

General Communication with Tax Authorities in friendly or unfriendly ways

Tax Commission – of course...!

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National Report of Sweden

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1. The Swedish Tax Agency – a short introduction

The Swedish Tax Agency is one of the largest agencies in Sweden. The Agency's primary tasks are i) to manage taxes, ii) attend to public records, iii) manage estate inventory and iv) to represent and manage the states creditor work.

As part of the Agency's task to manage taxes, the Agency is responsible for exercising fiscal supervision and – in a tax point of view – conduct audits of individuals and business enterprises. The Agency therefore has extensive possibilities to collect data of the individual/enterprise, either through formal/informal injunctions/requests directly to the individual or through so-called third-party audits and third-party injunctions. The Agency may also prepare request for enforcement action against the individuals/enterprise or a third party, such as search of premises.

The Agency often works closely with the Prosecution Authority, and the Authority has an obligation to report suspected tax fraud and other crimes to the Swedish Prosecution Authority.

However, the Agency's primary objective is to reduce the overall tax evasions and tax fraud etc. Hence, the Agency work is to a great extent tinged by the Agency's preventive work, such as to provide information and services to individuals and taxable enterprises.

1.1 Communication general

How does the General Communication with the Tax Authorities take place?

- a. Is a direct contact in between the tax payer and the Tax Authorities possible/common/advisable?

In addition to, and as a part of the Swedish Tax Agency's main tasks mentioned above, the Agency is appointed to provide taxpayers with information. The Agency's objective in this is to work proactively.

On the Agency's web page, one can find information and answers to questions that arise in the common areas such as deduction, declaration and population registration for individuals as well as information for both established and emerging companies. There is a broad range of information provided on the website, hence a lot of information is available to those who have the time, knowledge and opportunity to search and navigate themselves.

The Agency also answers questions by individuals and taxable enterprises via the Agency's Tax Information Service Telephone-line. Hence, a taxable person can directly without the involvement of a tax counsels obtain information about all sorts of issues, such as tax, registration and deductions.

Also, the Agency offers personal meetings with a caseworker at the Agency's Service Offices. These Service Offices are operated by the Agency together with

the National Health Service and Police Authority. Thus, the Authorities may offer more full-covering answers to the questions raised.

Furthermore, the Agency also provides answers to questions which the Agency receives by letter and e-mail.

As part of the Agency's preventative work the Agency also use other channels to reach out to with necessary information to individuals and other taxable enterprises. For example, the Agency often figurate in the press and provides information through brochures. The Agency also invites start-up businesses to information sessions and offer consultation in individual company visits.

- b. If not, does the communication only take place via tax counsels?

Not applicable. See answer in section 1.1(a) above.

- c. How can the communication regarding special matters be described?

Such special matters are usually handled by the Tax Board, se answer to section 1.2 below.

If urgent such matter can also be handled through a tax consultant that may provide an informal and non-binding answer to a question raised to the Tax Agency.

- d. Does it take place only in a written form or are meetings possible?

See answer in section 1.1(a) above.

- e. Can the behavior of the Tax Authorities in your country be described as all dominant, cooperative, customer-oriented or otherwise?

To summarise, the Swedish Tax Agency's overall behaviour may be described as cooperative with the objective to act informative and preventative. However, once the Agency initiates an audit against an individual or a taxable enterprise, the Agency's behaviour is more so all dominate and the close co-operation between the Agency and the Prosecution Authority allows the Agency to carry on extensive investigations against the said taxpayer.

1.2 Agreements between tax payers and tax authority

- a. Is there the possibility of a tax ruling and, if so, which costs can be expected?

An individual or taxable enterprise may in special matters apply for a so called preliminary decision by the National Tax Board.

The Tax Board forms a part of the Swedish Tax Agency's headquarters and is an agency under the Ministry of Finance. The members of the Tax Board are appointed by the government.

A preliminary decision is an answer from the Tax Board on how a particular matter should be assessed for tax purposes. In order to receive such a preliminary decision, one must therefore submit an application to the Tax Board. The possibility to obtaining a preliminary decision is dependent that the answer to the question raised not is immediately apparent from the statutory law or jurisprudence.

Since 2011 the Swedish Tax Agency offers (to a selection of large corporations) the possibility to enter into so called deepened collaborations with the Agency. This means that the Agency and the relevant corporation undertakes to work together to reduce the said corporation's tax contingencies and the need for subsequent audits. Hence, the deepened collaboration shall contribute to avoid a later audit and the need for use of other control measures, which may lead to tax penalties and long-lasting tax proceedings.

The aim is that such deepened collaboration shall lead to benefits in terms of lower costs and administrative burdens for the relevant corporation, as well as for the Agency, and thus be of benefit to the Swedish taxpayer in general.

A deepened collaboration is long-term and is initiated after a written statement of intent by both parties. In summary a deepened collaboration is much like a so called enhanced relationship, which is becoming more and more common on the international arena.

The Tax Board charges a fee to announce a preliminary decision relating to a matter of direct taxation, i.e. matters concerning income tax, property tax, returns from pension, special payroll tax on pension costs and general pension

No fee is charged in matters of indirect tax.

The fee is set at SEK 20 000 - 1 000. If there are any special reasons, the fee may however be set less than SEK 1 000. Individuals pay the lowest fees and large companies and organizations pay the highest fees.

It is not possible to appeal a fee decision. However, the Tax Board will refund the fee to the applicant if the Supreme Administrative Court, following an appeal of the Tax Boards preliminary decision, eliminates the preliminary decision.

There is no fee charged as regards a deepened collaboration.

b. What is the average time frame to get a tax ruling done?

Currently, it takes about three – four months for the Tax Board to communicate a preliminary decision after the exchange of information is completed.

- c. Are these consultations binding and, if so, which possible remedies do exist?

A preliminary decision by the Tax Board is binding for the Swedish Tax Agency and for an administrative court, as concerns the individual/taxable enterprise raising the special matter. Furthermore, the preliminary decision is only binding upon the Agency and an administrative court in so far as the relevant circumstances in the specific case at hand corresponds to the circumstances upon which the preliminary decision is assessed.

It is possible to appeal against an announced preliminary decision and there is no requirement for leave to appeal. Such appeal is made to the Supreme Administrative Court.

The legal position of the Tax Boards preliminary decisions are regulated in the Act (1998:189) on Rulings on Tax Issues.

As concerns deepened collaborations, an agreement between the Swedish Tax Agency and a corporation to enter into such collaboration is not legally binding. It should however be noted, that the exact legal status of both the deepened collaboration per say and the agreement to initiate the said collaboration is unclear.

- d. Once a tax ruling between all the parties concerned has been achieved, can one rely on it?

Se answer in section 1.2(c) above.

- e. What is the exact legal status of a tax ruling?

Se answer in section 1.2(c) above.

- f. Is it common in order to get a tax ruling that the tax payer has to give up certain rights or explicitly agree to e.g. information exchange?

As concerns the Tax Boars preliminary decision, the tax payer does not have to give up any right or explicitly agree to e.g. information exchange.

- g. Is a tax ruling a public document or will it be treated confidentially by the tax authority? Does the taxpayer have an obligation to keep it confidential?

The Tax Board is a national authority. Therefore, the general principle of free access to public records applies to its activities. This means that the public, as a general rule, have the right to obtain copies of the Board's rulings. However, there is an important limitation of the obligation to disclose the Tax Boards preliminary decisions, e.g. there is an absolute confidentiality of information about individuals' personal or financial circumstances. The confidentiality is governed by Chapter 27. § 6 of the Public Access to Information and Secrecy Act (2009:400).

The tax payer does not however have an obligation to keep any information confidential.

As regard deepened collaborations, the confidentiality thereof is – as a result of the uncertainties surrounding the exact legal status of deepened collaborations - unclear. This being said, based on the above mentioned principle of free access to public records, it may be presumed that documents received or prepared in the cores of a deepened collaboration, normally are covered by confidentiality, with the exception of the Agency's documentation as regards the decision to enter into the collaboration.

1.3 Remedies against decisions of the Tax Authorities

- a. Is it common that one has to litigate if a decision has been made by the Tax Authorities and which remedies do exist?

The Swedish Tax Agency decides as first instance on tax assessments, supplementary taxation and other taxation measures as well as tax penalty. As part of the Agency's exercise of authority, the Agency may execute tax audits, and within such audit use remedies such as search of premises etc.

It is also common that the Swedish Tax Agency, during its examination of an individual's or a business's income etc. makes written formal requests for information from the person being audited.

The Agency's tax audits and formal requests for information are often carried on for a long period of time, and may in some cases be carried on for several years.

Prior to deciding on supplementary taxation, the Swedish Tax Agency must submit a so-called "consideration of decision", in which the Agency's preliminary decision is presented, to the individual or enterprise being audited. The taxable individual/enterprise then has the opportunity to comment on the Tax Agency's preliminary decision.

Following this, the Swedish Tax Agency will determine the supplementary/final tax and present its final decision to the individual/enterprise.

If the Authority decided to charge the individual or taxable enterprise in question with an additional tax, the tax falls due for payment within 30 days. Unless the individual or enterprise in question demonstrates that such payment will result in bankruptcy/insolvency, the tax must be paid within 30 days.

- b. Is there the possibility of addressing a court or is this an administrative procedure?

It is possible to appeal against the Swedish Tax Agency's decisions and there is no requirement for leave to appeal. Such appeal is made to the first instance of the general administrative court.

As stated above the Swedish Tax Agency decides on tax penalties. An individual or enterprise may also appeal against such decision to the general administrative court. Tax penalties amount to a certain percentage of the tax in question.

c. Which costs are to be expected in such a case?

Mainly legal costs are to be expected.

Each party bears its own costs regardless of the outcome. A private party has, however, in some cases, limited opportunities to receive reimbursement of its legal costs.

d. Is it compulsory to have a lawyer in case of any remedy?

Not applicable.

e. What timeframe can be expected in case of a remedy/litigation?

See section 1.3 a above.

f. Is it possible to postpone the payment of the tax debt as assessed by the tax authority until the end of a pending litigation with the tax authority? Will the tax authorities require guarantees for the postponement (Bank guarantees, mortgages etc.)?

The possibilities to postpone the payments of the tax debt as assessed by the Swedish Tax Agency are limited, see 1.3 a above.

g. Is it possible that the tax authorities submit a report to the public prosecutor to investigate on possible criminal tax offences and under what circumstances?

The Swedish Tax Agency often submits a report to the public prosecutor to investigate on possible criminal tax offences. The Agency is obligated to submit a report if the Agency suspects that a crime has been committed.

A preliminary investigation regarding tax crime is, except for matters of a simple nature, conducted by a prosecutor in accordance with the Swedish code of judicial procedure.

A preliminary investigation shall be initiated as soon as - due to a report or for other reason - there is cause to believe that an offence subject to public prosecution has been committed. As regards tax crime a preliminary investigation is normally initiated after a report made by the Tax Agency.

During a preliminary investigation, inquiry shall be made concerning who may be reasonably suspected of the offence and whether sufficient reason exists for a prosecution.

Upon the conclusion of a preliminary investigation, a decision on whether or not to institute a prosecution shall be issued.

A preliminary investigation has to be declared concluded and after that sent to the suspect and his lawyer.

An audit, conducted by the Swedish Tax Agency, and a preliminary investigation regarding a tax crime, executed by a prosecutor, are two different forms of investigation. However, a prosecutor's decision to open a preliminary investigation regarding a tax crime is normally preceded by an audit and a subsequent report of the audit drawn up by the Agency.

- h. Is it possible to include a clause in an agreement to automatically amend this agreement in accordance with the outcome of a discussion or litigation with the tax authority (e.g. if an "at arms length payment" is not accepted as such by the tax authority or if interests are held to be dividends or a loan is seen to be a gift)?

It is in general possible to include such clauses in an agreement between two civil parties. However, such clause will in most cases not affect the Swedish Tax Agency's or the general administrative court's assessment of the tax question at hand.

1.4 Sanctions

- a. What is the statute of limitations for tax related matters?

The statute of limitation is six years back in time as regards unreported assets abroad or previously submitted incorrect information. However, if a substantial amount (circa SEK 453 000) has been withheld as a result of the incorrect information, the statute of limitation is extended to a period of ten years.

- b. What is the typical sanction/amount of fines in your jurisdiction? Is there a different fine level for direct or indirect taxes?

Tax penalties amount to a certain percentage of the tax in question. As regards direct tax the tax penalty is 40 %, and as regards indirect tax the tax penalty is 20 %.

- c. Is it possible for a taxpayer to prevent tax penalties to be imposed should he/she be able to prove her good faith or reasonable interpretation of the law?

Tax penalties will not be imposed if the individual of taxable enterprise voluntarily, and before the issue has been raised by the Swedish Tax Agency, and before the end of the relevant tax period, corrects the incorrect information etc.

- d. Is it possible to regularize your tax situation with reduced or no fines/sanctions?

See section 1.4 c above.

- e. May tax advisors/tax lawyers be held responsible by the tax authority for their advice to taxpayers?

Not applicable.

1.5 Tax information exchange

- a. Does a tax information exchange on the EU level or OECD level happen and how does it take place?

The Swedish Tax Agency often exchange information on EU level and OECD level.

The exchange of information is always carried out within the framework of the relevant international agreements on the exchange of information.

- b. Does your country enter into tax treaties that oblige to exchange information spontaneously, automatically and/or upon request?

Usually, the tax treaties entered in to by the Swedish government, requires the Swedish Tax Agency, as well as the relevant agency in the treaty-country, to have exhausted all possible remedies within its own jurisdiction, in order to make a request for the exchange of information.

Therefore, an exchange of information normally occurs after a formal request has been made.

Information may however also be exchanged spontaneously and automatically.

Spontaneous information shall be provided only if they are deemed to be of interest to the tax authorities of the relevant country, i.e. are normal payments not generally considered as such information which should be reported. In general it may be said that information is deemed to be of interest in the following situations; i) if it can be assumed that a particular transaction has taken place to evade tax in another country (e.g. if payment is made in cash in a case where such payment normally is made by bank transfer), ii) if a

transaction has been made via a third country, and iii) if it appears that a non-competitive price is applied in order to reduce the tax burden.

Automatic exchange of information only applies if explicitly stipulated in the relevant treaty.

- c. Is the tax payer notified in case information is exchanged with foreign tax authorities?

The Tax Agency is not required to notify the tax payer that the Agency has made a request or have received a request for change of information.

However, if the Tax Agency decides to audit an individual or taxable enterprise, the Agency is required to - before an audit is undertaken - notify the individual/taxable enterprise being audited of the Agency's decision to audit said individual/enterprise. The audit decision is made by a case handler of the Swedish Tax Agency.

A decision to audit shall contain, *inter alia*, the name of the individual/taxable enterprise to which the audit applies, the purpose of the audit, and the identity of the auditors of the Tax Agency who will undertake the audit.

- d. Can the tax payer object against an exchange of information?

Not applicable.