

Delphi information **Setting up business in Sweden**

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General

A foreign company or individual wishing to establish itself in Sweden can mainly choose to do so through a local branch office or by setting up a Swedish subsidiary. There is no need of any special permits or references for establishing a business in Sweden. Which form to choose depends on several parameters such as the type of business (manufacturing, R&D or simply a holding company), the extent of the business activities, the international tax and legal aspects and the investor's administrative structure.

Limited Liability Company (Sw: Aktieföretag)

In Sweden, foreign investors most commonly operate through a limited liability company. The shareholders of a limited liability company are not personally liable for the company's obligations and generally it has the same characteristics as equivalent entities in other countries. A limited company can be (regardless of whether it is government or privately owned) either private or public, the private company may not have its shares publicly traded and will typically have a small number of the shareholders, a public company may have its shares listed with a trading place and usually has a large number of shareholders. A private company must have a share capital of at least SEK 100,000 (approximately 11 000 Euro) while the minimum share capital of a public company is SEK 500,000. (approximately 55 000 Euro) The board of directors has overall responsibility for the company's affairs. A majority of the directors must be resident in the EEA, unless an exception is granted.

Branch

The alternative to limited liability company may be to register a branch in Sweden. The advantages of this alternative are mainly that there are no minimum capital requirements, somewhat fewer legal regulations of the operations (for instance there is no need of a board of directors) and that losses can be set off against the owner's profits. On the other hand, the branch needs to be managed by a managing director, who shall be resident within the EEA. The accounts as well as the official accounts of the "parent" organisation must be filed with the Swedish Company Register. Further, the company having the branch will be fully responsible for all operations and dealings of the branch. As a consequence of the above, a branch is normally used only in the development stage and then transferred to a fully fledged company later on.

Tax

- Corporate tax rate - below most western European countries
- Possible to capitalize Swedish Holding company with loans - no thin capitalization rules
- No withholding taxes on dividends

There are a few different ways of doing business in Sweden – the starting point is often to carry out business with Sweden – i.e. through an independent party or similar; and the next

step is or to carry out business in Sweden where the foreign party is present in the form of a permanent establishment (p.e.), a branch or a company.

Company

Like the branches the statutory tax rate of a limited liability company is 28 %, and as a result of tax deferrals the effective rate over time is 25 %.

All income is included in only one source regardless of type. The taxable profit is – as for any business operation – based on the official accounts with modifications for non-deductible and non-taxable items, and tax deferrals. As is indicated below most dividends and capital gain is exempt from taxation.

Branch

Once the activities in Sweden has reached the level and local presence that there is a p.e. in Sweden a registration for a branch permit must be filed – a simple and formal procedure. As a general rule of thumb a p.e. is at hand when the foreign entity has a fixed place of business – an office, employees, a dependent agent etc. - in Sweden. A branch is in most aspects treated as any traditional company – its taxable profit is calculated in almost exactly the same way and by using the same methods as for a company, however; with the difference that there is no possibility to deduct interest on inter-company debt to the foreign “parent” organisation. Profits can be freely repatriated as there is no formal capital base in the branch

Important general tax rules

Profit periodization

The Swedish tax rules permits tax losses to be carried forward indefinitely if the ownership remains unchanged – this is currently defined as a change of controlling interest of not more than fifty percent. There is a general option to set up a reserve, which can be best described as a “tax allocation reserve”, in addition to an excess depreciation reserve. This option is intended, for example, to allow companies the possibility to “carry back” losses to offset previous years’ profits. The reserve is based on a company’s annual taxable income. One-fourth of the taxable income may be appropriated to this reserve. A particular year’s allocation to the reserve can be released at the discretion of the company, for example to balance a net operating loss.

Group contribution

Consolidated balance sheets are not recognised for tax purposes in Sweden and each company within a group constitutes a separate taxable entity. The group, as such, is not taxed. However; the group relationship is taken into account in various ways. When certain conditions are met the tax law allows consolidation of income through group contributions, i.e. contributions are deductible to the donor and taxable to the donee. In this way group contributions can be used to even out profits and losses between companies within a company group. Group contributions may also be used even if there is a non-resident

company in the structure, under condition that the contribution is made between two entities taxable in Sweden.

No thin capitalization rules

Swedish tax law does currently not include specific rules concerning thin capitalization of companies. Therefore, a Swedish holding company may be capitalised with loans – from its parent or affiliated companies - without any risk that interest paid or other financial expenditures to the parent company will not be deductible, of course subject to the general condition that the terms must meet the arm's length-test. An effective loan financing of the Swedish holding company or its subsidiaries can therefore often further improve the structure. When structured properly, no withholding tax will be levied on outbound dividend as the Swedish withholding tax on dividends is waived on intra EU distributions and under most tax treaties. Sweden has no withholding tax on dividends according to domestic provisions on business-related shares if the receiving company is subject to taxation in its country of residence similar to the taxation to which a Swedish company is subject. There is a presumption of similar taxation if the company is resident in a treaty country. This is a very favourable rule, since the withholding tax on dividends may be waived on unlisted shares irrespectively of the holding period or a minimum holding.

No tax on business related shares

Tax effective structures have an increasing importance in international trade as businesses stress the need for effective coordination advantages in an international environment. Such structures must take into consideration the investor's home country and how corporate owners will be taxed when they seek to repatriate their profits. For an international investor who wants to have the best return on an investment, this issue often boils down to the creation of a Special Purpose Vehicle ("SPV") to function as an intermediary of the planned investment and the choice of jurisdiction. Often the SPV is legally in the form of a holding company, i.e. a separate legal entity which will be funded for the planned investment – sometimes only equity and sometimes a mix of equity and loans. A Swedish holding company is one effective way that meets all criteria.

Sweden introduced new legislation in 2003 that greatly facilitated the operation of holding companies. In addition to the historical features of a Swedish holding company such as exemption of dividend income and a vast treaty net-work, the new law provides tax exemption on capital gain on the sales of e.g. holdings of controlling blocks of shares. According to international tax consultants the new tax laws, in combination with existing corporate-friendly taxation, have created one of the most favorable environments in Europe for holding companies.

Capital gains and dividends from business related shares are exempt from tax. The definition of business related shares (Swe: "näringsandelar") is very generous compared to other countries. Shares in foreign companies will also qualify as shares held for business reasons and will fall under the participation exemption.

Tax relief for foreign personnel

Foreign key personnel – executives, experts, researchers, and others – may qualify for special tax relief when working in Sweden. The legislation provides an additional advantage to companies who need foreign expertise for their Swedish operations. In addition, a new legislation as of 1st of January 2005 gives a greater freedom of choice for foreign personnel when it comes to the Swedish income tax system.

The main feature of Sweden's tax relief legislation provides a 25 percent reduction of taxable income of a foreign key person. This means that a key foreign individual's income tax will be based on only 75 percent of his or her income.

The reduced tax applies to all salaries and “perks”, such as employers' contributions to housing and living costs. The tax reduction also applies to stock options and other special compensation, provided it is offered by the Swedish employer. Foreign key personnel is also able to receive tax-exempt contributions from employers for moving to and from Sweden, holiday travel to a home country, and school fees for children.

Binding advance rulings

Binding advance rulings may be requested by the Tax Payer or by the National Tax Board on the tax consequences of proposed transactions. Rulings may also be requested to ascertain whether the general anti-avoidance provision will be applied.

Extensive network of tax treaties

Sweden has an extensive network of tax treaties with currently over 80 countries. A large number of these treaties imply that no withholding tax is to be paid in the subsidiaries' jurisdiction on dividend paid to a Swedish holding company, in addition to this Sweden has generous unilateral rules for double taxation relief in using the overall principle when granting credit for foreign taxes.

EU development and taxation

Currently many of the tax rules of the different member countries of the EU are subject to review by case law development. Based on the development so far it can be assumed that the trend will be greater harmonization between the member states also on the tax side.

Some areas of specific interest are e.g. consolidation cases (where the most renown case is Marks & Spencer) where losses in one affiliate in one EU country are claimed to be offset against profits in another affiliate in another EU country. Interestingly enough, one tax court in Sweden has recently ruled in favour of a Swedish parent company's group contribution to its German subsidiary.

Another area of importance is exit taxation where the ECJ has been very active over the last years, in most cases ruling in favour of the tax payer whenever a EU state has tried to implement tax charges which are triggered solely by the move from one EU state to another.



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