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GLOBAL TRANSFER PRICING SERVICES

Global Transfer Pricing Review

Sweden

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TAX



Sweden



KPMG observation

Both the Ministry of Finance and the Confederation of Swedish Enterprise are active in the Organisation for Economic Co-operation and Development's (OECD's) Base Erosion and Profit Shifting (BEPS) project. Both parties have voiced their concerns that the Swedish tax base may be eroded significantly depending on the outcome of several of the BEPS action points. The Swedish Tax Agency follows the development closely.

The Swedish Tax Agency recently stated that transfer pricing continues to be one of its main focuses in 2014.

Basic information

Tax authority name

Skatteverket (Swedish Tax Agency or STA).

Citation for transfer pricing rules

The arm's length principle is found in 14:19 Inkomstskattelagen, Chapter 14, Section 19 of the Income Tax Act.

Documentation requirements are found in 39:15-16 Skatteförfarandelagen, Chapter 39, sections 15-16 of the Tax Procedures Act. Arm's length principle introduced 1928; amended last time in 2001 with no material changes save for a change in the burden of proof. Documentation requirements were introduced in STA regulations (SKVFS 2007:1) published 20 February 2007. The regulations are binding. STA Guidelines (SKV M 2007:25) published 15 November 2007.

Effective date of transfer pricing rules

1928.

What is the relationship threshold for transfer pricing rules to apply between parties?

Direct or indirect management, supervision, ownership or control is required.

What is the statute of limitations on assessment of transfer pricing adjustments?

Six years from tax year-end.

Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?

There is no requirement to disclose any transfer pricing information with the tax return, but there is a statutory requirement that transfer pricing documentation be prepared annually. Submitting transfer pricing documentation with the tax return when it is filed makes it more difficult for the STA to levy penalties should an adjustment be made. Different filing dates (depending on financial year-end) apply from 2013.

What types of transfer pricing information must be disclosed?

No disclosure has to be made in the tax return save for information on Advance Pricing Agreements (APAs) that have been concluded. Taxpayers with APAs must disclose information whether the APA has been applied and whether the assumptions etc. on which the APA rests are still valid.

What are the consequences of failure to prepare or submit disclosures?

Failure to provide disclosures/documentation upon request will likely shift the burden of proof from the STA to the taxpayer and will make it more difficult to avoid penalties in the case of adjustments being made.

Transfer pricing study overview

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?

Yes. There is an absolute requirement for all companies to prepare transfer pricing documentation annually, but there are no specific documentation-related penalties. General tax penalties apply.

Simplified transfer pricing documentation may be used for certain transactions with low values. The threshold for being considered a low value transaction is linked to a base amount, subject to annual change. For 2014 the threshold for goods is 27,972,000 Swedish krona (SEK) per company within the group and SEK5,550,000 per company within the group for other transactions. Transfer of intangible property is never considered as a low-value transaction.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study?

There is a legal requirement to prepare transfer pricing documentation annually. Having high quality transfer pricing documentation in place, supporting that the pricing is at arm's length, would normally reduce the risk of the STA making adjustments. It also makes it more difficult for the STA to shift the burden of proof to the taxpayer.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

The STA can request that transfer pricing documentation be filed when deciding to audit the taxpayer but never before the tax return is due. Transfer pricing documentation normally needs to be submitted within 30 days of request.

When a transfer pricing study is prepared, should its content follow Chapter V of the OECD Guidelines?

Yes, but in addition the following information is also required:

- Intra-group agreements (if numerous a list of the agreements will suffice)
- APAs
- Mutual agreement procedures (MAPs)
- Rulings

No economic analysis is required for documentation of transactions with low value. However, in the case of an audit, the STA has the right to request that an economic analysis be prepared by the taxpayer.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No.

Transfer pricing methods

Are transfer pricing methods outlined in Chapter II of the OECD Guidelines acceptable?

Yes.

Is there a priority among the acceptable methods?

No.

If there is no priority of methods, is there a "best method" rule?

No.

Transfer pricing audit and penalties

When the tax authority requests a taxpayer's transfer pricing documentation, how long does the taxpayer have to submit its documentation?

Normal STA practice is to request that the documentation be submitted within 30 days.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of competent authority?

Application of the Arbitration Convention may be requested for transactions within the European Union (EU). The majority of Swedish tax treaties contain provisions for corresponding adjustments.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

Yes. General tax penalties only: 40 percent of the additional tax due on the transfer pricing adjustment.

To what extent are transfer pricing penalties enforced?

Almost always.

What defences are available with respect to penalties?

Penalties might be avoided if complete documentation is filed with the tax return as an integral part of the tax return. Disclosing more limited information on intra-group cross-border transactions as an appendix to the tax return might also help avoiding penalties.

What trends are being observed currently?

The number of transfer pricing audits continues to increase dramatically. Most of the audits result in adjustments at the STA level.

The STA has a national focus group of experienced tax advisors/auditors based

in Stockholm, Gothenburg and Malmö. They work solely on transfer pricing and act as in-house advisors to the auditors in transfer pricing audits and other transfer pricing related issues. With the STA appointing dedicated transfer pricing auditors and litigators, the result has been an increased focus on transfer pricing.

The STA's current focus areas are restructurings and profit/loss allocation to permanent establishments. Industry focuses are pharmaceutical companies and private equity firms.

Special considerations

Are secret comparables used by tax authorities?

This has happened in a few instances. It will likely not be the case in the future.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

Yes. The STA prefers Swedish comparables when auditing a Swedish company, but pan-European comparables are readily accepted. Comparability is more important than location. Local comparables are preferred when a foreign entity is the tested party, but also in these cases pan-European, pan-Asian comparables etc. are readily accepted depending on tested party's location.

Do tax authorities have requirements or preferences regarding databases for comparables?

The STA uses Amadeus, but there is no requirement for companies to use Amadeus. The quality of the comparables is more important than the database.

What level of interaction do tax authorities have with customs authorities?

Low, but increasing.

Are management fees deductible?

Yes, provided an economic or commercial benefit has been conferred.

Are management fees subject to withholding?

No.

Are year-end transfer pricing adjustments permitted?

Yes. True-ups and true-downs are normally expected and accepted. Year-end adjustments should preferably be reflected in the financial statements (tax follows the accounting treatment in Sweden with few exceptions). It is, however, also possible to make the adjustments in the tax return. Adjustments may have both customs and VAT implications. The method for year-end adjustments should be clearly described in the transfer pricing documentation.

Other unique attributes?

Documentation in EU transfer pricing format is explicitly referred to as acceptable. Multi-year data is preferred over single-year data. There are no safe harbors.

Other recent developments

Several APAs have been filed with the competent authority since the introduction of the APA legislation in 2010. There is not yet any official feedback on outcomes from the competent authority.

An increasing number of companies refer cases of double taxation to arbitration convention as opposed to court, due to the time it may take to process a case through the court system.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Extensive.

If extensive, is the competent authority effective in obtaining double tax relief?

Almost always.

When may a taxpayer submit an adjustment to competent authority?

The taxpayer should submit an application to the competent authority within 3 years

of being made aware of the decision that resulted in the taxation violating the applicable tax treaty. There is no such timeframe in domestic Swedish law. A tax treaty may contain another statute of limitation in this respect. It is advisable that submission is made to the competent authority as soon as possible when the taxpayer has been made aware of the double taxation.

May a taxpayer go to the competent authority before paying tax?

Yes. It is possible to obtain an extension for the tax payment when the case is referred to the competent authority in a mutual agreement procedure and when the arbitration convention is applied. It is normally also possible to be granted an extension for the tax payment when a case is appealed to the court.

Advance pricing agreements

What APA options are available, if any?

APA legislation was introduced with effect from 1 January 2010. The rules apply for treaty countries only.

Only bilateral and multilateral APAs are accepted. It is not possible to obtain unilateral APAs.

Is there a filing fee for APAs?

The current filing fee is SEK150,000 per country involved for a new APA, SEK125,000 for a renewal with amendments and SEK100,000 for a renewal.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?

The competent authority has not yet published any statistics, but has committed to do so eventually. Information will be provided to the OECD and likely also published on the STA's website.

Please provide some information on how successful the APA programme is and whether there are any known difficulties?

According to a source at the competent authority a couple of APAs have been concluded since the introduction of the APA program in 2010. Some APAs are close to being concluded.

Language

In which language or languages can documentation be filed?

Swedish, Danish, Norwegian, and English.

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