



cutting through complexity

Global Transfer Pricing Review

Sweden

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TAX



Sweden



KPMG observation

Transfer pricing continues to be one of the main focus areas of the Swedish Tax Agency. In the last couple of years, companies with intellectual property transfers or having undergone reorganizations, have been frequently audited. A new focus area within transfer pricing appears to be branches and Permanent Establishments (PEs) in Sweden, where the number of audits have increased at a rapid pace. Branches and PEs are audited by non-transfer pricing specialists having limited knowledge of transfer pricing.

This fact has already led to several misunderstandings from the Swedish Tax Agency's side, resulting in adjustments being made and penalties levied. Litigation is bound to follow.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable	Required to be contemporaneous
Legal requirements		●
Protection from penalties		●
Reduce risk of adjustment	●	
Shifts burden of proof		●

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 submitted to the revenue authority on an annual basis (e.g. with the tax return)?

No. 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 for the tax return (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 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

Can documentation be filed in a language other than the local language? If yes, which ones?

Yes. Swedish, Danish, Norwegian, and English.

When a transfer pricing study is prepared, should its content follow Chapter V of the Organisation for Economic Co-operation and Development (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

Does your country follow the transfer pricing methods outlined in Chapter II of the OECD Guidelines? If exceptions apply, please describe.

Yes.

Transfer pricing audit and penalties

When the tax authority requests a taxpayer's transfer pricing documentation, are there timing requirements for a taxpayer to submit its documentation? And if so, how many days?

Yes, 30 days.

When the tax authority requests a taxpayer's transfer pricing documentation, are there timing requirements for a taxpayer to submit its documentation? Please explain.

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

If an adjustment is proposed by the tax authority, what dispute resolution options are available?

- 1) Filing an appeal with the Administrative Court.
- 2) Application of the Arbitration Convention may be requested for transactions within the European Union (EU).
- 3) Requesting that a MAP be initiated. The vast majority of Swedish tax treaties contain provisions for MAP.

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 defenses 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?

There are no legal requirements to present a benchmark. Only a comparability analysis is required. However, a benchmark is commonly requested by the STA. The STA uses

Orbis and Amadeus. The quality of the comparables is more important than the database.

Does the tax authority generally focus on the interquartile range in a TNMM analysis?

Yes, always.

Does the tax authority have other preferences in benchmarking? If so, please describe.

The STA requires strict independence for the comparables.

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

Low, but increasing, especially between the Nordic countries.

Are there limitations on deductibility of management fees beyond the arm's length principle?

No.

Are management fees subject to withholding?

No.

Are there limitations on the deductibility of royalties beyond the arm's length principle?

No.

Are royalties subject to withholding?

No.

Are taxpayers allowed to file tax return numbers that differ from book numbers?

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.

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 three 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 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 as long as it can be proven that the tax has been paid on the income in the other state. 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?

Bilateral, multilateral.

Is there a filing fee for APAs?

Yes. The current filing fee is 150,000 Swedish krona (SEK) per country involved for a new APA 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?

Yes.

Are there any difficulties or limitations on the availability or effectiveness of APAs?

Yes. The competent authority has limited resources which makes the APA process slow.

KPMG in Sweden

Annika Lindström

Tel: +46 8 723 61 71

Email: annika.lindstrom@kpmg.se

As email addresses and phone numbers change frequently, please email us at transferpricing@kpmg.com if you are unable to contact us via the information noted above.

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