



Overview

Skeppsbron Skatt AB, Taxand Sweden

Thanks to our extensive experience of all aspects of transfer pricing, combined with our ability to see the big picture from a business as well as a tax perspective, Skeppsbron Skatt serve clients in most sectors. Such sectors include manufacturing, finance, retail, IT, food, commodities, energy, pharmaceuticals and life sciences and offer comprehensive practicable advice on i.a.

- ❖ Restructurings
- ❖ IP deals
- ❖ Tax disputes
- ❖ Advance Pricing Agreements "APA" and Mutual Agreement Procedures "MAP"
- ❖ Transfer pricing policies and documentation.

General: Transfer Pricing Framework

The arm's length principle is incorporated into Swedish domestic law (Chapter 14, section 19 of the Income Tax Act, "ITA"). The arm's length principle is also incorporated into Sweden's double tax agreements, which are in turn based on Article 9 of the OECD's Model Tax Convention. The Swedish transfer pricing regulations are normally interpreted based on the principles laid down in the OECD Guidelines. This is not explicitly stated in the Swedish legislation but is based on statements made by the Swedish Supreme Administrative Court (RÅ 1991 ref. 107). It should be noted that the Swedish Tax Agency "STA" generally believe that new versions of the OECD Guidelines are applicable retroactively and viewed as clarifications of the arm's length principle.

Accepted Transfer Pricing Methodologies

The OECD Guidelines is implemented by decisions from the Swedish Supreme Administrative Court. Consequently, the methods described in the OECD Guidelines are all accepted. The method used must, however, reflect the functional, risk and asset profile of the parties in the transaction. The applied method should be deemed appropriate from an arm's length perspective.

In summary, the most appropriate pricing method providing the most reliable measure of an arm's length result in each case should be selected on a transaction-by-transaction basis. It is further accepted to apply other methods as long as it can be demonstrated that it results in arm's length pricing.

The most common methods are the transactional net margin method "TNMM" for routine entities and the comparable uncontrolled price method "CUP" especially for financial transactions and license fees. The use of the profit split method "PSM" is still rather uncommon although it is becoming increasingly adopted by taxpayers.

Transfer Pricing Documentation Requirements

Sweden has implemented transfer pricing documentation (master and local file) requirements in line with the OECD Guidelines. An unlimited taxable company that carries out transactions with a limited taxable company abroad within the same group must provide transfer pricing documentation. Transactions between Swedish entities are exempt from documentation; however, the transactions should still be priced at arm's length. This is particularly important in case the Swedish entities lack group contribution rights or if the entities have restrictions on tax losses carried forward.

To be exempted from the transfer pricing documentation requirements, such companies must, in the year that precedes the tax year, have fewer than 250 employees and either an annual turnover of no more than SEK 450 million or a balance sheet total of no more than SEK 400 million.

According to Swedish law, it is not required to document immaterial transactions in a local file. The materiality of the transactions is based on the size and operations of the local entity. Large transactions or transactions key to the core operations are considered material. There is, however, an exemption related to the total value of the transactions. If the transactions with a foreign controlled entity are less than SEK 5 million during the financial year, the transaction is per definition considered immaterial. The transaction should however still be priced in accordance with the arm's length principle. For intangible assets, the exemption is only applicable if the intangible assets do not pertain to the company's core business.

The documentation shall consist of two parts, a master file and local file. It may be prepared in Swedish, Danish, Norwegian or English. The master file must be prepared no later than the time when the parent company in the group must submit its income tax return. The local file must be prepared no later than the time when the Swedish company must submit its income tax return.

The transfer pricing documentation is to be submitted to the STA upon request. There is no timeframe specified by the law for how long the company may have to submit the master- and local file. Consequently, the timeframe is decided by the STA on a case-by-case basis depending on how long the company needs. Normal practice for the STA is, however, to request the documentation within 30 days.

The transfer pricing documentation must be kept available for seven years after the end of the calendar year in which the fiscal year ended.

Sweden has also enacted the country-by-country reporting "CbCR" rules in line with the OECD Guidelines. The rules apply to groups with revenues exceeding SEK 7 billion. The CbCR must be submitted within 12 months of the end of the relevant fiscal year. CbCR notifications should be submitted to the STA by all Swedish entities of a group liable to prepare the CbCR by the end of the relevant fiscal year.



Local Jurisdiction Benchmarks

Sweden follows the guidance described in the OECD Guidelines regarding comparability analysis. There is generally no specific preference for domestic comparables over foreign comparables, however the comparables should be independent and have a clear comparability. The STA usually refers to multiple year data and the interquartile range in terms of benchmarking. In line with the OECD Guidelines, the benchmark should be updated every three years, unless no substantial changes have occurred that prompts an update. A financial update should be conducted every year as best practise. However, the STA would not necessarily question a benchmark for which no financial update has been made.

Focus on Financial Transactions

Under Swedish law, pricing of intercompany financial transactions is primarily assessed under the arm's length principle as reflected in the Swedish adjustment rule in Chapter 14, Section 19 of the Swedish Income Tax Act. The Swedish Tax Agency and Swedish case law generally interpret this rule in light of the OECD Transfer Pricing Guidelines (including the guidance on financial transactions). However, Swedish practice has historically focused on whether the terms of an intragroup loan, in particular the interest rate, are arm's length rather than challenging the legal characterization of the funding as debt. A recent court case illustrates the challenges that may arise in a cross-border context where certain jurisdictions, relying on the OECD guidance, may seek to recharacterize or partly disregard an intragroup loan on the basis that an independent lender would not have granted the same amount of debt under comparable circumstances. Sweden does not have the same practice of recharacterizing loans for transfer pricing purposes.

The Swedish transfer pricing analysis concerning pricing of financial transactions is consistent with the OECD framework, and the analysis would place importance on whether treasury entities or cash pool leaders have the personnel, decision-making capability and financial capacity required to control and assume relevant financial risks. Where an entity performs only limited financial intermediation or administrative functions, its remuneration should generally be limited to an appropriate routine return. Conversely, any higher return linked to funding or financial risk should be supported by actual substance, decision-making capability, and capital at risk. In a cash pool context, persistent or long-standing debit or credit positions may also need to be analysed as long-term intragroup loans rather than as short-term cash pool balances, depending on the facts and circumstances.

Finally, the transfer pricing analysis operates alongside Swedish domestic rules on the deductibility of interest expenses. Even where the pricing of an intragroup loan is considered arm's length, deductibility may be affected by Sweden's targeted interest deduction limitation rules for certain related-party debt as well as the general EBITDA-based interest limitation rules. Accordingly, the Swedish tax analysis should address both the arm's length nature of the

financial transaction and the separate domestic tax rules that may restrict interest deductibility.

Advance Pricing Agreement/Bilateral Advance Pricing Agreement "BAPA" Overview

APA procedures in Sweden are initiated by the taxpayer by sending a written application to the competent authority which is part of the STA. Apart from Swedish companies, foreign companies with permanent establishments in Sweden are also allowed to apply for an APA. The taxpayer is generally given the possibility to meet the STA to discuss the APA prior to submitting the application, should the taxpayer want to. An APA application may only cover complex issues and major transactions. A question is not considered complex if the application of the arm's length principle in the current situation is not unclear.

Bilateral and multilateral APAs are accepted in Sweden and the arrangements are entered through a mutual agreement procedure regime in the applicable tax treaty (article 25, mutual agreement procedure, OECD:s Model Tax Convention on Income and on Capital). As such, APAs are only available if there is a tax treaty in force between Sweden and the foreign tax jurisdiction. Unilateral APAs are not accepted in Sweden.

The fee for an APA is SEK 150,000 per country for the first application. The fee is somewhat reduced for renewals.

The APA procedure is generally relatively time-consuming as the competent authority has limited resources and demands high level of detail before they feel comfortable forming an opinion on the issue.

Transfer Pricing Audits

During the most recent years, the STA seems to have focused audits on companies involved in a re-structuring and/or transfer of intellectual property. Additionally, companies with branches or permanent establishments have also been subject to scrutiny. Finally and most importantly, loss-making entities/groups are always of particular interest to the STA.

The Burden of Proof in Transfer Pricing: Theory versus Practice

Recent court rulings in Sweden have brought renewed attention to the allocation of the burden of proof in tax disputes. Under Swedish tax law, the initial burden of proof rests with the party seeking to amend taxable income. During a tax audit, if the STA determines that a taxpayer has submitted an incorrect statement in their income tax return, the STA bears the initial burden of proving the inaccuracy. Once the STA has provided sufficient evidence, the burden shifts to the taxpayer to counter the STA's claims. Similarly, if a taxpayer requests an adjustment to their taxable income, they must substantiate the claim with appropriate evidence.



In the context of transfer pricing and the application of the so called “correction rule” (Swedish: *korrigeringsregeln*), the STA must first demonstrate that the pricing deviates from what independent parties would have agreed upon under comparable circumstances. This requires the STA to present sufficient evidence supporting the claim that e.g. the reported transfer prices do not reflect arm’s length conditions. Once this threshold is met, the burden shifts to the taxpayer, who must counter the STA’s position by proving that the pricing has not been influenced by the fact that the entities are related. In doing so, the taxpayer may rely on e.g. transfer pricing documentation, benchmark studies or other supporting analyses.

The burden of proof will only shift back to the STA if the taxpayer presents compelling evidence that undermines the STA’s findings - otherwise, the STA’s position prevails. If the taxpayer successfully demonstrates that the transaction was conducted at arm’s length, the burden of proof shifts back to the STA, which then will be able to refute the taxpayer’s evidence. If the STA prevails in refuting the evidence and successfully demonstrating that the reported income is subject to additional taxation in the end, the taxpayer may be taxed accordingly. In practice, however, the Swedish courts often appear to lean in favor of the STA, sometimes shifting the burden of proof to the taxpayer more readily than might be expected.

This increased attention on the burden of proof emphasizes the importance of maintaining thorough documentation and being prepared to present critical evidence during tax audits, in other words, maintaining proper documentation has become a critical safeguard against the risk of an unfavorable reallocation of the burden of proof.

Transfer Pricing Penalties

There are no specific penalties related to not preparing transfer pricing documentation. In case the STA considers that the pricing applied is incorrect, penalties of maximum 40% on the additional tax levied may be applied. Having compliant transfer pricing documentation in place may reduce potential penalties by half if certain criteria are met. Potential penalties can also be fully reduced if an open statement has been made in the tax return or if the transfer pricing issue is deemed very complex.

Local Hot Topics and Recent Updates

In recent years, the STA has intensified its focus on business restructurings, particularly in the context of MNEs adapting to current economic challenges. For example, the STA has closely scrutinized cases where MNEs have relocated functions out from Sweden, e.g. to low-cost jurisdictions or centralized key functions in a single country as part of efficiency-driven initiatives or as a result of an acquisition.

Under Swedish transfer pricing regulations and the OECD Guidelines, such restructurings may trigger exit taxation. The STA has shown greater interest in following up and challenging such restructurings. Most commonly, when the taxpayer has failed to adequately document the transfer pricing implications, and particularly when no or limited compensation has been recognized for the transferred business.

Given the heightened scrutiny, MNEs engaging in restructurings should proactively evaluate the tax consequences, ensure appropriate analysis and documentation and assess whether arm’s length compensation is required.



Documentation threshold

Master file	250 employees or either a turnover of at least SEK 450 million or a balance sheet of at least SEK 400 million.
Local file	250 employees or either a turnover of at least SEK 450 million or a balance sheet of at least SEK 400 million.
CbCR	Revenue SEK 7 billion.

Submission deadline

Master file	No later than the time when the parent company in the group must submit its income tax return.
Local file	No later than the time when the Swedish company must submit its income tax return.
CbCR	Within twelve months after the end of the financial year. It is the financial year of the group's parent company that determines the time period.

Penalty Provisions

Documentation – late filing provision	No penalty.
Tax return disclosure – late/incomplete/no filing	Late filing fee is SEK 6,250 (could be charged up to three times).
CbCR – late/incomplete/no filing	No penalty.



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