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Delphi Tax Alert

In a previous newsletter **no. 1, April 2012** we described the Swedish government's proposal on limitation of interest deductions. The bill was circulated for comments, which has now resulted in an amended proposal which, as a whole, **follows the initial proposal.**

The most significant change in the amended bill concerns the reversed general exemption. In March, the government suggested that the Tax Agency should have the authority to go back several years in time to assess if a debt relation had been created mainly for a group of affiliated companies to obtain a significant tax benefit. This retroactive effect is now partly limited as the exemption instead will fall under the general assessment rules which means that the Tax Agency, in normal cases, will only be able to review such decisions within two years of each income year. However, the amended bill also means that the burden of proof will always be with the taxpayers, i.e. companies must be able to prove that intra-group debt relations have not been created mainly to obtain a significant tax benefit by being granted interest deductions. This also applies when the corresponding interest income is taxed at 10 % or more.

As always, we are available to discuss the appropriate actions at this stage. In our opinion, the need to initiate a review and alternative planning is urgent. It is likely that we will see a final proposal this autumn. If the current proposal is enacted, we would still recommend clients to undertake the following actions in good time:

- Ensure that the applied interest rate can be justified as being set at the fair market rate, for example by means of using benchmarks from banks or from interest-rate benchmark studies.
- An analysis of existing debt relationships, focusing on whether the new definition of affiliated companies means that any existing debt relationship will fall within the scope of the new rules.
- An analysis of whether the existing debt relationships are commercially justified. This should be done regardless of whether the recipient is taxed at 10 % or more. Prepare a defense file. The existing debt relationships must be commercially justified for both the debtor and the creditor.

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- If the recipient is taxed at less than 10 % it is necessary to determine whether the recipient is situated in an EEA country or in a state which Sweden has signed an extensive tax treaty with. It must also be considered if the financing could have been solved by a capital contribution from a group company instead of the loan.
- An analysis of whether the company has current expenses to affiliated companies that could be treated as an interest expense in a broad definition.

In summary, our recommendation to clients is to put together a "defense file" summarizing the facts concerning a financial structure to be used or which has been implemented to show that the tax deductions claimed by a Swedish entity are in compliance with Swedish tax law – and will continue to be in the future.

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