Nordic Tax Law Bulletin

Karin Attorps
Partner, Advokat

Erik Björkeson
Partner, Advokat

Jonas Aartun
Partner, Location Head Tax

Ingvar Gjedrem
Partner

Jakob Schilder-Knudsen
Partner, Head of Tax, Denmark

Antti Paloniemi
Partner, Head of Tax

In our quarterly Nordic Tax Law Bulletin, our tax lawyers across the Nordic region highlight relevant news and trends on the Nordic tax market scene. The bulletin intends to provide high-level knowledge and insight. Want to learn more? Our experts will be happy to hear from you.

Highlights from Sweden

- **Swedish Supreme Administrative Court Grants Leave to Appeal in Tax Surcharge Case**

  The Swedish Supreme Administrative Court has granted leave to appeal in a case (Case No. 7304-24) concerning the prerequisites for relief from tax surcharges. The review will focus on two principal legal questions:

  1. To what extent should the Swedish Tax Agency's methods for reviewing income tax returns be considered in the assessment of whether there are grounds for relief from tax surcharges?

  2. Under what circumstances are two different tax return actions to be regarded as so closely connected that this should affect the evaluation of whether there are reasons for granting relief?

  The case involves a Swedish AB, which, in its 2021 income tax return, reported a write-down of financial fixed assets and short-term investments amounting to SEK 12,210,105 without any corresponding tax adjustment, even though such write-downs are not tax deductible. At the same time, the company failed to report a tax-exempt gain of nearly SEK 20 million from the sale of shares as a tax-free income. Both omissions were attributed by the company to a transition to a new cloud-based tax preparation software.

  Despite the company's argument that the mistakes canceled out each other and resulted in no tax advantage as well as its assertion that it was unreasonable to impose a surcharge given the Swedish Tax Agency's digital selection and control procedures, both the Administrative Court and the Administrative Court of Appeal concluded that an incorrect tax return had been filed and that there were no grounds for relief. The courts also held that there was insufficient connection between the two tax-return items to warrant considering them together for relief purposes.

  The Supreme Administrative Court will consider how the Swedish Tax Agency's digital methods and selection criteria for reviewing income tax returns may influence the assessment of the risk of tax loss and, consequently, whether there are grounds for granting relief from tax surcharges. Furthermore, the Court will examine in what circumstances two separate errors in a tax return, such as an omitted deduction for a non-deductible write-down as well as a failure to report a tax-exempt capital gain, should be viewed as being so closely connected as to impact whether it is unreasonable to impose tax surcharges or if full or partial relief should be granted.

- **Advocate General's Opinion in the Högkullen Case (C-808/23)**

  On 6 March 2025, Advocate General Kokott delivered an opinion in the Högkullen AB v. Skatteverket case before the Court of Justice of the European Union. The opinion concerns how the VAT base should be determined for administrative services such as business management, finance, property management, information technology, and personnel administration that a holding company provides to its subsidiaries.

  The Advocate General concludes that these services do not constitute a single unique supply for which no comparable market value exists. Each type of service supplied by the holding company should generally be assessed individually, and the market value for each separate service can usually be determined based on prices available on the open market. It follows that, where a comparable market price is available for the service, this should form the basis for the VAT calculation. The fact that the subsidiaries have paid a single bundled fee for these services does not mean that a unitary and unique service exists under VAT law, particularly when each component service is also available individually from third parties.

The opinion also rejects the view that the VAT base for internal services must automatically be determined using the holding company's entire annual cost base. Only costs that are directly linked to each specific service and are subject to VAT may be relevant for the base calculation, and only if no comparable market value can be established on the market. Costs relating to other activities, such as future share issues or general shareholder expenses, should be excluded. Furthermore, major investment costs that benefit several years should be allocated proportionally rather than fully reflected in a single year's VAT base.

The Swedish Tax Agency has consistently maintained that the value of support services for VAT purposes should correspond to the holding company's actual costs and has applied revaluation rules accordingly. The Advocate General rejected this approach, emphasizing that the mere fact that a company's input VAT exceeds its output VAT does not, in itself, indicate tax evasion or avoidance.

If the Court follows the Advocate General's reasoning in its final judgment, numerous Swedish companies, especially those operating in the financial and real estate sectors, may seek to have their VAT assessments reassessed retroactively for a period of up to five years.

Highlights from Denmark

- **Danish Legislation Eases Business Succession Rules in Family-Owned Companies**

  On April 8, 2025, the Danish Parliament passed new legislation easing the rules for business succession within families. Effective retroactively from January 1, 2025, the changes significantly reduce the tax burden on family-internal transfers of businesses and grant a legal right to use a standardized valuation model when determining business value for inheritance and gift tax purposes.

  The inheritance and gift tax rate for transfers of businesses to close family members has been reduced from 15% to 10%. The definition of "close family" has been extended to include siblings, who will, starting in 2027, benefit from the lower rate when receiving business assets as gifts or inheritance.

  The definition of a qualifying business now includes active property leasing, allowing family businesses engaged in such activity to be transferred under favorable tax conditions. These transfers are eligible for tax deferral (succession) and the reduced 10% inheritance/gift tax.

  To qualify as active leasing, the making of significant lease-related decisions must not be handled predominantly by independent third parties. If the property is held in a company, the transferor must directly or indirectly hold more than 50% of the property. Ownership held by certain family members—including children, siblings, and spouses—is also included in this percentage calculation.

  Active leasing properties are no longer subject to the "passive holding company" rule, which previously excluded them from favorable tax treatment.

  Active property leasing is now treated like any other business activities and can be transferred under the succession rules, deferring capital gains tax.

  Furthermore, business value can now be determined using a standardized method based on company financials. The transferor has a legal right to apply this model when calculating inheritance or gift tax, though this does not extend to the calculation of capital gains tax for taxable transfers.

- **Danish Tax Agency Issues New Guidelines on VAT Refunds for Incorrectly Invoiced Output VAT**

  On 21 May 2025, the Danish Tax Agency (“DTA”) published new guidelines introducing a revised administrative practice on the procedure for obtaining VAT refunds in matters involving incorrectly invoiced output VAT.

  The primary change concerns the interpretation of section 52a(7) of the Danish VAT Act. Under the former practice, a refund of VAT erroneously charged by the supplier and remitted to the DTA could be granted only if the business repaid the VAT amount to the customer, in line with the principle of preventing unjust enrichment.

  Under the new practice, this repayment condition has been removed. Businesses are now eligible to apply for a refund of incorrectly invoiced output VAT without reimbursing the customer, provided a credit note or a corrected invoice is issued.

The customer may submit a claim directly to the DTA in cases where it is impossible or unreasonably difficult to recover the amount from the supplier, and where the VAT has been paid to the DTA. However, this option is not available if the DTA has already refunded the VAT amount to the supplier.

The new practice represents a significant departure from previous practice and brings the Danish approach into closer alignment with EU VAT law and case law concerning unjust enrichment.

The new practice is, however, subject to certain exceptions. Notably, where a supplier has invoked the statute of limitations to deny a refund to the customer, the DTA will similarly deny the supplier’s claim for a refund.

Furthermore, in situations where issuing a credit note or corrected invoice is not feasible, the DTA will not insist on such documentation as a prerequisite for granting the refund.

The revised practice simplifies the correction process, reduces administrative and financial burdens, and offers a clearer route to reclaiming VAT that was previously considered irrecoverable.

We recommend that businesses review historical instances of incorrect VAT invoicing to determine whether refund claims may now be pursued under the updated administrative practice.

Highlights from Finland

- **Finnish Government Publishes Growth Package to Strengthen Finland's Competitiveness and Economic Growth**

  The Finnish Government published a growth package in the mid-term review on 23 April 2025, which is largely a tax package. The package aims to strengthen Finland's competitiveness and economic growth. The growth package includes, among other suggestions, the following.

  Corporate Income Tax

  - The corporate income tax rate will decrease from 20% to 18% starting in 2027.
  - The period for deducting losses will be extended from 10 years to 25 years, applying to losses incurred from the 2026 tax year onward.

  M&A Taxation

  - Tax-neutral share exchanges will be extended to include transactions outside the EEA, and the existing stringent criteria for cash-and-share combinations will undergo review.
  - A review of the tax implications of mergers and acquisitions will be carried out, with appropriate adjustments implemented as needed.
  - Existing discrepancies will be addressed. For instance, the timing of income tax and transfer tax on earn-out payments will be aligned with the year in which the earn-out basis is finalized.

  Personal Income Tax

  - Taxes on earned income will be reduced.
  - Top marginal taxes will be lowered to 52% (currently around 58-59%).
  - The withholding tax rate for key foreign employees will be reduced from 32% to 25% and the model will be extended to Finnish citizens, i.e. return migrants.
  - The taxation of equity-based incentive plans, including stock options, will undergo reform aiming to establish the most competitive tax regime in Europe within this sector.

  Inheritance and Gift Tax

  - Gift and inheritance tax is not replaced by capital gains tax.
  - However, some taxpayer-friendly changes will be made (increase of the lower thresholds, reduction of interest rates, extension of tax relief for generational transfer to underage people).

  Other Tax Changes

  - The tax credit for large sustainable investments will be continued if the EU's framework for state aid exemptions is maintained.
  - The fund structures enabled by EU legislation will be actively implemented and the necessary amendments to tax legislation will be made accordingly.

Highlights from Norway

- **Norwegian Supreme-Court Ruling on Taxation of Dividends from Swiss Company and whether to Deem Switzerland a "Low-Tax Jurisdiction"**

  In case HR-2025-563-A (Elopak), the Norwegian Supreme Court heard a case on whether dividends received by a Norwegian company (**NorCo**) from its Swiss subsidiary (**SwissCo**) in 2010 and 2014 were taxable in Norway for NorCo.

  Under the Norwegian Participation Exemption Method, dividends received by corporate shareholders may be tax free in Norway. However, with respect to companies that are tax resident outside the EU/EEA, certain conditions apply, *inter alia,* that the distributing company (SwissCo) cannot be tax resident in a low-tax jurisdiction.

  The question before the Court was whether SwissCo was to be considered tax resident in a low-tax jurisdiction.

  According to the Norwegian Tax Act, a low-tax jurisdiction is defined as a jurisdiction in which the ordinary income tax on the overall profit of the company is less than two thirds of the tax that would have been levied on such company if the company had been tax resident in Norway.

  In the years leading up to and including 2009, SwissCo had been taxed in Switzerland under the so-called "mixed-company rules", which implied an effective tax rate of approximately 10% (i.e., less than two thirds of the Norwegian corporate income tax rate at the time).

  From 2010-2014, SwissCo was taxed according to ordinary Swiss tax rules (at around 20%), even though SwissCo qualified for the mixed-company rules. In the board minutes of SwissCo from 2011, it was stated that SwissCo's decision to withdraw from the mixed-company rules was due to dividend distributions to NorCo.

  The Court stated that the assessment of whether a company is tax resident in a low-tax jurisdiction must be made based on a "*general comparison between the effective tax rate on the ordinary income of the company (...)*" in the relevant years.

  Furthermore, adjustments to the assessment should be made based on the "*company in question*" and the “*type of business it operates in*".

  It was therefore the "*effective taxation of the type of company in question that is the basis for comparison. Factors of a more specific, individual nature and that are not typical for the business in question shall, in principle, not be considered*". This, as opposed to considering the effective tax rate of the company in question for the relevant year.

  Based on this legal doctrine, the Court argued that it was not typical for companies similar to SwissCo to be taxed under ordinary Swiss tax rules when the conditions for taxation under the mixed-company rules were met.

As it was the "*individual – company-specific – dividend payment that justified the decision to change the taxation*" from the mixed-company rules to ordinary Swiss taxation, the Court concluded that SwissCo was tax resident in a low-tax jurisdiction when distributing the dividends to NorCo in 2010 and 2014.

The Court stated that a company could potentially be considered a tax resident in a normal-tax jurisdiction if the low-tax rules implied that the company in question would have to accept onerous conditions, or if the company had consistently chosen to be subject to normal taxation over a "*long period of time*". Based on this reasoning and given the fact that SwissCo had been subject to normal taxation from 2010-2014, the Court expressed doubt about taxing the dividend distributed in 2014.

The Court also assessed whether the taxation of the dividends from SwissCo was to be considered as unlawful discrimination under Article 24 of the EFTA Convention. The Court determined that, since SwissCo was deemed a tax resident in a low-tax jurisdiction and its income had been subject to low taxation, SwissCo was not in a comparable situation with Norwegian subsidiaries (of which dividends are tax free in principle). Thus, unlawful discrimination was not found to exist on this basis.

Furthermore, although dividends from companies in low-tax jurisdictions within the EU/EEA are generally tax free for Norwegian corporate shareholders, the Court held that this was due to Norway's obligations under the EEA Agreement, and the EFTA convention was not found to prohibit such discrimination.

The ruling was issued with dissent (3/2).