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GUIDES 2022**

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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, a person who conducts business activities in Sweden, regardless of the company form, is obliged to apply for a registration with the Swedish Tax Agency. In the notification the taxpayer can apply for an approval regarding so called Swe. F-skatt which gives the taxpayer an approval showing that the person conducting business is responsible for the income taxes etc. The notification can also include value added tax (VAT) and employers' social contribution. There is no fee charged for the registration and it can be done digitally at the Swedish Tax Agency. Foreign companies conducting business 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 Swe. F-skatt, employer's social contribution and VAT can be done in the same application. However, when applying to get an approval of the Swe. F-skatt the tax payer is obliged to hand in a preliminary tax return showing the expected profit of the business conducted. The Swedish Tax Agency will then decide how much preliminary tax the taxpayer will pay and also when it should be paid.

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, a taxpayer files 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 which has been provided to the Swedish Tax Agency from employers, banks, foreign entities etc.. Together with the tax return a preliminary tax decision is sent out. The taxpayer receives the tax return and can, if necessary, subsequently make changes such as report any additional income or make deductions. Thereafter, the tax return is signed, normally digitally, and submitted to the Swedish Tax Agency.

Thereafter, 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 check all tax returns, instead they are initially sorted after certain questions (algorithms due to analyses), unknown for the public. Depending on the findings the tax officers thereafter investigate the tax returns.

If no changes are made by the tax payer or the Swedish Tax Agency the tax return will be decided on in accordance to 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.

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 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 is

considered to be incorrect, the taxpayer must amend the return before the Swedish Tax Agency starts investigation the error, or surcharges 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 could 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 maybe to a third party ending up with a reassessment changing the previous decision. An audit is a more invasive type of investigation where the Swedish Tax Agency in general investigates the book keeping, make visits at the premises of the taxpayer and so forth. The Swedish Tax Agency also has the right to ask for a tax lien and seizure of evidential matter. This is done as an application to court. The tax audit normally ends up with a reassessment also 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 and 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 handed in the Swedish Tax Agency has the right to make an arbitrary assessment including tax surcharges.

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 hands in 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, no matter when the tax return was handed in the decision, if disadvantageous to the tax payer, has to 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 the six year period if the Agency can prove incorrect information has been made in the tax return.

7. How is tax fraud defined in your law?

Tax fraud is defined in the Tax Crimes Act as if 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.

As a comment, the first prerequisite for a tax surcharge and fraud is the same, it has to be incorrect information submitted 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 tax payer.

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 very much due to several circumstances. For example, it can be depending on the resources at the Swedish Tax Agency, but it can also be that the tax authority has made internal analysis that certain areas of business need to be investigated more frequently or an anonymous application has been submitted to the tax authority. Therefore, companies within certain businesses can be audited more frequently due to 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 (i.a. companies). 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 a tax audit. 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 compulsory request certain information.

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

The taxpayer has normally the right to appeal against a decision, however some decisions are not appealable, for example a decision of a tax audit cannot be appealed. Nor has the tax payer a right to appeal a compulsory request for information towards.

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 compulsory request certain information from third parties.

The third party does not always have the right to appeal against such 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?

If there is an oral hearing it 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.

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, the main rule is that the tax documents within the Swedish Tax Agency is subject to absolute secrecy. However, tax decisions are public and can be handed out if someone asks for them. However, the opposite is true for the courts where the main rule is that any document or act that is submitted to or created by an authority is

as a main rule a public act as long as no confidentiality rule in the applicable law says otherwise. This leads to the fact that if the public asks for all the documents in a tax litigation file, the responsible judge needs to go through the file and try if there are parts or documents which falls under the confidentiality rules.

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 surcharges.

19. Is there a document discovery process?

Yes, as a general rule we do have a process of order of discovery in Sweden. A party can move for an order of discovery or the court can initiate one by itself without a party requesting one. The order must regard written documentary evidence which also may 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 decides on giving the order, the request needs to be communicated with the receiver, which quite frequently solves the problem and no order of discovery has to 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, this depends on the tax matter and also on when in time the tax decision has been made due to the fact that a negative decision made by the authority after two years after the income year has to include incorrect information which the Swedish Tax Agency always has the burden of proof for. However, trying to make it simple the burden of proof is on the Tax Agency to prove the circumstances that an income is to low or left out, and for the taxpayer to prove the circumstances which shows a right to a deduction.

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

It depends on the scope and extent of the case. The courts only have internal policies differing between different courts. However, a frequent time is that the courts would like to rule within a year from receiving the appeal. If an oral hearing takes place the case usually takes a longer time to get a ruling.

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

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

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 e-legitimation, 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 this 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, a judgement from the Administrative Court is appealed to the Administrative Court of Appeal where some decisions, for example extension of payment of the tax needs a leave to appeal but never a tax matter. A ruling from the Appeal’s court can be appealed to the Supreme Administrative court which will try the case if it is given a leave to appeal. During the litigation there is also a possibility to ask the court to ask the Court of Justice of the European Union for a preliminary ruling if there is a EU-law question in the tax matter.

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 surcharges, the surcharges can be mitigated wholly or in part, if there is reason to believe that the reason for the incorrectness for example this could be reasons as follows.;

- i. Age, health or similar conditions
- ii. A misjudgement of a rule or the significance of the actual circumstances

- iii. Misleading or erroneous review 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 Swedish Tax Liability Act (1971:69) 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 black labour. Some special reviews take place in collaboration with other authorities.

31. In your opinion, are there any areas which taxpayers are currently finding particularly difficult to deal with when faced with a challenge by the tax authorities?

The question of evidence itself, both difficulties with who

has the burden of proof and how this is handled by the authorities. But also, the valuation of the evidence put forward by the Tax Authority and the tax payer. There are very few precedents from the Supreme Administrative court regarding evidence. How can a tax payer foresee what evidence it needs to refer to in situations where the Swedish Tax Agency has put forward plenty of statements but no real evidence? How does the burden to investigate, which is a strong certainty rule in Sweden, affect the burden of proof and the valuation of proof? Since tax cases tend to be more complicated due to the internationalisation, the question of evidence has also. Because of this a Swedish tax litigation case is very often difficult to handle for a tax payer without counsel.

32. Which areas do you think will be most likely to be the subject of challenges and disputes in the next twelve months?

Most importantly international tax issues and questions in connection to this. No fulfilled harmonisation between states and plenty of information regarding income and tax payers being sent between the different countries and tax authorities it is very important for the different authorities to fulfil all requirements of tax certainty, confidentiality and the ability for the affected tax payer to get knowledge if its own situation and be able to "defend" oneself.

In addition, to fulfil all the procedural and taxation requirements have become more and more difficult for tax payers due to complexity. I believe we will see more challenges and disputes were the tax payer has tried to fulfil the requirements, but the authorities are of another opinion and therefore there will be more disputes.

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