

Newsalert

EU Direct Tax Group

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Sweden proposes to introduce limited "group deduction" for foreign tax losses

On 11 March 2009 the Swedish Supreme Administrative Court ruled that a Swedish parent company will obtain a tax deduction for final losses suffered by subsidiaries within the EEA, if the losses cannot be used in the other country, but only if the subsidiary is dissolved through liquidation. It was thus clear that the Swedish group relief system (Sw. "koncernbidrag", group contributions, ie. an income transfer payment) was not fully in line with the freedom of establishment laid down in the EC Treaty.

The Swedish Government has now announced that it intends to amend the legislation as of 1 July 2010 (assuming that the rules are approved by the Parliament) to be applicable to fiscal years ending after 30 June 2010. In a white paper released on 22 September the Government states that no change of the group contribution system should be made. An alternate system, a so-called group deduction (Sw. "koncernavdrag"); will instead be introduced to make the Swedish group relief system compliant with the EC Treaty.

According to the draft bill a Swedish parent company will be able to deduct final losses in a directly held subsidiary within the EEA when the subsidiary has been dissolved through liquidation. Several requirements have to be met. Amongst others the following could be mentioned. The losses in the subsidiary must have been incurred during a period when the Swedish parent company has been the direct owner of more than 90 per cent of the shares. No deduction will be allowed, if the group continues to hold another subsidiary resident in the same country as the dissolved subsidiary. Unlike the group contribution system, the group deduction will not be tied to the transfer of funds. The losses in the foreign subsidiary should be calculated both according to foreign and Swedish tax rules and the lesser amount of the two is the maximum deduction available. And finally, the Swedish parent company can not deduct a higher amount than the parent company's own taxable profit (before the group deduction) in Sweden.

It is clear that the stipulated requirements will be hard to meet and it is equally clear that the Swedish Government's view is that as few deductions as possible should be granted. The burden of proof for showing that all requirements are met lies with the Swedish parent company. Surprisingly, the Swedish Government explicitly states that the group has to consider – and carry out - all available tax planning activities abroad in order to ensure that the foreign losses could be utilized abroad before any tax deduction is granted in Sweden. "Sophisticated tax planning" abroad, however, should not be necessary, the Government adds. The Swedish Government is of the opinion that the amended rules will be EU compliant. This is, however, far from clear and it cannot be ruled out that there will be upcoming court cases challenging the new rules in the future.

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