sweden, provided the services for which the compensation is paid were rendered in Sweden,[504] unless the "183-days rule" applies.[505] This means that compensation income is not taxable in Sweden if the employer is not a resident of Sweden and the employee renders services in Sweden for a time period or time periods that, in the aggregate, do not exceed 183 days in the course of any 12-month period. The exception does not apply if the amount of the compensation is charged to a PE of the employer in Swe-

[493] Withholding Tax Act, Secs. 7 and 14.

[494] Income Tax Act, *e contrario* Ch. 3, Secs. 18–19.

[495] As defined in Income Tax Act, Ch. 2, Sec. 17. Both family houses and cooperative apartments are treated as real property for purposes of the legislation.

[496] Income Tax Act, Ch. 3, Sec. 18.

[497] Income Tax Act, Ch. 42, Secs. 30–31.

[498] Income Tax Act, Ch. 42, Sec. 1.

[499] RÅ 2004 ref. 43.

[500] Income Tax Act, Ch. 3, Sec. 18, Ch. 45, Sec. 33 and Ch. 46, Sec. 18.

[501] Income Tax Act, Ch. 45, Sec. 33 and Ch. 46, Sec. 18.

[502] Income Tax Act, Ch. 3, Sec. 19.

[503] Income Tax Act, Ch. 3, Sec. 19.

[504] Special Income Tax Act for Persons Residing Abroad, Sec. 5.

[505] Income Tax Act, Ch. 3, Secs. 17–18; Special Income Tax Act for Persons Residing Abroad, Sec. 6a.

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den.[506] Any compensation paid by the Swedish Government or any Swedish municipality is in any event always taxable in Sweden.[507]

If the employment period exceeds 183 days, an employee will be subject to withholding tax at the rate of 25% unless an applicable tax treaty offers relief. No deductions are allowed. It should be noted that the requirement to withhold and remit tax deducted at source only applies to the extent the foreign company for which the employee works maintains a taxable PE in Sweden.[508] If a Swedish subsidiary makes the payment, the subsidiary must withhold and remit the tax.[509]

Fees paid to a director or deputy director of a board of a Swedish company are always taxable in Sweden, irrespective of where the activity of the director is conducted.[510]

Residents of another EU Member State who are nonresidents of Sweden and collect earned income from Swedish sources, may elect to have such income subject to a final tax or taxed on a net basis, i.e., allowing for deductions. The choice will depend on the amount of deductions that can be claimed by the taxpayer.[511]

The 183 days rule does not apply in the case of temporary agency work under the "economic employment" concept.[512] Agency work means that a natural person, by the employer or with his or her participation, is hired out or made available to perform work in an activity in Sweden conducted by another person (the client) and performed under his or her control and management. Agency work does not encompass work that is performed in Sweden for a maximum of 15 consecutive days, to the extent that such work does not exceed a total of 45 days in a calendar year.

F. Special Income Tax for Artists, Sportsmen, Etc.

A special income tax[513] applies to artists and sportsmen resident outside Sweden and to entertainment companies. This tax also applies to promoters that are domiciled or resident outside Sweden. Taxable income consists of cash payments or other forms of remuneration that originate from Sweden, or from a performance in Sweden or on a Swedish ship. The Swedish payor is liable for the tax, and must deduct, account for, and remit the tax to the tax authorities. The applicable rate is 15% of taxable income. No deductions are allowed against such income.

G. Special Regime for Key Personnel on Temporary Assignment

Foreign experts, researchers, executives and other "key persons" on temporary assignment to Sweden qualify for certain income tax benefits under a special regime for a period of seven years.[514] These benefits are:

(i) 75% of earnings are subject to personal income taxation in Sweden;

(ii) The 75% of earnings basis is also the basis for social security charges; and

(iii) Relocation costs, school fees and tuition (up to and including *baccalaureate* and the cost of two round trips to the country of origin for the entire family), paid for by the employer, are not taxable and do not constitute benefits in kind.

Otherwise, the key person is treated as a Swedish resident taxpayer, taxable on worldwide net income subject to zero bracket amounts and available deductions. This means, for example, that a foreign key person can apply for tax deductions for extra costs of living or for maintaining double residences, just as any Swedish resident taxpayer may.

The special regime is aimed at key personnel on temporary assignment to Sweden who are not Swedish nationals and have not been residents of Sweden any time during the five-year period prior to taking up the temporary assignment.

Key personnel include foreign experts, engineers, scientists, research and development (R&D) specialists, and other persons whose unique competence is unavailable or not readily available in Sweden. Examples of such personnel are experts working with advanced product development and applications of new technology, and specialists in rationalization, production, administration, logistics, marketing, engineering, finance, and information and communication technologies.

Key personnel also include foreign executives and managers who hold vital positions in a company. These people would be responsible for a company's general management and administration or other tasks that imply that they hold a key position.

The legislation does not limit the foreign key personnel regime to persons holding specific qualifications or positions, but it provides some examples and guidelines. This means that the Research Tax Board, which handles the applications, has some leeway in deciding who may qualify. Regardless of the required qualifications, the legislation will treat persons with a monthly salary of more than SEK 88,200 (for 2025) as key personnel. For persons with lower wages, the current rules remain unchanged.

Qualifying employers are Swedish private or public employers or non-Swedish undertakings with a branch or other fixed place of business in Sweden. An application for the special regime must be filed with the Research Tax Board within three months of the person taking up the Swedish assignment, at the latest.

Note: The Supreme Administrative Court has held that an individual does not meet the conditions required to be granted expert tax relief if his or her monthly compensation is in excess of two price base amounts (i.e., the price base amount, as defined by the Social Insurance Code (2010:110), which was SEK 46,500 for 2019) during only his or her first two years of employment and not in subsequent years.[515] In the case at hand, an individual had applied for expert tax relief based on fulfill-

[506] Special Income Tax Act for Persons Residing Abroad, Sec. 6a.
[507] Special Income Tax Act for Persons Residing Abroad, Sec. 5.
[508] Special Income Tax Act for Persons Residing Abroad, Sec. 6.
[509] Tax Procedure Act, Ch. 13, Secs. 3 and 6.
[510] Special Income Tax Act for Persons Residing Abroad, Sec. 5.
[511] Special Income Tax Act for Persons Residing Abroad, Sec. 4, CJEU C-169/03 *Wallentin.*
[512] Special Income Tax Act for Persons Residing Abroad, Secs. 6a and 6b.
[513] Act on Special Income Tax for Nonresident Artists, etc. (*Lag* (1991:591) *om särskild inkomstskatt för utomlands bosatta artister m.fl*).
[514] Income Tax Act, Ch. 11, Secs. 22–23a.
[515] HFD, Case 2018:19.

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ing the required salary level during the first two years of his employment in Sweden. After this period, he would no longer attain that salary level. The individual was denied relief by the Taxation of Research Workers Board based on the fact that, already at the beginning of his employment, it was clear that he would not meet the salary level requirement after two years; his monthly compensation did not, therefore, meet the requirement for granting this tax status. The HFD concluded that, although the wording of the law was unclear leaving room for interpretation, the preparatory work states clearly that the intention of the legislator was for the stipulated salary amount to be met during the entire period of employment and that the legislative language aims at clarifying the price base amount to be applied in determining the required level of compensation. Consequently, the HFD agreed with the Tax Agency's interpretation and determined that the rule stipulating a specific amount of income must be met during the entire period of employment, or up to three years, which is the maximum period during which the expert tax relief can apply.

The legislation has been subject to another case before the HFD.[516] The question in this case concerned whether a salary and compensation for work in Sweden paid to a foreign employee by someone other than his or her usual employer in Sweden should be considered when determining whether the required salary level has been reached.

A person employed by a German company was relocated to Sweden to work for a Swedish company in the group. A portion of his remuneration during his employment in Sweden was paid by the Swedish company, and the remaining amount was paid by the German company on behalf of the Swedish company. According to the legislation, the requirement for the remuneration to be covered by the expert tax relief must relate to work performed in Sweden. However, nothing in the law or the preparatory work indicates how the compensation shall be paid.

The conclusion stated by the HFD was that the remuneration in its entirety referred to work performed in Sweden and on behalf of the Swedish company. Therefore, the part of the compensation paid out by the German company should have also been considered when assessing whether the required amount for the expert tax relief had been reached.

H. Cross Border Commuters

Starting January 1, 2025, a new double tax agreement, known as the Öresund Agreement, will come into effect between Sweden and Denmark. This agreement establishes new rules for individuals who commute for work between the two countries. Under the new regulations, salary taxation will occur in the country where the commuter typically works, if they spend at least half of their total working time in that country over a twelve-month period.

For example, if a person resides in Sweden but works in Denmark, their salary will be taxed in Denmark. This rule applies even if the work is carried out remotely — such as from home in Sweden — at another location in Sweden or involves temporary business trips outside of Denmark. The new regulations only apply if the salary is not linked to a Danish employer's permanent establishment in Sweden. If the conditions of the agreement are not met, salary taxation will be divided based on the amount of time worked in each respective country. In other words, the tax must be allocated according to the time spent working in each country.

No formal decision is needed for tax exemption. If a person resides in Sweden, works in Denmark, and meets the criteria — specifically, working at least 50% of their total working time in Denmark over twelve months — the Danish employer is not required to withhold tax in Sweden. However, if the conditions of the agreement are not fulfilled, the Danish employer must register as an employer in Sweden and withhold Swedish preliminary tax for any income earned from work performed in Sweden.

With the new Öresund Agreement between Sweden and Denmark now in effect, amendments have been made to the Act on Special Income Tax for Non-Residents (SINK). These changes aim to align Swedish legislation with the updated provisions of the Öresund Agreement and impact the taxation of individuals living abroad who work in Sweden.

[516] HFD, Case 1763-20.

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XII. Transfer Pricing

A. *Scope of Provision*

The Swedish tax authorities are empowered to adjust an inter-company price paid by a Swedish company to a foreign related company if the price is not an arm's-length price. Such incorrect pricing between affiliated companies is challenged by means of the "correction rule" (*korrigeringsregeln*), which is also referred to as the "transfer pricing rule" *(internprissättningsregeln)*.[517] This rule applies to international transactions between related parties and is designed to prevent incorrect profit allocation to jurisdictions outside Sweden. The rule is based on the international arm's length principle.[518] If the agreement between the related parties leads to a result that deviates from market conditions, the income of the Swedish company is "adjusted," in the sense that it is calculated as if the deviating conditions had not existed.

The notion of "related parties" refers to companies in an "economic community of interests," but the transfer pricing legislation itself does not define the term related parties. In the preparatory work of the bill, it is mentioned that favorable pricing in itself may be an indication of an associated party transaction. However, in practice, an overall assessment in each individual case is carried out to determine whether the correction rule is applicable. The correction rule applies to every Swedish company that owns more than 50% of the share capital or controls more than 50% of the votes in a foreign company. It also applies to Swedish companies owned to the same extent by a foreign party.

Branches of foreign companies fall outside the scope of the correction rule, as a branch does not constitute a separate legal entity and, hence, cannot be regarded as a related party for the purposes of the transfer pricing legislation. Instead, incorrect transfer pricing practice between a Swedish branch and the foreign head office is dealt with by means of the general rules on deemed taxation (*uttagsbeskattning*), under which a taxpayer is taxed according to calculations made as if the market conditions (instead of the deviating pricing) had been applied. The rules on deemed taxation and the correction rule technically work in the same way; however, the burden of proof that lies with the tax authorities (when adjusting the calculation of the tax base) is much higher when they are applying the correction rule.[519]

For further discussion of Sweden's transfer pricing system, see also Chapter 155 of 6970-1st T.M., *Transfer Pricing: Rules and Practice in Selected Countries (Q–S)*.

B. *Determination of Arm's-Length Price*

With regard to the sale of goods, the rendering of services, or the payment of interest, royalties or management fees, the determination of an arm's-length price is initially made by reference to the open market. If a comparable unrelated transaction cannot be established, the Swedish Tax Agency may establish a price by adding an appropriate mark-up or reducing profits at a later stage of the market. It is also possible to express certain fees in terms of a percentage of, for example, turnover. The tax authorities have published an extensive paper regarding the arm's-length price that describes in detail the different methods available and acceptable to establish a fair market price between two dependent parties.[520]

The burden of proof as regards a readjustment lies with the Swedish Tax Agency. Unlike the general burden of proof rules applied with regard to purely domestic situations, the correction rule stipulates a much higher burden of proof for the Swedish Tax Agency. Thus, it is up to the tax authorities to show that the transfer pricing method applied by the taxpayer deviates from the market conditions and that the motive for any deficient pricing derives from the fact that the companies involved are related.

C. *Documentation Requirements*

The Swedish rules on transfer pricing documentation follow Chapter V of the OECD *Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations* (OECD Guidelines) and are incorporated in the Income Tax Act.[521]

1. *Transfer Pricing Documentation*

The Swedish documentation requirements generally follow the OECD Guidelines and state that transfer pricing documentation in Sweden must consist of a Master File, a Local File, and a Country-by-Country Report (for larger groups). A company must not prepare a Master file nor a Local File if it is part of a group that had fewer than 250 employees and either had a turnover that did not exceed SEK 450 million or a balance sheet total not exceeding SEK 400 million in the year before the fiscal year in question.

The transfer pricing documentation consists of two parts: a group-wide part and a company-specific part. The group-wide part must give an overall picture (rather than a detailed one) of the business of the group, where it is conducted, what transfer pricing policy is applied, etc. Companies are allowed to base this part of the documentation using good judgment to determine the level of detail at which the information is to be provided. The information may be broken down into branches of activity to better reflect the business of the group. Such an application is suitable if branches work independently within the group's other operations or if a particular branch of activity has recently been acquired. The company-specific part must provide more detailed information on the cross-border transactions it has had with related companies. It complements the group-wide part to determine whether prices and other conditions comply with the arm's length principle. Information contained in the group-wide part need not be provided in the company-specific part. A reference should then be made in the company-specific part to indicate where the data are located.

The deadline for preparing the Master File is the tax return filing date for the group parent company. The deadline for preparing the Swedish local country file is the tax return filing date for the Swedish company. There is no statutory filing re-

[517] Pursuant to Income Tax Act, Ch. 14, Secs. 19–20.
[518] OECD Model Convention, Article 9(1).
[519] Income Tax Act, Ch. 22.
[520] Available at: https://www4.skatteverket.se/rattsligvagledning/347291.html (in Swedish).
[521] Tax Procedure Act, Ch. 39 Secs. 15–16, 16 a – 16 f.

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quirement for transfer pricing documentation. Documentation should, therefore, only be presented to the tax authorities upon request. The transfer pricing documentation must be prepared in Swedish, Danish, Norwegian, or English. If, for example, the group-wide part has been established in another language, the Swedish company must arrange for it to be translated into one of the approved languages.

There are no transfer pricing specific penalties for noncompliance. However, penalties may be imposed on taxpayers if the taxpayer is not complying with the arm's length principle and the information attached to the tax return is inaccurate or insufficient.

The purpose of the documentation is to provide the tax authorities with the necessary information to conduct tax enforcement and transfer pricing risk assessment. Therefore, the documentation must include information demonstrating that the taxpayer's cross-border, intra-group transactions satisfy the arm's length principle.

2. Filing Obligations

The obligation to provide transfer pricing documentation applies to unlimited taxable legal entities involved in transactions with limited taxable entities, provided that the companies are in a community of interests. The documentation obligation also applies to an unlimited taxable legal entity with a permanent establishment abroad. Similarly, the documentation obligation applies to a foreign legal entity liable to tax on income from a permanent establishment (PE) in Sweden. Swedish partnerships are also subject to the documentation obligation, even though they are not tax subjects as such.

Insignificant transactions do not need to be documented in the company-specific part. Transactions that a Swedish company has with a foreign company in a joint venture are always treated as insignificant if the total value of the transactions during the financial year is less than SEK 5 million. However, intellectual property (IP) rights and related transactions always require complete documentation, unless the assets are negligible for the business irrespective of the value.

3. Country-by-Country Reporting

Sweden introduced country-by-country (CbC) reporting regulations for multinational groups with revenues exceeding SEK 7 billion, effective April 1, 2018.[522]

The rules provide for automatic exchange of said reports between the tax authorities in the European Union and in the jurisdictions that have signed the multilateral agreement on country-by-country reporting. The regulatory framework is linked to Action 13 in the Base Erosion and Profit Shifting (BEPS) project, aimed at preventing the transfer of profits and erosion of countries' tax bases. Documentation rules for internal pricing are extended to partnerships, as well as foreign and Swedish PEs.

The documentation rules require groups to establish a group-wide Master File containing an overview of the group and its operations. A Local File for each legal entity must be attached to the Master File, to provide a more detailed description of the individual company's operations and its intra-group transactions. The documentation must be drawn up for each tax year and must be submitted to the Swedish Tax Agency upon request. It is important to emphasize that even groups that are not covered by the new documentation requirements must continue to apply arm's-length pricing in their intra-group transactions in accordance with the Swedish so-called correction rule and OECD Guidelines for internal pricing.

The CbC reporting rule affects multinational groups that have a total group turnover of at least SEK 7 billion. The parent company in such a group must submit a CbC report for the entire group in the country where the parent company is located. In Sweden, this report must be submitted electronically to the Swedish Tax Agency within 12 months after the end of the fiscal year referred to in the report.

In connection with CbC reporting, a notification requirement requires all Swedish companies and foreign fixed establishments in Sweden that are subject to the rules to notify the Swedish Tax Agency which company will submit the CbC report. Using Form SKV 2381, notification must be submitted to the Swedish Tax Agency before the financial year to be covered in the report has expired and may be in Swedish or English.

The OECD's initiative under the BEPS Project and the new international guidelines arising therefrom, have created challenges for international companies engaged in cross-border transactions, particularly in connection with intra-group treasury operations and financing services. Under the documentation requirements derived from the BEPS project, multinational groups must report their financing strategies and the transfer pricing models applied which, in turn, should be evidenced as well-grounded and robust.

The OECD's Inclusive Framework on BEPS has released two sets of guidelines in December 2019 to give greater certainty to tax administrations and multinational groups alike on the implementation and operation of CbC reporting (BEPS Action 13).

Detailed guidance and assistance with respect to CbC reporting and notification is available on the website of the Swedish Tax Agency.[523]

On November 24, 2021, Directive (EU) 2021/2101 was adopted, amending Directive 2013/34/EU regarding the publication of income tax information for certain companies and branches. The directive states that large companies operating in several countries must publish a report on income tax information. The obligation to submit an income tax report prescribed in the directive is largely consistent with CbC reporting in accordance with Ch. 33, a., of the Tax Procedures Act (2011:1244). However, unlike the income tax report, the CbC report must not be made public.

The directive requires large multinational groups and companies to publish certain income tax information to the Swedish Companies Registration Office in a report that must also be available on the company's website (https://svenskforfattningssamling.se/sites/default/files/sfs/2023-06/SFS2023-340.pdf). It applies to groups and companies with annual revenues exceeding SEK 8 billion. In addition, according

[522] Tax Procedure Act (2011:1244), Ch. 33 a.

[523] See: https://skatteverket.se/foretag/internationellt/landforlandrapporter.4.361dc8c15312eff6fd334a9.html.

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to the Annual Accounts Act,[524] the auditor of companies categorized as larger companies must state in the audit report whether the company is obliged to publish an income tax report and, if so, whether the company has complied with this obligation.

D. Advanced Pricing Agreements

The option to apply for an advanced ruling on the future pricing of international intra-group transactions is available to domestic taxpayers and foreign taxpayers with a PE in Sweden.[525] A pricing decision (an advance pricing agreement or APA) may be granted based on a reciprocal agreement between two (bilateral) or several (multilateral) countries on the pricing of certain international intra-group transactions, provided there is an applicable tax treaty between Sweden and the respective jurisdiction(s); unilateral APAs are not available. The transaction at issue must also not be insignificant in value. A pre-filing meeting with the Swedish Tax Agency may be requested to discuss the terms and conditions of an application and the scope of information to be submitted.

According to the general rule, an APA covers three to five tax years. The application fee is SEK 150,000 with respect to each country that is involved in the concerned transaction. To renew an existing APA, the application fee is SEK 100,000 and SEK 125,000 if the renewal includes revisions to the previous agreement.

E. Competent Authority

The Swedish Ministry of Finance is appointed as the Competent Authority in Sweden. Relevant articles in Sweden's tax treaties stipulate, however, that the competence of the Swedish Ministry of Finance can be delegated to another authority. In practice, the tasks of the competent authority are, therefore, delegated to the Swedish Tax Agency.

Sweden's tax treaties correspond to a great extent to the Organisation for Economic Cooperation and Development (OECD) Model Convention and hence generally include a special provision according to which any tax adjustments relating to alleged incorrect pricing will, if necessary, be subject to consultation between the competent authorities of the Contracting States.[526]

For further discussion of the roles and functions of the Swedish Competent Authority, see Chapter 155 of 6895 T.M., *Income Tax Treaties: Competent Authority Functions and Procedures of Selected Countries (O–Z).*

[524] 34 a § Companies Act.

[525] Act on pricing decisions in international transactions (*Lag* (2009:1289) *om prissättningsbesked vid internationella transaktioner*).

[526] OECD Model Convention, Art 9.2.

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XIII. Special Provisions Relating to Multinational Operations

A. General

Sweden is one of the world's most beneficial jurisdictions for multinational company groups with the participation exemption regime. The rules are applicable to all Swedish limited liability companies, Swedish economic associations, and the corresponding foreign legal entities. At the level of the holding company, the legislation allows a large number of legal entities to qualify for the participation exemption. The participation exemption will apply irrespective of whether the objective of the company or the economic association is portfolio investment or economic business operations. The participation exemption rules apply automatically without any specific legal or administrative actions being required to be taken.

Besides the participation exemption rules, multinational groups establishing a Swedish subsidiary will also benefit from a broad network of tax treaties (with more than 80 countries), no duties on capital injection, and a generous withholding tax regime. Taken all together, as enumerated below, the Swedish tax rules create an attractive environment for international operations in Sweden. The main relevant features are as follows:

(i) Complete exemption from tax on dividends received (under the participation exemption regime);

(ii) Complete exemption from tax on the sale of shares (under the participation exemption regime);

(iii) The ability to pay dividends to foreign corporate shareholders free of dividend withholding tax or at a reduced rate of withholding tax under one of Sweden's tax treaties;

(iv) No withholding tax on interest payments, provided the payee has no permanent establishment (PE) in Sweden;

(v) No thin capitalization rules;

(vi) No tax on share capital (no capital tax or stamp duty);

(vii) No prohibition on transactions with tax haven jurisdictions; and

(viii) No requirements as to notaries.

B. Sweden as a Holding Company Jurisdiction

1. Choice of Business Form

The most important forms of commercial enterprise in Sweden are private or public limited liability companies (LLCs) and partnerships or limited partnerships. The private LLC is the business form that is most widely used by nonresidents of Sweden, although some foreign businesses elect to establish local branches rather than subsidiaries, a decision that is sometimes influenced by the absence of withholding taxes on branch profit remittances.

The following table provides a comparison of the features of the various forms of doing business in Sweden:

	Partnership	**Limited Partnership**	**Private LLC**	**Public LLC**
Liability for Company Debts	Joint and several, also personal liability	General partner: joint and several, also personal liability.	No personal liability.	No personal liability.
		Limited partner: for invested capital	Risk normally limited to capital invested.	Risk normally limited to capital invested.
Capital Requirements	No	General partner: No.	Minimum SEK 25,000	Minimum SEK 500,000
		Limited partner: assumes liability for minimum 1 kronor		
Owners/Members Required	At least two individuals or legal entities	At least two individuals or legal entities	Single shareholder (individual or legal entity)	Single shareholder (individual or legal entity)
Authority to Act	Partners	General partner(s)	Board of Directors; a Managing Director may be elected	Board of Directors and Managing Director
Auditor Compulsory	No	No	Yes, at least one authorized and approved accountant (CPA or CA), except for small companies[527]	Yes, at least one authorized and approved accountant (CPA or CA)
Tax Liability	Partners	Partners	Company	Company

[527] An auditor is not required if the company does not exceed two of the following three thresholds: (i) more than three employees; (ii) more than SEK 3 million in balance sheet total; and (iii) more than SEK 3 million in turnover.

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Swedish branches of foreign companies and all Swedish companies must be registered with the Swedish Corporate Registry. Such registration is required for classification and recognition as a separate Swedish resident legal entity that may claim benefits under the holding company regime (and the terms of Sweden's tax treaties).

For a detailed discussion of the general considerations relevant to operating a business in Sweden and the available forms of doing business, see, respectively, II. and III., above. The following sections are of particular relevance to the establishment and operation of a holding company:

- Foreign investment regulations (II.A., above);
- Foreign ownership of Swedish companies (III.C.1.c., above);
- Director residence requirements (III.C.2.d., above);
- Registration requirements (III.C.1.a., above);
- Share subscription (III.C.1.a., above); and
- Maintenance of share capital (III.C., above).

It should also be noted that a Swedish holding company may not grant loans to, or give security for, any shareholder, director or manager of the company or its parent company. No such restriction applies to loans granted by a subsidiary to its parent or higher-tier parent or to credit arrangements, on condition that the loans derive from normal business transactions and have normal payment terms.

2. Participation Exemption

The Swedish participation exemption (see V.B.3.d., above) applies to capital gains and dividends with respect to "business-related shares" (*näringsbetingade andelar*).

a. Business-Related Shares — General Conditions

A share in an unlisted company is always regarded as a business-related share, irrespective of the size of the holding and the length of the holding period. By contrast, a share in a listed company is regarded as a business-related share only if the holding represents at least 10% of the voting rights or if the holding is otherwise deemed necessary for the business conducted by the owner or any of its affiliates.[528] In the latter case, according to case law, even the mere holding of 1% of the shares can qualify for tax exemption with respect to dividends. Hence, even an insignificant holding can qualify for tax exemption if the holding itself is related to and important for the business activities of the holding company.

Furthermore, in all listed companies, the holding must satisfy two additional conditions:[529]

(i) The shares must have been held for a period of one year; and

(ii) The shares must have been regarded as business-related shares during this period.

No time requirements apply to holdings in unlisted companies.

b. Shares in EU Companies

The general requirements for the participation exemption described above also apply to companies within the European Union (EU). Because Sweden has fully implemented the EU Parent-Subsidiary Directive, to the extent the general domestic legislation imposes deviating conditions, the provisions of the Parent-Subsidiary Directive will prevail, as they have full effect with regard to holdings in other EU Member States.

Dividends can be received tax free under the EU Parent-Subsidiary Directive from a company within the European Union that fits into one of the descriptions of companies listed in the Appendix to the Directive, provided the company is subject to the specific tax referred to in Article 2 of the Directive. If the holding in the EU company is 10% or more, the participation exemption rules will apply even if the holding does not meet all the requirements set out under the Swedish domestic participation exemption rules. In such cases, instead of a requirement of 10% of the voting rights, it is sufficient to hold 10% of the equity of the company.

c. Shares in Other Foreign Companies

In principle, there is no difference between a holding in a Swedish subsidiary and a holding in a foreign subsidiary for purposes of the participation exemption. If the foreign subsidiary is resident outside the European Union, the Swedish holding company will have the burden of proving that the subsidiary is similar in its form and function to a Swedish LLC (*aktiebolag* — AB), as this is the main criterion for qualifying for the participation exemption.[530] There is no legal definition as to what the criteria are for being similar to a Swedish AB. However, the main characteristics of an AB that a foreign entity most probably will have to meet to qualify are as follows:

(i) The foreign entity is liable to tax (it is not taxed at the partner level);

(ii) It has equity capital that cannot be freely used by its shareholders;

(iii) Its profit is allocated to the shareholders with reference to their participation in the share capital; and

(iv) It has legal competence and the formal capacity to act as a party before administrative authorities and the courts.

If the above form and function requirements are met and the shares are business-related, the Swedish holding company will be able to receive tax-exempt dividends and capital gains from a subsidiary in any jurisdiction. This also applies to dividends and capital gains received from a tax haven country. Under the participation exemption, there are no requirements regarding the level of taxation in the country from which the dividend is distributed. However, if the holding of the Swedish holding company in the foreign subsidiary exceeds 25% of the capital or votes, the Swedish controlled foreign corporation (CFC) legislation may be applied (see XIII.C., below).

[528] Income Tax Act, Ch. 24, Secs. 13–14 and 20.

[529] Income Tax Act, Ch. 24, Sec. 20.

[530] Income Tax Act, *e'contrario* Ch. 24, Secs. 32–34.

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d. Eligible Entities

The participation exemption is available to the following legal entities:[531]

(i) A Swedish LLC (*aktiebolag*) or a Swedish economic association (*ekonomisk förening*) that is not an investment company;

(ii) A Swedish trust (*stiftelse*) or a Swedish non-profit association (*ideell förening*) that is subject to unlimited tax liability;

(iii) A Swedish savings bank (*sparbank*);

(iv) A Swedish mutual insurance company (*ömsesidigt försäkringsbolag*); and

(v) A foreign company resident in the European Economic Area (EEA) that is the equivalent of one of the legal entities referred to above in (i) to (iv), and is subject to corporate income tax in Sweden (i.e., a PE in Sweden is required).

Further, although not expressly listed above, a *societas europaea* (SE) is also considered a qualifying legal entity as a result of a general provision in the Income Tax Act stipulating that an SE is to be treated as a Swedish LLC.

Due to the application of the nondiscrimination clause in tax treaties, even a foreign company established in a non-EEA country will qualify as a holder of business-related shares, provided it has a PE in Sweden. Hence, such a company is able to receive tax-free dividends from Swedish, as well as foreign, subsidiaries. Most of the tax treaties concluded by Sweden provide that Sweden will treat dividends received by a PE in the same way as if the dividends were received by a Swedish company.

Swedish limited partnerships are not included in the list of legal entities that qualify for the participation exemption. These partnerships are treated as tax-transparent entities. Any profit realized by such a partnership is taxable income of the partners. However, dividends and capital gains are tax-free in the hands of the partner if the partner qualifies for the exemption.

e. Companies Trading in Securities

The rules on the participation exemption for capital gains and dividends, described in XIII.B.2.a. to XIII.B.2.d., above, apply only to the extent the company holding the business related-shares can itself be considered to be conducting a business. "Business" is defined in the law as other business activities than the mere holding of liquid assets, securities, and other similar assets.[532] Hence, a company whose main activity consists of securities transactions cannot benefit from the participation exemption. A simplified definition of a securities company is that the main goal of such a company is to buy and sell shares on a short-term basis, without playing an active role itself in the participation.

The factors that have been considered in case law in determining the degree of activity and the types of activities for purposes of classifying a company as a securities company are as follows:

(i) The value of the transactions;

(ii) The number of transactions;

(iii) The duration and frequency of the transactions;

(iv) The speed of turnover of the securities; and

(v) The statutes of the company.

3. Alternatives to the Participation Regime

As an alternative to the participation regime, individuals, as well as corporate shareholders who do not qualify for the participation exemption, may, in certain cases, obtain a tax deferral under which the taxation of capital gains is deferred. There are two parallel tax deferral regimes, one for individual shareholders[533] and one for corporate shareholders and partnerships.[534] The basic idea of the tax deferral is to enable stock share restructuring without any immediate tax events being triggered. Tax deferral is available in exchanges for share transactions and in situations involving the sale of a business in exchange for shares in the acquiring company.[535]

The two systems of tax deferral work in somewhat different ways. In the case of individuals, the taxation of a capital gain in relation to a sale of shares is deferred by means of rollover relief. No taxation takes place at the time the shares are exchanged; instead, the acquisition cost of the shares disposed of is carried over to the newly acquired shares, irrespective of their real acquisition value. As a result of the tax deferral, the share-for-share exchange is taxed first when the newly acquired shares are sold. The tax deferral is applied automatically in the case of individuals, i.e., they do not need to report the share-for-share exchange in their tax returns in order to receive the tax deferral; instead, any capital gains or losses must be reported in the tax return for the year in which the new shares are sold. There are no limits with regard to consideration paid partly in cash. Tax deferral is granted even if part of the consideration consists of cash; however, the cash amount is taxed directly and tax deferral is only granted for the remaining part of the consideration paid in shares.[536]

The rules on tax deferral apply only to individuals resident in Sweden and individuals who live in Sweden on a regular basis.[537] Consequently, if a shareholder who benefits from tax deferral moves abroad and is no longer a resident of Sweden or living in Sweden on a regular basis, the capital gain that arose from the share-for-share exchange will normally be recaptured and subject to taxation, except where the individual moves to another EU or EEA country.[538]

In contrast, corporate shareholders that do not qualify for the participation exemption, as well as partnerships, have to file a request for tax deferral.[539] The deferral can be obtained irrespective of whether the shares constitute capital or business as-

[531] Income Tax Act, Ch. 24 a, Sec. 32.
[532] Income Tax Act, Ch. 2, Sec. 24.
[533] Income Tax Act, Ch. 48a.
[534] Income Tax Act, Ch. 38 and Ch. 49.
[535] Income Tax Act, Ch. 38 and Ch. 48a, respectively, and Ch. 49.
[536] Income Tax Act, Ch. 48a, Secs. 2 and 9.
[537] Income Tax Act, Ch. 48a, Sec. 5.
[538] Income Tax Act, Ch. 48a, Sec. 11.
[539] Income Tax Act, Ch. 49, Sec. 6.

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sets.[540] Taxation will occur first when the new shares are sold and the deferral amount for the "old" shares is recaptured and subject to taxation.[541] As in the case of individual shareholders, any part of the consideration paid in money is subject to immediate taxation.[542]

4. Withholding Tax Exemption for Outbound Dividends

The general rule under domestic Swedish tax law is that Sweden imposes withholding tax on dividends distributed to a foreign corporate shareholder, unless the foreign shareholder performs business activities through a PE in Sweden.

In most cases, corporate shareholders will however benefit from 0% withholding tax. In broad terms, tax exempt distribution is achieved in the following cases:

(i) Distribution to an EU company;[543]

(ii) Distribution to a shareholder resident in a tax treaty country;

(iii) Distribution to a shareholder in another foreign country that levies similar taxation to that which Sweden levies on Swedish companies.

Thus, no withholding tax will be imposed if the receiving shareholder is an EU company or if the foreign shareholder is a qualifying "foreign company" under Swedish law, i.e., if the company is resident in a country with which Sweden has signed a tax treaty or if the company is resident in a country with taxation similar to that levied by Sweden on Swedish companies (a tax rate of 10% to 12% is an acceptable level).[544]

Comment: With regard to the "similar taxation" criterion, there are some basic principles that should be considered when determining whether similar taxation exists. The principles that appear to be significant in this context are as follows:

(i) The company concerned must be subject to a direct tax on its income; it is not sufficient for the company to be subject to tax based on its turnover or subject to a fixed annual fee; and

(ii) The profits of the company cannot be tax-exempt for a number of years, even if such exemption is part of an incentive program to promote investments in the country concerned.[545]

a. Distributions to EU Companies

(1) General

Under Swedish law implementing the provisions of the EU Parent-Subsidiary Directive, no withholding tax is imposed on dividends paid to a parent company in another EU Member State if the parent owns at least 10% of the capital in the Swedish subsidiary. There is no minimum holding period required for this purpose.

In addition to the 10% holding requirement, the EU company must fully comply with the provisions stipulated in Article 2 of the EU Parent Subsidiary Directive.[546] Accordingly, the company must be classified as a company mentioned in the appendix to the Directive; the company must be resident for tax purposes in the country in which it has been set up; and it must be subject to tax as specified in the Directive, without the possibility of opting out or being exempt from tax, as mentioned in Article 2 of the Directive.

An EU company may, however, also benefit from a withholding tax exemption by virtue of being resident in a country with which Sweden has signed a tax treaty, as further described under XIII.B.4.b., below.

(2) Case Law

A Belgian-incorporated and tax resident limited liability company (société à responsabilité limitée, SRL) applied to the National Tax Board[547] to ask if dividends distributed from Sweden would be exempted from withholding tax. The company constitutes a so-called Private Privak, a form of alternative investment fund in Belgium that engages in collective investment in funds. Investments are only made in unlisted shares and certain types of debt instruments.

An SRL is a legal entity with its capacity, meaning it can acquire rights, assume obligations, and bring legal proceedings before courts and relevant authorities. The shareholders of an SRL do not have free disposal over the company's assets and are not personally liable for its debts and obligations. This principle also applies to Private Privak. Additionally, regulatory requirements stipulate that a Private Privak can only exist for a limited lifespan. There are also restrictions on which assets it may invest in, and there is generally a minimum requirement for the number of investors. Holding shares in a Private Privak grants the right to participate and vote at general meetings. Shares can be freely transferred to a new investor, provided the investment requirement of €25,000 per shareholder is maintained.

From a tax perspective, an SRL with Belgian tax residency is subject to unlimited tax liability for all its income, with a corporate tax rate of 25%. However, for a Private Privak that only invests in certain qualified assets, the taxable base is limited to benefits, gifts received without consideration, and non-deductible expenses.

The key issue in this case was whether the dividends the company might receive on its unlisted shares in a Swedish limited company should be taxed under the Withholding Tax Act (WTA).[548] The case ultimately centered on whether the company qualifies as equivalent to a Swedish limited company under Section 4, sixth paragraph of the WTA. If so, it would not be subject to Swedish withholding tax.

The fundamental principle is that when assessing whether a foreign company corresponds to a Swedish company, both

[540] Income Tax Act, Ch. 49, Sec. 1.
[541] Income Tax Act, Ch. 49, Sec. 19.
[542] Income Tax Act, Ch. 49, Secs. 14 and 17.
[543] Withholding Tax Act (*Kupongskattelagen* (1970:624)).
[544] *Internationell Beskattning*, Mattias Dahlberg, Ed. 5 2020, page 77.
[545] For purposes of point (ii), above, the language "numbers of years" comes from the legislative work itself; there is no actual number mentioned. The issue as to the specific number of years has not been subject to litigation.
[546] EU Directive 90/435/EEC.
[547] 91-24/D 2024-12-17.
[548] Withholding Tax Act (*Kupongskattelagen* (1970:624)).

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civil law and tax law comparisons must be made.[549] Regarding the civil law comparison, the investigation in the case showed that the company's shareholders are not personally liable for the company's debts and obligations. In all other respects, the company is deemed equivalent to a Swedish company under civil law.

Regarding the tax law comparison, it was established that the company is resident in Belgium and is, as a rule, subject to unlimited taxation on all its income at a corporate tax rate of 25%. The company is therefore considered, both formally and substantively, to be a tax subject in its home country. The fact that the company's actual taxation may be based on a limited tax base — or, in some cases, no taxable base — does not change this assessment.[550]

The National Tax Board found that the company is not subject to Swedish withholding tax on the dividends it may receive on the shares it is considering purchasing.

b. Distributions to Shareholders in Tax Treaty Partner Countries

No withholding tax will be levied on distributions made to corporate shareholders resident in countries with which Sweden has a tax treaty in effect. The general condition that must be met, however, is that the scope of application of the tax treaty cannot be limited to a particular tax; the company must be covered by the treaty and must be resident in the relevant country for tax purposes. Furthermore, the company must be similar to a Swedish AB that is not an investment company and the holding in the Swedish holding company must meet the requirements for business-related shares; otherwise the withholding tax issue must be settled under the terms of the tax treaty concerned.

In a tax treaty situation, unlike in an EU context, the 10% holding requirement applies only with respect to a listed company, whereas no requirements apply with respect to a holding in an unlisted company. In addition, the holding in a listed company must be held for at least one year.

c. Distributions to Shareholders in Other Foreign Countries

Swedish domestic legislation enables the dividends to be distributed without the imposition of withholding tax also to companies resident in other countries, that are neither EU nor tax treaty countries. No withholding tax will be levied if:

(i) The holding qualifies for the participation exemption regime; and

(ii) Taxation in the country in which the corporate shareholders are resident is similar to the taxation of a company in Sweden. (See V.B., above.)

d. Deferral of Withholding Tax

For deferral to be granted, the following three conditions must be met:

(i) The taxpayer must be a foreign legal person resident within the European Union, or in a state within the EEA that has entered into an agreement with Sweden or the European Union on mutual assistance for recovery of tax claims, or a state that has entered into a tax treaty with Sweden containing exchange of information and assistance in recovery of tax claims;

(ii) The company must be able to prove that it has received dividends from which withholding tax has been withheld or paid; and

(iii) The taxpayer can show that there is a possibility of deferral available based on a calculation made according to a specific formula under the legislation.[551]

When calculating whether there is deferral space, the foreign legal person's earnings, dividends received during the tax year in question, and previously granted deferred income must all be taken into account and must be calculated according to Swedish rules. The deferral is valid for up to four months after the year that follows the taxable year for which the deferral was approved. The taxpayer has the opportunity to extend deferral by applying for a new deferral that corresponds wholly or partially to the previous deferred amount.

5. Capital Gains on Shares

No withholding taxes apply to capital gains realized on the disposal of shares in Swedish companies.

Foreign corporate shareholders are, as a general rule, not liable for any tax relating to capital gains on shares. Where a Swedish PE exists, the taxation of capital gains and capital losses follows the same set of rules as that applicable to resident corporate shareholders.

6. Cross-Border Interest and Royalty Payments

a. Debt Financing

Several features of its tax legislation make Sweden an attractive jurisdiction for financing companies. Even before the introduction of the participation exemption regime, Sweden offered various facilities that made it possible to optimize international tax structures.

One of the main features of Sweden's tax system is the lack of thin capitalization rules. Unlike many other countries, Sweden has no tax rules designed to place restrictions on leveraged companies. Further, Swedish tax legislation generally provides for the unlimited deduction of interest payments (however, see below and see V.B.3.f., above).[552] Furthermore, Sweden does not impose any withholding tax on interest payments.

Interest deductions on intra-group loans are subject to specific limitations.[553] The loan related to the acquisition of shares from a related party is denied unless it is essentially motivated by business reasons. However, interest deductions are allowed if the income corresponding to the interest expense is subject to a tax of at least 10% in the home country of the receiving company, the receiving company is residing within the EEA or residing in a state with which Sweden has a tax treaty in ef-

[549] see RÅ 2009 ref. 100.
[550] see HFD 2022 not. 3 and HFD 2022 not. 41.
[551] Withholding Tax Act, Secs. 28–28b.
[552] Income Tax Act, Ch. 16, Sec. 1.
[553] Income Tax Act, Ch. 25. Secs. 16–20.

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fect. The limitations apply to foreign-owned groups as well as Swedish-owned groups. See further under V.B.3.f., above.

However, if the debt structure has been set up exclusively or almost exclusively for the related group companies to receive a significant tax benefit, interest expenses may be rejected by the tax authorities.[554]

b. Royalties

Royalties received from various developing countries are usually taxable only in the country of source and exempted from tax in Sweden. Article 12 of the 1994 Sweden-U.S. tax treaty exempts both rental and lease payments and Swedish-source royalties paid to residents of the United States from Swedish taxation and renders them liable to tax only in the United States.[555]

Royalties and other periodical payments for the use of tangible or intangible assets or rights paid by Swedish licensees to a nonresident company are normally regarded as income derived by the nonresident company from a PE in Sweden and, thus, subject to the national income tax by assessment.[556] This rather peculiar provision is, however, regularly not applied in relation to partner treaty jurisdictions.

As a result of the implementation of the EU Interest and Royalties Directive,[557] royalty payments between Sweden and another country within the European Union are exempt from tax, if the following conditions[558] are met:

(i) The payer is a legal entity listed in an appendix (identical to the list of legal entities contained in the Directive) that is subject to restricted or unrestricted taxation in Sweden);[559]

(ii) The recipient of the payments is a legal entity listed in the same appendix, is subject tax, and receives the payment for its own account; and

(iii) The payer and the recipient are in a community of interests.

Two companies are in a community of interest if one company holds 25% or more of the share capital of the other company, or if another company within the European Union holds 25% or more of the share capital in both companies.

However, if the royalty payments are higher than what would have been normal if the payer and the recipient had been independent contracting parties on the open market (at arm's length), the tax exemption only applies to the part of the payments not exceeding normal arm's length payments.

Foreign-source royalties payable to a Swedish company are in principle taxable in Sweden. However, where a tax treaty applies, the potential effects of double taxation are avoided either under the terms of the tax treaty itself, or through the foreign tax credit system under Swedish domestic law.

7. Intra-Group Restructuring Measures

Swedish tax legislation has many features that facilitate tax neutral intra-group reorganizations.

All the types of transactions provided for in the EU Merger Directive, i.e., mergers, divisions, transfers of assets, exchanges of shares and partial divisions, are provided for under Swedish domestic legislation.

In addition to the transactions provided for in the EU Merger Directive, Sweden offers the possibility of transferring assets at book value without triggering any tax liability for either the transferring company or its shareholders, a transaction that is routinely used for intra-group restructuring. Because of the generous participation exemption rules, the transfer of assets at book value has become standard procedure in a variety of sale transactions, including both intra-group reorganizations and sales to third parties. The transaction involves three steps. First, the selling company establishes a new, wholly-owned subsidiary to which, as the second step, the line of business concerned is transferred at booked value. Once this has been done, the shares of the subsidiary can be sold to a third party at market price, the gain realized being tax free under the participation exemption rules. The procedure can also be used to transfer single assets, although in such cases an additional requirement must be met, i.e., that the companies involved in a transaction in which only a single asset and not an entire business is transferred, must qualify under the group contribution system (see V.B.3.g., above).

From January 31, 2023, new company law rules apply to cross-border restructurings, such as mergers, divisions, and conversions. The regulations expand the possibilities for limited companies to restructure across national borders within the European Economic Area (EEA). The changes are based on Directive (EU) 2019/2121 dated November 27, 2019, amending Directive (EU) 2017/1132 concerning cross-border conversions, mergers and divisions.

In connection with the above, the government has made changes to the tax legislation.[560] According to the legislation, the cross-border transfer of a business or a branch of a business effected via division by separation is exempt from immediate taxation under the provisions of Chapter 38 of the Income Tax Act:

(i) Accrued and compensation funds do not need to be reversed and exposed to corporate taxation immediately, where the cross-border conversion means that the tax liability ceases. The reversal of accrued and compensation funds should, instead, be effected successively in accordance with the provisions in Chapters 30 and 31 of the Income Tax Act.

(ii) Tax deferral must also be granted in the case of a cross-border conversion, as in the case of other expatriation taxation situations.

[554] Income Tax Act, Ch. 24 Sec. 18. Para. 2.

[555] Convention Between the Government of Sweden and the Government of the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, signed on September 1, 1994 (the "1994 Sweden-U.S. tax treaty"), Art. 12. (Art. 12 does not apply if the beneficial owner of the royalties carries on business in Sweden through a PE in Sweden).

[556] Income Tax Act, Ch. 6, Sec. 11.

[557] Directive 2003/49/EC of June 3, 2003, on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States (*Räntе/royaltydirektivet av den 3 juni 2003*).

[558] Income Tax Act, Ch. 6a, Secs. 2 and 3–6.

[559] Income Tax Act, Appendix 6a 1.

[560] SFS 2023:756, Proposition 2023/24:15, Fi 2023/01049.

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(iii) Expenses incurred when a limited company transfers its registered seat from Sweden to a country within the EEA may be deducted.

(iv) The tax rate for yield tax must be capable of adjustment in the event of a cross-border conversion.

8. Comparison with Other Holding Company Regimes

The following table (updated for 2025) allows the Swedish holding company regime to be compared with the holding regimes of other jurisdictions:

	Sweden	Denmark	Spain	Netherlands	Belgium	Luxembourg
Tax	20.6%	22%	15–25%	19–25.8%(1)	20–25%(2)	24.94%(3)
Dividends	Exempt	Exempt	95% Exempt	Exempt	Exempt	Exempt
	>0%/10%	>0%/10%	5%	5%	10%	10%
Holding Period	None/1 year	None	1 year	None	1 year	1 year
Capital Gains	Exempt	Exempt	95% Exempt	Exempt	Exempt	Exempt
	>0%/10%	>0%/10%	5%	5%	10%	10%
Holding Period	N/A/1 year	N/A	1 year	N/A	1 year	1 year
Tax Treaties	Excellent	Good	Excellent	Excellent	Excellent	Good

Notes:

(1), (2) The tax rate is progressive depending on the size of the taxable profit.

(3) Corporate income tax rate of 24.94% (for Luxembourg City) includes solidarity surtax of 7% and 6.75% municipal tax.

C. Controlled Foreign Corporations

1. General

A controlled foreign corporation (CFC) is deemed to exist by application of a default rule. If the holding (whether direct or indirect) of a Swedish shareholder in a foreign company exceeds 25% of the total capital or votes, the Swedish CFC legislation will be triggered unless the foreign company is resident in a country subject to an acceptable income tax at a rate defined under the legislation. The income caught by the CFC rules is not limited to passive income — i.e., active income is also within the scope of the rules. A partner in a foreign legal entity will be subject to CFC taxation if the partner alone owns at least 25%, or someone in the partner's "community of interest" (i.e., close family members, related companies as defined) controls at least 25% (reduced from 50%) of the foreign legal person's total capital or votes.

2. Limitations of the CFC Law

The scope of the CFC legislation is, however, limited in a number of ways. If the foreign company is subject to a tax of at least 11.33% (2025), the CFC regime does not apply.[561] The 11.33% rate is equal to 55% of the nominal Swedish corporate income tax rate of 20.6% (2025). The calculation as to whether the level of taxation meets this threshold is made pursuant to Sweden's domestic rules.

The most important exception to the CFC legislation is constituted by the "White List" (see Worksheet 15).[562] This list enumerates countries and regions that are explicitly excluded from CFC taxation. In some situations, however, even though the country as such has been identified by the legislature, certain specific kinds of companies or types of income within the country may be excluded, in which case the general rule (requiring a level of taxation of at least 11.33%) will apply. The types of income excluded from the White List safe harbor are, for example, those pertaining to financial activities and insurance businesses. Notable examples of regions in Europe that are entirely excluded from the White List include Malta, Monaco, Isle of Man, and the British Channel Islands. There are also many countries that are partly excluded with respect to income from bank and financing activities, insurance business, royalties, and other kinds of income from intellectual property such as, for example, Belgium, France, Italy, Luxembourg, Netherlands, Russia, Spain, Switzerland, and the United Kingdom. The White List undergoes an annual update based on taxation developments on a worldwide basis.

The Swedish CFC legislation does not cover income from shipping activities, even if such activities are conducted in a tax haven region or country.[563] For the rule to be applied, several conditions must be met. First, the income of the foreign legal person must only come from international shipping activities. Second, the partner, or any other legal person who is resident in an EEA state and with whom the partner is in a community of interests, must carry out shipping activities. Thus, if a Swedish partner is a holding company without its own shipping business, the exemption does not apply.

Notwithstanding that a taxpayer's net income is not exempt from CFC taxation, it could still fall outside the application of the CFC regulations according to the White List.[564] This applies to the income of a foreign legal person that is resident in the EEA, provided that the shareholder, who is liable for tax

[561] Income Tax Act, Ch. 39a, Secs. 2 and 5.
[562] Income Tax Act, Ch. 39a, Sec. 7–7a.
[563] Income Tax Act, Ch. 39a, Sec. 8.
[564] Income Tax Act, Ch. 39a, Sec. 7.

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in Sweden, can prove that the foreign legal person in the state where it is resident constitutes a genuine establishment from which a business-motivated activity is carried out.[565] The assessment of an actual establishment takes into account whether the foreign legal person has resources in the state in which it resides in the form of premises, has the equipment necessary for its activities, and has employees possessing the qualifications and competence required to conduct the business independently. The assessment also considers if the staff of the foreign legal person takes decisions independently in the day-to-day operation of the business.

Comment: The Swedish legislature has established conditions that appear to be far stricter than those that follow from the *Cadbury Schweppes (CJEU, C-196/04)* case. The concept embodied in the Swedish legislation is open to challenge because of the requirement of "a real establishment from which a commercially motivated business is conducted."

3. Deduction of Tax

If tax has been paid on CFC taxed income in the source country from which the income originates, the taxable person is entitled to offset the foreign tax against the tax paid in Sweden on that income.[566] If the tax cannot be deducted, as there is no tax to set it off against, the tax deduction can be carried forward for five years.[567]

D. Base Erosion and Profit Shifting

Sweden ratified the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("the MLI") on June 2018, which was initiated by the OECD's BEPS initiative, and it entered into force on October 1, 2018. Sweden made reservations against a number of the proposed changes, as a consequence of which only a few of the proposals within the BEPS framework will, in practice, impact Sweden's existing tax agreements.

The purpose of BEPS is to provide more standardized tax rules globally.

Four minimum standards were agreed to, as follows:

1. Model provisions to prevent treaty abuse, including through treaty shopping that will impede the use of conduit companies in countries and jurisdictions with favorable tax treaties to channel investments and obtain reduced rates of taxation;

2. Standardized country-by-country reporting that will give tax administrations a global picture of where multinational enterprises' profits, tax, and economic activities are reported, and the ability to use this information to assess transfer pricing and other BEPS risks, so they can focus audit resources where they will be most effective;

3. A revitalized peer review process to address harmful tax practices, including patent boxes where they include harmful features, as well as a commitment to transparency through the mandatory spontaneous exchange of relevant information on taxpayer-specific rulings, which in the absence of information exchange, could give rise to BEPS concerns;

4. An agreement to secure progress on dispute resolution, with a strong political commitment to the effective and timely resolution of disputes through the MAP.

Existing standards have been updated and will be implemented, noting that not all countries that have participated in the BEPS Project have endorsed the underlying standards on tax treaties or transfer pricing. Countries have agreed to a general tax policy direction in other areas, such as recommendations on hybrid mismatch arrangements and best practices on interest deductibility. In these areas, they are expected to converge over time by implementing the agreed common approaches, thus enabling further consideration of whether such measures should become minimum standards in the future. Guidance based on best practices will also support Governments intending to act in mandatory disclosure initiatives or controlled foreign company (CFC) legislation.

As of April 1, 2022, Sweden has introduced BEPS-related legislation in several areas, such as transfer pricing documentation (see XII.C.1., above), country-by-country reporting (see XII.C.3., above), mandatory disclosure reporting (see XIII.E., below), general limitations for interest deduction (see V.B.4.f.(1)–(4), above), and has signed and ratified The Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (see XIV.B.5.d., below).

E. Mandatory Disclosure Reporting

1. DAC6

The EU Directive 2018/22 of May 25, 2018 (DAC6) was transposed into domestic Swedish law and entered into force on July 1, 2020.[568] The Directive is closely linked to the OECD BEPS Action 12 on Mandatory Disclosure Rules. Reporting obligations fall primarily on EU intermediaries, such as tax advisors, law firms, and banks. However, taxpayers are responsible for reporting where an intermediary cannot fulfill this role (e.g., because of privilege) or where no intermediary is involved. Arrangements that trigger reporting requirements under the legislation must be disclosed within 30 days. Targeted arrangements are reported on form SKV 2780 "*Rapport om rapporteringspliktiga arrangemang*" (Report on reportable events).[569]

Qualified cross-border arrangements include arrangements among the EU Member States and those between one Member State and a non-EU country, such as the United States. Annex IV to DAC6 specifies the structures that are subject to mandatory disclosure, including specific transfer pricing arrangements, arrangements involving the improper benefit of deductions or duplicative relief from double taxation, and some arrangements that may undermine the automatic exchange of financial ac-

[565] Income Tax Act, Ch. 39a, Sec. 7a.

[566] Foreign Tax Credit Act (*Avräkningslagen* (1986:468)), Ch. 4., Sec. 1.

[567] Foreign Tax Credit, Ch. 4, Sec. 4.

[568] *Lag* (2020:434) *om Rapporteringsskyldiga Arrangemang.*

[569] Form SKV 2780 can be submitted using an e-service available on the website of the Swedish Tax Agency at: https://www.skatteverket.se/foretag/etjansterochblanketter/blanketterbroschyrer/blanketter/info/2780.4.109dcbe71721adafd25558f.html?q=SKV+2780. Detailed information regarding the content of the reporting can also be found in the Tax Reporting Act, sec. 33 b.

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count information. In some cases, reporting is required if just one of the primary benefits one may reasonably expect to derive from an arrangement is obtaining a tax advantage. Arrangements subject to this main benefit test include some arrangements with confidentiality requirements or contingent fees for planners and arrangements that are available off the shelf.

2. DAC7

Directive 2021/514/EU (DAC7), amending Directive 2011/16/EU on administrative cooperation in taxation matters, has been incorporated into Swedish law. The Directive aims to improve administrative cooperation in the field of taxation and address the challenges posed by the digital platform economy.

Swedish digital platform operators must collect and report information on the earnings of those who use their platforms to sell goods or services. The data must be reported to the tax authority of the country where the platform operator is domiciled, and it must be provided for both sellers who are domiciled in the Member State where the data must be reported, and sellers who are domiciled in other Member States. If an operator in a country outside the EU carries out an activity with some connection to the EU, it must register in one of the EU Member States (e.g., Sweden) and provide the relevant information to the competent authority of that country.

In addition to the Directive on administrative cooperation in taxation, the OECD's corresponding model rules were also implemented. They must be applied when exchanging information between Sweden and third countries through a valid agreement between the competent authorities on the automatic exchange of information on income obtained through digital platforms.

In Sweden, the platform operators must provide information on all sellers subject to reporting obligations, i.e., those domiciled in Sweden, another EU member state or a third country. The Swedish Tax Agency must then transfer the data to other Member States and third countries with a valid agreement on exchange of information.

The legislation also contains provisions regarding a new form of audit that can be carried out jointly between authorities of different Member States, the so-called "joint audits" in the legislation. Furthermore, the legislation also provides rules that prevent data outflow to Member States or other countries that cannot maintain the confidentiality or information security of the data received.

3. Directive 2021/2101 (EU)

Sweden has implemented Directive 2021/2101.[570] Multinational groups and companies with annual revenues of more than 8 billion SEK must prepare and publish a report detailing the income tax they pay in different countries. The report must be made public by filing it with the Swedish Companies Registration Office. If the income tax report is not submitted on time, the Swedish Companies Registration Office will be able to impose penalty orders on persons in the company's management. The Swedish Companies Registration Office will also be able to impose fines. The company must also make the report available on its website.

The information in the report must be presented for each EEA country in which a company pays tax. Information must also be provided on activities in non-EEA countries, namely jurisdictions on the EU list of non-cooperative jurisdictions for tax purposes.

The information in the income tax report may be presented in accordance with the instructions set out in Annex III, Section III, Parts B and C of Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC, as amended by Council Directive (EU) 2016/881 of 25 May 2016 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation. Companies that need to prepare a country-by-country report under the Tax Procedure Act can use the same information used in that report in the income tax report.

The auditor of a large company or a public interest entity must state in the audit report whether the company/entity had an obligation to publish an income tax report under the new law and whether the company has done so. The Directive does not require the auditor to perform any other review other than a review to establish whether an income tax report has been published. The auditor's review should therefore be carried out in essentially the same way as a review to establish whether a sustainability report or a corporate governance report has been prepared. The auditor needs to check whether the income tax report has been filed with the Swedish Companies Registration Office. The Directive does not require the auditor to comment specifically on the fact that a company has temporarily omitted certain information.

F. Pillar II — Global Minimum Tax

1. Act on Additional Tax (Swe:Lag (2023:875) Om Tilläggsskatt)

The OECD and G20 countries have cooperated internationally in the Inclusive Framework on Base Erosion and Profit Shifting (Pillar One and Pillar Two) to counteract tax base erosion and profit shifting (BEPS). The work carried out on Pillar Two has focused on the introduction of a global minimum tax rate to neutralize tax evasion. The rules aim to ensure that multinational companies pay a fair share of tax wherever they operate, thus eliminating a significant part of the benefit of shifting profits to no- or low-tax jurisdictions. The agreed minimum tax level corresponds to an effective tax rate of at least 15%, calculated based on consolidated accounts.

The rules constitute a coordinated system for taxing low-taxed profits derived in one state by levying additional tax on such profits in another state. The rules will be implemented in the form of a "common approach." This means that states that have agreed to the rules are not obliged to implement them in their national law, but if they do, the rules will be implemented and administered in accordance with the model rules and accompanying commentary.

On December 13, 2023, the Swedish parliament approved the Act on Additional Tax (AAT) and the implementation of the Pillar Two global minimum tax in accordance with Council

[570] Law on the publication of income tax reports of certain large companies (*Swe: Lag* (2023.340) *om offentliggörande av vissa stora företags inkomstskatterapporter*).

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Directive (EU) 2022/2523 of December 14, 2022 ("Directive 2022/2523") on ensuring a global minimum level of taxation for multinational enterprise (MNE) groups and large-scale domestic groups in the European Union.

On February 1, 2023, July 13, 2023, December 15, 2023 and May 24, 2024, new administrative guidelines were included in the Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two). To the extent they offer clarifications and examples, the guidelines are already covered by the provisions introduced in the AAT.

Sweden has adopted the changes necessitated by the new administrative guidelines by introducing additional provisions or amending existing provisions in the AAT. The legislative amendments entered into force on January 1, 2025 to be applied for the first time for tax years beginning after December 31, 2024. A reporting entity may apply that all or some of the provisions be applied for tax years beginning after December 31, 2023.

The Swedish government has submitted a report (2024/25:FPM9) to Parliament regarding a proposal from the EU Commission to amend Directive 2011/16/EU, which pertains to administrative cooperation in taxation. The proposal's primary focus is to establish provisions required for companies to fulfill their reporting obligations under Directive 2022/2523. Additionally, the proposal facilitates the exchange of extra tax reports among tax authorities. It also suggests implementing rules for cooperation and national sanctions in cases where there are deficiencies in the submission and collection of information. Without this new directive, each company within a multinational group would have to submit an additional tax report in the country where it is incorporated.

This process could be time-consuming and complicated. However, under the proposal allowing for information exchange between tax authorities, multinational companies will only need to submit a single additional tax report at a central level for the entire group. This change will significantly simplify the submission process and reduce the administrative burden on multinational enterprises. It is important to note that these proposals have not yet been adopted into Swedish legislation. The proposed changes are set to take effect on December 31, 2025. The proposed changes have not yet been implemented in Sweden, however at the EU level, the DAC 9 directive sets out harmonized reporting and information sharing across the EU and has been adopted by the Commission on April 14, 2025 requiring Member States to implement these provisions by December 31, 2025 to apply for the first reports due by June 30, 2026.

2. Rules

The AAT provides for the introduction of the Pillar Two income inclusion rule (IIR)[571] and undertaxed profits rule (UTPR)[572] to ensure a minimum tax level of 15% on MNE groups with annual consolidated revenue of at least 750 million euros in at least two of the preceding four fiscal years. The AAT also provides for a qualified domestic minimum top-up tax (QDMTT).[573]

The IIR is levied by the home jurisdiction of a group's ultimate parent entity on a jurisdiction-by-jurisdiction basis. Under the principal rule, the additional tax to be paid is the tax corresponding to the ultimate parent company's ownership share in a low-taxed company. This means that if the parent company holds only a minority interest in the low-taxed company, the parent company's additional tax liability will be adjusted downwards.

The UTPR is levied by the jurisdiction of a constituent entity that is a member of a group with affiliates with income in other jurisdictions taxed at a rate less than 15%. This supplementary rule covers situations in which the principal rule does not apply (for example, because a group's ultimate parent company is located in a jurisdiction that has not adopted Pillar Two). In principle, the tax under the UTPR is to be allocated to all the group's jurisdictions (that have introduced a corresponding rule) and companies according to a unique key based on each entity's tangible assets and number of employees. This means that if there are a number of Swedish companies in a group and additional tax is payable under the UTPR, the tax is allocated to all the Swedish companies using the same key. However, the group can have the entire Swedish part of the additional tax paid by a specific Swedish entity.

The QDMTT is levied by jurisdictions on their domestic corporations (and local branches of foreign corporations) to bring their domestic tax liability up to the 15% rate. The rule on national additional tax aims to ensure that Sweden retains the right to tax in cases where Swedish group entities are low-taxed, instead of the tax being claimed by other jurisdictions. This is because a national additional tax (in the low-taxed jurisdiction) will normally be deducted from the additional tax payable under the principal rule or the UTPR.

The calculations necessary to determine the additional tax amount shall be made in the currency used for preparing the parent company's consolidated financial statements (presentation currency).[574] If an amount required for the calculation is not expressed in the presentation currency, it shall be converted into that currency following the same principles used for currency translation in the preparation of the consolidated financial statements.

If the national additional tax has been calculated according to a specific rule for calculating Swedish national additional tax, the following applies instead.[575] If all Swedish group entities use the Swedish krona as their reporting currency, the calculations necessary to determine the additional tax amount shall be made in Swedish kronor. If one or more Swedish group entities use the euro as their reporting currency, the reporting entity may choose to perform the calculations either in the presentation currency or in Swedish kronor.

Calculations for all group entities must be carried out in the same currency. The choice remains valid for five years from the year the selection applies. Group entities that do not use the selected currency for their accounting shall convert their amounts into this currency according to the principles used for currency translation under the accounting standard applied in

[571] Act on Additional Tax, Ch. 6 Sec. 3.
[572] Act on Additional Tax, Ch. 6 Sec. 10.
[573] Act on Additional Tax, Ch. 6 Sec. 2.
[574] Act on Additional Tax, Ch. 1 Sec. 17 a.
[575] Act on Additional Tax, Ch. 1 Sec. 17 b.

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calculating the additional tax amount for the national additional tax.

The AAT entered into force on January 1, 2024, and will apply for the first time to tax years beginning immediately after December 31, 2023, except for the UTPR, which will apply for the first time to tax years beginning immediately after December 31, 2024.

3. Minimum Taxation and Tax Treaties

Under the IIR, it is the ultimate parent company that is liable for any additional tax arising from the existence of group entities domiciled in low-tax jurisdictions. Thus, the principal rule operates in a manner closely comparable to a controlled foreign company (CFC) rule and raises similar questions regarding compatibility with tax treaties. The differences between the principal rule for additional tax and CFC rules in different states, according to the Swedish legislature's view, do not alter that assessment. As for the relationship between tax treaties and CFC rules, it is noted in paragraph 81 of the Commentary on Article 1(3) of the OECD Model Convention that because CFC rules entail a Contracting State taxing its own residents, these rules do not conflict with tax treaties. This applies even if the relevant treaty does not contain a provision equivalent to Article 1(3).[576]

The supplementary UTPR for additional tax is to be applied when the principal rule for additional tax is not applicable, for example, when the ultimate parent company is domiciled in a third country that does not apply the principal rule. The supplementary rule may therefore result in the taxation of group entities resident in a country that has introduced the supplementary rule. According to the OECD Model Convention, a Contracting State has the right to tax legal entities resident in that state. The assessment above regarding whether the main rule for additional tax is compatible with tax treaties, therefore, also applies in relevant part to the supplementary rule for additional tax. As regards a supplementary rule for additional tax that operates by denying deductions, the non-discrimination provisions in Article 24 of the OECD Model Convention are applicable. In the case of Sweden, however, Article 24(4) of the OECD Model has no relevance in this context, since Sweden's supplementary rule is not proposed to take the form of a denial of deductions.

4. Included and Non-included Taxes

The AAT has incorporated provisions corresponding to the provisions in Article 20 of Directive 2022/2523 covering the taxes that are or are not to be included in the calculation of the adjusted tax cost.[577]

5. Qualified Refundable Credits

In calculating the additional tax amount, qualified refundable credits must be recognized as income.[578] The legislation allows an alternative treatment for qualified refundable credits granted in connection with the acquisition or production of assets. In the case of such a credit, a company may choose — instead of recognizing the amount of the credit as income immediately — either to reduce the tax base of the asset with respect to which the credit is granted or to recognize that amount as income over the useful life of the asset. For this option to be available, the group entity concerned must have treated the tax credit in a similar way in its accounts. Over time, the same amount will be recognized for tax purposes regardless of the method used. However, the currently proposed approach gives companies an opportunity either to spread the income over the useful life of the asset concerned or, indirectly, to recognize the amount in such a way that the depreciation deductible with respect to the asset is lower than it would otherwise be.

A credit will be a qualified refundable credit under the AAT[579] where:

(i) A refund (of the credit) is structured to be paid in cash or its equivalent to a group entity within four years of the date on which the group entity becomes entitled to receive the refund under the laws of the State granting the credit; or

(ii) If the tax credit concerned is only partially refunded, the portion of the tax credit that is payable in cash or its equivalent is paid to a group entity within four years of the date on which the group entity becomes entitled to receive that amount.

6. Safe Harbor

To assist group entities and tax administrations over a transitional period corresponding to the first three years after the AAT enters into force, i.e., 2024–26 (with special rules for split financial years), the AAT contains temporary relief rules (safe harbors).[580]

In short, the temporary relief rules allow group entities to use data in their qualifying Country-by-Country Reporting (CbCR) to determine whether a jurisdiction meets the requirements for the application of a safe harbor.

If any of the following three tests are met, the additional tax amount for the jurisdiction concerned is considered to be zero.

(i) ***De minimis*** test:[581] this test is a simplified version of the *De Minimis* Exclusion provided for in Article 5(5) of the GloBE rules.[582]

The requirements for the availability of the safe harbor are met (with the result that there is no top-up taxation with respect to the relevant jurisdiction) if the turnover according to the CbCR is less than 10 million euros in the jurisdiction concerned and, at the same time, the pre-tax income in the jurisdiction is less than 1 million euros.

(ii) **Simplified ETR test:**[583] under this safe harbor rule, the effective tax rate in a jurisdiction may be calculated in a

[576] OECD (2017), Model Tax Convention on Income and on Capital.
[577] Act on Additional Tax, Ch. 3 Secs. 23–27.
[578] Act on Additional Tax, Ch. 3 Sec. 18.
[579] Act on Additional Tax, Ch. 2 Sec.29.
[580] Act on Additional Tax, Ch. 8.
[581] Act on Additional Tax, Ch. 8 Sec. 3.
[582] OECD (2021), Tax Challenges Arising from the Digitalization of the Economy — Global Anti-Base Erosion Model Rules (Pillar Two): Inclusive Framework on BEPS, OECD Publishing, Paris, https://doi.org/10.1787/782bac33-en (the "GloBE Rules").
[583] Act on Additional Tax, Ch. 8 Sec. 4.

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simplified manner. For purposes of the calculation, the denominator is the pre-tax profit of the jurisdiction in question as reported on a country-by-country basis, and the numerator is what is referred to as "Simplified Covered Taxes." The latter includes the tax expense for the year concerned, including deferred tax, as recognized in the annual report, with certain adjustments being made for taxes that are not considered Covered Taxes.

For this safe harbor to be available (with the result that there is no top-up taxation with respect to the relevant jurisdiction), a jurisdiction's Simplified ETR must be at least:

- 15% for financial years beginning in 2023 and 2024;
- 16% for financial years beginning in 2025; and
- 17% for financial years beginning in 2026.

(iii) **Routine profits test:**[584] to meet the test for this safe harbor, the Substance-based Income Exclusion (SBIE) is calculated in the usual way under Article 5(3) of the GloBE rules. The SBIE is the sum of a percentage of physical assets and personnel costs in a jurisdiction (initially 7.8% of physical assets and 9.8% of personnel costs) (AAT transitional rules for the years 2024–32). If the pre-tax profit in a jurisdiction on a country-by-country basis is equal to or less than the SBIE amount, it is considered less likely that there may be excess profits in the jurisdiction that could be subject to top-up taxation. In such cases, the jurisdiction meets the routine profits test, and there is no top-up taxation with respect to the jurisdiction.

7. Definition of Financial Statements

The definition of consolidated financial statements in the AAT[585] corresponds to Article 3(6) of the Directive and Article 10(1)(1) (consolidated financial statements) of the GloBE Rules. The term "consolidated accounts" encompasses:

(i) The accounts of an entity prepared following generally accepted accounting standards[586] in which the entity's assets, liabilities, income, expenses and cash flows, and those of any entities over which the entity has a controlling influence[587] are presented as the accounts of a single economic entity;

(ii) The accounts that a principal entity in a group prepares in accordance with a generally accepted accounting standard; and

(iii) Accounts prepared by a parent company not in accordance with a generally accepted accounting standard that are subsequently adjusted to prevent any significant distortion of competition. ("Significant distortion of competition" is defined in Chapter 3 Section 7 of the AAT).

Chapter 2 Section 19 of the AAT also governs the situation in which the group parent does not prepare accounts in accordance with (i) – (iii). The provision concerned is divided into subsections (a) and (b). For purposes of subsection (a), the term "consolidated accounts" means the accounts that would have been prepared if the parent were required to prepare them in accordance with a generally accepted accounting standard. Subsection (b) covers the same concept but in relation to other accounting standards, with the requirement that the accounts have been adjusted to prevent any significant distortion of competition. These subsections lay down the test for hypothetical consolidation, the "deemed consolidation test." This test may be relevant when a parent company does not consolidate the accounts of its subsidiaries because there is no law or regulation requiring it to prepare consolidated financial statements in accordance with IFRS or a local GAAP.

The AAT definition of generally accepted accounting standards[588] refers to:

(i) International Financial Reporting Standards (IFRS) adopted by the International Standards Board; and

(ii) IFRS adopted by the European Union (and EEA countries) in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council on the application of international accounting standards.

Generally accepted accounting principles in certain designated countries are also treated as generally accepted accounting standards. The designated countries are Australia, Brazil, Canada, Hong Kong (China), Japan, Mexico, New Zealand, the People's Republic of China, India, the Republic of Korea, Russia, Singapore, Switzerland, the United Kingdom and the United States.

Under the EU Regulation, the Commission is to decide on the application of international accounting standards within the European Union. For this purpose, "International accounting standards" means International Accounting Standards (IAS) and International Financial Reporting Standards (IFRS) and related interpretations (SIC/IFRIC interpretations), subsequent amendments to those standards and related interpretations, and future standards and related interpretations issued or adopted by the International Accounting Standards Board (IASB). The impact of the Regulation is, therefore, dynamic, i.e., it changes as and when the Commission makes decisions on the application of international accounting standards within the European Union.

The AAT also contains a definition of "an approved accounting standard"[589] and "an approved accounting body." An approved accounting standard means generally accepted accounting principles permitted by an approved accounting body in the jurisdiction in which the entity concerned is domiciled. In Sweden, the K3 regulations are an approved accounting standard. An approved accounting body is the body in a state that has the legal authority to prescribe, establish or accept accounting standards. In Sweden, the Swedish Accounting Standards Board is the approved accounting body.

[584] Act on Additional Tax, Ch. 8 Sec. 5, Ch. 5 Sec. 2–10.
[585] Act on Additional Tax, Ch. 2 Sec. 19.
[586] Act on Additional Tax, Ch. 2 Sec. 20.
[587] Act on Additional Tax, Ch. 2 Sec. 14.
[588] Act on Additional Tax, Ch. 2 Sec. 20.
[589] Act on Additional Tax, Ch. 2 Sec. 21.

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8. Allocation of Tax Related to Controlled Foreign Companies and Hybrid Entities

As regards the allocation of taxes related to controlled foreign companies (CFCs) and hybrid entities, the relevant provisions in the AAT correspond to those in the GloBE rules and the Directive (2022/2532).

The AAT contains provisions on the allocation of tax cost under the rules on the taxation of the income of CFCs. The cost of included taxes in a group entity's accounts is to be allocated to a CFC if the tax cost is charged against the CFC's income.[590] The provision means that such included taxes are not to be taken into account by the group entity that has incurred the tax cost but are to be credited to the CFC.

If the tax costs relate to passive income, the allocation corresponds to the lower of, on the one hand, included taxes on passive income and, on the other, an amount consisting of the percentage of additional tax for the low-taxed state multiplied by the passive income.[591] In calculating the percentage of additional tax, the ownership unit's included taxes on the passive income are not taken into account. This limitation rule is designed to ensure that the minimum tax rate constitutes a limit on the amount to be attributed. Excess included taxes on passive income are attributed to the ownership unit.[592]

The tax cost included in the accounts of a group entity is to be allocated to a hybrid entity if it relates to the adjusted profit of the hybrid entity. However, the part of the cost of included taxes that relates to passive income is to be allocated in the manner specified in Chapter 7 Section 63, second and third paragraphs of AAT. This means that the allocation is made in the same way as for CFCs.

A "hybrid entity" means an entity that is a taxable entity for income tax purposes in the country in which it is domiciled but is treated for tax purposes as tax-transparent in the country in which the owner of the entity is domiciled (Chapter 7 Section 64, second paragraph of the AAT. This section corresponds to Article 24(4) and Article 24(6), first to third paragraph of the Directive and Article 4(3)(2)(d), 4(3)(3), 10(1)(1) (passive income) and Article 10(2)(5) (hybrid entity) of the GloBE rules).

9. United States GILTI Regime

The Swedish legislator has not made any statements on the parallel application of the US Global Intangible Low-taxed Income (GILTI) regime. Guidance on the issue can be found in the following publications issued by the OECD:

(i) Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalization of the Economy (the "OECD October 2021 Statement");

(ii) OECD (2023), Tax Challenges Arising from the Digitalization of the Economy — Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two), OECD/G20 Inclusive Framework on BEPS, OECD, Paris, (the "GloBE Model Rules") https://www.oecd.org/tax/beps/agreed-administrative-guidance-for-the-pillar-two-globe-rules.pdf.

(iii) OECD (2022), Tax Challenges Arising from the Digitalization of the Economy — Commentary to the Global AntiBase Erosion Model Rules (Pillar Two), OECD, Paris, https://www.oecd.org/tax/beps/tax-challenges-arising-from-thedigitalisation-of-the-economy-global-anti-base-erosion-model-rules-pillar-two-commentary.pdf.

The December 2023 document provides guidance on the allocation of CFC taxes under Article 4(3)(2)(c) of the GloBE rules when the CFC taxes are generated under a Blended CFC Tax Regime. In the OECD October 2021 Statement, the Inclusive Framework agreed that consideration would be given to the circumstances in which GILTI will co-exist with the GloBE Rules to ensure a level playing field. The Inclusive Framework has agreed that GILTI, in its current form, meets the definition of a CFC Tax Regime under the GloBE Rules and must be treated as such. However, given the status of GILTI as a Blended CFC Tax Regime and the urgent need for guidance on the allocation of GILTI taxes under Article 4(c) of the GloBE Rules, the Inclusive Framework has agreed on a simplified allocation that can be applied to Blended CFC Tax Regimes, including GILTI, for a limited period, i.e., fiscal years that begin on or after December 31, 2025 but not including a fiscal year that ends after 30 June 2027. Whether to allow a particular allocation methodology for Blended CFC Tax Regimes after that limited period will be assessed by the Inclusive Framework.

10. Reporting

The AAT imposes an obligation to provide information about both Swedish and foreign group entities. Compliance with this obligation requires an additional tax report to be submitted. All Swedish entities must comply with the obligation, unless the group of which they are part informs the Swedish Tax Agency that only one of the Swedish entities or a group entity in another country will submit the report. Entities identified as liable to pay additional tax in the additional tax report must also submit an additional tax return.

The additional tax report[593] must contain information on various matters such as the identity of all group entities, the country to which each entity belongs, each entity's status, information about the group structure in terms of control relationships and more. It must also include information necessary to calculate the effective tax for each country and group entity, as well as a list of the steps taken by the group regarding the calculation of the additional tax. The deadline for submitting the additional tax report is no later than 15 months after the end of the fiscal year, which means the first reporting deadline will be the end of June 2026.

An additional tax return must also be submitted to help determine the basis for levying tax under the Act. A group entity must submit a tax return if it is liable for an additional tax or additional supplementary tax attributed to Swedish group entities.

An additional tax return must contain, among other things: the necessary identification information; information about which entity submits the additional tax report; a statement to

[590] Act on Additional Tax, Ch. 7 Sec. 63 first paragraph.
[591] Act on Additional Tax, Ch. 7 Sec. 63 second paragraph.
[592] Act on Additional Tax, Ch. 7 Sec. 63 third paragraph.
[593] Tax Procedure Act (*Skatteförfarandelag* (2011:*1244) Chapter 33 d.*

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the effect that the entity liable to pay the tax has read the report; the information needed to allocate additional tax; and the information needed to calculate national additional tax in accordance with the AAT. An additional tax return must be submitted no later than one month after the additional tax report.[594]

The legislation also includes provisions concerning review opportunities and deadlines, as well as procedures for appealing decisions.

11. Sanctions

Member States are required to impose sanctions to ensure the effective application of the national rules. Furthermore, the sanctions must be proportionate and dissuasive.

Only Swedish group entities are covered by the AAT and liable for tax under the AAT. In the case of a PE, it is the head office entity that fulfills the obligations under the AAT. Sanctions can only be imposed on group entities subject to the AAT and on entities that are head offices of PEs.

A late filing fee of SEK 25,000[595] is payable if an additional tax report or an additional tax return is not submitted on time. A taxpayer is considered not to have submitted an additional tax return if the information in the return is so deficient that it clearly cannot be used as a basis for taxation. If the person obliged to submit an additional tax report or an additional tax return does not do so within three months of the date on which the obligation should have been fulfilled in accordance with the law, a second late fee is charged. If the obligation is not fulfilled after a further two months, a third late payment fee will be levied. If the reason for charging a late fee is that the person that submitted the additional tax return failed to sign the return, the Tax Agency must first order that person to do so. A late fee is only charged if this order is not complied with. In this case too, the late fee is SEK 25,000. When assessing whether it is unreasonable to charge a late fee in the full amount when an additional tax report has not been submitted in due time, the Swedish Tax Agency will also take into account whether the late fee is related to the fact that notice that another entity is to submit the additional tax report has not been given or has not been given in due time. When assessing whether it is unreasonable to levy a tax surcharge on additional tax in the full amount, the Swedish Tax Agency must also take into account: (i) whether the inaccuracy or inaction on which the tax surcharge is based has also led to a sanction for the reporting entity in another state; and (ii) the fact that the provisions of the AAT can be particularly complicated and that the obligation to provide information is very extensive. The Government's assessment is that, in accordance with existing provisions, the Swedish Tax Agency can decide on full or partial exemption from the special levies discussed above if it is unreasonable to charge them in the full amount.[596]

The AAT also provides for a reporting fee.[597] The reporting fee is imposed on a person submitting an additional tax report if incorrect information has been provided in the report or information that should have been provided has been omitted. However, a fee may only be charged if the deficiencies are serious. In assessing whether the deficiencies are serious, particular attention must be paid to whether they have: caused tax not to be levied, even though there were grounds for levying it; significantly increased the risk of tax evasion; or prevented or seriously impeded tax control. The possibility of, and conditions for, charging a reporting fee also apply in the context of the completion or correction of an additional tax report. A reporting fee will not be charged if the person submitting the additional tax report corrects the deficiencies on its own initiative. The minimum reporting fee is SEK 250,000 and the maximum, SEK 5 million. However, the reporting fee may exceed SEK 5 million if the inaccuracy or inaction on which it is based could have formed the basis for a tax surcharge or equivalent sanction in another state or jurisdiction. The reporting fee is then determined taking into account both the amount that would have been levied as a tax surcharge if the entity had been domiciled in Sweden and any additional amount justified by other deficiencies. A decision on the imposition of a reporting fee must be issued within six years of the end of the calendar year in which the relevant tax year ended. A decision on the imposition of a tax surcharge as a result of the submission of incorrect information or discretionary taxation must be issued within three years of the end of the calendar year in which the relevant tax year ended. If a person obliged to submit an additional tax return submits the return after the end of the second year after the calendar year in which the relevant tax year ended, a decision on a tax surcharge may be issued within one year from the date on which the return was received by the Swedish Tax Agency. In these cases, however, the decision must be announced no later than six years from the end of the calendar year in which the relevant tax year ended. The Government's assessment is that existing provisions regarding decisions on late fees and decisions on tax surcharges in other contexts are applicable to the collection of tax under the AAT.

The rules on surcharges[598] in the Tax Procedure Act will apply if the specific conditions laid down by those rules are fulfilled. The surcharge on additional tax is 40% of the tax that, if the incorrect statement had been accepted, would not have been assessed on the person that made the statement. If the incorrect information consists of the attribution or the likely attribution of an amount to the wrong tax year, the rate of the surcharge on additional tax is instead 10%.

[594] Tax Procedure Act Chapter 32 a.
[595] Tax Procedure Act Chapter 48 Sec. 1–2, 4, 5 a, 6-6.
[596] Tax Procedure Act Chapter 51, Secs 3 – 4.
[597] Tax Procedure Act Chapter 49 e f.
[598] Tax Procedure Act Chapter 49 Sec. 10 d, 11 and 13.

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XIV. Avoidance of Double Taxation

Sweden has an extensive network of tax treaties with well over 100 jurisdictions, which places it very highly among jurisdictions offering treaty access to foreign countries. Sweden has historically been very active in negotiating tax treaties and is known for having an extensive and competitive tax treaty network. However, the rate of agreements, i.e., the number of newly negotiated and renegotiated tax agreements, has fallen in recent years. The downward trend can be partly explained by the government's efforts to focus on transparency and exchange of information agreements.

There is no uniform process for initiating a tax treaty negotiation or renegotiating an agreement. When it comes to renegotiating an agreement, the Ministry of Finance usually makes the first contact with the other country and takes responsibility for producing a first draft agreement. Sweden's new tax treaty largely follows the OECD's model agreement.

The process of negotiating and renegotiating tax treaties may have changed with the introduction of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS ("the MLI"). The MLI enables a rapid, coordinated, and uniform implementation of the tax treaty-related BEPS measures. The alternative would have been to amend each agreement through bilateral negotiations, which would have taken a very long time and thereby delayed the impact of the minimum standards developed within the framework of the BEPS project.

Sweden has completed tax treaties with more than 80 states and jurisdictions. At the time of the signing of the MLI, the government elected 64 Swedish tax treaties to be covered by the MLI. Sweden has notified these agreements. The agreements omitted from the list are limited tax agreements, tax agreements that are being renegotiated, tax agreements that the government wishes to renegotiate in addition to the amendments that become relevant through the MLI, and tax agreements that are otherwise unsuitable to be covered by the MLI. Considering that more states and jurisdictions are likely to sign the MLI in the future, it can be expected that more Swedish tax treaties will be covered by the MLI.

For a list of Sweden's tax treaties and other tax-related agreements, see International Tax Treaties.

Authors note: The tax treaty with Russia was repealed the 10th of February 2025 (FS 2025:54).

A. Foreign Tax Credit

Swedish companies and resident individuals may claim a credit for foreign taxes paid, both for national and municipal income tax purposes.[599] The foreign tax is eligible for crediting only when the amount has been finally assessed by a foreign taxing authority in a country that bases its tax system on the principles of an income tax.

The amount of foreign tax available for credit is limited to the ratio of a taxpayer's foreign-source income to worldwide income, this limit being computed on an overall basis (i.e., rather than on a per-country basis).[600] Furthermore, the amount of foreign tax available for credit must be separately determined for each type of income (for example, for earned income and for capital income) because of the different taxation levels applying to each kind of income.[601] The amount of foreign tax available for credit may exceed the computed limit if this is allowed under an applicable double tax treaty.[602] Excess foreign tax credits may be carried forward for five years before expiring; the carryback of credits is not available. The calculation is made on a yearly basis in connection with the tax return.

A request for settlement is made by checking the box under "*Övriga upplysningar*" (Other information) in the Swedish tax return, either through the e-Service Income Tax Return or on the paper tax return form of the year that the foreign income was reported. When requesting settlement, the following information under the section "*Övrigt*" (Miscellaneous) must be submitted:

- What the income pertains to (for example, employment income from private or public service);
- The amount of foreign income and tax in SEK;
- The country in which the income was generated;
- The country or countries in which one has worked;
- The exchange rate one used for restatement into SEK;
- The expenses one has deducted pertaining to the foreign income.

A settlement request can also be made using the form SKV 2703, "*Avräkning av utländsk skatt — Privatpersoner*" (Settlement of foreign tax — Private individuals).[603]

The taxpayer must prove that the final foreign tax has been paid when requesting the settlement. Therefore, it is advisable to get a tax receipt from the foreign tax office to which the payment was submitted.

In the event that settlement of foreign tax has been granted and the foreign tax is consequently reduced, there is a responsibility for reporting this information to the Swedish Tax Agency. Such a report must be submitted within three months of the date that a decision on the reduction has been received by the taxpayer. The notification can be made using the form, SKV 2705: "*Anmälan, nedsättning av utländsk skatt*" (Notification of reduction on foreign tax).[604]

Deductible foreign tax in consolidated taxation of corporate groups abroad — Swedish Tax Agency statement Dnr: 8-3171046

The Swedish Tax Agency considers that a Swedish limited liability company (aktiebolag) with a permanent establishment abroad that is part of the group taxation of corporations may

[599] Foreign Tax Credit Act, Sec. 1.

[600] Foreign Tax Credit Act, Secs. 6 and 11.

[601] Foreign Tax Credit Act, Sec. 7.

[602] Foreign Tax Credit Act, Sec. 12. For further information on the mechanics of the foreign tax credit, refer to the website of the Swedish Tax Agency at: https://www.skatteverket.se/servicelankar/otherlanguages/inenglish/individualsandemployees/workinginsweden/liabilityfortaxation/settlementofforeigntax.4.676f4884175c97df4193071.html.

[603] See: https://skatteverket.se/4.39f16f103821c58f680006556.html.

[604] See: https://skatteverket.se/4.6efe6285127ab4f1d2580003712.html#:~:text=Blanketten%20anv%C3%A4nder%20du%20om%20du,b%C3%A5de%20privatpersoner%20och%20juridiska%20personer.

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have paid foreign tax that is creditable against the company's Swedish tax.

A prerequisite for a Swedish company's share of the foreign tax to be creditable is that the Swedish company is a taxable entity in the foreign country. The Swedish Tax Agency considers this requirement to be fulfilled if the foreign company responsible for the corporate group's tax payments acts as a collection agent in that country and as a representative of the Swedish company when its foreign tax is paid within a group taxation framework. Additional conditions for the Swedish company's share of the foreign tax to be creditable are that the foreign tax is both paid and final. The Swedish Tax Agency considers the foreign tax to be paid when the Swedish company has transferred an amount corresponding to its share of the foreign tax to the foreign company responsible for tax payments within the corporate group. That foreign company has subsequently transferred the amount to the foreign tax authority. The foreign tax is considered final when a final tax assessment notice has been issued to the foreign company. Furthermore, the Swedish Tax Agency considers that a payment made as compensation for the tax effect of losses in other group companies, which the Swedish company benefits from, does not constitute a foreign tax. Such a payment is therefore not creditable to the Swedish company.

Author comment: The mandatory national group taxation of corporate groups in Denmark is an example of the type of group taxation referred to in this statement. This statement replaces the previous position, "Credit for Danish tax in group taxation" (issued May 31, 2006, case no. 131 342711-06/111), which no longer applies. The statement does not introduce a changed view but clarifies the factors to consider when assessing whether the foreign tax in a group taxation arrangement is credible. The scope of the statement has been expanded to include not only group taxation of corporate groups in Denmark but also comparable group taxation systems in other countries.

B. Treaty Interpretation and Application

1. Treaty Relationship

Historically, Sweden has been at the forefront in negotiating and concluding tax treaties and its network of such treaties is one of the most comprehensive in the world. While Sweden's earlier tax treaties were based on the exemption method of avoiding double taxation, its most recent treaties and the treaties that it has renegotiated have been concluded based on the credit method. The Organisation for Economic Cooperation and Development (OECD) Model Convention expresses no preference for either method. Of Sweden's treaties with OECD countries, only the 1939 Sweden-U.S. tax treaty[605] continued to apply the exemption method until 1995. The 1994 Sweden-U.S. tax treaty applies the credit method with effect from January 1, 1996.

There is no uniform process in Sweden to start or initiate a tax agreement negotiation or renegotiate an agreement. Most common is an initiative taken by the Ministry of Finance or Ministry of Foreign Affairs. In some cases, the initiative comes from the industry, from one or more companies operating in the country in question, or through industry associations. However, the renegotiation of existing agreements may be prompted by new legislation in Sweden or in the other country, or if the other country has agreed to more favorable terms in more recent agreements with other countries.

In negotiations of a new agreement, the first contacts are usually made through the Ministry of Foreign Affairs. When it comes to the renegotiation of existing agreements, the Ministry of Finance typically takes the first initiative. The Ministry of Finance is responsible for drafting an initial agreement. The draft forms the basis for further negotiations, which the Ministry of Finance also manages. Once both parties have agreed that the agreement is ready to sign, the Government takes over the signing process.

a. Model Followed

The Swedish Ministry of Finance has, over the years, tried to set up a model tax treaty agreement, mainly based on the OECD's model agreement. However, there is currently no Swedish model agreement in place, but work is said to be in progress to design one, based on the latest versions of the OECD and UN's respective model agreements and the recommendations based on the BEPS project. Without a unique Swedish model agreement, the OECD Model Convention will continue to prevail when negotiating and renegotiating tax treaties.

b. Constitutional Process

Once the parties have agreed on a draft agreement, respective chairs of the negotiating delegations initial the agreement by placing the initials on each side of the draft agreement, thereby locking the agreed text. When both countries have decided that the agreement is ready, the process is handed over to the Swedish Government for signing. After that, the government submits a bill to parliament for approval. Subject to the approval by parliament, the government issues a specific law on the tax agreement followed by either a ratification procedure by the parties or the exchange of an approval notice through the Ministry of Foreign Affairs.

c. Explanatory Material

Negotiations between the contracting states are not documented in the same way as in the ordinary Swedish tax legislation process. Preparatory work, such as investigative reports and ministry memoranda, is lacking. The bills that form the basis for laws on tax agreements seldom contain more than very general statements on interpretation questions. However, the Swedish Government has issued instructions in connection with certain tax agreements, such as the tax agreement with the United Kingdom and Northern Ireland[606] and the tax agreement with Italy.[607] Unlike protocols, instructions are not agreements between the contracting states but merely express Sweden's view on certain detailed issues. These instructions, therefore, do not have the same significance as protocols.

[605] Convention and Protocol between the United States of America and Sweden Respecting Double Taxation, signed on March 23, 1939 (the "1939 Sweden-U.S. tax treaty").

[606] SFS 1984:932 (i.e., the number of the tax agreement under the Swedish law system), Appendices 1–3.

[607] SFS 1983:857, Appendix 1.

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2. Administrative Measures Dealing with Tax Treaty Provisions

a. Guidance in the Form of Administrative Rules, Regulations or Other Announcements

There are no specific domestic rules or regulations dealing with tax treaties. Some guidance can be obtained from material published by the Swedish Tax Agency. However, it should be noted that the information issued by the tax authorities is issued with a fiscal eye; therefore, it may not reflect a completely objective point of view. A general overview can be found on the Swedish Tax Agency's website under the section on interpretation of tax treaties.[608] The tax authorities have also published their position regarding specific tax treaty interpretation issues.[609] The tax authorities are obliged to comply with their own statements while they are only indicative for taxpayers.

b. Competent Authority for Mutual Agreement Procedures

If tax adjustments are made, the taxpayer may present its case to the competent authority, which, according to the relevant article in an applicable tax treaty, will initiate a mutual agreement procedure (MAP) with a view to eliminating taxation that is not in accordance with the treaty. The competent authorities may also consult each other in cases of taxation that are not covered by the tax treaty. It must be stressed, however, that the practice of the Swedish competent authority is not to initiate any such proceedings if any possible judicial examinations are still pending in Sweden, i.e., the MAP is only available once the reassessment decision, followed by a court judgment (if any), has been finally delivered and entered into force.

The MAP, per the terms of Sweden's tax treaties, imposes only an obligation to initiate negotiations and not a commitment to actually solve the dispute and eliminate the negative effects of double taxation. A mandatory requirement to solve potential transfer pricing disputes is, however, imposed by the European Arbitration Convention, which provides that the amount of an adjustment in one EU Member State is to be properly reflected by a corresponding adjustment in the other EU Member State. The convention is effective, as a matter of Swedish law, as of November 1, 2004.[610] The European Arbitration Convention, which was ratified by the EU Member States,[611] seeks to avoid double taxation resulting from increases or decreases in income within an international corporate group within the European Union under common control as a consequence of an intercompany pricing adjustment.

For further discussion of the roles and functions of Sweden's competent authority, see also 6895 T.M., *Income Tax Treaties: Competent Authority Functions and Procedures of Selected Countries (O–Z)*, at Chapter 155.

[608] See: https://www4.skatteverket.se/rattsligvagledning/edition/2021.6/2962.html (in Swedish).

[609] See: https://www4.skatteverket.se/rattsligvagledning/edition/2024.1/2962.html?q=Tolkning+av+skatteavtal.

[610] Act 2004:744.

[611] See Faes, 7450-2nd T.M., *Business Operations in the European Union — Taxation*, at VIII.F.

3. Treaty Interpretation

a. General Approach

(1) Unilateral Interpretative Material

When a tax agreement has been incorporated into Swedish law, the text of the agreement becomes part of Swedish law. The interpretation of such a law becomes, in practice, a question of understanding the underlying agreement. This interpretation of the agreement is made using partly different interpretation principles and source material than the interpretation of ordinary tax legislation.

As in the interpretation of legislation in general, the starting point for interpreting a tax agreement is the text itself based on the language used in this context. There is no generally accepted term for such an interpretation, but it is sometimes called logical-grammatical or purely linguistic interpretation.

Certain principles for interpreting international agreements can be found in Articles 31 to 33 of the Vienna Convention on The Law of Treaties. Tax agreements usually contain an interpretative rule that deviates from those articles of the Vienna Convention. However, the Convention deals with the relationship between the contracting states and not the relationship between taxpayers and a contracting state. It is therefore not directly applicable where tax authorities and courts apply tax agreements in individual cases. The Swedish case law on the interpretation of tax agreements is substantial and helpful in interpreting tax treaties and issues of international taxation. There are, however, no specific provisions of internal law governing the interpretation of tax agreements.

(2) Foreign Language Texts

It is common for Swedish agreements to be drawn up in Swedish, the language of the other state, and English if the language of the other state is not English. According to case law, the Swedish courts and the tax authorities must apply the 1969 Vienna Convention on treaties to interpret tax treaties.[612] According to Article 33 of the 1969 Vienna Convention, the general rule is that if a treaty has been certified in two or more languages, each version is presumed to have equal weight. However, if it has been explicitly agreed that a language version takes precedence, then the agreed language prevails.

The Supreme Administrative Court of Sweden has made some critical statements concerning the interpretation of tax agreements in case RÅ 1987 ref. 162. In the specific case, the agreement was in both Swedish and English versions, and both versions had equal weight. The Court ruled that the interpretation of the agreement is what the parties intended with the provisions of the agreement at the time of its creation. Furthermore, the Court stated that, when the agreement is to be applied in Sweden, the starting point is the Swedish text. According to the Court, since the negotiations were conducted in English, the English text was given determining importance as interpretative data for what the parties intended under the agreement.

[612] RÅ 1996 ref. 84.

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Comment: This position is noteworthy as it can be assumed that most of Sweden's tax agreements are negotiated in English.

(3) Reference to OECD or UN Models and Commentaries

(a) Status in Treaty Interpretation

It is unusual for Swedish tax agreements to be based on the UN model agreement, but it does occur. Sweden has been a member of the OECD since the organization was formed, and Sweden almost always follows the OECD Model Convention when new agreements are negotiated and interpreted. It should be noted that OECD member countries are not obliged to comply with the model agreement.

Over the years, the Swedish Ministry of Finance has also drafted various versions of its Swedish model agreement, which have primarily been based on the OECD's Model Agreement. The Swedish model has served as a starting point in the Swedish tax agreement negotiations. However, currently there is no Swedish model agreement in active use, but work is underway to draft a new, updated one, which will be based on the latest versions of the OECD's and the UN's respective model agreements.

(b) Version(s) to Be Used

The first edition of the OECD model agreement came in 1963 and was followed by a new edition in 1977. The OECD has decided that the model agreement shall be revised continuously. The last changes are from 2017. However, few changes have been made to the articles, reflecting caution in changing the model that has been followed to such an extent in existing agreements.

Article 35 of the introduction of the OECD model agreement, states that amendments to the Articles of the Model Convention and changes to the Commentaries that are direct results of these amendments are not relevant for the interpretation or application of previously concluded conventions where the provisions of those conventions are different in substance from the amended Articles. However, other changes or additions to the Commentaries are generally applicable to the interpretation and application of conventions concluded before their adoption because they reflect the consensus of the OECD member countries regarding the proper interpretation of existing provisions and their application to specific situations.

(c) Use in Relation to Treaties with Non-OECD Countries

Sweden follows the OECD's Model Convention when it negotiates a new tax treaty, vis-à-vis both OECD and non-OECD countries. The Model Convention Commentaries will therefore play an essential role in the interpretation of the tax treaty, irrespective of whether the country is a member of the OECD.

b. Definition of Terms

(1) "Unless the Context Otherwise Requires"

The interpretation concept represented by the phrase "Unless the context otherwise requires" is defined in Chapter II Article 3 of the Model Convention. If the context of the Convention does not give substance to the interpretation of a non-defined term, the term will have the meaning that it has at that time under the laws of that State. The meaning of such a term may be ascertained by reference to the meaning it has for any relevant provision of the domestic law of a Contracting State. In the 2017 revision of the Model Convention, this article was amended to allow competent authorities to agree to a different meaning under a MAP. However, this option has not yet been introduced into any of Sweden's tax treaties.

The provision constitutes a reference to internal law to seek the definition of terms used in the agreement. If there are different definitions in national tax law and civil law, the definition in the national legislation that gives rise to the taxation that entails applying the tax agreement shall apply.

(2) Static v. Ambulatory

In Swedish case law, an ambulatory approach has regularly been applied by the HFD, although a static method has been used in a few cases. The challenge with the HFD rulings is that the Court does not expressly indicate whether a static or ambulatory approach has been and or should be applied. However, the HFD seems to imply that an ambulatory practice is acceptable. It should be noted that none of the cases have been subject to a plenary session that would establish a precedent. The OECD has an ambulatory approach, and the view is that, in principle, all amendments constitute clarifications and additions and not substantial changes. Because Sweden systematically follows the OECD Model Convention, it is not surprising that Sweden also uses the ambulatory method. On the other hand, the prevailing view in doctrine is that a static approach should primarily be applied when interpreting tax agreements, and that an ambulatory approach should only be applied in exceptional cases.

4. Special Provisions

a. Permanent Establishment

The Swedish domestic definition of a permanent establishment (PE)[613] is based on the OECD Model Convention, with some differences. The Swedish definition does not exclude properties that are inventories, preparatory and deputy activities, and subsidiaries of foreign companies. The Swedish view is that it is unnecessary to regulate the exceptions referred to in Article 5(4) of the Model Convention as they fall outside the general definition of a PE.

Much of the tax planning in connection with doing business in Sweden has revolved around the definition of a PE. For example, under the 1939 Sweden-U.S. tax treaty, there was an issue as to whether the doing or transacting of business in Sweden was covered by the paragraphs of the 1965 Protocol to the treaty that defined a PE. If the activity in Sweden did not amount to a PE, there was no tax exposure in Sweden with respect to that particular activity. The definition of a PE in the 1994 Sweden-U.S. tax treaty follows that in the OECD Model Convention.[614]

[613] Income Tax Act, Ch. 2, Sec. 29.

[614] 1994 Sweden-United States tax treaty, Art. 5.

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By contrast to other U.S. tax treaties, the treaty with Sweden treats a PE as if it were a "distinct and separate enterprise" (as in the OECD model treaty) rather than a "distinct and independent enterprise" (as in the U.S. model treaty). The language in other U.S. treaties is intended to clarify that, as described in the OECD Commentaries, a PE is to be treated as an independent enterprise, i.e., one that deals independently with all related companies, not just its home office. There should be no difference in applications between paragraph 2 of Article 7 of the treaty and its analog in other U.S. treaties.

(1) Fixed Place — Examples

In domestic Swedish tax law,[615] there is a definition of a PE that is almost identical to the one that can be found in Article 5 (4) of the OECD Model Convention.

The fixed places mentioned in the Swedish legislation are the following:

- A place of management;
- A branch;
- An office:
- A factory;
- A workshop;
- A mine;
- An oil or gas well;
- A quarry or any other place of extraction of natural resources;
- A building- or construction or installation project; and
- Real estate accounted for as inventory in the business.

A PE is also deemed to exist if someone carries out an economic activity in Sweden and has received and regularly uses a power of attorney to enter into agreements for the business holders. Even though the Swedish definition of a PE does not make explicit exclusions as in the Model Convention, the Swedish definition is deemed to exclude the same situations as in the Model Convention.

The term "permanent establishment" under Article 5 (4) of the OECD Model Convention does not include:

(i) The use of facilities solely for the purpose of storage, display, or delivery of goods or merchandise belonging to the enterprise;

(ii) The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display, or delivery;

(iii) The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(iv) The maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or for collecting information for the enterprise;

(v) The maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character; or

(vi) The maintenance of a fixed place of business solely for any combination of the activities referred to in (i) through (v), provided that such activity or, in the case of subparagraph (vi), the overall activity of the fixed place of business is of a preparatory or auxiliary character.

Under the 1994 Sweden-U.S. tax treaty, this provision closely follows Article 5 of the OECD Model Convention and is, therefore, consistent with the general pattern found in most modern tax treaties between industrialized countries. Article 5 of the 1994 Sweden-U.S. tax treaty defines the term "permanent establishment" as a fixed place of business in which the business of the enterprise is wholly or partly carried on. A PE includes: a place of management; a branch; an office; a factory; a workshop; a mine, oil or gas well, quarry, or other place of extraction of natural resources; and a building site, construction or assembly project that exists for more than 12 months.

(2) Fixed Place — Modification to OECD Model

In contrast to the OECD's Model Convention, there is no time requirement under Swedish law to be met for a building/construction or an installation project to constitute a permanent establishment. The OECD Model Agreement stipulates that contract work must last at least 12 months to be considered a PE.[616]

Even though there are no time requirements, the mandatory criteria under Swedish law are that the business operations must be permanent, which means that the business usually must extend over six months. Under the Swedish tax agreements, the time required varies from six to 12 months, and in some agreements, there is no time limit.

Real estate that is accounted for as inventory has been explicitly added to the Swedish definition of a PE under Swedish tax law. The provision was introduced to safeguard taxable income from real estate businesses and other activities where real estate constitutes a current asset conducted so that there is no permanent place of business as defined in the Model Convention.

(3) Digital Sales and Services

The Swedish standpoint on the tax treatment of digital sales and services seems to follow the guidelines of the OECD Model Convention and its commentaries.

There is an ongoing discussion in Sweden whether the mere use of computer equipment in a digital business in a country could constitute a PE. When assessing the location of a digital business, a distinction must be made between computer equipment being set up at a place in a way that could trigger a PE and the data and software used by or stored on that equipment. An Internet website that is a combination of software and electronic data does not in itself constitute tangible property. It, therefore, does not have a location that can constitute a place of business. A PE requires some substance, such as a room or, in some cases, a machine or equipment. The server on which

[615] Income Tax Act, Ch. 2. Sec. 29.

[616] OECD Model Agreement, Art. 5 (3).

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the Web page is stored and through which it is accessible can be such equipment that is located in a physical location. If the company conducts its business through the server, that location may constitute a PE.

The Swedish tax authorities have published an opinion[617] addressing whether a server constitutes a PE or not. The Swedish Tax Agency believes that a PE arises if a foreign company has one or more servers located in Sweden and the business consists of leasing space and data capacity on the server to customers. According to the tax authorities, a PE does not arise if the foreign company leases the entire server to another company that uses it in its operations.

Furthermore, the Swedish Tax Agency considers that a PE arises in e-commerce when a foreign company has a server (at its disposal) and a website that functions as a typical "shop" where the customer can see the range of products, order products, pay and also get the digital products delivered directly through the server. A PE also arises in e-commerce where the server and website are used to showcase the products and receive orders if binding agreements are concluded at the time of the order, even if the goods are delivered from another location and payment is done outside the digital process. On the other hand, a PE does not arise if the customer only can see the supply of goods on the website and cannot place the order using the website.

The Swedish Tax Agency considers that a PE can arise even if the server is not used in direct contact with customers, for example, if the foreign company's business consists of storing and processing information and this is done on a server in Sweden.

In the context of internet service providers, it is essential to distinguish between a server location and a Web page. The company that operates and leases a server location is not usually the same as the company that runs its business through a Web page. It is common for the Web page to be located on a server belonging to a company that provides internet services to many companies (internet service provider (ISP)). Although under such agreements, the fees for the services paid to the leasing company, ISP, may be based on the amount of disk space used to store what the website requires, these agreements do not typically make the server and its location available to the renting company. This company cannot be said to have a physical presence on the site, and this applies even if the company has had the opportunity to decide that the website should be located on a specific server located in a particular location. However, if the company is operating through a web page itself and has the entire server, the server's location may constitute a PE. As the tax authorities refer to Commentaries (Commentaries 122 – 131 to Article 5) of the OECD Model Convention regarding digital sales/services, it is likely that the tax authorities essentially rely on the OECD standpoint in these issues.

(4) MLI Position on Fixed Places

Sweden has signed and ratified The Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("MLI") (see further at XIV.B.5.d., below).[618] The MLI has been developed as part of the OECD/G20 package of efforts within the BEPS project. The purpose of the MLI is to enable a fast, coordinated, and consistent implementation of tax treaty-related measures in existing tax treaties without states having to renegotiate each tax agreement with each other.

The MLI has introduced a new definition for a PE for specific situations. Sweden has reserved the right not to apply this definition of PE.[619]

The Swedish view is that the updated version of the definition of a PE under the MLI has lowered the threshold for when a PE arises. Accordingly, the opinion in Sweden is that more PEs will emerge from this definition compared to the present framework. It has therefore excluded the new definition of a PE under the MLI. The argument from a Swedish perspective not to implement the new definition in its treatises is that Sweden does not want to limit cross-border trade, mobility, and investments. As Sweden has many multinational companies and a relatively small domestic market, it is essential from the Swedish perspective that the threshold for when a PE arises is kept at a reasonable level.

(5) MLI Position on Dependent and Independent Agents

Sweden has excluded the MLI definition of a PE. Accordingly, the MLI does not change anything with respect to the PE issue for dependent agents and independent agents.

b. Business Profits

(1) Method Used to Attribute Profits

The overall method used by Sweden to attribute profits follows the "authorized OECD approach,"[620] as described in Article 7 paragraph 2, also called "the functionally separate entity approach." The result to be attributed to a PE is the arm's length result that the PE would have had if it were a separate and independent company operating under the same or similar conditions. The statement of income takes into account the functions performed, the assets used, and the risks taken by the enterprise through the PE. Hence, a surplus may arise in a PE even though the company as a whole has a deficit and vice versa, i.e., a deficit in the PE even though the company as a whole is in surplus.

The method attributes income to a PE in two stages. In step one, a functional and factual analysis is carried out through which the functions (economically significant activities) and the responsibilities are identified. This process also determines the PE's transactions with independent companies, related companies, and the rest of the company of which the PE is a part. Step two determines an arm's length remuneration for the intended transactions.

According to the OECD's profit attribution report, a PE must, under the arm's length principle, have sufficient capital to support the functions it performs, the assets it is considered

[617] Dnr: 202 493137-18/111.

[618] For a list of Sweden's covered agreements under the MLI, see https://www4.skatteverket.se/rattsligvagledning/edition/2024.1/374191.html?q=mli.

[619] MLI, Arts. 12–15.

[620] OECD Report on the Attribution of Profits to Permanent Establishments dated July 22, 2010.

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to be the economic owner of, and the risks it carries. Therefore, the PE must be assigned what is referred to in the report as free capital. 'Free capital' consists of capital that does not give rise to a deductible interest rate. The allocation of 'free capital' will lead to a result that follows the arm's length principle.

Thus, it follows from the OECD approach that a PE must have sufficient capital consisting of both 'free capital' and loans. Sweden has made it clear that it considers that the different approaches to allocating 'free capital' to a PE according to the profit allocation report do not necessarily lead to a result that is in accordance with the arm's length principle. Sweden considers that if such an outcome leads to double taxation, it may be resolved by the mutual agreement procedure (MAP) under Article 25.[621]

The Sweden-U.S. tax treaty provides for the elimination of the branch profits tax. The Protocol only has relevance from a U.S. tax perspective, i.e., for U.S. branches of Swedish companies, because Sweden has no domestic provisions imposing a branch profits tax. The exemption applies to a U.S. branch net payment made to a Swedish company, provided the Swedish company would have been granted a withholding tax exemption with respect to dividends, had the branch activities been carried on by a U.S. subsidiary instead.

(2) Allocation

There are no specific provisions in the Income Tax Act or the Model Convention to calculate income attributed to a PE. Foreign legal persons follow the provisions for Swedish legal entities. However, the calculation cannot conflict with the provisions of the applicable tax agreement.

Only income from the activities of the PE will be taxed in Sweden. The income of a PE is to be calculated based on the profit and loss account of the PE and not based on a flat-rate distribution of the enterprise's total income.[622]

All business activities carried out by a legal person are considered to be a single economic activity. The same method applies to a foreign company with several PEs in Sweden and a foreign individual conducting several business activities in Sweden. Even in dealings with the head office, the income shall be calculated as if the PE had been a stand-alone undertaking.

(3) Deduction for Headquarters Expenses

When calculating the income of the PE, deductions may be made for costs incurred at the head office if attributable to the PE. The deductibility follows domestic law and is not covered by the Model Convention (see Model Convention Commentary 30 on Article 7) or any tax treaty concluded by Sweden.

c. Services

(1) Dependent and Independent Personal Services

Sweden follows Article 7 of the OECD Model Convention regarding Business Profits. As defined in Article 3(1)(h) of the Model Convention, the term "business" also covers professional services and other independent professional activities. This provision was added in 2000 at the same time as Article 14, which dealt with Independent Personal Services, was deleted from the Model Convention.

Many Swedish tax treaties still contain a provision on Independent Personal Services that corresponds to the older version of Article 14 of the Model Conventions.

According to the Income Tax Act, income from employment can be income from services or income from economic activities. This means that Sweden does not customarily invoke the article on Independent Personal Services.

(2) Pensions

Under Article 18 of the Model Convention, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxed only in that state. The Swedish approach is that the source State, i.e., the Contracting State from which the pensions are paid, should be granted exclusive tax rights.

Comment: The Swedish hard attitude on this issue is closely connected to the fact that Sweden has a net outflow of pensioners from the country, and therefore there is a strong political interest to protect the tax base.

(3) Other Considerations

Under Article 21 of the Model Convention, items of income of a resident of a Contracting State, wherever arising, not dealt with the previous Articles of the Convention shall be taxable only in that state.

However, some of Sweden's tax treaties include another section in the article giving the source State, instead of the State of residence, the right to tax income not dealt with in other articles of the Agreement.

The Sweden-U.S. tax treaty (Article 22) follows Article 21 of the Model Convention.

d. Investment Income

(1) Definition

There is no explicit definition of investment income under the OECD Model Convention or in Swedish tax legislation. Nevertheless, the general approach in Sweden is that investment income is income from passive investment, such as dividends and interest, for example. It is sometimes difficult to establish whether rental payments should be classified as investment income or commercial income. Several court cases illustrate this problem. However, it seems that passive income under the OECD Model Convention, such as dividends, interest, royalties, and capital gains, is equivalent to what could be defined as investment income. From a Swedish tax perspective, it is of no relevance if the income derived from other states is classified as investment income or not, as all income attributed to a business is taxed at the same income tax rate of 20.6%. For individuals, the disparity is of importance as investment income is taxed at a flat rate of 30% and earned income at a rate of up to 55%.

(2) Royalty v. Sale/Service

The royalty provision in certain Swedish tax treaties deviates from the present wording of the OECD Model Convention as it is based on an older version of the Convention.

[621] OECD Commentaries on Art. 7(82).
[622] RÅ 1971 ref. 50.

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In some of Sweden's tax treaties, the source State also has the right to tax royalties (see, for example, Article 12 of the tax treaty with the People's Republic of China[623] and the tax treaty with Spain).[624]

Within the European Union, it was vital to abolish the double taxation of certain interest and royalty payments between related companies. That is why the EU Interest and Royalty Directive[625] was introduced. The main principle of the Interest and Royalty Directive is that interest and royalty payments between related companies in the European Union should be exempt from tax in the paying State. For companies to be related, a direct holding of at least 25% of the capital is required.

Payment for the use of or for the right to use industrial, commercial, or scientific equipment, including shipping containers, is not covered by the definition of royalties in the Model Convention (paragraph 9 of the OECD Commentaries on Article 12). In some newer and most of the older Sweden's tax treaties, the royalty provision follows the older wording of the Model Convention that includes such lease payments. In more recent Swedish tax treaties, where the definition of royalties follows the current definition in the Model Convention, leasing fees are instead covered by Article 7 (Income from Business) or, in the case of the rental of containers, Article 8 (International Shipping and Aviation).

Some tax treaties mention, in particular, the reimbursement of assistance, technical assistance, or technical services. In that case, compensation for such assistance or services may fall within the definition of royalties or may be defined as a concept of its own in the same article as royalties or alternatively in another article. For example, the tax treaty with Australia[626] includes assistance in the definition of royalties, paragraph 3(d) to Article 12 (Royalties).

Article 12 (Royalties and Technical Services) of the tax treaty with India,[627] defines royalties in paragraph 3(a) and technical services in paragraph 3(b). Since the definitions are independent of each other, no link between technical services and royalties is required for the remuneration of technical services to fall within the scope of Article 12 of the tax treaty. In the tax treaty with Malaysia,[628] technical services are not included in Article 12 (Royalties) but are instead dealt with in Article 13 (Compensation for Technical Services).

If compensation for assistance, technical assistance, or technical services is not explicitly mentioned in a tax treaty, the compensation will be covered by Article 7 (Income from Business).

(3) Dividends

Under several Swedish tax treaties, primarily with states in Western Europe, dividends between companies are exempt from taxation in the source State, provided that the receiving company owns a minimum share in the distributing company.

Many Swedish tax treaties contain provisions exempting dividends distributed to Swedish companies (see, e.g., Article 23(2)(c) of the tax treaty with the United States,[629] Article 10(4) of the tax treaty with Barbados,[630] and Article 24(4) of the tax treaty with Switzerland.[631] Newer tax treaties often only include a reference to domestic legislation (see, e.g., Article 22(2)(c) of the tax treaty with Malta).[632] Tax exemption for dividends received often follows from Swedish domestic law,[633] and in such cases, the rules of the tax treaties on tax exemption do not need to be applied.

The Protocol to the Sweden-U.S. tax treaty provides for the elimination of withholding tax on dividends paid between companies resident in the two Contracting States. Under provisions of the Protocol, Swedish investments in the United States receive the same beneficial tax treatment as that granted to U.S. holdings in Sweden. In general, a Swedish parent company is entitled to benefit from the zero withholding tax rate if its holding in the U.S. subsidiary represents 80% or more of the voting rights in the subsidiary over 12 months. A further criterion is that the parent company must pass a treaty benefits test. To pass the test, the following conditions must be met:

> (i) The parent company's principal class of shares is regularly traded on one or more recognized stock exchanges, and either:
>
> > (a) its principal class of shares is primarily traded on a recognized stock exchange located in the Contracting State of which the company is a resident (or, in the case of a company resident in Sweden, on a recognized stock exchange located within the European Union or in any other European Economic Area state or in Switzerland; or
> >
> > (b) the company's primary place of management and control is in the Contracting State of which it is a resident; or at least 50% of the aggregate voting power and value of the shares in the company are owned directly or indirectly by five or fewer companies entitled to benefits under the tax treaty, provided that, in the case of indirect ownership, each intermediate owner is a resident of either Contracting State;
>
> (ii) On at least half the days of the taxable year at least 50% of each class of shares or other beneficial interests in the company is owned, directly or indirectly, by residents of the Contracting State of which that company is a resident that are entitled to the benefits under the treaty; and less than 50% of the company's gross income for the taxable year, as determined in the person's State of residence, is paid or accrued, directly or indirectly, to persons who are not residents of either Contracting State in the form of payments that are deductible for purposes of the taxes covered by the tax treaty in the company's State of residence (but not including arm's length payments in the ordinary course of business for services or tangible property and payments in respect of financial obligations to a bank that is not related to the payor); and the company's income

[623] SFS 1986:1027.
[624] SFS 1977:75.
[625] Council Directive 2003/49/EC.
[626] SFS 1981:1006.
[627] SFS 1997:918.
[628] SFS 2004:874.
[629] SFS 1994:1617.
[630] SFS 1991:1510.
[631] SFS 1987:1182.
[632] SFS 1995:1504.
[633] Income Tax Act Ch. 24, Secs. 31–42 IL.

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is connected to an active trade or business conducted in its State of residence;

(iii) At least 95% of the aggregate voting power and value of the company's shares is owned, directly or indirectly, by seven or fewer persons that are equivalent beneficiaries; and less than 50% of the company's gross income, as determined in the company's State of residence, for the taxable year is paid or accrued, directly or indirectly, to persons who are not equivalent beneficiaries, in the form of payments, that are deductible for the purposes of the taxes covered by the tax treaty in the company's State of residence; or

(iv) A company resident of a Contracting State shall be granted benefits of the tax treaty if the competent authority of the other Contracting State determines that the establishment, acquisition, or maintenance of such person and the conduct of its operations did not have as one of its principal purposes the obtaining of benefits under the tax treaty. The competent authority of the other Contracting State shall consult with the competent authority of the first-mentioned State before denying the benefits.

If the companies do not meet the primary conditions or are otherwise disqualified by the treaty benefits test, a withholding tax of 15% or 5% (if the recipient is a company owning at least 10% of the shares in the company paying the dividends) will be levied.

The reciprocal withholding tax exemption applies to dividends paid to pension funds resident in the other Contracting State. To qualify for the exemption, the Protocol to the Sweden-U.S. tax treaty requires that the pension fund's dividends not be derived from the carrying on of a trade or business by the pension fund or through an associated enterprise and that the stocks not be sold within a two-month period following their acquisition.

Comment: This provision is undeniably a significant benefit for pension funds. As the original tax treaty would generally only reduce the withholding tax to 15%, pension funds are able to enjoy considerable savings on their investments in the other Contracting State.

e. Capital Gains

(1) Capital Gains Article v. Business Profits Article

The uncertainty over whether to apply the Capital Gains Article or the Business Profits Article is dealt with in paragraph 4 of Article 7 of the Model Convention. Under that Article, where profits include items of income that are dealt with separately in other Articles of the Convention, then the provisions of those Articles shall not be affected by Article 7.

The rule does not govern how the income will be classified for purposes of domestic law. If a Contracting State taxes an item of income according to other Articles of the Convention, that State may, for its domestic purposes, characterize such income as it wishes provided that the tax treatment of that item of income follows the provisions of the Convention.

(2) "Exit Tax" and "Delayed Alienation" Provisions

Sweden does not impose an exit tax on individuals when emigrating from the country. However, under Swedish tax law, capital gains arising in connection with a natural person's disposal of capital assets (shares and similar assets) during a period of up to 10 years after emigration from Sweden will be taxed in Sweden. For Sweden to exercise the right to tax under this 10-year claw-back rule, a special provision is often implemented in Sweden's tax treaties.

The format of the provision as well as the claw-back period covered vary among Sweden's tax treaties. For example, the period is two years under the treaty with France (SFS 1991:673), 10 years under the Nordic tax agreement (Denmark, the Faroe Islands, Finland, Iceland, Norway, and Sweden)[634] and seven years under the agreement with Great Britain and Northern Ireland.[635]

Sweden's position is not aligned with Article 13 of the Model Convention that states that the alienation of shares shall be taxed only in the Contracting State of which the person is resident.

There are two approaches on the deferral of taxation of shares in the Income Tax Act (1999:1229): Chapter 48(a) covering natural persons and Chapter 49 pertaining to legal persons (see V.B.5.b., above). Under Chapter 49, a so-called deferral amount is recaptured no later than the year when the consideration shares are transferred or cease to exist. Chapter 48(a) does not include a corresponding rule for individuals. Instead, the deferral arises through a method of attributing an acquisition cost to the shares received that is equal to the amount of expenses for the divested shares.

Both approaches of deferred taxation apply provided the residence of an individual or legal entity is within the EEA and that tax liability exists under an applicable double tax treaty. If the person moves outside the EEA, taxation is triggered.

Note: From January 1, 2021, the United Kingdom is no longer treated as being within the EEA due to Brexit. Accordingly, the requirement of residence or habitual residence within the EEA to qualify for deferral is no longer fulfilled, thereby triggering current taxation under the Swedish Income Tax Act.

f. Residence

The resident status of a person in Sweden is assessed exclusively under the Swedish Income Tax Act. A person who has been deemed liable to unlimited tax under the Swedish Income Tax Act continues to be so even if the person concerned would be considered a resident of another state according to the domestic tax legislation of that state. A person deemed liable to tax in Sweden is taxed according to the same rules as other unlimited taxable persons, provided Sweden has the right to tax the relevant income under an applicable tax treaty.

Pursuant to paragraph 2 of Article 4 of the OECD Model Convention, where by reason of the provisions of paragraph 1 of Article 4, an individual is a resident of both Contracting States, then his or her status shall be determined as follows:

a) He/she shall be deemed to be a resident only of the State in which he/she has a permanent home available to him/her; if he/she has a permanent home available to him/her in both States, he/she shall be deemed to be a resident on-

[634] SFS 1996:1512.
[635] SFS 2015:666.

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ly of the State with which his/her personal and economic relations are closer (center of vital interests);

b) If the State in which he/she has his/her center of vital interests cannot be determined, or if he/she has not a permanent home available to him/her in either State, he/she shall be deemed to be a resident only of the State in which he/she has an habitual abode;

c) If he/she has an habitual abode in both States or in neither of them, he/she shall be deemed to be a resident only of the State of which he/she is a national;

d) If he/she is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

Pursuant to paragraph 3 of Article 4 of the OECD Model Convention, where by reason of the provisions of paragraph 1 of Article 4 of the Model Convention, a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall endeavor to determine by mutual agreement the Contracting State of which such person shall be deemed to be a resident for the purposes of the Convention, having regard to its place of effective management, the location where it is incorporated or otherwise constituted, and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by the Convention except to the extent and in such manner as may be agreed upon by the competent authorities of the Contracting States.

In the case of dual residence of a company, Sweden has entered into tax treaties deviating from the Model Convention. For example, under the tax treaty with the United States (SFS 1994:1617), per Article 4, paragraph 3, a company being resident of both Contracting States that was created under the laws of a Contracting State or a political subdivision thereof, will be deemed to be a resident only of that State. Furthermore, where by reason of the provisions of Article 4, paragraph 1, a person other than an individual or a company is a resident of both Contracting States, the competent authorities of the Contracting States shall settle the question by mutual agreement.

(1) Individuals

Sweden complies with Article 4 of the OECD Model Agreement, but some deviations have been made to secure the right to tax and avoid double taxation.

In the case of States that tax only income with a source there, the Resident Article has been given a different form to ensure that residents of that State do not fall outside the scope of the agreement. See, for example, Article 4 of Sweden's tax treaty with Bolivia.[636] Even in States that tax persons based on citizenship, a specific provision is required for the agreement to cover persons who are nationals but do not have a domicile, etc., in that state. See, for example, Article 4 of the Sweden-U.S. tax treaty.[637]

Under the Sweden-U.S. tax treaty, Article 4, "a United States citizen or an alien lawfully admitted for permanent residence in the United States is a resident of the United States, but only if such person has a substantial presence, permanent home, or habitual abode in the United States. If such person is also a resident of Sweden under this paragraph, such person will also be treated as a United States resident under this paragraph and such person's status shall be determined under paragraph 2. c)."

According to paragraph 2 c), if a habitual abode exists in both States, the person shall be deemed to be a resident of the State of which he is a citizen.

(2) Corporations

According to Article 4(3) of the OECD Model Convention, a legal person is deemed to be domiciled in the Contracting State in which it has its effective management. Accordingly, following that Model, a Swedish limited liability company is not domiciled in Sweden if it has its physical management in another State. In this context, a foreign legal person can never obtain a domicile in Sweden under Article 4(1) since, under Swedish domestic legislation, a foreign legal person is always subject to limited tax liability.[638]

(3) Pass-Through Entities

The Commentaries to the OECD Model Convention (Article 4, Commentary 8.13) states that where a State disregards a partnership for tax purposes and treats it as fiscally transparent the partnership itself is not liable to tax and may not be considered a resident of that State.

The concept of "fiscally transparent" used in the paragraph refers to situations where, under the domestic law of a Contracting State, the income of the entity is not taxed at the level of the entity but at the level of the persons who have an interest in that entity or arrangement.

Some of Sweden's tax treaties have a provision that differs from the OECD Model Convention, which specifically covers partnerships and other shareholder-taxed foreign legal entities. The provision is most often found in Article 4, as in the Nordic tax treaty and the tax treaties with Belgium[639] and Botswana.[640] Under the Sweden–U.S. tax treaty,[641] the provision is placed in Article 1 paragraph 6. Under the treaty article "an item of income, profit or gain derived by or through a person that is fiscally transparent under the laws of either Contracting State, shall be considered to be derived by a resident of a State to the extent that the item is treated for the purposes of the taxation law of such State as the income, profit, or gain of a resident."

g. Other Income

The OECD Model Convention, at Article 21 paragraph 1, states that the income of a resident of a Contracting State, wherever arising, not dealt with in other articles of the Convention, shall only be taxed in the State of residence. Some of Sweden's tax treaties follow this Model, such as Article 22 of the Sweden–U.S. tax treaty.

However, certain of Sweden's tax treaties follow the UN Model and contain an additional third paragraph under Article

[636] SFS 1994:282.
[637] SFS 1994:1617.
[638] Income Tax Act, Ch. 6, Sec. 7.
[639] SFS 1991:606.
[640] SFS 1992:1197.
[641] SFS 1994:1617.

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21. According to this third paragraph, income not covered by the preceding articles of the agreement, acquired by a resident of a Contracting State and originating in the other Contracting State, may be taxed in that other State. The addition to Article 21 gives the source State, instead of the State of residence, the right to tax income not dealt with in other articles of the agreement.

Furthermore, the tax treaties with Israel,[642] Kenya,[643] New Zealand,[644] and Singapore[645] do not have an article that covers other income. In those cases, each State taxes the income under domestic tax law without regard to where the income is sourced. However, in the case of Israel, the method of elimination of double taxation article, i.e., Article XVII § 2.b), states that income not explicitly covered by the agreement and sourced in Israel is exempt from Swedish tax, provided that the income has been taxed in Israel.

h. Non-Discrimination

Most tax treaties concluded by Sweden have rules prohibiting discrimination. In the vast majority of tax treaties, these rules are designed according to Article 24 of the OECD Model Agreement.

Paragraph 1, Article 24 of the OECD Model Agreement, states that nationals, both individuals and legal persons, of a Contracting State, shall not be subject in the other Contracting State to any taxation or any connected requirement that is other or more burdensome than the taxation and connected requirements to which nationals of that State in the same circumstances are or may be subject to. There is no impediment to a Contracting State treating foreign nationals better than its nationals.

In Case RÅ 1999 ref. 58, a Norwegian non-life insurance company operating from a permanent establishment (PE) in Sweden was entitled to claim taxation under the rules applicable to Swedish non-life insurance companies pursuant to the nationals rule of the Nordic tax treaty.

Pursuant to Article 24 paragraph 3 of the OECD Model Agreement, the taxation of a PE which an enterprise of a Contracting State has in the other Contracting State shall not be less favorable in that other State than the taxation levied on enterprises in that other State carrying on the same activities.

In Case RÅ 1990 ref. 597, a Belgian parent company, A SA, merged with its Belgian subsidiary, B BV. The latter company had a branch in Sweden. An application to the tax authorities for an advanced ruling raised the question of A SA's right to make certain adjustments to the cost of the assets acquired to calculate income attributable to the PE and to deduct losses attributable to the activities carried out by B BV through the PE in Sweden. According to the HFD, A SA had the same right that would have accrued to B BV to make the adjustments and to take advantage of the loss deductions. In this specific case, the HFD referred both to the citizenship rule and to the rules on PEs in Sweden's tax treaty with Belgium at the time.

Pursuant to Article 24, paragraph 4 of the OECD Model Agreement, interest, royalties, and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned state.

The HFD, in case 2011 ref. 90 IV, addressed whether the interest deduction restriction rules under Swedish domestic law contravened the non-discrimination clause in the Sweden-Belgium tax treaty. The provision in question followed the OECD Model Agreement. The Court stated that it follows from paragraph 4 that interest paid from a Swedish company to a Belgian company must be deductible under the same conditions as if the interest had been paid to another Swedish company. The Court held that since the requirements for deductibility laid down in the relevant provisions of the Income Tax Act are the same regardless of whether the interest is paid to a domestic or a foreign recipient, the application of the provisions is not in conflict with the prohibition against discrimination.

According to paragraph 5 of Article 24 of the OECD Model Agreement, enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subject in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

The purpose of the provision is to guarantee equal treatment to taxpayers resident in the same State. The application of the paragraph has led to numerous cases before the HFD, especially concerning the tax-deductibility of intragroup contributions. If Sweden has a tax treaty containing an article prohibiting discrimination with the State in which the parent company belongs, that provision may be invoked in support of the right to make a deduction.

Under the Income Tax Act, a tax-deductible intra-group contribution cannot be given between two Swedish sister companies owned by a parent company resident outside the EEA. However, in case RÅ 1987 ref. 158, the HFD held that a deductible contribution could not be denied if under the circumstances there is an applicable treaty with a provision of non-discrimination between Sweden and the State in which the parent company is resident.

In case RÅ 1993 ref. 91 I, the HFD allowed an intra-group contribution from a Swedish parent through an intermediate company in the United States to a Swedish subsidiary.

In contrast, Case RÅ 1993 ref. 91 II addressed whether a tax-deductible intra-group contribution could be made between two Swedish sister companies belonging to a group in which both a Swiss and a German company were part of. The HFD found that a deduction dependent on the simultaneous application of both the German and Swiss tax treaties could not occur, because each treaty is intended to apply only to the respective Contracting States and not to a State that is not a contracting party. However, this case is no longer applicable for

[642] SFS 1960:617.
[643] SFS 1974:69.
[644] SFS 1980:1131.
[645] SFS 1991:1886.

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EU transactions in the aftermath of an CJEU decision,[646] which confirmed that it is not compatible with EU law to refuse a tax-deductible intra-group contribution despite the fact that the deduction depends on two tax treaties being applied simultaneously.[647] This practice within an EU context was also subsequently confirmed by the HFD in case RÅ 2000 ref. 17.

i. Special Provisions

(1) Branch Profits Tax

Some states levy a special tax on branch profits to equate the tax treatment of branches and subsidiaries that corresponds to the tax levied on dividends from subsidiaries. Article 10 of the OECD Model Agreement does not cover such tax.

The Protocol amending Article 10 (Dividends) of the 1994 Sweden-U.S. tax treaty provides for the elimination of the U.S. branch profits tax on net remittances made by the U.S. branch of a Swedish company to the Swedish "home office" under circumstances where the Swedish company would have been entitled to a complete dividend withholding tax exemption had the U.S. branch activity been carried on by a separately incorporated U.S. subsidiary.

(2) Overriding Taxing Right/Savings Clause

Pursuant to Article 1 paragraph 4 of the Sweden-U.S. tax treaty, notwithstanding any provision of the tax treaty, except paragraph 5, the United States may tax its residents [as determined under Article 4 (Residence)] and by reason of citizenship its citizens as if the treaty had not come into effect. Notwithstanding the other provisions of the treaty, a former citizen or long-term resident of the United States may, for a period of 10 years following the loss of such status, be taxed under the laws of the United States.

(3) Remittance Rule

Pursuant to Article 22 paragraph 3 of the Malta-Sweden tax treaty, Sweden has the right, under the remittance rule, to tax certain income that originates from Sweden and is not transferred to or received in Malta. The rule has no equivalent in the OECD's Model Agreement. According to Sweden's domestic legislation, the rule applies when another article in the tax treaty restricts Sweden's tax law to a certain income while Malta, according to its domestic legislation, taxes this type of income only to the extent that it is transferred to or received in Malta. For the rule to be applicable in an individual case, it must be established that the income in question is taxed in Malta only to the extent that it is remitted there. The taxpayer has the burden of proof that such remittance takes place. However, the taxpayer does not have to show that the income is taxed in Malta.

(4) New Limitation on Benefits Clauses for Future Activities

Sweden is trying to introduce a new type of limitation on benefits clause in tax treaties with countries that have not yet enacted domestic legislation for special, tax-favored entities, but which may do so in the future. Specifically, the tax treaties with Estonia (Article 28), Kazakhstan (Article 27), and Macedonia (Article 27) contain this provision.

This new type of limitation on benefits article reads as follows:

> Notwithstanding any other provision of this Convention, where
>
> a) a company that is a resident of a Contracting State derives its income primarily from other States
>
> (i) from activities such as banking, shipping, financing of insurance or
>
> (ii) from being the headquarters, co-ordination center, or similar entity providing administrative services or other support to a group of companies which carry on business primarily in other States; and
>
> b) except for the application of the method of elimination of double taxation typically applied by that State, such income would bear a significantly lower tax under the laws of that State than income from similar activities carried out within that State or from being the headquarters, co-ordination center or similar entity providing administrative services or other support to a group of companies which carry on business in that State, as the case may be, any other provisions of this Convention conferring an exemption or a reduction of tax shall not apply to the income of such company and the dividends paid by such company.

Comment: There is some uncertainty as to whether this type of article is compatible with EU law, specifically the freedom of establishment and free movement of capital.

(5) Limitation on Benefits in the Sweden-U.S. Tax Treaty

Article 17, as amended in 2005, follows a standard format used by the United States in income tax treaties concluded at that time, i.e., in 2005. Paragraph 1 states the general rule that a resident of a Contracting State is entitled to benefits otherwise accorded to residents only to the extent that the resident satisfies the requirements of the Article. Paragraph 2 lists a series of attributes of a resident of a Contracting State, any one of which suffices to make such resident entitled to all the benefits of the Convention. Paragraph 3 provides a so-called derivative benefits test under which certain resident companies may qualify for benefits if their owners could have claimed equivalent benefits had they received the income directly. Paragraph 4 sets forth the active trade or business test, under which a person not entitled to benefits under paragraph 2 may nonetheless be granted benefits with regard to certain types of income. Paragraph 5 provides special rules for so-called triangular cases notwithstanding the other provisions of Article 17. Paragraph 6 pro-

[646] CJEU C 200/98.

[647] According to the CJEU, [current] Arts. 43, 44, 45, 46, 47, and 48 EC preclude tax relief from being refused in respect of transfers made between two LLCs established in a Member State, where the second of those companies is wholly-owned by the first together with several subsidiaries which it owns entirely and which have their seat in various other Member States with which the first Member State has concluded agreements for the prevention of double taxation which contain a non-discrimination clause.

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vides that benefits may also be granted if the State's competent authority from which the benefits are claimed determines that it is appropriate to give benefits in that case.

Even if a person satisfies the requirements of Article 17, benefits shall be granted exclusively if the resident of a Contracting State meets any other specified conditions for claiming benefits. Accordingly, a publicly traded company that satisfies the requirements of subparagraph 2(c) will be eligible for the elimination of withholding tax on dividends at source if it owns 80% or more of the voting power of the paying company and satisfies the 12-month holding period requirement of subparagraph 3(a) of Article 10, and satisfies any other conditions specified in Article 10 or any other articles of the Convention.

Sweden has introduced a similar limitation on benefits article in the treaty with Barbados (Article 24.1, 3 and 4)

(6) Tax Sparing Article

Sweden's tax treaties with less developed countries consistently include a tax sparing article. Under the terms of such a provision, Swedish taxpayers are granted a tax credit for the tax that would otherwise have been levied by a country in the absence of an incentive program. Treaties containing such a provision include the 1961 Sweden-Greece,[648] 1997 Sweden-India,[649] 1959 Sweden-Israel,[650] 1987 Sweden-Philippines,[651] 1968 Sweden-Singapore,[652] and 1994 Sweden-Vietnam tax treaties.[653]

5. Issues in Application of Income Tax Treaties

a. Interaction of Treaty and Domestic Law

An overwhelming majority of countries follow a principle, often called the golden rule, with respect to the interaction of domestic law and a tax treaty. This rule, which is codified in most of Sweden's tax treaties, stipulates that a tax treaty can only limit, never extend the right to tax that accrues to a state according to its domestic international tax law. Accordingly, a tax treaty can never impose higher taxes than under domestic law. Importantly, this also means that even if the tax treaty would give Sweden the right to tax, Sweden cannot tax if there is no domestic tax provision that would allow such a claim.

There is no constitutional impediment in Sweden to prohibit the legislature from introducing tax provisions that contravene an already implemented tax treaty.

The general principle in Sweden is that a tax treaty cannot extend the right to tax or make it less favorable as compared to domestic tax law. Domestic tax law will take precedence if it is more beneficial to the taxpayer.

b. Treaty Overrides

The Supreme Administrative Court has stated that tax agreements should, as a general rule, be given priority over domestic Swedish laws unless the legislature has indicated that new Swedish rules shall be given priority.[654] The position in doctrine is that the law or the preparatory work must explicitly provide that the legislature's intent was for the new domestic tax rule to be applied in priority to that under a tax treaty.

c. Successor States

A tax agreement is applied as long as the tax treaty is in force regardless of whether the other Contracting State or its successor still applies the agreement. Reciprocity is not required for the application of a tax treaty with successor states. In the case, RÅ 83 ref. 1:87, the HFD held that the 1928 tax agreement between Sweden and the German Reich was still applicable (the 1974 income year) in relation to (at that time) the German Democratic Republic (East Germany), since the proclamation (1928:485) on the application of this agreement had not been annulled in relation to East Germany. The fact that East Germany declared that it did not intend to apply the agreement was irrelevant. Similarly, the tax agreement with Yugoslavia (SFS 1982:70) continues to apply to Slovenia, Croatia, Serbia, and Montenegro. A tax agreement was later concluded between Sweden and Macedonia.[655] However, the tax agreement with the Soviet Union no longer applies to any part of the former Union.[656] Most of these States have signed new tax treaties with Sweden, except for Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, and Uzbekistan.

d. Multilateral Instrument

On October 1, 2018, the OECD Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) entered into force in Sweden. The MLI is an instrument designed to implement Base Erosion and Profits Shifting (BEPS) measures in the context of bilateral tax treaties — it is intended to bring existing so-called Covered Tax Agreements in line with the most recent treaty provisions developed by the OECD to address tax avoidance, without the need for the participating jurisdictions to engage in (new) bilateral negotiations. The MLI contains a combination of "minimum standards" and "best practice" provisions that amend bilateral tax treaties to prevent them from being used to facilitate multinational tax avoidance. The "minimum standard" provisions apply automatically to a given bilateral treaty if the Contracting States to that treaty sign the MLI. On the other hand, the "best practice" provisions are optional, and will only modi-

[648] Convention between the Government of the Kingdom of Sweden and the Government of the Kingdom of Greece for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital, signed on October 6, 1961 (the "1961 Sweden-Greece tax treaty").

[649] Convention between the Government of the Kingdom of Sweden and the Government of the Republic of India for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital, signed on June 24, 1997 (the "1997 Sweden-India tax treaty").

[650] Agreement between Sweden and Israel for the Avoidance of Double Taxation with Respect to Taxes on Income and Capital, signed on December 22, 1959 (the "1959 Sweden-Israel tax treaty").

[651] Convention between the Kingdom of Sweden and the Republic of the Philippines for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, signed on May 7, 1987 (the "1987 Sweden-Philippines tax treaty").

[652] Convention between the Government of the Kingdom of Sweden and the Government of the Republic of Singapore for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital, signed on June 17, 1968 (the "1968 Sweden-Singapore tax treaty").

[653] Agreement between the Government of the Kingdom of Sweden and the Government of the Socialist Republic of Vietnam for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, signed on March 24, 1994 (the "1994 Sweden-Vietnam tax treaty").

[654] RÅ 2008 ref. 24.

[655] SFS 1998:258.

[656] SFS 1995:1340.

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fy a treaty if both Contracting States sign the MLI and agree to adopt them.

The MLI does not change the text of existing tax treaties, instead it will be applied alongside existing treaties. The provisions of the MLI may overlap or be in conflict with provisions of Covered Tax Treaties on the same tax matters.[657] If provisions of the MLI are in conflict with existing tax treaty provisions covering the same subject matter, the conflict is addressed through one or more compatibility clauses. If an incompatible or conflicting provision exists, the provision of the MLI shall prevail. In the absence of such existing provision, the provision of the MLI shall be deemed to be automatically added to the Covered Treaty Agreement.

Sweden has chosen to approve a minimum of articles in the MLI, i.e., Articles 6, 7, 16, 17, and 18 to 26. In addition, Sweden has chosen to apply the time of application specified in Article 35:3 of the MLI. Under Article 35:7, Sweden reserves the right not to apply the MLI until the necessary changes have been made to Swedish domestic law. The incorporation will take place gradually, and there will be bills introduced in connection with the implementation of the MLI. Article 6 refers to the purpose of a tax treaty and how it can be clarified so that it can also, in principle, prevent the abuse of a tax treaty. Article 7 contains an explicit provision to prevent the abuse of a tax treaty. Mutual agreement between competent authorities is dealt with in Article 16. Corresponding adjustments that a Contracting State may need to make to achieve equal treatment of income are the subject of Article 17. Articles 16 to 26 cover the mutual agreement process. It is possible that Sweden will choose additional articles in the MLI to apply in the future. Thus far no MLI agreements have been closed between Sweden and any of its selected treaty partner states.

C. Other Treaties

1. Estate and Gift/Inheritance Tax Treaties

Sweden has abolished estate, gift and net wealth taxes and therefore any provisions in Swedish tax treaties covering these taxes no longer have any factual application.

2. Foreign Account Tax Compliance Act

a. The U.S.

On August 8, 2014, Sweden and the United States signed an agreement to improve international tax compliance and to implement the Foreign Account Tax Compliance Act (FATCA) of the United States, following the Model 1A (reciprocal) Intergovernmental Agreement.[658] The legislation entered into force on April 1, 2015, and has been implemented and is being applied by the tax authorities.

The FATCA requires financial institutions to use enhanced due diligence procedures to identify U.S. persons who have invested in either non-U.S. financial accounts or non-U.S. entities. The intent behind FATCA is to prevent U.S. persons from hiding income and assets overseas.

b. The EU

In addition to the FATCA agreement with the U.S., Sweden has incorporated the EU Directive 2014/107/EC covering the automatic exchange of information on financial accounts. The exchange of information is based on a multilateral agreement between competent authorities of several countries. The Directive was incorporated into Swedish law,[659] and is independent of the U.S. FATCA legislation which was also incorporated into Swedish law.[660] Sweden is one of more than 61 states and jurisdictions that have joined a multilateral agreement between competent authorities to implement the OECD Common Reporting Standard (CRS) and to enter into the automatic exchange of financial account information.

3. Totalization Agreements

Sweden has concluded a number of totalization agreements, including the social security agreement with the United States of May 27, 1985, which is effective as from January 1, 1987 (for the texts and status of Sweden's tax treaties, see International Tax Treaties). The agreement with the United States was amended in 2004[661] to take into account reforms in the Swedish pension system in effect since January 1, 2003, the amendments for which entered into force on November 27, 2007. The agreement improves social security protection for individuals who work or have worked in both countries. It helps many individuals who, without the agreement, would not be eligible for monthly retirement, disability or survivors benefits under the social security system of one or both countries. It also helps those individuals who would otherwise have to pay social security taxes to both countries on the same earnings. For purposes of the agreement, the applicable laws concerning benefits and contributions are, for the United States, those governing the federal Old-Age, Survivors and Disability Insurance (OASDI) Program and, as for Sweden, the laws governing sickness compensation, activity compensation, guaranteed pensions and income-based old-age pensions, survivors pensions, and surviving children's allowance.

4. Exchange of Information Agreements

Sweden has been active in entering into agreements to exchange tax information automatically and spontaneously. Using the OECD's model (Tax Information Exchange Agreement, TIEA) as a basis, Sweden has entered into bilateral information exchange agreements with a large number of states and jurisdictions that have been incorporated into Swedish law.

[657] For a list of Sweden's covered agreements under the MLI, see https://www4.skatteverket.se/rattsligvagledning/15311.html.

[658] The text of the agreement is available at: https://home.treasury.gov/system/files/131/FATCA-Agreement-Sweden-8-8-2014.pdf.

[659] Regulation (2015:922) concerning the automatic exchange of information regarding financial accounts *(Förordning (2015:922) om automatisk utbyte av upplysningar om finansiella konton),* Act (2015:912) concerning the automatic exchange of information regarding financial accounts (*Lag (2015:912)).*

[660] Act (2015:62) regarding the identification of reportable accounts under the FATCA agreement (*Lag (2015:62) om identifiering av rapporteringspliktiga konton med anledning av FATCA-avtalet*).

[661] Act on Convention between Sweden and the United States of America on Social Security (*Lag* (2004:1192) *om Konvention mellan Sverige och Amerikas förenta stater om social trygghet*).

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Sweden has signed TIEAs with more than 45 jurisdictions, including Andorra, Anguilla, Aruba, Bahamas, Bermuda, British Virgin Islands, Cayman Islands, Cook Islands, Gibraltar, Guernsey, Isle of Man, Jersey, Monaco, Saint Kitts and Nevis, Samoa, San Marino, and the Turks and Caicos Islands.

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