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Sweden Introduces Bilateral and Multilateral APAs

By **Mats Emanuelsson and Elvira Allvin**

Sweden has introduced guidelines for bilateral and multilateral advance pricing agreements (APA) to increase predictability and avoid international economic double taxation in cross-border transactions within multinational enterprises. The APA program offers taxpayers a means of securing approval from the relevant tax authorities of their transfer pricing policies and methodologies. APAs are available as of 1 January 2010.

What is an APA and what is required to enter into one?

APAs may be unilateral, bilateral, or multilateral. A unilateral APA is essentially an agreement between a taxpayer and the tax authorities of a single country, whereas bilateral and multilateral APAs are agreements between two or more states regarding the pricing of cross-border transactions within multinational enterprises. The Swedish Tax Agency will enter into bilateral and multilateral agreements only -- it does not provide the option of entering into unilateral agreements.

APAs generally cover a time frame of three to five financial years. Although they are binding on the Swedish Tax Agency, they may be amended or revoked under specific circumstances.

To be eligible for an APA, certain conditions must be met, including the following:

- A tax treaty must be in place between Sweden and the other countries involved, and the treaty must contain provisions that enable the exchange of information between the relevant national jurisdictions;
- The application for an APA must not concern transactions of limited value or of a routine nature; and
- It must be possible to assess the transaction for which agreement is being sought separately from other transactions.

Who can apply?

- Enterprises that are or expect to become taxable in Sweden according to Swedish law;
- Swedish and foreign enterprises with permanent establishments in Sweden; and
- Partnerships that constitute legal entities whose partners are or expect to become taxable in Sweden.

How to apply?

Applications for bilateral and multilateral APAs should be made in writing to the Swedish Tax Agency. Before an application is filed, it would be advisable to hold a meeting with the Swedish Tax Agency to discuss the conditions and circumstances of the application.

A fee is levied for the filing and negotiation of an APA. For 2010, the applicable rates are as follows:

- 150 000 SEK for an APA application;
- 100 000 SEK for renewal of an existing APA without amendments; and
- 125 000 SEK for renewal of an existing APA with amendments.

What should be included in an application?

The application for an APA should contain all the information necessary to assess the transaction and transfer pricing methodology, including the following:

- The companies, fiscal years, and countries covered by the application;
- Whether an APA has been issued in another state for similar transactions for the parties involved;
- Business and organizational description;
- The nature and scope of the transactions;
- Functional and comparability analyses;
- Presentation of the selected transfer pricing method and reason for choosing this method; and
- Any intercompany agreements covering the concerned transactions.

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