SWEDEN

OUTLINE

LIST OF ABBREVIATIONS

Directive	Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payment made between associated companies of different Member States
IL	*Inkomstskattelagen 1999:1229* (Swedish Income Tax Law)
LSK	Law 2001:1227 on tax returns and statements on earnings and income
Merger Directive	Council Directive 90/434/EEC of 23 July 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States
OECD	Organization for Economic Cooperation and Development
OECD MC	OECD Model Tax Convention 2003
Parent-Subsidiary Directive	Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States
Savings Directive	Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments
SN	*Skatterättsnämnden*, The Swedish Advance Tax Rulings Board
SFS	Svensk författningssamling, the official publication of statutes etc.
RR	*Regeringsrätten,* Swedish Supreme Administrative Court
RÅ	*Regeringsrättens årsbok , Yearly publication of decisions by RR*

LIST OF LEGAL REFERENCES

Laws

- Income Tax Law (1999:1229).
- Law (1994:1500) on Sweden's accession to the European Union, Lag (1994:1500) med anledning av Sveriges anslutning till Europeiska unionen.
- National Net Wealth Tax Law, Lag om statlig förmögenhetsskatt (1997:323).
- Law 2001:1227 on tax returns and statements on earnings and income.
- Law (1995:575) on Tax Avoidance.
- Law (1990:314) on Mutual Assistance in Tax Matters, Lag om ömsesidig handräckning i skatteärenden.

Bills

- Bill 2003/04:126, Undantag från skattskyldighet för vissa ersättningar i form av royalty och avgift, (SFS 2004:61), Exemption from tax liability on certain payments on royalties and fees.
- Bill 2004/05:27, Amendments to the Parent-Subsidiary Directive, Genomförande av ändringar i moder-dotterbolagsdirektivet.

Administrative Guidelines and Recommendations

- Guidelines 2005, International taxation Ch. 3 Business Income, Handledning för internationell beskattning, Kap. 3 Inkomst av näringsverksamhet.
- Guidelines 2005, International taxation Ch. 8 Interpretation and application of Double Tax Conventions etc, Handledning för internationell beskattning, Kap. 8 Tolkning och tillämpning av skatteavtal, m.m.
- The Tax Agency's Administrative Recommendations, 041007, Dnr. 130 583520-04/111, Financial leasing and taxation, Skatteverkets skrivelse 041007, Dnr. 130 583520-04/111, Finansiell leasing och beskattning.
- Swedish Accounting Standard Recommendations, Redovisningsrådets rekommendationer och bokföringsnämndends korresponderande normgivining, s. 95 www.rsv.se 2005-10-12.

Case law

- RÅ 1967 ref. 7.
- RÅ 1974 ref. 34.
- RÅ 1987 ref. 58.
- RÅ 1989 ref. 62.
- RÅ 1992 ref. 21 1 and 2.
- RÅ 1991 ref. 107.
- RÅ 1998 ref.188.
- RÅ 2001 ref. 7.

Literature and articles

- Bergmann, Elisabeth, Köhlmark, Anders, Internationella Skattehandboken, Upplaga 5:1, Stockholm 2004.
- Cahiers de droit fiscal international, 1997, Volume LXXX11a, Sweden.
- Wiman, Bertil, Studier i skatterätt tillägnade Nils Mattsson på femtioårsdagen.

PART I. IMPLEMENTATION OF THE DIRECTIVE

1. INTRODUCTION

1.1. GENERAL INFORMATION ON THE IMPLEMENTATION OF THE DIRECTIVE

Sweden implemented the Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payment made between associated companies of different Member States (the "Directive") on 17 June 2004, by law SFS 2004:614. The law entered into force on 1 July 2004 and applies retroactively to interest and royalty payments arising after 31 December 2003. The parliamentary proceedings concerning the implementation of the Directive are contained in Government bill 2003/04:126.

In Sweden, the preparatory implementing legislation contains guidance on the implementation of the Directive. Therefore, the implementing bill will be used as guidance when describing the necessary amendments to national law. Furthermore, the guidelines and recommendations of the Swedish Tax Agency will also be considered since they contain information on the application of the rules under the Directive.

Sweden does not levy withholding tax on interest payments to foreign companies. No amendment with regard to interest payments to a foreign state was introduced. According to the Swedish Government, the national rules on withholding tax on interest already comply with the Directive.

Sweden enacted provisions to exempt royalty payments to an associated company in another Member State. To comply with the Directive, the Swedish rules on royalty and periodical payments were amended by introducing a new chapter 6 a IL, in the Income Tax Act (*Inkomstskattelagen (1999:1229), IL*).

The following table shows the relevant provisions of the Swedish laws implementing the Directive:

Articles of the Directive	Relevant sections of Swedish laws
Art. 1 (1)	Ch. 6 a Sec. 1 IL and Ch. 6 a Sec. 2 IL
Art. 1 (2)	---
Art. 1 (3)	Ch. 16 Sec. 1 IL.
Art. 1 (4)	Ch. 6 a Sec. 4(3) IL
Art.1 (5)	Ch. 6 a Sec. 2 IL and Ch. 6 Sec. 11 IL
Art.1 (6)	---
Art.1 (7)	Ch. 6 a Sec. 6 IL
Art.1 (8)	Ch. 6 a Sec. 5 IL
Art.1 (9)	Ch. 6 a Sec 2 IL
Art.1 (10)	---

Articles of the Directive	Relevant sections of Swedish laws
Art.1 (11)	---
Art.1 (12)	---
Art.1 (13)	Ch. 2 Sec 7 LSK, Ch. 7 Sec. 3 (4) LSK, Ch. 12 Sec. 3 LSK
Art.1 (14)	---
Art.1 (15)	---
Art.1 (16)	---
Art. 2 (a)	---
Art. 2 (b)	Ch. 13 Sec 11 IL, Ch. 6 Sec. 11 IL
Art. 3 (a) (i)	Ch. 6 a Sec. 4 IL, Annex 6 a 1, IL
Art. 3 (a) (ii)	Ch. 6 a Sec. 4(1) IL
Art. 3 (a) (iii)	Ch. 6 (a) Sec. 4 (2) IL, Annex 6 a 2 IL
Art. 3 (b)	Ch. 6 a Sec. 6 IL
Art. 3 (c)	Ch. 2 Sec. 29 IL
Art. 4 (1)	---
Art. 4 (2)	Ch. 6 a Sec. 7 IL
Art.5 (1) and (2)	---
Art. 7	Law 2004:614

1.2. TAX TREATMENT OF INTEREST AND ROYALTY PAYMENTS UNDER GENERAL TAX LAW

1.2.1. Domestic rules

a. Tax treatment at the level of the paying company

Deduction of interest and royalty payments

Interest and royalties are generally deductible in computing the company's income, provided they are incurred for business purposes and the remuneration is not excessive (Ch. 16 Sec. IL). However, the amount of interest, royalties and service fees paid between affiliated companies, which is in excess of the arm's length amount is treated as a hidden profit distribution or a shareholder's contribution for tax purposes, and is, accordingly, not tax deductible (Ch. 14 Sec. 19 IL and Ch. 6 a Sec. 7 IL).

b. Tax treatment at the level of the beneficiary company

Interest and royalty payments to a Swedish beneficiary company

No withholding taxes are imposed on interest and royalty payments to resident companies. All income of a company forms one category of income, i.e. business income. Business income is taxed at the corporate income tax rate of 28%.

Cross-border interest and royalty payments

There is no withholding tax on interest payments to companies resident abroad. Royalties paid to a non-resident company are not subject to withholding tax, but they are normally subject to income tax by assessment. Non-resident legal persons recipients of royalty payments are deemed to have a permanent establishment in Sweden. In a non-treaty situation, and where a treaty does not limit Sweden's taxation right, the income tax is levied (at the corporate income tax rate of 28%) on the net amount of royalties after deduction of expenses; if a treaty sets a maximum tax rate, the income tax is levied at the treaty maximum rate on the gross amount of royalties.

Tax treatment of outbound royalties

Under domestic law (Ch. 6 a IL) implementing the provisions of the Directive, outbound royalty payments are exempt from income tax, provided that the beneficial owner of the royalty is an associated company of another Member State or such a company's permanent establishment situated in another Member State. The relevant companies must have a legal form listed in the Annex to the Directive and be subject to corporate income tax without being exempt. A company is an "associated company" of another company if (a) it has a direct minimum holding of 25% in the capital of the other company or (b) a third company has a direct minimum holding of 25% in the capital of both companies. There is no minimum holding period requirement. If the amount of royalties exceeds what would have been agreed between independent parties, these rules only apply to the arm's length amount (Ch. 6 a, Sec. 7 IL).

c. Constructive dividend distribution

In the situation where the interest and royalty payments made by a Swedish company to a related non-resident beneficiary are not at arm’s length, the excess payments may be treated as a hidden profit distribution. For tax purposes, a hidden profit distribution is generally treated as a regular profit distribution, i.e. non-deductible for the payer and subject to dividend withholding tax. The dividend withholding tax of 30% may be reduced to a lower rate or 0 under an applicable tax treaty or the Parent-Subsidiary Directive.

A final withholding tax (*kupongskatt*) of 30% applies to dividends paid by a Swedish company to a foreign company, unless the dividends are attributable to a business carried on by the non-resident company through a permanent establishment in Sweden, in which case they are subject to corporate income tax. The domestic participation exemption rules may apply.

1.2.2. Treaties

Prior to the implementation of the Directive, the tax treatment of interest and royalty flows eligible to a withholding tax exemption under the Directive were covered by the tax treaty between Sweden and the relevant Member State. Sweden has double tax treaties with all other EU Member States (see Annex).

a. Interest

Most income tax treaties concluded by Sweden and another Member State provide for a reduction or an exemption from withholding tax on interest. However, as stated above under 1.1.2. *b. Tax treatment at the level of the beneficiary company*, pursuant to its domestic law, Sweden does not levy withholding tax on interest payments. Accordingly, no withholding tax will be levied.

b. Royalties

The tax treaties between Sweden and EU Member States provide either for exclusive taxation in the state of residence or a reduced withholding tax ranging from 5% to 10%. Therefore, outbound royalties will either be exempt from Swedish tax or subject to the reduced tax treaty rate. With respect to inbound royalties, Sweden will avoid double taxation by granting a credit.

If there is a relevant tax treaty, a royalty payment will be dealt with under the royalty article of the treaty. In general, with a few exceptions the Swedish tax treaties allocate the taxing right to the State of the recipient. The tax treaties with Italy and Spain allow the state of the paying company to levy withholding tax on royalty payments on the gross amount at a reduced rate.

c. Conclusion

In general, all treaties follow the OECD MC. Each treaty, however, has its own rules regarding withholding taxes and other provisions regarding the avoidance of double taxation. Where, in a particular case, a treaty rate is higher than the domestic rate, the latter is applicable. Under domestic law, there is no withholding tax on interest paid to non-residents.

Although the definition of interest and royalties under a tax treaty may differ from that combined in domestic law and in the Directive, some tax treaties concluded between Sweden and some other Member States provide for the exclusive taxation of interest and royalty payments in the state of residence of the recipient (i.e. exemption from withholding tax). The tax treaties providing for exclusive taxation of interest and royalty income in the state of residence are those concluded with Austria (only in respect of royalties), Belgium (only in respect of royalties), Cyprus (only in respect of royalties), Czech Republic (only in respect of interest); Denmark (in respect of interest and royalties), Finland (in respect of interest and royalties), France (in respect of interest and royalties), Germany (in respect of interest and royalties), Hungary (in respect of interest and royalties), Ireland (in respect of interest and royalties), Luxembourg (in respect of interest and royalties), Malta (in respect of interest and royalties), Netherlands (in respect of interest and royalties), Poland (only in respect of interest), Slovak Republic (only in respect of interest), Slovenia (in respect of interest and royalties); and the United Kingdom (in respect of interest and royalties).

2. SCOPE

2.1. PAYMENTS

2.1.1. Concept of interest

There is no withholding tax on interest paid to foreign companies. Accordingly, domestic law complies with the Directive. The scope of this report will therefore be limited to the treatment of royalty payments.

2.1.2. Concept of royalties

a. Definition

There is no general definition of royalties under domestic law. Under Ch. 13 Sec. 11 IL, "The recipient of consideration in the form of royalty or periodical payments, for the use of tangible or intangible assets, is considered as conducting business activities". With regard to non-resident foreign legal persons a similar expression is used. Chapter 6 Sec. 11 IL states that "Consideration in the form of royalties or periodical fees for the use of tangible or intangible assets... ".

The provisions implementing the Directive have been transposed as exception to the general domestic rules and do not include a definition of royalties. The chapter transposing the Directive covers "royalty payments or periodical fees for the use of tangible or intangible assets" (Ch. 6 a Sec. 1 IL). The wording in the transposing provision is the identical to the expression used in the general rule in Ch. 6 Sec. 11 IL mentioned above.

Essentially, under domestic law consideration for the use of tangible or intangible assets is treated as royalty provided that the total amount of the consideration is not known in advance.

Lump sum payments are not considered royalty. The treatment of lump sum payments has been discussed in the doctrine. According to the doctrine lump sums payments paid in advance do not constitute royalty payments, but lump sums payments made after a contractual relation is finalized do constitute a royalty payment (*Wiman, Bertil, Studier i skatterätt tillägnade Nils Mattsson på femtioårsdagen*).

Under Swedish case law (RÅ 1967 ref. 7.), lump sum payments replacing an ongoing obligation to pay royalties, made in advance to terminate an obligation to pay royalties during an undetermined period of time, have been treated as royalty classified as business income subject to tax by assessment. Case law (RÅ 1974 ref. 34) also stipulates that lump sum payments made in advance, but which are adjusted subsequently depending on a floating licensee fee determined afterwards, constitute royalty.

Fixed periodical payments are in general not deemed royalty payments, but the fact that payments are periodical result in that this kind of payments are treated as royalty (Guidelines 2005, International taxation Ch. 3).

In the implementing bill the Government stated that, although there is no extensive definition of royalty under domestic law, it is clear that payments treated as royalty payments are not equivalent to payments as defined under the definition of royalties under the Directive (Bill Prop. 2003/04:126). The Swedish legislator decided to exempt royalty payments or periodical fees from tax. Thus, implementation exemption includes also "periodical fees" that additionally cover certain payments that would not be regarded as royalties under the Directive. The introduction of a Swedish definition equivalent to the definition under the Directive was not

considered necessary (Prop. 2003/04:126). Accordingly, domestic law exempts not only royalty payments in all situations covered by the Directive but also periodical fees falling out of the scope of by Art. 2 (b) of the Directive.

b. Classification of revenue from leasing and software

Swedish domestic tax law does not contain specific provisions on the classification of revenue from leasing and software. Any payment from leasing and software covered by the Directive is exempt from tax. Consequently, payments not covered by the Directive are subject to tax by assessment.

Sweden exempts royalty payments for all situations covered by the Directive under the concept of royalty payments or periodical fees (see above under 2.1.2. *a. Definition*) and thus payments from leasing of industrial, commercial or scientific equipment and software payments are exempt.

In general, leasing and software payments are treated as royalty and taxed as business income provided that they classify as business income under Ch. 13 Sec. 1 IL. Furthermore, the law specifies that royalties and other periodic payments for the use of tangible or intangible assets derived through a permanent establishment in Sweden are regarded as business income if these payments can be attributed to the permanent establishment (Ch. 6 Sec. 11 IL).

For accounting purposes, the Swedish Accounting Standard Recommendations are used when classifying leasing payments. According to the Swedish Tax Agency, these recommendations should not be used for assessment purposes. The case law provides guidance on classification and taxation of leasing payments (e.g. RÅ 1989 ref. 62 I and II, RÅ 1992 ref. 21 I and II, RÅ 2001 ref. 7). It is not clear how the classification of software would be done.

c. Exclusion of royalties reclassified as profit distribution or conflicting arm's length (Art. 4(1) a) and Art. 4(2))

Excessive royalties that conflict the arm’s length principle fall under the general Swedish dividend distribution rules (see Introduction, 1.2.1. *c. Constructive distribution rules*). Hidden profit distributions are non-deductible expenses.

Article 4 (2) of the Directive was implemented into domestic law by Ch. 6 a Sec. 7 IL. If the amount of royalties exceeds the amount that would have been agreed between independent parties, the exemption under Ch. 6 a Sec. 7 IL applies only to the amount that would have been paid between unrelated companies.

The wording of the Swedish provision deviates from the wording in the Directive by referring to "the remuneration that would have been paid between independent parties", instead of using the wording "which would have been agreed between the payer and the beneficial owner in absence of such relationship". The national provision does not include the wording "special relationship between the payer and the beneficial owner", as stated under Art. 4 (2) of the Directive. Furthermore, the national provision does not state "the amount of interest and royalties exceeds…", but instead "the amount that exceeds what would have been agreed upon between unrelated companies" (Ch. 6 a Sec. 7 IL.). There is, however no reason to assume that the national provision does not comply with the Directive.

According to para. 22 of the Commentary to the OECD MC, condensed version 15 July 2005, the arm's length principle should apply when determining the amount of royalty that would have been agreed upon by the payer and the beneficial owner.

The equivalent national provision to the arm's length principle as expressed in the OECD MC is stipulated in Ch. 14 Sec. 19 IL. Under this section, if the income of a company is lower than the income that would have been agreed upon by independent entrepreneurs, the income should be computed as if those deviating terms had not existed. The scope of the domestic provision does not cover specific payments such as interest and royalty payments as covered under the Directive. The provision generally applies to the total profit of a company. Consequently, applying the arm's length principle under domestic law before the implementation of the Directive, royalty payments were considered to constitute a part of the total company profits. The arm's length principle was not applied to specific payments. Accordingly, Ch. 6a Sec. 7 IL was introduced to exempt royalty payments between associated companies from tax.

2.2. COMPANIES

2.2.1. Types of companies benefiting from implementing provisions (Art. 3(a)(i))

a. Other types of entities

The exemption of Swedish tax on royalty payments applies to royalties paid by a resident company to an associated non-resident company. A company is resident for purposes of applying the benefits under the Directive if (i) it takes one of the forms listed in the Annex to the Directive and (ii) if it is incorporated and/or has its place of effective management in Sweden.

It is expected that the Swedish Government will prepare a bill to extend the Swedish types of entities listed in the Annex in accordance with the Commission proposal, COM (2003) 841 (Bill 2003/04:126). The Annex under the Directive would be aligned with the Annex in the Parent -Subsidiary Directive.

b. Hybrid entities

As Sweden does not impose withholding tax on interest payments no issues with regard to interest will arise. As pointed out above (*see, 2.1.1 Concept of Interest)* the scope of this section is limited to describe the treatment of royalty payments from a Swedish company to Hybrid H in Member State B. As stated above, royalty payments are subject to tax by assessment unless exempted under the Directive.

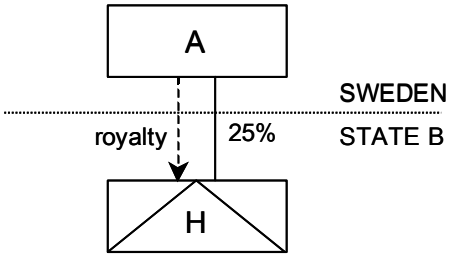
There is no specific guidance with respect to the application of the exemption from withholding tax when royalties are paid to or by hybrid entities. Conclusions on the tax treatment of such payments are drawn on the basis of general provisions of the IL. The issue of tax treatment of payments in situations involving hybrid entities is considered based on three hypothetical situations described below:

- Case 1: a Swedish company pays interest and royalties to an associated hybrid entity H located in Member State B ;
- Case 2: a Swedish hybrid entity H pays interest and royalties to an associated company in Member State A;

- Case 3: a Swedish company pays interest and royalties to an associated company through a hybrid entity H, the latter two located in Member State A.

Case 1: Payment to a hybrid entity

A Swedish associated company A pays royalties to a hybrid entity H situated in Member State B. Sweden treats hybrid entity H as a transparent entity.



The Swedish rules implementing the Directive do not specifically address the issue of payments to hybrid entities. To benefit from the exemption available under the Directive, the national provisions require that the receiving EU associated company must fulfil the following requirements:

(i) the foreign entity has to be a company of a Member State listed in the Annex 6.a.1 (Ch. 6 a Sec. 4 IL); and
(ii) the foreign entity has to be subject to one of the taxes listed in Annex 6.a.2. (Ch. 6 a Sec. 4 IL); and
(iii) the foreign entity must be the beneficial owner.

Furthermore, the participation in the associated company must be direct.

In accordance with the requirements cited above, the benefit of the tax exemption on royalties paid by the Swedish associated company will not be granted if company H is not subject to corporate tax on its income. In this situation, such income is taxed at the level of the members, and not at the level of the hybrid entity, and therefore the requirement of being liable to corporate income tax is not met.

We assume that Member State B treats entity H as a non-transparent taxable entity, while Sweden treats entity H as a transparent entity, a royalty payment by company A in Sweden to entity H in Member State B might be exempt under the national provisions provided that all the conditions are fulfilled. However, there is no definite guidance in the implementing law on this issue.

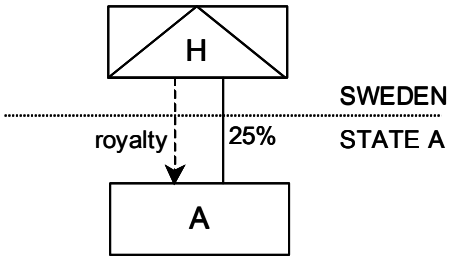
Under the Swedish legal tradition, it is doubtful whether the bill implementing the Parent-Subsidiary Directive would have any effect on the application of the Directive. In the bill implementing the Parent-Subsidiary Directive, it is stated that companies that are treated as taxable entities in their country of resident shall be granted a dividend withholding tax exemption, despite being treated as transparent under Swedish law (Bill 2004/05:27).

In conclusion, provided that the requirements under the Directive are met an exemption on a royalty payment made to entity H might be granted. It should be noted that it is not clear, whether the Swedish Tax Agency would deny the benefits under the Directive by not taking the treatment of entity H in Member State B into consideration.

Note that in respect of companies listed in the Annex to the Directive, the case of e.g., Italian Czech or Slovak companies may trigger potential issues. Under certain conditions, Italian limited liability companies (*societa a responsabilita limitata*) and partnerships limited by shares (*societa in accomandita per azioni*) listed in the Annex to the Directive may opt to be treated as flow-through entities. In these cases, the income of the Italian entity is attributed directly to the members. The income of Czech or Slovak general partnerships (e.g., the Czech *veejna obchodni spolecnost*) listed in the Annex to the Directive is subject to tax at the level of partners. It is not clear whether the Swedish Tax Agency would consider the participation to be direct, as the income of the entity is directly attributed to the members. In this latter case, the Tax Agency may deny the application of the withholding tax exemption because the participation is considered to be indirect and because of the failure to meet the subject to tax test.

Case 2: Payment by a hybrid entity

A hybrid entity H in Sweden pays royalties to an associated company A in Member State A.

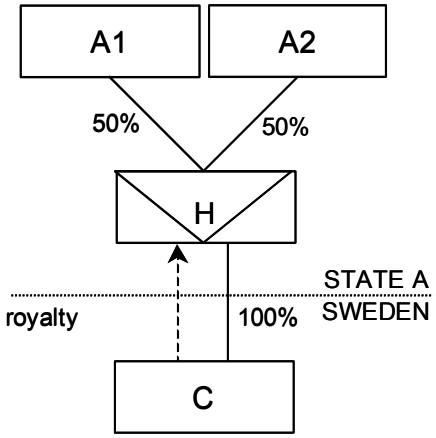


In this case company A in Member State A treats entity H in Sweden as a transparent entity. Entity H is subject to tax in Sweden. Provided that entity H is included in the list of companies in Annex 6.a.1. IL, the requirements under the Directive are fulfilled. It is most likely that payments by entity H in Sweden would benefit from the tax exemption in Sweden.

Payments by Swedish hybrid entities do not benefit from the tax exemption in Sweden if such entities are not listed as eligible companies under Annex 6.a.1. IL (see 2.2.1. *a. Other types of entities*, above).

Case 3: Payment through a hybrid entity

Companies A1 and A2 are the members of the hybrid entity H, all located in Member State A. The hybrid entity H holds all the shares in company C, located in Sweden. Sweden treats hybrid entity H as a transparent entity. Company A1 gives a license to the hybrid entity H and the hybrid entity H gives a license to the company C. Royalties flow from the company C to a member A1 through the hybrid entity H.



In the case at hand, there is no direct participation, as the payment is made through a hybrid entity H in State A. It is therefore most likely that an exemption under the Directive would not be granted since the direct holding requirement is not met.

2.2.2. Residence requirement (Art. 3(a)(ii))

a. Implementation of the requirement

The residence requirement has been implemented into national law in Ch. 6 a Sec. 4 (1) IL. Under the national provision the recipient company has to be a resident under the tax law of its Member State. Companies resident outside the Community under a tax treaty are not deemed to be resident in a Member State under the Directive and are not granted the benefits available. The national provision is identical to Art. 3 (a) (ii) of the Directive.

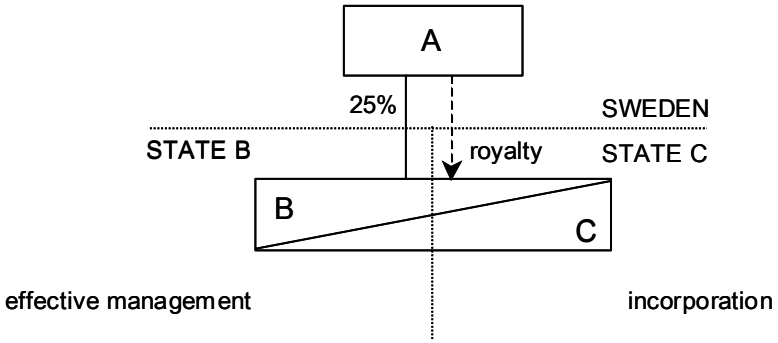
b. Application of the requirement in dual residence cases

There is no specific guidance with respect to the application of the exemption from tax when royalties are paid to or by dual resident companies. The conclusions on the tax treatment of such payments are drawn on the basis of general provisions of the IL. The issue of tax treatment of payments in situations involving dual residency is considered based on three situations described below:

- Case 1: a Swedish associated company A makes a royalty payment to a dual resident company BC incorporated in Member State C but with its effective management in State B;
- Case 2: a dual resident company BC incorporated in Member State C but with its effective management in Sweden makes a royalty payment to an associated company A resident in Member State A;
- Case 3: a dual resident company BC incorporated in Sweden but with its effective management in State C makes a royalty payment to an associated company A located in Member State A.

Case 1: Payment to a dual resident

Swedish associated company A makes a royalty payment to a dual resident company BC incorporated in Member State C but with its effective management in Member State B.



The Swedish rules implementing the Directive require the receiving EU associated company to meet, inter alia, the following conditions:

(i) has one of the legal forms listed in the Annex to the Directive; and
(ii) be liable to corporate income tax, without being exempt, and
(iii) qualify as an associated company.

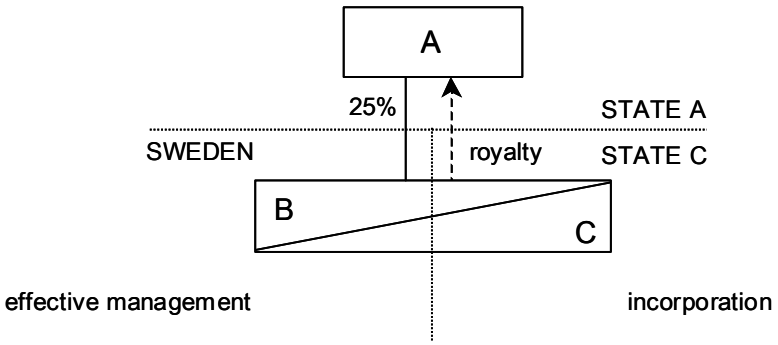
In the case at hand Company BC meets requirement (i) cited above as it takes a legal form of a company of Member State C and of member State C listed in the Annex to the Directive.

In respect of (ii), generally, the company BC will be subject to the corporate income tax of Member State B and/or C under the domestic tax law. The issue of dual residency of the recipient dual company will be solved under the provisions of the income tax treaty between Member States B and C.

Assuming that the tax treaty between B and C is identical to the OECD MC, the company BC will be considered resident for treaty purposes in Member State B where its effective management is located (Art. 4 (3) of the MC). In this situation it is most likely that Sweden will grant the withholding tax exemption in respect of the payment made to dual resident company BC.

Case 2: Payment by a dual resident with place of management in Sweden

A dual resident company BC incorporated in Member State C but with its effective management in Sweden makes a royalty payment to an associated company A resident in Member State A.

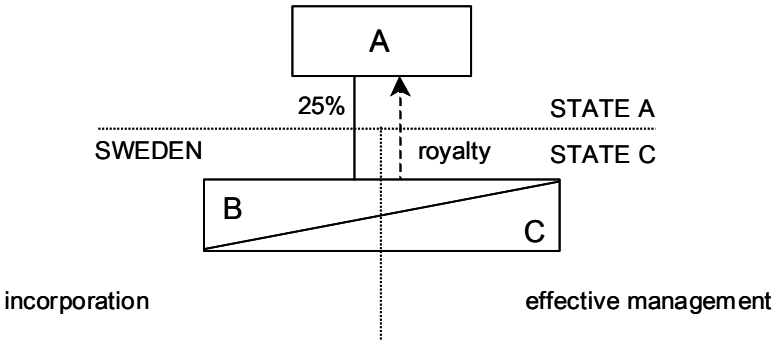


Under the Swedish implementing provisions, Sweden restricts the application of the Directive to payments made by companies that are (i) listed in the Annex to the Directive and (ii) resident in Sweden. Furthermore, the benefits under the Directive apply to non-resident companies conducting business in Sweden through a permanent establishment (Ch. 6 a 3 IL). Therefore it is most likely that Sweden will apply the Directive to any company having a legal form listed in the Directive and not only to the Swedish legal forms listed therein. However, the Tax Agency has not published any guideline on this issue.

Assuming that the tax treaty between Sweden and Member State C follows the OECD MC, the tie-breaker rule under Art. 4 (3) of the tax treaty between Sweden and Member State C will designate Sweden, where the effective management is located, as the country of residence for tax treaty purposes. The royalty payment will therefore be deemed to arise in Sweden, unless the royalty deduction is attributable to a permanent establishment in Member State C. If the company A and the company BC fulfil all conditions under the rules implementing the Directive, Sweden will not be allowed to include the royalty payments in the taxable base of company A.

Case 3: Payment by a dual resident with the place of incorporation in Sweden

A dual resident company BC incorporated in Sweden but with effective management in State C makes a royalty payment to an associated company A located in Member State A.



Under Ch. 6 a 3 IL Sweden grants a tax exemption for royalties paid by a company listed in the Annex to the Directive, or to a non-resident company conducting business through a permanent establishment in Sweden (see 2.2.1. *a. Other types of entities*). Further, the company must be resident in Sweden for Swedish tax purposes. To determine whether or not the Swedish company is liable to Swedish corporate income tax, it is necessary to determine the residence of company BC for Sweden-State C tax treaty purposes.

Assuming that the tax treaty between Sweden and Member State C follows the OECD MC, the tie-breaker rule under Art. 4 (3) of the tax treaty between Sweden and Member State C will designate Member State C, where the effective management is located, as the country of residence for tax treaty purposes. The royalty payment will be deemed to arise in Member State C, so that Sweden will be prevented from including the royalty payment in the taxable base of company A, unless the royalty deduction is attributable to a permanent establishment in Sweden.

Where the royalty payment is attributable to a permanent establishment in Sweden, Sweden will have to apply the withholding tax exemption under the Swedish rules implementing the

Directive (Ch. 6 a Sec. 2) in respect of the royalties paid by the Swedish permanent establishment to an associated company A in Member State A.

2.2.3. Subject-to-tax requirement (Art. 3(a)(iii))

The subject-to-tax condition was implemented in Ch. 6 a Sec. 4 (2) IL and Annex 6 a.2 IL. The provision requires that the recipient company is subject to one of the taxes as stated in Annex 6 a.2 IL (corresponds to Art. 3 (a)(iii) of the Directive), or is subject to a tax that is identical or substantially similar and which is imposed after 26 June 2003.

2.2.4. Associated company (Art. 3(b))

Sweden does not apply a lower ownership threshold than the one in the Directive. Furthermore, there is no extension to indirect holdings.

Under Ch. 6 a Sec. 6 IL the paying company and the recipient company have to be associated. Two companies are "associated companies" if:

(i) one of the companies holds 25% in the capital of the other company; or
(ii) a third company, that is a resident in a state within the European Union, has a holding of 25% in the capital of the two companies.

2.2.5. Beneficial ownership (Art. 1(4))

Under Ch. 6 a Sec. 4 (3) IL, it is required that the recipient of the payment is the beneficial owner, i.e. that the beneficial owner receives the payments for its own benefit. The condition is implemented as one of the conditions that have to be fulfilled when determining whether a company is the recipient of a royalty payment. The beneficial owner requirement as stated in Ch. 6 a Sec. 4 (3) IL is not linked to the subject-to-tax requirement. Nevertheless, if the beneficial owner is not subject to tax, no exemption will be granted under the Swedish rules implementing the Directive.

2.3. PERMANENT ESTABLISHMENTS

2.3.1. Definition (Art. 3(c))

Royalties and other periodic payments for the use of tangible or intangible assets are regarded as income derived through a permanent establishment if the payments are attributable to business income and are derived by a permanent establishment in Sweden. There is no definition of permanent establishment in the law implementing the Directive.

The domestic concept of permanent establishment under Ch. 2 Sec. 29 IL is almost identical to the definition of permanent establishment under the OECD MC.

In certain respects, the definition under Swedish law deviates from the OECD MC. In general, Art. 5 of the Swedish tax treaties include a shorter or no minimum time-requirement with regard to the duration of a building site or construction or installation project. Swedish domestic law does not include the minimum twelve-month requirement as stated under Art. 5 para. 3 of the OECD MC.

The deviations from the OECD MC are the following: Swedish domestic tax law does not include the negative list in para. 4 of Art. 5 OECD MC. Consequently, the definition of permanent establishment under Swedish law is broader than the definition under the OECD

MC. A fixed place of business in Sweden also include facilities for the purpose of storage, display or delivery of goods, for the maintenance of a stock of goods or merchandise or for the purpose of carrying on, for the foreign enterprise, any activity of auxiliary character.

Real property located in Sweden, classified as a current asset of a company for tax purposes, constitutes a Swedish permanent establishment (even if the property is not operated from Sweden or from a fixed place in Sweden). An incorporated Swedish subsidiary of a foreign company only constitutes a permanent establishment if the subsidiary acts as a dependent agent of the foreign company.

In RÅ 1998 ref.188, the Swedish Administrative Court (*RR*) held that activities of preparatory or auxiliary character could constitute a permanent establishment both under Swedish domestic tax law and under the German/Sweden tax treaty (SFS 1992:1193).

The definition of permanent establishment under Swedish tax treaties definition in general follows the definition in the OECD MC. In general, under Swedish domestic tax law the OECD MC and Commentary is used as guidance for tax treaty interpretation. Furthermore, this has also been explicitly stated under Swedish domestic case law in which the RR has held that the Commentary of the 1977 OECD MC should be used to interpret the tax treaty between the Netherlands and Sweden (RÅ 1987, ref. 158). With regard to permanent establishments the RR also held that OECD reports should be used as guidance when interpreting a tax treaty (Guideline International Taxation Ch. 8 2005). Nevertheless, certain conventions, in particular with developing countries are (partly) based on the UN MC.

2.3.2. Application of source rules (Art. 1(2))

At this stage, we are not aware of any instances where Sweden as the source state would have interpreted Art. 3 (c) of the Directive more narrowly than Art. 5 of the OECD MC and as a consequence would have assessed tax on royalty payments from its sources to an associated company in another Member State.

2.3.3. 'Tax-deductible expense' requirement (Art. 1(3))

In Sweden expenses incurred to realize or maintain profits are deductible (Ch. 16 Sec. 1 IL). No new national provision was introduced to implement Art. 1 (3) of the Directive.

2.3.4. Beneficial ownership (Art. 1(5))

Under Swedish law, a permanent establishment is taxable as a non-resident (Ch. 6 Sec. 11 IL). To exempt a permanent establishment from tax on royalty payments, a new provision Ch. 6 a 2 IL was introduced. The provision equates a permanent establishment as with a company eligible for an exemption under the Directive. Accordingly, a permanent establishment that is the beneficial owner of a royalty payment is covered by Directive. The provision does not contain the wording beneficial owner, but refers to Ch. 6 a Sec. 4 according to which the beneficial owner has to fulfil certain conditions, see 2.2.5. Beneficial ownership.

The provision requires that the new national rules with regard to the paying company (Ch. 6 a Sec. 3 IL), the recipient company (Ch. 6 a Sec. 4 IL), associated company (Ch. 6 a Sec. 6 IL) and permanent establishments in a third state (Ch. 6 a Sec. 5) are fulfilled. To summarise, under those rules it is required that the paying and the receiving companies are associated, listed in the Annex and subject to tax. Furthermore, permanent establishments outside the EU are excluded.

The implementing provision deviates from the wording of Art. 1 (5) of the Directive since it does not state when a permanent establishment shall be treated as the beneficial owner of royalties. Instead, the national provision grants the exemption under the Directive to non-resident taxable permanent establishments located in Sweden (Ch. 6 Sec. 11 IL).

The provision makes a reference to the subject to tax requirement, as implemented under Ch. 6 a Sec. 4 (2) IL (see 2.2.3. Subject to tax requirement).

2.3.5. Permanent establishment in a third country (Art. 1(8))

Article 1(8) of the Directive has been implemented under Ch. 6 a Sec. 5 IL.

The exemption under the Directive does not apply to recipient companies resident in an EU Member State having a permanent establishment established in a state outside the European Union, if the payment received is attributable to the permanent establishment (Ch. 6 a Sec. 5 IL.).

3. PROCEDURE

Sweden did not implement new national provisions similar to the procedure provisions under the Directive. Accordingly, Art. 1 (11-16) under the Directive apply as the Directive is transposed to Swedish law as a whole. An attestation that Art. 1 and Art. 3 of the Directive are fulfilled can be required under the procedural rules of the Directive. Since Sweden does not levy tax on royalty payments when all the requirements under the Directive are met, it is not likely that Sweden will require an attestation from another Member State.

In general, Swedish companies and non-resident companies taxed on business income in Sweden are required to submit a tax return and a statement on earnings and income and deductions with respect to e.g. royalty payments in accordance with the provision in the Law on tax returns and statements on earnings and income (LSK) (Ch. 2 Sec. 7 LSK, Ch. 7 Sec. 1 LSK and Ch. 12 Sec. 3 LSK). This includes non-resident permanent establishments under Ch. 6 Sec. 11 IL.

Companies receiving income not subject to tax in Sweden are not obliged to submit a tax return. Companies receiving income that is, under a tax treaty, only partly or not taxed at all, in Sweden are obliged to submit a tax return to the Tax Agency (Ch. 2 Sec. 8 LSK). Under LSK a statement on earnings and income and deductions shall be submitted to the Swedish Tax Agency at the latest by 31 January of the following calendar year (Ch. 14 Sec. 1 LSK).

If another Member State requires an attestation from a Swedish company that confirms that the requirements for an exemption from withholding tax under the Directive are met, the statement of earnings and income will be used.

In general, Swedish income tax treaties include an exchange of information article (usually treaty Art. 25). The competent authority to refer a request to the other Member State is the Swedish Tax Agency. In a situation where the Swedish authorities are examining if a company in another Member State is subject to tax under the laws of that Member State, Sweden can refer a request to that Member State to confirm that taxes have been levied. The documents requested would normally include tax returns or other information providing the necessary information (Sec. 17 Law on Mutual Assistance in Tax Matters).

3.1. MINIMUM HOLDING PERIOD (ART. 1(10))

Sweden does not require a minimum holding period.

3.1.1. General

N/a.

3.1.2. Relief before the holding period requirement is satisfied

N/a.

3.1.3. Appeals

N/a.

3.2. ATTESTATION (ART. 1(11) AND 1(13))

Sweden does not require an attestation as stated in Art. 1 (11) and Art. 1 (13) of the Directive.

3.2.1. General

Sweden does not require an attestation.

In Sweden, resident and non-resident companies (Ch. 6 Sec. 11 IL) that are taxable on business income are obliged to submit a tax return to the Tax Agency (Ch. 2 Sec. 7 LSK). The tax return shall be submitted to the Tax Agency at the latest by 2 May of the tax year (Ch. 4 Sec. 2 LSK).

If a company receives income that not subject to tax in Sweden under the IL or under the National Net Wealth Tax Law, the company is not obliged to submit a tax return. Companies receiving income that is only partly or not taxed under a tax treaty, are obliged to submit a tax return to the Tax Agency (Ch. 2 Sec. 8 LSK).

It is also required that resident and non-resident companies submit a statement on earnings, income and deductions. The statement on income and deductions shall contain information on payments received as consideration for the use of or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience (Ch. 7 Sec. 1 LSK and Ch. 7 Sec. 3 (4) LSK). Under LSK a statement on income and deductions shall be submitted to the Tax Agency at the latest by 31 January of the following calendar year (Ch. 14 Sec. 1 LSK).

3.2.2. Appeals

See above, under 3.2.1. General.

3.2.3. Relief before the holding period requirement is satisfied

N/a.

3.3. DECISION ON APPLICATION OF THE RELIEF (ART. 1(12))

Sweden does not require a decision on the application of the relief under Art. 1 (12) of the Directive.

3.3.1. General

N/a.

3.3.2. Supporting documents

N/a.

3.3.3. Appeals

N/a.

3.4. APPLICATION FOR REFUND (ART. 1(15) AND 1(16))

Sweden applies the system of exemption at source. There are no specified application forms for refund procedures. The right to the exemption will appear from the tax return that must be filed.

3.4.1. General

The law implementing the Directive does not include any provisions similar to Art. 1 (15) and Art. 1 (16) of the Directive. In the case of a refund the provisions under the Directive will apply.

3.4.2. Appeals

A company can appeal a decision by the Tax Agency to the regional administrative court (*Länsrätten*). This appeal must be filed before the end of the fifth year after the assessment year. In the proceedings before the regional administrative court, only the specific issue appealed is open for review. In respect of issues not subject to appeal, the court may, however, pass a judgement in favour of the taxpayer (*reformatio in melius*), if special reasons exist.

4. FRAUD AND ABUSE (Art. 5)

Sweden has not adopted any specific measures to implement Art. 5 of the Directive.

4.1. MEASURES UNDER ART. 5(1) OF THE DIRECTIVE

4.1.1. Domestic

In Sweden, transactions deemed as tax avoidance or abuse may be disregarded by the Tax Agency. Section 2 of the Tax Avoidance Law states that a transaction can be disregarded provided certain conditions are fulfilled. A transaction is disregarded if the taxable person directly or indirectly has participated in the transaction and the main reason of the transaction is to achieve the tax benefit.

Transactions set up primarily to avoid taxation or to minimize the tax liability in accordance with the Directive may be challenged under the Swedish Tax Avoidance Law.

The application of the law results in that the Tax Agency will disregard the abusive transaction and assess the income as if the abusive transaction did not occur. The burden of proof in any subsequent judicial litigation rests on the Tax Agency.

4.1.2. Agreement-based

Certain tax treaties concluded between Sweden and certain Member States contain anti-abuse provisions. It is not clear whether the tax authorities will apply such anti-abuse provisions to transactions covered by the Directive.

4.2. MEASURES UNDER ART. 5(2) OF THE DIRECTIVE

See above under 4.1.1. Domestic.

4.3. COMPARISON WITH SIMILAR MEASURES UNDER PARENT-SUBSIDIARY AND MERGER DIRECTIVES

There is no difference in implementation and interpretation between Art. 5 of the Directive in comparison with the implementation of the Parent-Subsidiary (Art. 1 (2)) and Merger (Art. 11 (1) (a)) Directives. The Swedish legislator did not implement national anti-abuse provisions in respect of the Parent-Subsidiary and the Merger Directive.

5. SUMMARY

Sweden implemented the provisions of the Directive by introducing new provisions on royalty payments. No amendments were introduced with regard to interest payments since Sweden does not levy withholding tax on interest.

Objective scope

Sweden did not introduce national provisions with regard to the definition of royalties as the domestic concept of royalties or periodical fees covers the definition under Art. 2 (b) of the Directive. Royalty payments are subject to Swedish constructive distribution rules.

Subjective scope

Sweden generally implemented the provisions laid down in Art. 3 (a) (i) of the Directive. Sweden requires a direct shareholding as mentioned in Art. 3 (b) of the Directive. This strict interpretation of the Directive does not allow payments through a hybrid entity to benefit from the withholding tax exemption. The Tax Agency may deny the application of the withholding tax exemption on the basis of (i) the indirect character of the participation, and (ii) the failure to meet the subject-to-tax test provided for in Art. 3 (a) (iii) of the Directive.

Sweden grants a tax exemption only to payments made by Swedish eligible companies or by Swedish permanent establishment of companies resident in an EU Member State and listed in the Annex. In this respect, issues may arise as to whether the tax exemption applies where payments are made by dual resident companies incorporated in another Member State and with the effective management attributed to Sweden under a tax treaty.

Sweden requires that the receiving company is subject to corporate tax without being exempt from corporate tax (Ch 6 a Sec. 4 (2) IL, subjective subject-to-tax requirement). In general, the ownership threshold requirement under Art. 3 (b) of the Directive has been implemented in Sweden.

The definitions of “permanent establishment” and “beneficial owner” have not been formally implemented. The concept of "permanent establishment" will most likely be defined under national provisions and under the relevant tax treaty. Under the national provision the scope of the concept of "permanent establishment" is wider than the concept under the tax treaties. National law does not include the negative list in Art. 5 (4) OECD MC. Sweden adopted an objective subject-to-tax requirement for permanent establishments.

PART II. THE AGREEMENT

In Sweden there is no withholding tax on interest payments.

To date there has been no legislative or other regulatory measures concerning the ratification or interpretation of Agreement between the European Community and the Swiss Confederation providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments or its Memorandum of Understanding in Sweden.

Under the Sweden-Switzerland income and capital tax treaty of 7 May 1956 as amended by protocol of 10 March 1992, interest may be taxable in both the state of residence and in the source state of a maximum rate of 5%. Royalties are exempt from tax in the source state (Art. 12 of the treaty). In addition, if the patent royalties, dividends or interest are derived through a permanent establishment which the Swiss company maintains in Sweden, the income is included in the taxable profits of the permanent establishment and is subject to corporate income tax under the standard rules (Arts. 7 (2) and 12 (3)).

The royalty article under the Sweden-Switzerland treaty is almost identical to Art. 12 of the OECD MC. Article 12 of the tax treaty does not state "beneficial owner" but instead "the recipient".

ANNEX

Table of the maximum withholding tax rates on interest and royalty payments under the tax treaties between Sweden and the EU Member States.

EU Member State	Interest	Royalties
Austria	0%	0/10% <1>
Belgium	10%	0%
Czech Republic	0%	0%
Cyprus	10%	0 / 5% <2>
Denmark	0%	0%
Estonia	10%	5 / 10% <3>
Finland	0%	0%
France	0%	0%
Germany	0%	0%
Greece	10%	5%
Hungary	0%	0%
Ireland	0%	0%
Italy	15%	5%
Latvia	10%	5 / 10% <4>
Lithuania	10%	5 / 10% <5>
Luxembourg	0%	0%
Malta	0%	0%
Netherlands	0%	0%
Poland	0%	10%
Portugal	10%	10%
Slovak Republic	0%	0/5% <6>
Slovenia	0%	0%
Spain	15%	10%
United Kingdom	0%	0%

<1> The 10% rate applies only if the Austrian company owns more than 50% of the capital in the Swedish company.
<2> The lower rate applies to copyright royalties, including films, etc.

<3> The 5% rate applies to equipment leasing.
<4> The 5% rate applies to equipment leasing.
<5> The 5% rate applies to equipment leasing.
<6> The lower rate applies to copyright royalties, including films, etc.