SWEDEN

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INTERNATIONAL DEVELOPMENTS

1. WHAT ARE RECENT TAX DEVELOPMENTS IN YOUR COUNTRY WHICH ARE RELEVANT FOR M&A DEALS AND PRIVATE EQUITY?

Effective as of 1 January 2016, dividend income is not tax exempt under the participation exemption regime if the company paying the dividend is a foreign company that is entitled to deduct the amount as interest expense or similar in its home jurisdiction (implementation of amendments of EU Parent-Subsidiary Directive).

Furthermore, on 30 March 2017, a government committee proposed amendments in the tax treatment of indirect sale of real estate, i.e. through the sale of the shares in a real estate owning company. Under current tax laws, such a sale does not trigger any income tax, provided that the conditions for participation exemption are met. Neither does such a sale trigger stamp duty, which is normally levied on the direct transfer of real estate at 4.25 per cent. In short, the committee proposed changes aiming to tax the indirect sale of real estate in the same way as a direct transfer. According to the proposal, the sale of a real estate company would trigger capital gains taxation in the company holding the real estate (deemed sale of the real estate at fair market value). In addition to the taxation of a capital gain, the real estate company is obliged to report a fictive income at 7.09 per cent of the fair market value of the real estate (corresponding to the after tax cost of stamp duty upon direct property transfers).

A proposal regarding amendments in deduction of interest expenses is expected during 2017. Whilst the proposal has not been made public, it is expected to include limitations based on EBITDA.

2. WHAT IS THE GENERAL APPROACH OF YOUR JURISDICTION REGARDING THE IMPLEMENTATION OF OECD BEPS ACTIONS (ACTION PLANS 6 AND 15 SPECIFICALLY) AND, IF APPLICABLE, THE AMENDMENTS TO THE EU PARENT-SUBSIDIARY DIRECTIVE AND ANTI-TAX AVOIDANCE DIRECTIVES?

BEPS

The implementation of the BEPS rules in Sweden has in general focused on actions 8-10 and action 13 regarding aligning transfer pricing outcomes with value creation, transfer pricing documentation and country-by-country (CBC) reporting. New rules regarding transfer pricing documentation (master file/local file) and CBC reporting entered into force on 1 April 2017. The documentation rules will apply for the first time for fiscal years commencing after March 31, 2017. First year covered by the CBC is any financial year starting after 31 December, 2015. The first CBC report should be submitted by end of the year following the financial year (i.e. by end of 2017 for most MNEs). Entities of a MNE group that have to submit a CBC report need to notify the Swedish Tax Agency (STA) about which entity that is the reporting entity by the end of the financial year covered by the report (extended to 30 April 2017 for first financial year covered). As Sweden follows the OECD Transfer Pricing Guidelines, no changes in domestic law have been implemented related to action 8-10. The STA has stated that the updated guidelines are possible to apply both retroactively and going forward. Action 6 provides for changes to the preamble to clarify that tax treaties are not intended to be used to generate double non-taxation. It seems likely that Sweden will conform to the new preamble in future tax treaties. In addition, action 6 provides the inclusion of a limitation of benefits test and principle purpose test. Sweden has not negotiated new treaties following the outcome of the BEPS project. However, it can be assumed that Sweden will in general accept the inclusion of both a limitation of benefits test and principle purpose test in its future treaties (limitation of benefits articles already exists in certain tax treaties, e.g. the treaty between Sweden and the US and the treaty between Sweden and Japan).

As regards the multilateral instrument, Sweden is part of the working group that is developing the multilateral instrument. Regardless of whether Sweden signs a joint agreement or renegotiates its different tax treaties, it is required that the agreement is approved by legislation in order for the changes to apply in Sweden.

The amendments to the EU Parent-Subsidiary Directive

As concerns outbound dividends, the Swedish government is of the opinion that no changes to Swedish tax legislation were needed in order to implement the amendment to the EU Parent-Subsidiary Directive. This is because the Swedish Withholding Tax Act prescribes that withholding tax is levied on outbound dividends if the shares in a Swedish company (the company distributing the dividends) are held in ”such a manner that someone else thereby receives an unjust favor as concerns income tax or exemption from withholding tax”. A requirement for this rule to be applicable is that the shareholder of the Swedish company must hold the shares in the company in someone else's place and this third party must thereby achieve a tax benefit. There is limited case law and more or less no preliminary works that describe the scope of the rule. This existing rule has nevertheless been deemed to be sufficient in relation to the general anti avoidance rule in the Parent-Subsidiary Directive.

Finally, as concerns inbound dividends, the amendment to the EU Parent-Subsidiary Directive has been implemented in Sweden through the introduction of a new provision in the Income Tax Act (see above). Note that the provision is extended also to non EU shareholdings.

Anti-Tax Avoidance Directive (ATAD)

The Swedish government is currently drafting a proposal for new rules on the limitation of interest deduction (see above). As of now, no legislation draft has yet been published. When presented, the legislative proposal must be in line with the interest limitation rule in ATAD.

Other than interest limitation rules, we are not aware of any other discussions on changes to domestic law following ATAD. This could partly be since Sweden already has extensive rules related to the other issues covered by ATAD, e.g. CFC-taxation, exit taxation and general anti-abuse rules.

GENERAL

3. WHAT ARE THE MAIN DIFFERENCES AMONG ACQUISITIONS MADE THROUGH A SHARE DEAL VERSUS AN ASSET DEAL IN YOUR COUNTRY?

An acquisition in Sweden is more often a share purchase rather than a purchase of the company's assets, since capital gains on the sale of shares may be tax-exempt (participation exemption). However, the benefits of asset acquisitions for the purchaser should not be ignored, particularly given that purchased asset goodwill benefits from tax deduction over five years.

A. Share deal

Capital gain or loss is calculated as the selling price less the tax base of the shares. The tax base equals the acquisition cost, subsequent capital contributions and sales costs.

For certain Swedish shareholders (e.g. companies) capital gains are non-taxable if the participation exemption regime is applicable. For non-residents without a permanent establishment in Sweden, a share deal is a non-taxable event. The participation exemption regime may also be applicable for companies established within EEA with a permanent establishment in Sweden.

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

A sale of shares is VAT-exempt. Input VAT on costs related to share purchases may be recoverable, provided certain conditions are met. Input VAT on costs related to share sales is, according to the opinion of the STA, not recoverable in Sweden. A recent court case from the Swedish Supreme Administrative Court (SAC) may however expand the field of VAT recovery on transaction costs incurred by the seller in share deals.

There are no other transfer taxes (however see above on proposed rules of indirect transfer of real estates).

B. Asset deal

A purchase of business (assets) usually results in an increase of the tax base of those assets for both gains tax and depreciation purposes (i.e. step-up in value), although a corresponding income is likely to be taxable for the seller. In addition, historical tax liabilities generally remain with the company and are not transferred with the assets. If the company holding the assets (or group company) has tax losses carry forward, a gain following the transfer of assets may be utilised against the tax losses.

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

Normal VAT rules apply in an asset deal. However, if all assets are transferred (or an independent part of a business) the transfer of business as a going concern may apply which has the effect that no VAT is due at all on the assets sold even if the assets would have been subject to VAT if sold separately.

Regarding the sale of real estate, stamp duty is levied on the highest of the market value and the tax assessment value (the normal stamp duty rate for legal entities is 4.25 per cent).

BUY-SIDE

4. WHAT STRATEGIES ARE IN PLACE, IF ANY, TO STEP UP THE VALUE OF THE TANGIBLE AND INTANGIBLE ASSETS IN CASE OF SHARE DEALS?

There are no specific strategies to step up the value of the tangible and intangible assets in case of share deals. One must carry out a case by case strategy.

5. WHAT ARE THE PARTICULAR RULES OF AMORTISATION OF GOODWILL IN YOUR COUNTRY?

Goodwill paid for a business in an asset deal may be depreciated. The rules for depreciation of goodwill are the same as those for machinery and equipment.

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

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

Buildings are depreciated straight-line by approximately two per cent to five per cent annually, depending on the nature of the building.

6. WHAT ARE THE LIMITATIONS TO THE DEDUCTIBILITY OF INTEREST ON BORROWINGS IN THE CASES OF ACQUISITION OF SHARES AND ASSETS?

Sweden's introduction of interest deduction limitation rules came into force as of 1 January 2009, as a reaction to an extensive use of debt push down-structures under the old, quite liberal rules. The new rules were intended to target excessive debt financing, tax base erosion and thought of abusive arrangements through intra group restructurings. After criticism and monitoring of the 2009 rules by the STA the rules underwent amendments in 2013, making them more restrictive.

Interest payments to affiliated companies are generally not deductible even if at arm's length. Interest payments may, however, be deductible if that company can demonstrate that the corresponding interest income for the lender would have been taxed with at least 10 per cent in the hands of the beneficial owner of the interest income ("the 10 per cent rule"). Other income, losses or deductible expenses from the normal activities shall not be included when assessing the taxation level.

The 10 per cent rule is not applicable and thus interest not deductible if the primary reason for the debt financing is to achieve a significant tax benefit within the affiliated group. This threshold is set at 75 per cent, meaning that a 24 per cent business motivated transaction will not be accepted.

The right of deduction also applies (regardless of the taxation level of the final recipient) provided the debt relationship is deemed mainly business motivated ("the business purpose rule"). This, however, applies only if the beneficial owner of the interest income is located within EEA or a treaty jurisdiction

7. WHAT ARE USUAL STRATEGIES TO PUSH-DOWN THE DEBT ON ACQUISITIONS?

A debt push down normally aims to transfer debt to subsidiaries in order to shelter taxable income in the subsidiary and to transfer taxable income through interest.

A debt push-down may be achieved through a dividend distribution from the target or through a transfer of assets between the target company and an affiliated company; both financed by debt provided by an affiliated company or third party.

A third alternative is to use a Swedish SPV to acquire a Swedish target in order to push down debt for the acquisition. The SPV is normally financed by debt from a foreign group company. The profit from the target company may be offset against the SPV's funding cost under the Swedish group contribution rules. Alternatively the target may be merged with the SPV.

Since deductibility of interest paid to an affiliated party is restricted, any debt structure has to be evaluated in detail.

8. ARE THERE ANY TAX INCENTIVES FOR EQUITY FINANCING?

According to newly introduced rules in Sweden, individuals are allowed a 50 percent deduction on the invested amount in a non-listed company (listing refers to listing on regulated markets). The investment deductions may be granted for up to MSEK 1.3 per year. Several requirements, on both the individual and company in question, must be met in order to be granted the deduction.

9. ARE LOSSES OF THE TARGET COMPANY(IES) AVAILABLE AFTER AN ACQUISITION IS MADE?

Losses incurred by companies are determined on a continuous basis for each tax period and are deductible from taxable profits for the following tax period. If the taxable profits are insufficient to cover the losses from the previous year, the excess loss is carried forward to the next year ("losses carry forward"). Losses may be carried forward indefinitely, i.e. without any time limit. However, losses must be deducted from profits as soon as a profit is available.

A company with losses carry forward could be transferred to a third party, whereby the loss could still be utilised by the company having the loss and also within the acquiring third party group. However, a change of ownership to a company with losses carry forward will trigger two limitations in relation to the losses, namely

1) the amount of losses carry forward that will survive ("the amount limitation"), and

2) the right to deduct losses carry forward against group contributions from companies within the acquiring group ("group contribution limitation").

It should be noted that the limitations only apply to tax losses carry forward. Thus, a tax loss incurred during the year in which the change in ownership takes place is not affected by these rules.

A “change in ownership” occurs if a company acquires the decisive influence (more than 50 per cent of the votes) over a company with losses carry forward. The same applies if a company with losses carry forward acquires the decisive influence over another company.

The maximum losses carry forward that will survive a change of ownership is calculated as 200 per cent of the acquisition cost to receive the decisive influence of the company (less certain capital contribution received by the company with losses). In other words, losses carry forward in excess of 200 per cent of the acquisition cost will be forfeited.

Swedish tax law contains provisions shifting taxable income between affiliated resident companies, known as group contributions. Any tax loss carry forward that survives the amount limitation is restricted for 5 years following the year in which the change of control took place. This means that during this period, the acquired company may not offset those losses against profits in any company belonging to the buyer’s group. However, where the company itself generates a profit after the change of control, the company may offset its tax losses against those profits (a merger might however restrict even this).

10. ARE THERE ANY ITEMS THAT SHOULD BE INCLUDED IN THE SCOPE OF A TAX DUE DILIGENCE THAT ARE VERY SPECIFIC TO YOUR COUNTRY?

There are generally no items specific to Sweden that should be included in the scope of a tax due diligence. Hence, items that should be included in the scope follow from the scope of a due diligence in general.

It should be noted that a reassessment by the STA - to the taxpayer’s disadvantage - cannot be decided after the year-end of the year after the fiscal year. The fiscal year corresponds to the financial year.

The Tax Agency can however make a reassessment to the taxpayer’s disadvantage up and until the end of the sixth year after the fiscal year, provided that;

1) the taxpayer has submitted incorrect or incomplete information in his tax return;

2) the taxpayer has been assessed a reduced amount of tax or no tax at all;

3) the reduced taxation has been caused by the taxpayer by issuing incorrect or incomplete information in the tax return; and

4) the amount of non-levied tax is substantial.

11. IS THERE ANY INDIRECT TAX ON TRANSFER OF SHARES (STAMP DUTY, TRANSFER TAX, ETC.)?

No.

12. ARE THERE ANY RESTRICTIONS ON THE CORPORATE TAX DEDUCTIBILITY OF ACQUISITION COSTS?

Costs attributable to acquiring and retaining income are tax deductible for Swedish corporate tax purposes. In an asset deal, the transaction costs are normally tax deductible.

In case of a share deal, it has to be analysed if the transaction costs are in principle related to the acquisition of shares. The costs directly related to the acquired shares are usually capitalised on the shares (and consequently not tax deductible since Sweden applies a participating holding regime meaning that profits /losses on shares are not taxable/deductible).

Acquisition costs will from a transfer pricing perspective only be deductible if the entity that incurred the costs has benefitted from the services provided.

13. CAN VAT (IF APPLICABLE) BE RECOVERED ON ACQUISITION COSTS?

For asset deals see Q 3. In a share deal, no VAT is due since transactions involving shares are VAT exempt in Sweden. When a business is acquired through a share deal the scope of VAT deductibility for the buyer of the shares depends on whether the acquisition of the company will generate additional revenues that are subject to VAT for the buyer (normally management services or similar services). If on the other hand the acquisition of the shares is a passive investment, no VAT deduction will be given on the transactions costs for the buyer.
The distinction between an "active and passive" holding company is strictly applied in Sweden.

It should also be emphasised that certain buying entities (e.g. investment funds and similar investment companies) may have difficulties to claim a full VAT deduction on operating expenses even if a management fee structure is put in place.

14. ARE THERE ANY PARTICULAR TAX ISSUES TO CONSIDER IN THE ACQUISITION BY FOREIGN COMPANIES?

Permanent establishment

Acquisition of a business in Sweden may give rise to a permanent establishment (PE) in Sweden. The PE definition in Swedish domestic legislation follows the OECD model. In general, three requirements need to be met to create a PE.

1) There must be a "place of business";

2) The place must be "fixed"; and

3) The "business activities" must be carried out through the fixed place.

A PE is also at hand if a person is acting on behalf of a foreign company and has and habitually exercises in Sweden an authority to conclude contracts in the name of the foreign company. A PE will however not be at hand if the business in Sweden is carried out through an "independent agent".

Dividends and capital gains attributed to a PE in Sweden may be tax exempt under the participation exemption regime (see Q.18 below).

Withholding tax

Withholding tax (WHT) at a rate of 30 per cent is generally imposed on all dividend distributions from a Swedish company to its foreign shareholders. In accordance with the EU Parent-Subsidiary Directive, Sweden does however not impose WHT on dividends distributed to a company that is covered by the directive. The exception from WHT applies provided that the shareholding of the foreign company exceeds at least 10 percent of the capital, without any time requirements. The distributing company and the shareholder should furthermore be one of the specific qualifying types of company listed in the directive,

There is an additional Swedish exemption which applies even if the requirements in the directive are not met, provided the inter alia following requirements are met

- The person receiving the dividend must be classified as a foreign company. A foreign company is defined as a foreign legal person that is taxed in its state of residence and the taxation in that state is similar to the taxation in Sweden, or a foreign legal person resident and subject to corporate tax in a state with which Sweden has entered into a tax treaty.
- The foreign company must be equivalent to a Swedish limited company. A foreign company qualifies if subject to income tax where it is resident and provided the shareholders have a limited responsibility for the company's liabilities and finally that the shareholders may not freely dispose of the company's assets.
- The share in the Swedish company that distributes the dividend must be a capital asset (i.e. not a trading asset). If the Swedish company is listed, the shareholder's voting rights must be at least 10 per cent for a consecutive period of 12 months. prior to the distribution of dividends in order to apply the exemption.

Finally, WHT could be reduced partly or in full under tax treaties.

- **Limitations in deduction of interest expenses**

  The limitations of deduction on interest expenses to affiliated companies should also be considered (see Q. 6).

15. CAN THE GROUP REORGANISE AFTER THE ACQUISITION IN A TAX NEUTRAL ENVIRONMENT THROUGH MERGERS OR A TAX GROUP?

After an acquisition a group may reorganise in a tax-neutral environment. Tax neutral mergers, de-mergers and transfer of assets are commonly utilised as pre or post-acquisition measures.

In principle, Swedish tax law follows the applicable EU directive on mergers and demergers. Tax-neutral mergers are generally possible provided the transferring company was subject to tax in Sweden immediately before the merger and the acquiring company is subject to tax for such business activity for which the transferring company was subject to tax. A foreign company resident in another Member State always qualifies for a merger or a de-merger, if it fulfils the requirements of the Merger Directive. In order to qualify for tax exemption in Sweden there are however some additional criteria which have to be fulfilled.

In case law, downstream mergers (i.e. a subsidiary absorbing its parent company) have also been treated as tax-neutral.

It should be noted that completing a merger, tax-neutral or not, may trigger limitations on tax losses carry forward, whereby the existing losses may be forfeited or ring-fenced.

It is possible to transfer assets to a price below fair market value without triggering exit tax (i.e., taxation based on a deemed fair market value transfer) if certain criteria are fulfilled. For Swedish qualifying companies (or permanent establishments in Sweden) a sale at a price below fair market value may be carried out without tax consequences provided that the following requirements are met:

- if full group contribution possibilities from the seller to the buyer are available the full fiscal year in which the transfer is made, or
- if the assets transferred constitute a “line of business” from a tax perspective.

Furthermore, a qualifying transaction cannot be made to a company with previous year’s losses where the company’s losses are restricted against group contributions or to a company which has group contribution possibilities with such loss company. Typically, this requirement does not restrict the possibility to make a drop-down to a newly established/acquired off the shelf company.

16. IS THERE ANY PARTICULAR ISSUE TO CONSIDER IN CASE OF TARGET COMPANIES OF WHICH MAIN ASSETS ARE REAL ESTATE?

A sale of real estate is in Sweden usually made through the sale of the shares in a real estate company. There are no specific tax issues solely applying to real estate companies. An indirect sale of real estate can according to current rules under certain conditions be made without income tax (applying the participating exemption regime under the standard conditions). A sale of shares is according to current rules not subject to any indirect tax (i.e. stamp duty or transfer tax). A proposal for new rules on taxation of companies holding companies has been presented (see above),

When acquiring a real estate company, a buyer must however consider the complex rules on depreciation of real estate.

In a share deal the buyer will normally require a discount for deferred tax. There are a number of factors that affect how much the discount for deferred taxes will be in the individual case.

If the real estate is sold directly, capital gains are subject to corporate income tax at the normal income tax rate. As for capital losses, there is a restriction regarding the use of capital losses from the sale against ordinary income. Stamp duty is levied on the transfer (the stamp duty for legal entities is 4.25 per cent).

According to present legislation it is possible, under certain conditions, to transfer a real estate to a company within the same group below market value without any immediate income tax consequences. Stamp duty is levied on the transfer; however there are possibilities to reduce and postpone the stamp duty.

17. IS FISCAL UNITY/TAX GROUPING ALLOWED IN YOUR JURISDICTION AND IF SO, WHAT BENEFITS DOES IT GRANT?

Each company within a group constitutes a separate taxable entity. There is no taxation on the consolidated level of a Swedish group of companies.

However, specific rules permit the transfer of profits between companies within wholly owned domestic groups ("group contribu-tions"), which have the effect that taxation of a consolidated income is effectively achievable. Group contributions are tax-deductible for the payer and taxable for the recipient.

An important qualification requirement for group contributions is that the group holds more than 90 per cent of the shares during the entire financial year. Furthermore, the receiving company must be liable for tax in Sweden, or at least the income to which that income corresponds must be liable to tax in Sweden.

The group contribution rules admit transfer of profits between two group companies: a transfer that is deductible for the transferring company and taxable for the receiving company. Such transfers are reflected as year-end accruals in the annual accounts of both companies and are executed by a transfer of funds.

In a cross-border context the group contribution rules are not applicable, (albeit they are applicable to permanent establishments of foreign companies in some circumstances). Instead, the group relief rule (Sw. "koncernavdrag)" is applicable. This provides a way for Swedish parent companies to make use of losses that have occurred in non-resident subsidiaries from other Member States or specific listed jurisdictions. The rules do not allow for deductions to be made for losses incurred in sub-subsidiaries. The subsidiary must have been liquidated and that process must have been completed. There is also a requirement that there are no other group companies operating in the local jurisdiction. The subsidiary must also have been owned for the entirety of the tax-year until the liquidation is completed. The amount deducted may not exceed the loss incurred in the last tax-year of the subsidiary, nor the positive result of the parent company using the loss. The rules for calculating the actual loss that may be deducted are rather complicated.

SELL-SIDE

18. HOW ARE CAPITAL GAINS TAXED IN YOUR COUNTRY?

Share deals

As a general rule, capital gain from a disposal of shares is taxable. Losses may only be offset against taxable gains from sale of shares, including gains made by other group companies (assuming full right to group contributions). However, the gain is not taxable and a loss is non-deductible if the participation exemption regime is applicable.

The participation exemption regime applies if the following relevant requirements are met:

1) The shares must be held by a Swedish company. If the shares are held by a foreign company, the capital gains are not taxed in Sweden unless the foreign entity has a permanent establishment in Sweden to which the capital gain can be attributed. The participation exemption may apply in such case, but only if the foreign company is resident in an EEA jurisdiction and if the company is equivalent to a Swedish company. A foreign company qualifies if subject to income tax where it is resident and provided the shareholders have a limited responsibility for the company's liabilities and finally that the shareholders may not freely dispose of the company's assets.

2) The shares must be shares in a Swedish limited company or a foreign equivalent. The participation exemption regime also applies with respect to shares in a Swedish partnership or a partnership resident within an EEA jurisdiction.

3) The shares must be defined as capital assets for the shareholder, i.e. it may not be trading/ current assets.

4) If the shares are listed, the shareholder must hold at least 10 per cent of the voting power and the shares have to be held for a one year term.

Sale of other assets

Capital gain from the disposals of other capital assets are taxable and a loss deductible for the seller. If the sale relates to real estate, the loss may in some cases only be offset against real estate gains, including such gains made by other group companies (conditional that group contributions are available). A capital gain is – simplified – calculated as the selling price less the tax base or residual value of the assets.

19. IS THERE ANY FISCAL ADVANTAGE IF THE PROCEEDS FROM THE SALE OF SHARES ARE REINVESTED?

There are no such rules in Sweden.

20. ARE THERE ANY LOCAL SUBSTANCE REQUIREMENTS FOR HOLDING COMPANIES?

There are generally no substance requirements for holding companies tax resident in Sweden.

21. ARE THERE ANY SPECIAL TAX CONSIDERATIONS REGARDING MERGERS/SPIN-OFFS?

For mergers see Q 15.

Spin-offs through distribution of subsidiary shares are tax neutral, provided inter alia all shares in the subsidiary are distributed, the distribution is pro rata and the parent company is listed. In addition to income tax neutrality, no withholding tax is levied on such a distribution to foreign shareholders.

There are also rules on tax exempt mergers and de-mergers (see above).

Sweden does not presently levy transfer tax on shares, although there is a proposal to levy such a tax on transfers of companies holding real estate in Sweden (see above). It's not clear if and when the proposal will lead to legislation.

When a business is sold through a share deal, any VAT incurred for the seller on the transaction costs is, according to the STA, not recoverable as input VAT for the seller. This being the situation since the sale of shares is a VAT exempt transaction. As already mentioned, however, a recent court case from the SAC may alter this position since, according to SAC, a VAT deduction may be given for the seller in cases where the transaction costs are not included in the sales price of the shares but rather being treated as an overall expense in the hands of the seller. The final word has not been said in this matter but this court case will definitely expand the deductible field for input VAT when it comes to transaction costs incurred by the seller in a share sale transaction.

If the business is sold as an asset deal, the concept of a transfer of a going concern may apply which means that any VAT incurred during the sales process by the seller will be deductible under normal VAT rules (e.g. the seller must conduct a VATable business and expenses cannot be subject to any general input VAT restrictions).
If individual assets are sold, normal VAT rules apply. If immovable property is sold, the scope of the VAT deduction on the transaction costs depends on how the property has been used under the "voluntary VAT liability" scheme by the seller. If no rental income has been subject to VAT in the hands of the seller, no VAT deduction is granted.

MANAGEMENT INCENTIVES

22. WHAT ARE THE TAX CONSIDERATIONS IN YOUR JURISDICTION FOR MANAGEMENT INCENTIVES?

The participant in a management incentive programme is taxed when salary and/or benefits are deemed available. Usually the time when the income will be deemed available corresponds to the time of payment or obtaining the benefit.

A participant that, as a result of the employment, acquires an asset, for example a financial instrument, at a price below the fair market value, is subject to tax on employment income on the difference between the fair market value and the acquisition price (if any). Social security contributions will also be imposed on the difference between the fair market value and the acquisition price. Any increase in value of the financial instrument after acquisition will be subject to capital income taxation at 30 per cent (however other tax brackets on holding in closely held companies). There is no definition of a financial instrument under the Swedish Income Tax Act. As a general rule, it would be required that an instrument is freely transferable in order to qualify as a financial instrument. Instruments carrying rights according to corporate law, for example the Swedish Companies Act, such as shares, warrants and convertible notes should be deemed financial instruments. Contractual rights, such as synthetic options, would likely not automatically be deemed financial instruments. If the acquisition of a financial instrument is subject to certain restrictions, there may be a risk of a postponed date of acquisition, i.e. due to the restrictions the financial instrument is not considered to have been acquired at day one. The financial instrument would instead be considered acquired when the restrictions lapse. This means that any increase in value prior to the financial instrument being considered acquired will be taxed as employment income.

A participant that, as a result of the employment, obtains a conditional right to acquire an asset in the future will be subject to employment income when this right is exercised. In this situation, it should be noted that the fair market value of the asset at the time the right is exercised serves as the basis for the taxation.

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