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Sweden

TAX DISPUTES

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This country-specific Q&A provides an overview of tax disputes laws and regulations applicable in Sweden.

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SWEDEN

TAX DISPUTES



1. Is it necessary for a taxpayer to register with the tax authority? Are separate registrations required for corporate income tax and value added tax/sales tax?

In general, any person who conducts business activities in Sweden, regardless of through which company form, is obliged to apply for a registration with the Swedish Tax Agency. In the notification, the taxpayer can apply for an approval of so-called F-tax (Swe. F-skatt), which gives the taxpayer an approval, confirming that the person conducting business is responsible for paying income taxes etc. The notification can also include registration for value added tax (VAT) and employers' social security contributions. There is no fee charged for the registration and it can be completed digitally at the Swedish Tax Agency's web page. Foreign companies conducting business or having employees in Sweden is also obliged to apply for a registration with the Swedish Tax Agency. The application itself is slightly different but information can be found on the Swedish Tax Agency's web page.

If an individual is located in Sweden for more than six months, he/she shall register with the Swedish Tax Agency. If an individual moves to Sweden and is planning on living in Sweden for more than one year, generally he/she is also required to register a permanent address in Sweden, which is also handled by the Swedish Tax Agency.

The application for a registration for F-tax, social security contributions and VAT can be completed in the same application. However, when applying to get an approval for F-tax, the taxpayer is obliged to submit a preliminary tax return, disclosing the expected profit of the business conducted. Based on this information, the Swedish Tax Agency will decide on how much preliminary tax the taxpayer will pay, including the timing of payment.

2. In general terms, when a taxpayer files a tax return, does the tax authority check it

and issue a tax assessment - or there a system of self-assessment where the taxpayer makes their own assessment which stands unless checked?

In general terms, taxpayers are required to submit a tax return every year. The Swedish Tax Agency sends out a proposal to a tax return consisting of different types of income based on information obtained from employers, banks, foreign entities, etc. Alongside with the tax return, a preliminary tax decision is provided. Upon receiving the tax return, the taxpayer may review and make any necessary changes, such as reporting any additional income or claiming deductions. Thereafter, the tax return is signed, normally digitally, and submitted to the Swedish Tax Agency.

Subsequently, the Swedish Tax Agency is obliged, within certain time limits regulated in the Tax Procedures Act, to make a decision. The Swedish Tax Agency does not manually review all tax returns, instead they are initially sorted after certain questions (algorithms due to analyses), which are not disclosed to the public. Depending on the findings, tax officers thereafter proceed to investigate selected tax returns in detail.

If no changes are made by the taxpayer or the Swedish Tax Agency, the tax return will be decided on in accordance with the preliminary tax decision. However, the Swedish Tax Agency has the right to change the decision up until six years after the expiration of the tax year. However, the statute of limitations is six years if incorrect information has been declared in the tax return. If there is no incorrect information in the tax return the Swedish Tax Agency has only two years after the expiration of the so called tax year to change its decision.

3. Can a taxpayer amend the taxpayer's return after it has been filed? Are there any time limits to do this?

A taxpayer can amend the tax return after it has been

filed. Certain rules are applied, and this is a legally difficult area depending on how the amendment is done. As a general rule, the taxpayer can amend its tax return through a request for a reassessment. This can be done by the taxpayer within six years after the expiration of the calendar year during which year the income year (tax year) has expired. However, if any information submitted together with the tax return is considered to be incorrect, the taxpayer must amend the tax return before the Swedish Tax Agency starts investigation the error or request information, or tax penalties will be applied.

4. Please summarise the main methods for a tax authority to challenge the amount of tax a taxpayer has paid by way of an initial assessment/self-assessment.

The Swedish Tax Agency can start two different types of investigations, a so-called desk-control or a tax audit. A desk-control can be summarized as a procedure of questions asked to the taxpayer, and potentially to a third party, leading to a reassessment that may change the previous decision. An audit is a more invasive type of investigation where the Swedish Tax Agency in general investigates the bookkeeping, make visits at the premises of the taxpayer and so forth. The Swedish Tax Agency also has the right to request a tax lien and seizure of evidential matter through a court application. A tax audit normally leads to a reassessment, but can also end up with the Swedish Tax Agency not amending the previous decision.

5. What is the procedure where a taxpayer has not registered so is unknown to the tax authority (for example a newly incorporated company or a foreign company operating through a permanent establishment?)

A newly incorporated company or a foreign company that performs activity in Sweden which entails tax liability, and should be registered with the Swedish Tax Agency, can be investigated by the Swedish Tax Agency. Such an investigation most likely includes a registration and an injunction to hand in a tax return. If no tax return is submitted, the Swedish Tax Agency can make an arbitrary assessment, including imposed tax penalties.

6. What are the time limits that apply to such challenges (disregarding any override

of these limits to comply with obligations to relief from double taxation under a tax treaty)?

If the taxpayer submits a tax return after the injunction and it is done after the expiration of the calendar year during which the tax return should have been handed in, the Swedish Tax Agency has one year to decide in a disadvantageous way. However, regardless of when the tax return was submitted, the decision, if disadvantageous to the taxpayer, must be made within six years after the expiration of the calendar year during which year the income year (tax year) has expired.

This rule gives the Swedish Tax Agency a possibility to make disadvantageous decision for a longer time compared to the main rule. The main rule according to the Tax Procedures Act states that such a decision can only be made within two years from the expiration of the calendar year when the income year (tax year) has expired. In addition, the Swedish Tax Agency can make such decisions within a six-year period if the Swedish Tax Agency can prove that incorrect information has been provided together with the tax return.

7. How is tax fraud defined in your law?

Tax fraud is defined in the Tax Crimes Act as an act, committed by anyone who in any other way than orally intentionally submits incorrect information to an authority or fails to submit a tax return, information or other prescribed information to the authority and thereby entails a risk that tax is evaded or incorrectly credited or reimbursed to himself or another. There are also certain rules against tax evasion in the Tax Evasion Act, entailing that the assessment shall not take into account any legal action taken by the taxpayer or by a legal person whose income is taxed in whole or in part by the taxpayer, if:

- I. The legal act, alone or together with another legal act in which the taxpayer or legal person has directly or indirectly participated, is part of a procedure which results in a not insignificant tax advantage for the taxpayer;
- II. The tax advantage in the circumstances may be presumed to have been the main reason for the proceeding and;
- III. A tax assessment on the basis of the procedure would be contrary to the principles of the legislation.

It can be noted that tax penalties and tax frauds partly share the same prerequisite: the submission of incorrect information to an authority.

8. How is tax fraud treated? Does the tax authority conduct a criminal investigation with a view to seeking a prosecution and custodial sentence?

The Swedish Tax Authority has an obligation to report a tax crime to the prosecutor when there is reason to believe that a crime according to the Tax Crimes Act have been committed. The Swedish Tax Authority has also for over twenty years had a department, separated from the tax departments, which investigates possible criminal investigations to help the prosecutor. However, it is always the prosecutors deciding whether to prosecute a taxpayer.

9. In practice, how often is a taxpayer audited after a return is filed? Does a tax authority need to have any justification to commence an audit?

This differs significantly due to several circumstances. For example, it may depend on the resources available at the Swedish Tax Agency or their internal analysis which may highlight the need for more frequent investigations in specific business areas. Additionally, anonymous applications submitted to the tax authority can also trigger more frequent audits, leading to certain companies within particular industries being audited more often as a result of identified risks.

The Tax Agency can decide on an audit in order to control that the taxpayer has complied with the obligation to provide information in its tax returns. The Tax Agency can also decide on an audit to collect information for this purpose by someone other than the one being subject to an audit. The Tax Agency may only decide on an audit for the situations listed in the Tax Procedures Act. There are also several formal requirements on the decision on which the audit is based. Furthermore, the Tax Agency must observe the principle of proportionality. This means that a decision on audit may only be made if the reason for the decision outweigh the infringement or harm that the decision entails for the person to whom the decision applies, or for any other opposing interest.

10. Does the tax authority have to abide by any standards or a code of conduct when carrying out audits? Does the tax authority publish any details of how it in practice conducts audits?

The Tax Procedures Act includes rules regarding tax

audits. For example, a decision on audit must include:

- I. Information on the purpose of the audit;
- II. Information on the possibility to exclude information and documentation from control, and;
- III. Appointment of the officials who are to carry out the audit (auditors).

Furthermore, the audit must be made in collaboration with the taxpayer. If the collaboration does not work during the audit, the Tax Agency may need to use coercive measures during the audit. The auditor has the authority to review documents and perform inspections during the audit. The auditor can review accounting material and other documentation that concerns the business. The auditor can also do inventories on cash, warehouses, machinery, equipment etc.

The tax authority publishes extensive information on its website.

11. Does the tax authority have the power to compulsorily request information? Does this extend to emails? Is there a right of appeal against the use of such a power?

The Swedish Tax Agency may compulsorily request certain information.

The Swedish Tax Authority generally communicate its inquiries by ordinary mail or under certain circumstances digitally. However, they do not communicate inquiries by email.

The taxpayer has normally the right to appeal a decision, however some decisions are not appealable. For example, a decision of a tax audit cannot be appealed. Nor has the taxpayer a right to appeal a compulsory request for information without a fine.

12. Can the tax authority have the power to compulsorily request information from third parties? Is there a right of appeal against the use of such a power?

The Swedish Tax Agency may compulsorily request certain information from third parties.

The third party does not always have the right to appeal against such a request.

13. Is it possible to settle an audit by way of a binding agreement, i.e. without litigation?

No.

14. If a taxpayer is concerned about how they are being treated, or the speed at which an audit is being conducted, do they have any remedies?

According to the Tax Procedures Act, an audit should be carried out in collaboration with the taxpayer, in a way that does not cause unnecessary interference in the business. Furthermore, an audit may not last longer than necessary. However, there are no explicit possibilities for the taxpayer to influence an ongoing audit. If the taxpayer is dissatisfied with how the authority is handling the audit, the taxpayer can complain to the Parliamentary Ombudsmen.

15. If a taxpayer disagrees with a tax assessment, does the taxpayer have a right of appeal?

Yes, a tax reassessment can be appealed.

16. Is the right of appeal to an administrative body (independent or otherwise) or judicial in nature (i.e. to a tribunal or court)?

The appeal is addressed to the Administrative Court, but submitted to the Swedish Tax Agency, which will make a new reassessment. If the position of the Swedish Tax Agency is unchanged, the case is automatically handed over to the Administrative Court. The case can subsequently be appealed to the Administrative Court of Appeal, and lastly, if permitted a leave to appeal, to the Supreme Administrative Court.

17. Is the hearing in public? Is the decision published? What other information about the appeal can be accessed by a third party/the public?

Any document or act that is submitted to or created by an authority is, as a main rule, a public act. As long as a public act is not covered by secrecy, it can be requested by anyone.

However, within the Swedish Tax Agency, tax documents are as a main rule subject to absolute secrecy. Tax decisions, on the other hand, are public and can be provided upon request.

The general rule in court proceedings is that any document or act that is submitted to or created by an authority is public as long as no confidentiality rule in the applicable law states otherwise. Consequently, if someone asks for all the documents in a tax litigation file, the responsible judge must thoroughly review the file and ascertain whether any parts or documents falls under the confidentiality rules.

If there is an oral hearing in a court proceeding, the hearing is as a main rule open to the public. The taxpayer can however request that the hearing should be kept behind closed doors if there are good reasons for it.

18. Is the procedure mainly written or a combination of written and oral?

The procedure is mainly written. The taxpayer can ask for an oral hearing within the courts. Such a request can be denied by the two first instances; however, a denial is not possible if the case concerns tax penalties.

19. Is there a document discovery process?

Yes, Sweden generally follows a process of order of discovery. A party involved in a legal proceeding may request an order of discovery, or the court may initiate one itself. The order must pertain to written documentary evidence, which may also include sound recording and picture fixation. Amongst other things, it must concern a document that can be assumed to be of importance as evidence. Before the court grants the order, the request must be communicated with the recipient, which quite frequently solves the problem, and no order of discovery must be decided. If the order is not fulfilled after the set deadline, a fine can be added. There is also a possibility to get assistance from the Enforcement Authority if needed.

20. Are witnesses called to give evidence?

Free presentation of evidence is a general rule in Swedish procedural legislation. This means that the taxpayer and the Swedish Tax Agency can invoke any evidence, including witnesses.

21. Is the burden on the taxpayer to disprove the assessment the subject of the appeal?

As a general rule, the burden of proof depends on the tax matter and the timing of the tax decision. Negative decisions made by the Swedish Tax agency after two years from the income year must be preceded by incorrect information, for which the Swedish Tax Agency always bears the burden of proof. However, in simplified terms, the burden of proof lies with the Tax Agency to prove the circumstances demonstrating that an income is too low or left out, while the taxpayer is responsible for providing evidence to support deductions claimed.

22. How long does an appeal usually take to conclude?

The duration of the case varies depending on its scope and complexity. Different courts may have their own internal policies. Typically, courts aim to issue a ruling within a year from receiving the appeal. If there is an oral hearing, the process may take additional time before a final ruling is reached.

23. Does the taxpayer have to pay the assessment pending the outcome of the appeal?

Regardless of whether an appeal is still pending or not, the taxpayer is required to pay the tax according to a decision. The taxpayer can however request a deferment, which usually only is admitted if the outcome in court, according to the Swedish Tax Agency, is uncertain.

24. Are there any restrictions on who can conduct or appear in the appeal on behalf of the taxpayer?

A person who is over 18, with a Swedish identification number and electronic identification, who is not bankrupt, have a business ban or have a trustee can be delegated to act on behalf of another taxpayer.

However, the main rule is that the taxpayer is represented by counsel.

25. Is there a system where the “loser pays” the winner’s legal/professional costs of an appeal?

A taxpayer who has had costs for lawyers etc., if there is reason to believe that legal representation was necessary, has the right to get reimbursement for such costs under certain circumstances, usually when the taxpayer wins an appeal. However, the taxpayer seldomly get reimbursed for all the costs. The taxpayer is not obliged to pay for the Tax Agency’s cost under any circumstances.

26. Is it possible to use alternative forms of dispute resolution - such as voluntary mediation or binding arbitration? Are there any restrictions on when this alternative form of dispute resolution can be pursued?

There is no possibility of alternative dispute resolutions.

27. Is there a right of onward appeal? If so, what are all the levels of onward appeal before the case reaches the highest appellate court.

The Swedish Tax Agency’s decisions are appealed to the Administrative Court. If unsatisfied with the judgement from the Administrative Court, further appeal can be made to the Administrative Court of Appeal. Some decisions, such as granting an extension of time to pay the decided tax amount, require a leave to appeal, while tax matters themselves never do. A ruling from the Appeal’s court can be appealed to the Supreme Administrative Court, which will review the case if it is given a leave to appeal. During the litigation, there is also a possibility to request the court to seek a preliminary ruling from the Court of Justice of the European Union if the tax matter involves a question related to EU-law.

28. What are the main penalties that can be applied when additional tax is charged? What are the minimum and maximum penalties?

For individuals: For a final tax decision, the penalty is 40 per cent on the taxes that should not have been decided if the incorrect information provided by the taxpayer would have been approved. If the incorrect information consists of the taxpayer attributing an amount to the wrong tax year or period, the penalty is 10 per cent.

For companies: For a final tax decision, the penalty on income tax is 40 per cent of the taxes that should not have been decided if the incorrect information provided

by the taxpayer would have been approved. For other taxation than the final tax decision, i.e. VAT or social security fees, the penalty is 20 per cent on the tax that should not have been decided if the incorrect if the incorrect information provided by the taxpayer would have been approved. If the incorrect information consists of the taxpayer attributing an amount to the wrong tax year or period, the penalty is 2 or 5 per cent.

29. If penalties can be mitigated, what factors are taken into account?

If it is considered unequitable to impose full tax penalties, the penalties can be mitigated wholly or in part. In the assessment, considerations should be given to the following reasons for the incorrectness:

- I. Age, health or similar conditions
- II. A misjudgement of a rule or the significance of the actual circumstances
- III. Misleading or erroneous review of information
- IV. The penalty is not in a reasonable proportion to the

error or passivity,

V. An unreasonable amount of time has expired after the Swedish Tax Agency has found reason to assume that a penalty shall be charged without the person who is subject to the fee being responsible for the delay; or

VI. The error or the passivity has also entailed that the party to which the penalty relates has been convicted of liability for an offence pursuant to the Tax Crime Act or has been subject of a seizure order as a result of criminal activities pursuant to Chapter 36, Section 1 (b) of the Swedish Penal Code.

30. Within your jurisdiction, are you finding that tax authorities are more inclined to bring challenges in particular areas? If so, what are these?

The Swedish Tax Agency conducts so called special reviews continuously. It can for example be work against financial crime, international tax evasion, unfair competition and undeclared labour. Some special reviews take place in collaboration with other authorities.

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