

Transfer Pricing Country Summary Sweden

26 June 2018

Legislation

Existence of Transfer Pricing Laws/Guidelines

Chapter 14, Section 19-20 of the Swedish Income Tax Act contains the legal basis for applying the arm's length principle, granting the Swedish Tax Agency the power to make adjustments where non-arm's length pricing occurs between a Swedish taxpayer and a non-Swedish taxpayer that have common economic interests (Inkomstskattelagen (1999:1229)).

Advance Pricing Agreements Act (APA Act) (Lag (2009:1289) om prissättningsbesked vid internationelltransaktioner) regulates APA agreements.

Chapter 39 of the Tax Procedures Act (Skatteförfarandelagen (2011:1244)) contains the provisions on transfer pricing documentation. The rules have been adopted to the OECD's new standard and are applicable on an income year that begins after March 31, 2017.

The OECD Transfer Pricing Guidelines are generally applicable as guidance in the application of the arm's length principle in Sweden.

Documentation requirements

Multinational enterprises are required to document transactions with related companies and present the arm's length consideration of transactions between related parties. For further details refer to chapter "Documentation and Disclosure Requirements", "Implementation of BEPS-related documentation requirements" and "Country-by-country reporting obligation".

The rules also enhances Swedish partnership companies (/Sv. Handelsbolag) and companies with permanent establishment in Sweden or in any other jurisdiction.

Exemption from documentation obligation

Before new transfer pricing regulations and CbC-reporting obligations was effective for a Swedish entity, there were no exemptions from documentation obligations. Although, there was limited documentation obligations, please see section "Limited transfer pricing documentation". According to the new transfer pricing regulations and CbC-reporting obligations, the following exemptions from documentation obligation exists:

Transfer pricing documentation (Master file/Local File):

A company must not prepare a Master file nor a Local file if it is part of a Group which the year before the fiscal year in question had less than 250 employees and either have a turnover that does not exceed 50 MEUR (450 MSEK) or a balance sheet total not exceeding 43 MEUR (400 MSEK).

So-called insignificant transaction are exempted from documentation obligation, transactions below SEK 5 MSEK are always considered as insignificant.

CbC-reporting:

All groups with a total net turnover of less than 7 billion SEK must not submit a CbC report.

Definition of Related Party

Chapter 39 Section 2 of the Income Tax Act states that legal entities are considered related for transfer pricing documentation purposes if the companies are regarded as a parent or subsidiary company or if the companies are under essentially joint management. The terms parent and subsidiary company is not defined, but should be interpreted as in its normal civil law form

This means that companies can also be affiliated based on either de jure or de facto control. The term covers legal persons in which the same group of shareholders may exercise control or share the same management, even if the shareholders are not the same.

Transfer Pricing Scrutiny

The transfer pricing audit is carried out by local tax authorities. The largest 250 multinational groups are usually audited once every five years, although companies with a high risk of tax avoidance are often audited more regularly. The Swedish Tax Agency's focus on transfer pricing-related issues has increased significantly since formal documentation requirements were introduced in 2007. Tax audits focus only on transfer pricing in some of the cases. Transfer pricing scrutiny is most likely applied to multinational enterprises, companies operating in offensive industries, the probability of intentional errors corrections, companies previously subjected to transfer pricing errors.

- The likelihood of a general tax audit is generally medium to high based on the dependence of factors, such as the industry in which the company operates, the occurrence of certain transactions, the outcome of previous tax audits and the changes in turnover or profit levels compared with prior years.
- The likelihood that transfer pricing will be reviewed as part of such an audit is high.
- The likelihood is medium that the transfer pricing methodology will be challenged if transfer pricing is reviewed as part of the audit. This depends on the transactions involved, the transfer pricing methods applied, whether the documentation and agreements are adhered to in practice.

The taxpayer being audited is obliged to provide requested documentation and to give tax authorities access to premises used by the company.

Transfer Pricing Penalties

There are no transfer pricing specific penalties. Penalties under the general penalty regime range from 10% to 40% of additional tax imposed.

Penalties are imposed on taxpayers for supplying the Swedish Tax Agency with inaccurate or insufficient information.

The risk of penalties can be eliminated if there is full disclosure of the transactions undertaken, the methods used and all other relevant information is provided. In the preparatory work for the law that introduced transfer pricing documentation requirements, it is stated that if an income adjustment is made because the taxpayer's prices are not deemed to be at arm's length, the penalties might be reduced or eliminated if the taxpayer has prepared proper transfer pricing documentation.

Advance Pricing Agreement (APA)

As from 1 January 2010 bilateral and multilateral APAs are available in Sweden (but not for unilateral APAs). The application for an APA will be charged. The fee for filing an APA applications is approximately EUR 15.000. The fee for filing for renewal of an APA is approximately EUR 10.000. The fee for filing a renewal APA with changes is approximately EUR 12.500. The term for APA is three to five years.

Implementation of BEPS-related documentation requirements

In order to adapt the Swedish legislation to the BEPS project put forward by the OECD, new regulations on transfer pricing documentations and country-by-country reporting (CbC reporting) gained legislative effect in Sweden as per April 1, 2017. The new requirements generally follows the recommendations put forward by OECD. The legislative changes for transfer pricing documentation will, per the proposal, become effective as from April 1, 2017.

New transfer pricing regulations:

The new rules on transfer pricing documentation will be applicable the first time for financial year starting from April 1, 2017. For a company with a financial year equivalent to calendar year, the new regulations will apply from the financial year starting January 1st 2018. The new require a company to prepare a master and local file.

Documentation And Disclosure Requirements

Tax Return Disclosures

There are no specific tax return disclosure requirements relating to inter-company transactions entered into by Swedish taxpayers. Submitting the documentation when filing the tax return may eliminate the risk of penalties though.

Level of Documentation

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CbC Reporting

All groups with a total net turnover of more than 7 billion SEK must submit a CbC report. A CbC report must be submitted before 12 months after the end of financial year which the report refers to. Hence, a CbC report referring to FY 17 must be submitted before December 31 2018.

Generally the parent company (the designated reporting entity) of the group is responsible for the submission. The local entity must however submit the report if one of the following conditions is met:

1. No CbC-report obligation exists in the country of the parent/surrogate parent;
2. There is no automatic exchange of CbC-report information (AEI) between the country of the reporting entity and the local entity;
3. Even if AEI exists, a systemic error applies and the taxpayers are notified on this.

All companies within the Group must inform the tax agency of their jurisdiction whether they or another entity of the group will submit the CbC report. Unlike the submission, this must be done before the end of the financial year which the report refers to.

The documentation should contain the following:

Master File

- Overview of the Group and its business (Activities, TP policy, etc.)
- Organization chart of the ownership structure and information of which country each entity is established in
- General description of the Group's operations
- Information of intangible assets
- Intra-group financial operations
- Financial information and details of tax related agreements

Local File

- Information about the company
- All significant transactions with related parties
- Financial information

CbC-report

- Name of company
- Country where company is tax liable
- Country where company is registered
- Main business/businesses of the company

The report shall also include information of the following:

- Profits

- Profit/loss before tax
- Tax paid
- Accumulated income tax for the FY
- Share capital
- Accumulated earnings
- Numbers of employees
- Tangible assets (except cash etc).

Record Keeping

Transfer pricing documentation must be kept for a period of 10 years after the end of the calendar year to which it relates

Language for Documentation

Transfer pricing documentation may be prepared in the following languages: Danish, English, Norwegian or Swedish.

Small and Medium Sized Enterprises (SMEs)

Small and medium-sized corporations will be exempted from the documentation requirement in Sweden. In order to be classified as a SME-company, the company must be a part of a Group which the year before the fiscal year in question with less than 250 employees and either have a turnover that does not exceed 50 MEUR (450 MSEK) or a balance sheet total not exceeding 43 MEUR (400 MSEK). Further, the figures of the Group for the year before the fiscal year will determine whether a documentation must be prepared or not.

Deadline to Prepare Documentation

There is no specific deadline to prepare transfer pricing documentation, but it is expected to be continuously updated and prepared by the filing date of the annual income tax return..

Deadline to Submit Documentation

Upon request by tax authority, transfer pricing documentation must be submitted within 30 days.

Statute Of Limitations

The statute of limitations is six years from the end of the tax year.

Transfer Pricing Methods

Sweden relies on the 2010 OECD Transfer Pricing Guidelines for transfer pricing methods. In particular, the following methods are in use:

- Comparable uncontrolled price (CUP) method
- Resale price method
- Cost plus method
- Profit split method
- Transactional net margin (TNMM) method

When none of these methods are applicable, the tax payer has to define other approaches before using this.

Comparables

Comparables are available at the Swedish Companies Registration Office. Foreign comparables are acceptable if comply to the OECD guidelines.