SWEDEN Update
New proposed rules on eg interest deduction and real estate

25 October 2017

pwc

Agenda

Introduction

ATAD adjustments regarding interest deduction

Real estate new rules

Introduction

New tax rules regarding interest deduction

Background

Development before 2017

Business Tax Committee (2014)

- Tasked by the Government to review the taxation of companies
  - ➢ Encourage investments and entrepreneurship
  - ➢ Broadening the tax base, lowering the corporate income tax, introduce a general limitation on interest deduction
  - ➢ The alternative proposal was an EBIT rule
  - ➢ Strongly critisized proposal

OECD – BEPS Action 2 and 4

- Actions to neutralize hybrid mismatches
- Recommends to introduce a general limitation of interest deduction based on a ratio of EBITDA (10-30 %)

Interest deductions according to the EU directive

COUNCIL DIRECTIVE (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market

The interest limitation rule – a minimum rule

- Negative net interest should be deductible up to 30 % of EBITDA
  - EBITDA = Taxable earnings before interest, tax, depreciation and amortisation

EU exceptions

- Safe harbour amount up to 3 000 000 EUR – For the entire group
- Standalone entities – fully deductable
- Loans which were concluded before 17 June 2016
- Public infrastructure project
- Group rule – comparison with the groups debt-to-equity for highly debt groups
- Financial undertakings

Purpose with the Swedish proposal

1. Mitigate aggressive tax planning and protect the Swedish tax base
2. Counteract cross-border tax planning strategies via hybrid mismatches
3. Implementation of BEPS
4. Improve the fiscal neutrality between debt and equity
5. A lowered tax rate is expected to have a positive effect on GDP and the employment ratio

Background

Ministry of Finance Fi2017/02752/S1 – New tax rules for the corporate sector

20 June 2017

The Ministry of Finance released the comprehensive memorandum on submit to interested parties for comment

1 July 2018

Legislation should enter into force from 1 July 2018.

Should be applied from the first fiscal year beginning after 30 June 2018

1 January 2019

For companies with calendar year as their financial year the rules are applicable from 1 January 2019

Tax cut

Proposed tax cut	Reversal of tax allocation reserve
22 % → 20 %	Former tax allocation reserves shall be reversed to taxation with 110 %

Summary

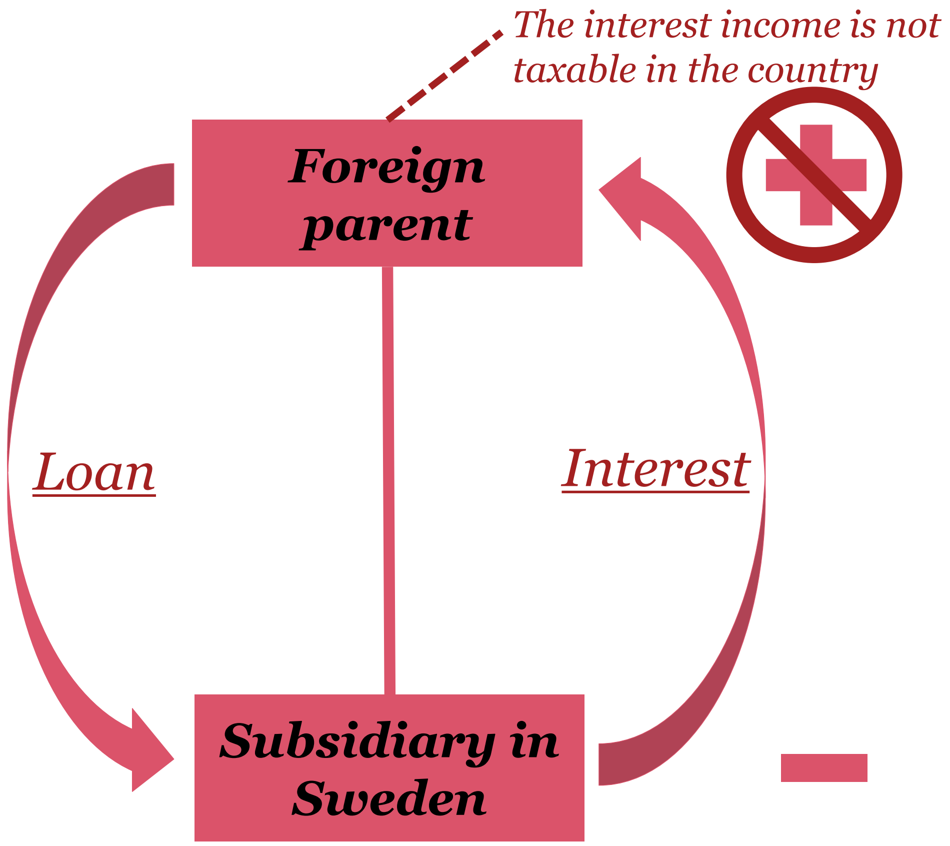
1. ***Hybrid rules***
2. ***Existing, modified interest deduction rules***
3. ***New general interest deduction restriction rule – EBIT/EBITDA model and a safe harbour rule***
4. ***Transfer pricing***

Hybrid rules

Deduction limitations regarding hybrid mismatches

Deduction for interest expensens are denied for cross-border transaction situations when:

- Double deduction is obtained (in Sweden and the other country)
- A corresponding income is not taxed in the other country



Interest deduction is not allowed

Prohibition to deduct interest between affiliates

Existing interest deduction rules are being modified and restricted – A narrower field of application?

Main rule

For interest between associated enterprises– ***no deduction***

Same definition as before

Exceptions

Interest expenses can only be deducted if the receiver:

1. Is located within the EEA, or
2. There is a tax treaty, or
3. If the income should have been taxed with at least 10 %

Exception from the exception

If the dept ratio exclusively or as good as exclusively, (90-95 %) will lead to a substantial tax benefit

Existing rules

Interests between associated enterprises – ***no deduction***

Exception

Interest expense can only be deducted if the company would have been taxed for the income with at least 10 %.

Exception from the exception

If the main reason (approx. 75 %) = essential tax advantage – no deduction

Interest expense can also be deducted if the debt is commercially motivated and the receiver is

1. Located within the EEA, or
2. There is a taxation agreement.

New general interest deduction restriction rules
Two proposed alternatives – EBIT or EBITDA

Alternative 1 – EBIT rule

Main rule → Deduction for **negative net interest** up to **35 %** of the deduction basis

Deduction basis

Profit before deduction for negative net interest and remaining net interest

+ interest expense
- interest income and surplus from partnerships

Including:

- Tax losses carried forward,
- group contribution, and
- provisions for and reversals from the tax allocation reserve.

Alternative 2 – EBITDA rule

Main rule → Deduction for **negative net interest** up to**25 %** of the deduction basis

Deduction basis

Profit before deduction for negative net interest and remaining net interest

+ interest expenses and depreciations
- interest incomes and surplus from partnerships

Including:

- Tax losses carried forward, and
- group contribution.

Provisions for and reversals from the tax allocation reserve are not included.

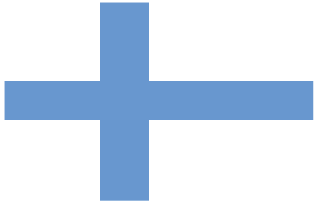
New interest rules
Sweden only 100 000 SEK (approx 10 000 EUR)!

Comparison with some EU countries

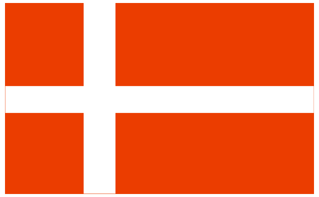
GBP 2m

EUR 3m

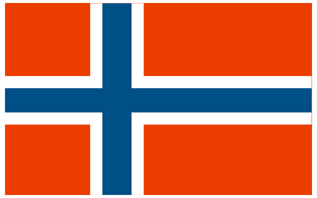
EUR 3m



EUR 500'



DKK 21,3m



NOK 5m

Not bound by the directive

Comparison with EU directive

- Right to deduct negative net interest up to 3 000 000 EURO
- Common basis for groups of companies

New rules

Remaining net interest and group set-off

Remaining net interest from previous year

- Remaining negative net interest can be carried forward for maximum 6 years
- The current year net interest shall be used before net interest from previous years
- Older remaining net interest shall be used before newer remaining net interest
- Remaining net interest is forfeited due to change of ownership

Group set-off

- A company with a positive net interest can deduct negativ net interest from another company if:
  - ➢ The companies have the right to exchange group contributions with deduction, **and**
  - ➢ Deductions are reported in the corporate income tax return

New definition of interest expense

Interest expense means

”Interest and other expenses for a credit, and expenses comparable to interest.”

Expenses comparable to interest

- Hidden compensation for interest
- Compensation for financial instruments
- Some f/x losses

Interest income means

- Interest income corresponding to interest expenses

Comments on the proposal

108 comments (57 official, 51 spontaneous)

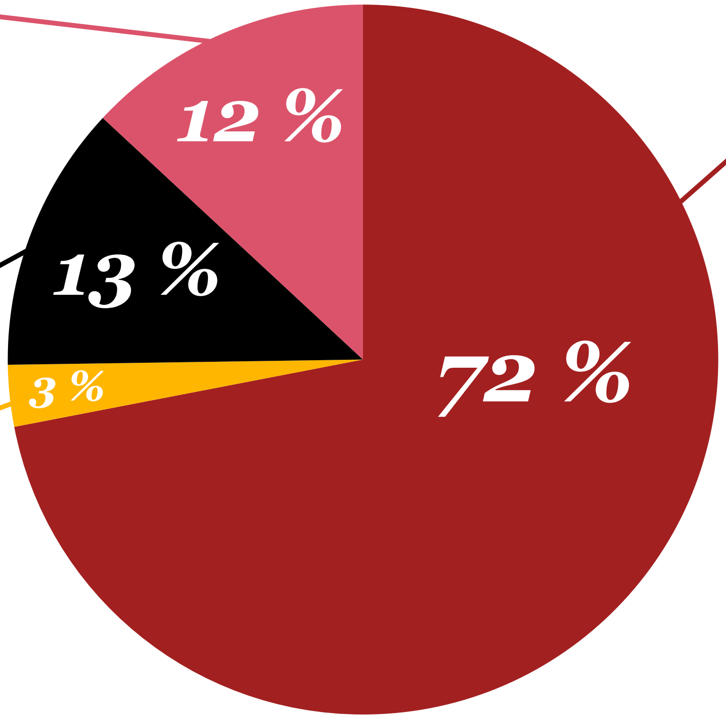
Approves the proposal

For example:

- Swedish Tax Agency
- Swedish Central Bank
- Financial Supervisory Authority

No reply

Partially objects



Objects the proposal

For example:

- Confederation of Swedish Enterprise
- The Swedish Property Federation
- The Swedish Construction Federation
- The Swedish Bankers' Association
- The Association of Swedish Finance Houses
- Insurance Sweden

Limitation to deduct tax losses carried forward

Temporary limitation for companies to use tax losses carried forward against profits

Companies can only deduct tax losses from previous years with 50 % of the profit before the negative net interest deduction

The basis/surplus shall be increased with:

- Deduction for negative net interest,
- deduction for remaining net interest,
- deduction for provisions to and reversals from the tax allocation reserve.

- Applicable regardless of whether the company has any interest expenses
- Tax losses not being used during the current year can be carried forward to the coming years
- The limitations will only be effective for
    - 2 years if EBIT model
    - 3 years if EBITDA model

Contingency funds (Swe: Säkerhetsreserv)

Standard income

- The Government Borrowing Rate by the end of November the year before multiplied by the contingency funds by the start of the fiscal year
- The Government Borrowing Rate should be at least 0,5 %

Temporary standard income

- Insurance companies with contingency funds by the start of the the first fiscal year beginning after the 30 June 2018 shall be taxed for a temporary standardised income
- 10 % of the contingency funds
- Either the whole amount the first fiscal year or 1/6 per year

What will happen in the future?

Interest deduction

Official period for submitting comments until 26 September

Revision of comments from 27 September

Council of Legislation

Government bill

The Swedish Parliament votes

Enter into force 1 July 2018

30 March 2017

1 July 2018

Real estate rules

Offical period for submitting comments until 15 September

Revision of comments from 16 September

Council of Legislation

Government bill

The Swedish Parliament votes

Enter into force 1 July 2018?

Thank you!

Elisabeth Bergmann
Partner
0702 – 71 01 62
elisabeth.bergmann@pwc.com

Lennart Staberg
Partner
0709 – 29 31 69
lennart.staberg@pwc.com

Daniel Glückman
Director
0729 – 80 91 77
daniel.gluckman@pwc.com