

Information following the Swedish Tax Authority's meeting regarding the new tax on chemicals within certain electronic products

The Swedish Tax Authority ("STA") held an information meeting on 8 March 2017 about the new tax on chemicals within certain electronic products ("Chemical Tax") that will come into force from 1 July 2017. Below are some of the highlights that KPMG identified in respect of this information meeting and our related comments on the implications for businesses.

Application to register as registered warehouse keeper

- It will be possible to apply to become a registered warehouse keeper from 1 April 2017. The registration will have no practical impact until 1 July 2017.
- The STA confirmed that it is the date of the registration, rather than the day of application, that will be date at which registration as warehouse keeper will come into force. Hence, the taxpayer will not be in a position to control the time of registration. In order to ensure that a warehouse registration is in place on 1 July 2017 it is therefore crucial that a complete application is submitted in good time before the desired time of registration. No indication was given by the STA in respect of the likely processing time, however, it can be expected that the STA will experience a high level of applications in the months up to July 2017.
- In order to obtain approval as a registered warehouse keeper the STA confirmed that it will assess each application in detail. As a part of this process any overseas director of the applicant company will be required to provide a "certificate of indebtedness" from the applicable authority in their country of residence confirming that they do not have debts in relation to taxes. This is a requirement for other excise duty regimes, and one that in KPMG's experience can be hard to meet in a timely manner, as many overseas authorities do not regularly provide such certification.
- A registered warehouse keeper will be obliged to update the STA on any changes in the business or on the board that could impact its registration as warehouse keeper. This will include both in respect of the formal requirements, such as director changes, as well as the substantive requirements in relation to the flows of in-scope goods operated by the warehouse keeper.
- The STA confirmed that both the application and the decision as a registered warehouse keeper are subject to strict confidentiality. These will therefore not be publically available in the same manner as for tax decisions within Sweden.

Registered warehouse keeper

- The STA confirmed that registration will cover the whole business, and not only specific warehouses. It is not possible to choose to act as a registered warehouse keeper on certain transactions and to not use the status as certified warehouse keeper on other transactions.
- As expected a warehouse registration will therefore impact all in-scope products purchased and sold by the warehouse, including those that are not purchased for re-sale (e.g. computers for the company offices).
- There will be no public register operated by the STA that shows which entities are registered as a warehouse. The STA advised that companies will be able to check their customer's warehouse status by receiving a confirmation from the STA via telephone (phone number +46 10 572 23 80). It was suggested that companies themselves publicize their warehouse status, for example on their website or on an invoice.
- Understanding a customer's warehouse status will be key to accounting for Chemical Tax correctly. In our view the absence of an electronic warehouse register places an additional burden on companies, who may potentially need to be in telephone contact with the STA on a daily basis. Warehouse's will be required to obtain evidence of their customer's warehouse status in order to support non-taxation of certain sales.
- The STA confirmed that businesses that store goods in a warehouse where goods for online sales are also stored will be eligible to register as a warehouse. However, it is possible that there may be a different tax accounting point for such goods, if it is considered that goods stored for online sales have been "taken to retail outlet".

Goods subject to the tax

- As known from the legislative provisions, the in-scope products that will be subject to the Chemical Tax are identified according to the CN number under which the goods have been classified. The STA confirmed that it will be the Swedish Customs that will continue to rule on product classification, and the STA will not take on this role as a part of its management of the new tax.
- The in-scope products should be determined based on the customs commodity code according to its wording on 1 January 2015. No further guidance was provided by the STA on this point. We would expect major customer code changes to be rare. However, in the more long term future this fixed point requirement may lead to the need to duplicate goods classification (i.e. once for customs purposes and once for Chemical Tax purposes).

- The STA was not able to give clear answer to whether spare parts also are goods that will be considered taxable goods in this respect. The STA was also not clear on the treatment of accessories if packed separately or together with in-scope goods. This remains a question of interpretation, and further demonstrates that the STA is itself yet to form a view on certain questions.
- The STA confirmed that goods that are returned to a seller, and that have already been subject to the Chemical Tax, will not be subject to the tax again if these are re-sold to a purchaser that is a non-registered warehouse keeper or if the goods are taken out of the warehouse for other purposes than business purposes. This is in line with the legislative provisions which state that an in-scope product will not be subject to Chemical Tax if it has already been subject to the tax at an earlier stage in the supply chain.
- Goods that are subject to leasing, in the view of the STA, will also be subject to the Chemical Tax. It was also stated that samples and other forms of goods transfer without charge would be taxable. This is in line with KPMG's general view of these types of transaction, although in certain specific circumstances there may be justification for non-taxation.

Goods exempt from Chemical Tax

- Purchases (both imports and EC acquisitions) made before 1 July 2017 will in principle not be subject to the Chemical Tax.
- However, the STA confirmed that goods that are imported/ received from an EU country before 1 July 2017 could still be subject to Chemical Tax if the taxpayer concerned becomes a registered warehouse keeper from the 1 July 2017. According to the Swedish Tax Agency, the tax point for such goods that will be at the point at which the goods are removed from the warehouse, and therefore Chemical Tax will become due where this occurs after 1 July 2017.
- Therefore the STA has confirmed a widely held concern regarding goods held in stock and the implications of a warehouser registration. Obtaining a warehouser registration with effect from or prior to 1 July 2017, could bring any goods already held in stock within the scope of the tax. Businesses should give thorough consideration to this issue prior to filing a warehouser registration request.
- Goods sold by a foreign entrepreneur and delivered directly from abroad to a private individual in Sweden will not be subject to Chemical Tax. According to the STA, a company will be deemed a foreign entrepreneur if it has no fixed or permanent establishment in Sweden. However, the STA flagged that the conditions of "direct delivery" must be fulfilled, and that this implies that the customer cannot pick up goods in a retail outlet even if that outlet is run by another legal entity. In our view it is unclear what

support for this position there is within the legislation, particularly so where the outlet is operated by a separate legal entity.

Tax points

- The STA confirmed that tax point for Chemical Tax is when the goods are delivered, and that there is no connection to when the invoices are issued. Businesses should note that Chemical Tax should be included in the taxable base for VAT. This view is in line with our interpretation of the law, and we note that pre-payment should also not trigger a Chemical Tax accounting point.
- Should a registration as warehouse keeper be withdrawn, the STA consider that this will trigger a tax point for all untaxed goods in the warehouse.

Documentation

- The STA expects that a supplier should maintain the following documentation in support of its Chemical Tax declarations:
 - Documentation regarding the weight and the number of goods where the tax liability has occurred, e.g. certificate from the manufacturer/suppliers, lab reports or other certificates from laboratories, declaration of content (if applicable)
 - Documentation to demonstrate that goods are sold to a registered warehouse keeper(s), i.e. where no tax has become due (if applicable)
 - Documentation that support the deduction of Chemical Tax, i.e. the 90% or 50% reduction (if applicable)
- These documentation requirements are in line with expectations. There is a burden of proof on the taxpayer to support any deductions or non-taxation. As a result, it can be expected that manufacturers (both within and outside of Sweden) will receive documentation requests to allow their customers to obtain relevant deductions.

Summary

- Broadly the meeting in line with expectations. Numerous businesses were represented reflecting the ongoing concern and volume of questions regarding the implementation of the tax. Whilst some new information was provided in relation to practical points around the management of the tax, such as the lack of a warehouse register, most of the confirmations provided were in line with our own views formed from working with clients over the last few months.

- A major concern is the effective date of a warehouse registration being the date at which this has been processed by the STA. This provides both uncertainty for the taxpayer, and a lack of control which may impact businesses plans in relation to the implementation of the new tax.
- Many questions remain unanswered, including the treatment of spare parts and accessories, and the implications of packaging these together with in-scope items. This not only flags that the STA is itself taking time to form a view of the law, but also highlights the complexity in the detail of the law, and that much will depend on the specifics of any product or logistics operation.
- The STA also confirmed that it does not intend to publish any information on Chemical Tax in English. This will be a frustration for overseas manufacturers and suppliers that may already be struggling to manage this tax with relatively short notice. It also appears to be counterproductive in relation to the overall goal of the tax, which is to reduce the amount of dangerous chemicals contained within household electronics.
- With just over three months remaining until the 1 July, the STA meeting re-enforces the view that businesses should start planning now in order to ensure that they are ready for implementation, and are effectively managing the many issues that this tax entails.

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