

Swedish holding company regime – A tax haven?



By Mahmut Baran
Partner, Bird & Bird, Stockholm

Sweden has a reputation for being a high-tax country. Nevertheless, Swedish tax law has created one of Europe's most favorable tax environments for holding companies. Even though the corporate tax is 26.3%, Sweden offers very attractive rules in relation to income from holdings of "business related shares", i.e. shares deemed to be held for business purposes. Sweden can, with its legislation, offer the following:

- no income tax on dividends received from business related shares
- no income tax on capital gains from sales of business related shares
- no withholding tax on dividends on shares in Swedish legal entities (see prerequisites below)

The following presentation on the corporate tax exemption (participation

exemption), as introduced in 2003, is intended to provide an overview of the most significant aspects of the legislation and is accordingly not intended as a complete description of the legislation.

Business related shares and capital investment shares

By way of introduction, it should be noted that only shares classified as capital assets, i.e. fixed financial assets, may be qualified as business related shares for tax purposes.

A non-quoted share shall always be regarded as a business related share. No requirements related to the holding time or minimum percentages apply.

A quoted share shall be regarded as a business related share, if the legal entity own-

ing the share possesses at least 10% of the votes in the entity or if the shareholding in question is motivated by the business operations of the legal entity owning the share or of any affiliated company of such entity. However, if a quoted share is sold before being owned at least 1 year, it will cease to be regarded as business related within such period and, subsequently, the capital gain on such disposal will be subject to income tax.

The definition of business related shares also includes shares in foreign legal entities, provided that the foreign entity is a taxable entity in its home jurisdiction and deemed as similar to a Swedish limited liability company from a civil law perspective. Please note that a Swedish company that holds an interest in a controlled foreign company ("CFC") may, under certain conditions, be subject to Swedish income tax on the foreign company's income on an accrued basis. In summary, a CFC-company will be at hand if the

company is subject to income tax at a tax rate lower than 14.465% on its profit calculated according to Swedish tax law.

As regards shares in foreign companies situated within the EU, the requirements related to holdings in listed/quoted companies and to shares as capital assets do not need to be fulfilled, provided that the holding corresponds to at least 10% of the equity and that the company is listed in the appendix to the parent-subsi-dary directive.

If a share does not qualify as business related, the share will, for the purposes of this article, be referred to as a capital investment share.

Dividends and capital gains/losses

A Swedish limited liability company is exempt from income tax both on dividends and capital gains on business related shares. Losses on such shares are, correspondingly, not tax deductible. Should a share in a foreign legal entity be considered as business related, the same rules apply.

Dividends and capital gains on capital investment shares are not subject to the participation exemption rules. Accordingly, losses on such shares are tax-deductible against profits on the shares and other securities similar to shares.

The acquisition cost for tax purposes, if a business related share is transformed into a capital investment share, will be valued at the market value at the time of the transformation in order to avoid a deduction of the value decrease. Consequently, an increase during the period before the reclassification will not be subject to income tax. If the capital investment share is transformed into a business related share, the transformation in itself will not trigger any tax consequences.

In this context, it should be mentioned again that profits in controlled foreign companies are taxed differently by being taxed in Sweden immediately as the income arise, i.e. at accrued basis. However, the shares in CFCs are

not excluded from the participation exemption rules if the requirements, with regard to business related shares, are fulfilled.

Partnership¹⁾

According to government draft legislation, the rules of participation exemption are suggested to include also interests in Swedish partnerships or foreign partnerships within the EEA as well as shares in limited liability companies held by such partnerships as from 1 January 2010. An interest in a partnership shall, thus, be treated as a business related share if the owner is capable of holding business related shares. Furthermore, partnerships can divest their possession of shares in limited liability companies without the partners being subject to taxation, if the capital gain would have been tax-exempt if the partner itself had divested the shares. Dividends on shares held by the partnership are tax-free for the partner provided that the dividend would have been tax-exempt if perceived directly by the partner.

Withholding tax on dividends on shares in Swedish companies

The Swedish participation exemption is also applicable to benefits in foreign companies holding shares in Swedish liability companies. Since non-residents of Sweden are not, as a main rule, subject to capital gains taxation, the benefits provided under the participation exemption are limited to withholding tax.

A foreign legal entity is entitled to receive withholding-tax-free dividends, provided that it is taxed in its home jurisdiction in a similar way as a Swedish limited liability company and provided that the shares in the distributing company would have been considered as business related shares if held by a Swedish limited liability company.

No withholding tax on interest and no thin capitalization rules

Sweden does not impose withholding tax on interest paid to non-tax residents of Sweden.

Sweden has no thin capitalization rules and no restriction applies with regard to deduction of interest on loans for shareholding qualifying for the par-

The Swiss perspective



In the last months and years the Swiss tax policy was mainly dominated by foreign pressure from the EU and the G-20. As a result of the pressure the Swiss government had to react quickly and effectively with re-negotiations of various double tax conventions. However, the – probably main – reason why Switzerland came under pressure was the total absence of a basic strategy in international tax matters. Since a couple of years, Switzerland applies a case-by-case strategy and resembles an unguided ship in the infinite vastness of an ocean. It's high time to take over the helm and to replace the failed case-by-case strategy by a consistent strategy based on long-term considerations.

The article of our Swedish colleague exemplifies the way how even a country with a reputation as a high tax jurisdiction introduces step by step a new and favorable tax regime, which is fully compliant with the EU rules. The introduction of the new rules is based on a long-term, well-considered strategy, which contains creative approaches, such as, e.g., the planned application of the new participation exemption rules for partnerships. In combination with the general lack of thin capitalization rules (however, with some exceptions) the new regime will offer attractive opportunities for holding structures – and each new Swedish holding structure will be missing in Switzerland...

Christian Lyk, Partner, Kendris private Ltd.

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ticipation exemption. Interest on loans is thus deductible, regardless of the capitalization of a Swedish company. However, it should be mentioned that new rules have entered into force, limiting, under certain circumstances, the deductibility of interest expenses on loans to the extent that it refers to an acquisition of shares from an affiliated company.

Certain other benefits and improvements

A Swedish holding company can be established without any stamp duty or incorporation tax. Furthermore, the administration related to the establishment of a Swedish company is to be seen as rather uncomplicated in an international comparison.

Corporate income tax has, in addition, been reduced from 28% to a flat

rate of 26.3%, a fairly low rate in international comparison. There are no additional local taxes.

The reputation for being a high-tax country may be true for individuals, but not for companies. The review above reveals Sweden as more attractive than many other countries within the EU. In fact, Sweden has become one of the most attractive jurisdictions for holding purposes, especially due to the wide definition of business related shares implying that even small holdings may benefit from the participation exemption regime.

1) Partnership is not a taxable person. Instead the partner is taxed for his or her part of the profit of the partnership.

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