

No 2 2015-02-24

Sweden's response to the European Commission on interest deductions



On 20 February 2015, Sweden provided a response to the European Commission's letter of formal notice.

Contrary to what the Commission has said, Sweden maintains its view that the Swedish interest deduction limitation rules are EU compliant. Furthermore, in the response, the Swedish government does not give an indication that it intends to abolish or amend the rules.

Caroline Våljemark, EU tax law specialist, gives a comment.

What does Sweden say in its response to the Commission?

Since January 2013, the question whether the Swedish interest deduction limitation rules are contrary to EU law has been subject the Commission's investigation and correspondence. The rules in question apply from 1 January 2013 (in their current form) and disallow interest deductions on intra-group loans, unless exceptions apply. In the Commission's letter of formal notice to Sweden on 27 November 2014, the European Commission confirmed its view that the Swedish interest deduction limitation rules are contrary to EU law and that Sweden's responses in the correspondence had not affected this view (please see [TaxNews no 7, 2014](#)).

In its response now, the Swedish government states that the rules are not contrary to EU law. In the government's view, the rules do not infringe the freedom of establishment; firstly on the basis that the situations referred to by the Commission are not comparable; and secondly that the rules are not discriminatory since they apply in the same way in respect of domestic and cross-border situations. The government also criticizes the Commission's reference to the Swedish Tax Agency's dialogue responses, given by the



Responsible publisher
Tina Zetterlund
tina.zetterlund@kpmg.se

Contact

Caroline Våljemark
+46 (0)31 61 48 60
caroline.valjemark@kpmg.se

No 2 2015-02-24

Commission as examples that the Swedish rules are applied in a discriminatory manner. Furthermore, the government is of the view that if the rules are found to be discriminatory, they can be justified and are not proportionate.

In its response, the government does not put forward any new facts about the rules or their application. Instead, the government's main focus is to argue against the Commission's EU law analysis, by reference to case law from the Court of Justice of the European Union (CJEU).

What happens now and what action may be needed?

With this response, which does not include much in the form of new facts, it can be expected that the Commission will send a reasoned opinion to Sweden, with a call for Sweden to align the rules with EU law within a stated time period (normally two months). If Sweden does not comply, the Commission may decide to refer to matter to the CJEU.

It can be noted that, contrary to what was anticipated these last few weeks, the government does not mention anything about a potential law change or a proposal for new rules. One can assume that the government awaits the reasoned opinion. If so, the question would be whether Sweden manages to change the law before the Commission refers the case to the CJEU.

Groups which have been denied a deduction for interest under the rules in question may want to refer to the letter of formal notice from the Commission in correspondence with the Swedish Tax Agency or courts. Furthermore, it is important to ensure that the years affected remain 'open' so that the opportunity to rely on EU law has not been lost in the event the CJEU would eventually find that the rules are contrary to EU law (either in the Commission's infringement procedure or in a preliminary ruling).

Please let us know if you would like more information.

Contact:

Caroline Våljemark
+46 (0)31 61 48 60
caroline.valjemark@kpmg.se