

Sweden

DAC 6 Domestic Implementation



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General Information

Territory	Sweden
Tax authority	Skatteverket
Status of legislation	Implemented.
Taxes covered	Income tax, withholding tax
Taxes excluded	VAT
Domestic transactions	No

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Definitions further clarified by guidance

Relevant taxpayer	Any person to whom a reportable cross-border arrangement is made available for implementation, or who is ready to implement a reportable cross-border arrangement or has implemented the first step of such an arrangement.
Associated enterprise	<p>A person who is related to another person in at least one of the following ways:</p> <p>a) a person participates in the management of another person and is in a position to exercise significant influence over the other person;</p> <p>b) a person participates in the control of another person through a holding that exceeds 25 % of voting rights; c) a person participates in the capital of another person through a holding that (directly or indirectly) exceeds 25 % of the capital;</p> <p>d) a person is entitled to 25 % or more of the profits of another person.</p> <p>If more than one person fulfills a condition specified in the first subparagraph for one and the same person, or if one and the same person fulfills such a condition for several persons, all persons shall be regarded as related persons.</p> <p>In assessing whether persons are related to each, persons acting together in respect of holding of capital or votes in a company shall be treated as a single person.</p>
Marketable arrangement	Cross-border arrangement that is designed, marketed, ready for implementation or made available for implementation without a need to be substantially customized.

Cross-border arrangement

An arrangement concerning either more than one Member State or a Member State and a third country where at least one of the following conditions is met:

- a) not all of the participants in the arrangement are resident for tax purposes in the same jurisdiction;
- b) one or more of the participants in the arrangement is simultaneously resident for tax purposes in more than one jurisdiction;
- c) one or more of the participants in the arrangement carries on a business in another jurisdiction through a permanent establishment situated in that jurisdiction and the arrangement forms part or the whole of the business of that permanent establishment;
- d) one or more of the participants in the arrangement carries on an activity in another jurisdiction without being resident for tax purposes or creating a permanent establishment situated in that jurisdiction;
- e) such arrangement has a possible impact on the automatic exchange of information;
- f) the arrangement could have an impact on the identification of beneficial ownership.

An arrangement shall also include a series of arrangements. An arrangement may comprise more than one step or part.

Intermediary

Any person that designs, markets, organizes or makes available for implementation or manages the implementation of a reportable cross-border arrangement. It also means any person that, having regard to the relevant facts and circumstances and based on available information and the relevant expertise and understanding required to provide such services, knows or could be reasonably expected to know that they have undertaken to provide, directly or by means of other persons, aid, assistance or advice with respect to designing, marketing, organizing, making available for implementation or managing the implementation of a reportable cross-border arrangement.

Tax advantage

There is no clarification in the legislation or the preparatory work.

Made available for implementation

There is currently no guidance on this topic.

Hallmark

By hallmark is meant a characteristic or characteristic of a cross-border arrangement which is an indication of a potential risk of tax evasion. These are:

A. Generic hallmarks linked to the main benefit test

1. An arrangement where the relevant taxpayer or a participant in the arrangement undertakes to comply with a condition of confidentiality which may require them not to disclose how the arrangement could secure a tax advantage vis-à-vis other intermediaries or the tax authorities.
2. An arrangement where the intermediary is entitled to receive a fee (or interest, remuneration for finance costs and other charges) for the arrangement and that fee is fixed by reference to:
 - a) the amount of the tax advantage derived from the arrangement; or
 - b) whether or not a tax advantage is actually derived from the arrangement.This would include an obligation on the intermediary to partially or fully refund the fees where the intended tax advantage derived from the arrangement was not partially or fully achieved.
3. An arrangement that has substantially standardised documentation and/or structure and is available to more than one relevant taxpayer without a need to be substantially customised for implementation.

B. Specific hallmarks linked to the main benefit test

1. An arrangement whereby a participant in the arrangement takes contrived steps which consist in acquiring a loss-making company, discontinuing the main activity of such company and using its losses in order to reduce its tax liability, including through a transfer of those losses to another jurisdiction or by the acceleration of the use of those losses.
2. An arrangement that has the effect of converting income into capital, gifts or other categories of revenue which are taxed at a lower level or exempt from tax.
3. An arrangement which includes circular transactions resulting in the round-tripping of funds, namely through involving interposed entities without other primary commercial function or transactions that offset or cancel each other or that have other similar features.

C. Specific hallmarks related to cross-border transactions

1. An arrangement that involves deductible cross-border payments made between two or more associated enterprises where at least one of the following conditions occurs:
 - a) the recipient is not resident for tax purposes in any tax jurisdiction;
 - b) although the recipient is resident for tax purposes in a jurisdiction, that jurisdiction either:
 - (i) does not impose any corporate tax or imposes corporate tax at the rate of zero or almost zero; or
 - (ii) is included in a list of third-country jurisdictions which have been assessed by Member States collectively or within the framework of the OECD as being non-cooperative;
 - c) the payment benefits from a full exemption from tax in the jurisdiction where the recipient is resident for tax purposes;
 - d) the payment benefits from a preferential tax regime in the jurisdiction where the recipient is resident for tax purposes;
2. Deductions for the same depreciation on the asset are claimed in more than one jurisdiction.

Hallmark

3. Relief from double taxation in respect of the same item of income or capital is claimed in more than one jurisdiction.

4. There is an arrangement that includes transfers of assets and where there is a material difference in the amount being treated as payable in consideration for the assets in those jurisdictions involved.

D. Specific hallmarks concerning automatic exchange of information and beneficial ownership

1. An arrangement which may have the effect of undermining the reporting obligation under the laws implementing Union legislation or any equivalent agreements on the automatic exchange of Financial Account information, including agreements with third countries, or which takes advantage of the absence of such legislation or agreements. Such arrangements include at least the following:

a) the use of an account, product or investment that is not, or purports not to be, a Financial Account, but has features that are substantially similar to those of a Financial Account;

b) the transfer of Financial Accounts or assets to, or the use of jurisdictions that are not bound by the automatic exchange of Financial Account information with the State of residence of the relevant taxpayer;

c) the reclassification of income and capital into products or payments that are not subject to the automatic exchange of Financial Account information;

d) the transfer or conversion of a Financial Institution or a Financial Account or the assets therein into a Financial Institution or a Financial Account or assets not subject to reporting under the automatic exchange of Financial Account information;

e) the use of legal entities, arrangements or structures that eliminate or purport to eliminate reporting of one or more Account Holders or Controlling Persons under the automatic exchange of Financial Account information;

f) arrangements that undermine, or exploit weaknesses in, the due diligence procedures used by Financial Institutions to comply with their obligations to report Financial Account information, including the use of jurisdictions with inadequate or weak regimes of enforcement of anti-money-laundering legislation or with weak transparency requirements for legal persons or legal arrangements.

2. An arrangement involving a non-transparent legal or beneficial ownership chain with the use of persons, legal arrangements or structures:

a) that do not carry on a substantive economic activity supported by adequate staff, equipment, assets and premises; and

b) that are incorporated, managed, resident, controlled or established in any jurisdiction other than the jurisdiction of residence of one or more of the beneficial owners of the assets held by such persons, legal arrangements or structures; and

c) where the beneficial owners of such persons, legal arrangements or structures, as defined in Directive (EU) 2015/849, are made unidentifiable.

E. Specific hallmarks concerning transfer pricing

1. An arrangement which involves the use of unilateral safe harbour rules.

2. An arrangement involving the transfer of hard-to-value intangibles. The term "hard-to-value intangibles" covers intangibles or rights in intangibles for which, at the time of their transfer between associated enterprises:

a) no reliable comparables exist; and

Hallmark

b) at the time the transaction was entered into, the projections of future cash flows or income expected to be derived from the transferred intangible, or the assumptions used in valuing the intangible are highly uncertain, making it difficult to predict the level of ultimate success of the intangible at the time of the transfer.

3. An arrangement involving an intragroup cross-border transfer of functions and/or risks and/or assets, if the projected annual earnings before interest and taxes (EBIT), during the three-year period after the transfer, of the transferor or transferors, are less than 50 % of the projected annual EBIT of such transferor or transferors if the transfer had not been made.'

3 Additional hallmarks

Additional hallmarks None.

4 Operation of legal professional privilege (lpp)

Operation of legal professional privilege (LPP)

When the intermediary is bound by LLP, he is bound to notify any and all other intermediaries that the reporting obligation automatically rests with them. If there are no other intermediaries, he should notify the relevant taxpayer in writing that the reporting obligation rests with the taxpayer.

5 Reporting deadline

Intermediaries

Within 30 days following: a) the day after the reportable cross-border arrangement is made available for implementation; or b) the day after the reportable cross-border arrangement is ready for implementation; or c) the moment when the first step in the implementation of the reportable cross-border arrangement is made, whichever occurs first.

In addition, intermediaries are also required to file information within 30 days beginning on the day after they provided, directly or by means of other persons, aid, assistance or advice. Reportable transactions for which first implementation step took place between 25 June 2018 and 1 July 2020 need to be reported by 31 August 2020.

For marketable arrangements, the intermediary is required to file a periodic report with all new reportable cross-border arrangements every 3 months.

Please note that the reporting is expected to be postponed on all reporting until February and January 2021.

**Users
(where LPP applies)**

Within 30 days following:

- a) the day after the reportable cross-border arrangement is made available for implementation; or
- b) the day after the reportable cross-border arrangement is ready for implementation; or
- c) when the first step in the implementation of the reportable cross-border arrangement has been made, whichever occurs first.

Reportable transactions for which first implementation step took place between 25 June 2018 and 1 July 2020 need to be reported by 31 August 2020.

Please note that the reporting is expected to be postponed on all reporting until February and January 2021.

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Reporting principles for intermediary

Circumstances in which intermediary is obliged to report

Intermediary is obliged to report information that is within their knowledge, possession or control on reportable cross-border arrangements.

Obligation to inform user what data was communicated

No

Priority of reporting where multi member state reporting obligations exist

Where the intermediary is liable to file information on reportable cross-border arrangements with the competent authorities of more than one Member State, such information shall be filed only in the Member State that features first in the list below:

- a) the Member State where the intermediary is resident for tax purposes;
- b) the Member State where the intermediary has a permanent establishment through which the services with respect to the arrangement are provided;
- c) the Member State which the intermediary is incorporated in or governed by the laws of;
- d) the Member State where the intermediary is registered with a professional association related to legal, taxation or consultancy services.

Circumstances under which intermediary not required to report

In case of multiple reporting obligations, the intermediary shall be exempt from filing if it has proof, in accordance with national law, that the same information has been filed in another Member State.

The intermediary shall also be exempt from filing the information if he is bound by legal professional privilege and has notified the other intermediaries or in absence thereof, the relevant taxpayer.

What will the tax authorities provide for the notification received

Currently no guidance provided by the Swedish Tax Agency.

7 Reporting principles for taxpayer

Circumstances in which taxpayer is obliged to report

The relevant taxpayer is obliged to report if:

- a) no intermediary was involved in the design, marketing, organizing or making available for implementation or managing the implementation of a reportable cross-border arrangement; or
- b) he has been notified by the intermediary that the intermediary is bound by legal professional privilege.

Priority of reporting where multiple taxpayers are involved

Where the relevant taxpayer has an obligation to file information on the reportable cross-border arrangement with the competent authorities of more than one Member State, such information shall be filed only with the competent authorities of the Member State that features first in the list below:

- a) the Member State where the relevant taxpayer is resident for tax purposes;
- b) the Member State where the relevant taxpayer has a permanent establishment benefiting from the arrangement;
- c) the Member State where the relevant taxpayer receives income or generates profits, although the relevant taxpayer is not resident for tax purposes and has no permanent establishment in any Member State;
- d) the Member State where the relevant taxpayer carries on an activity, although the relevant taxpayer is not resident for tax purposes and has no permanent establishment in any Member State.

Circumstances under which taxpayer not required to report

Where there is a multiple reporting obligation, the relevant taxpayer shall be exempt from filing the information if it has proof, in accordance with national law, that the same information has been filed in another Member State.

Proof that reporting obligation is satisfied by other taxpayer

No guidance is, of yet, provided by the Swedish Tax Agency.

8 Reporting principles applicable to all

Language

Swedish and potentially in English.

9 Penalties

Circumstances in which penalties may apply

Incomplete, late - or non-filing.

For the reportable transactions for which first implementation step took place between 25 June 2018 and 1 July 2020 no penalties will be applied if they are reported by 31 August 2020.

Amount

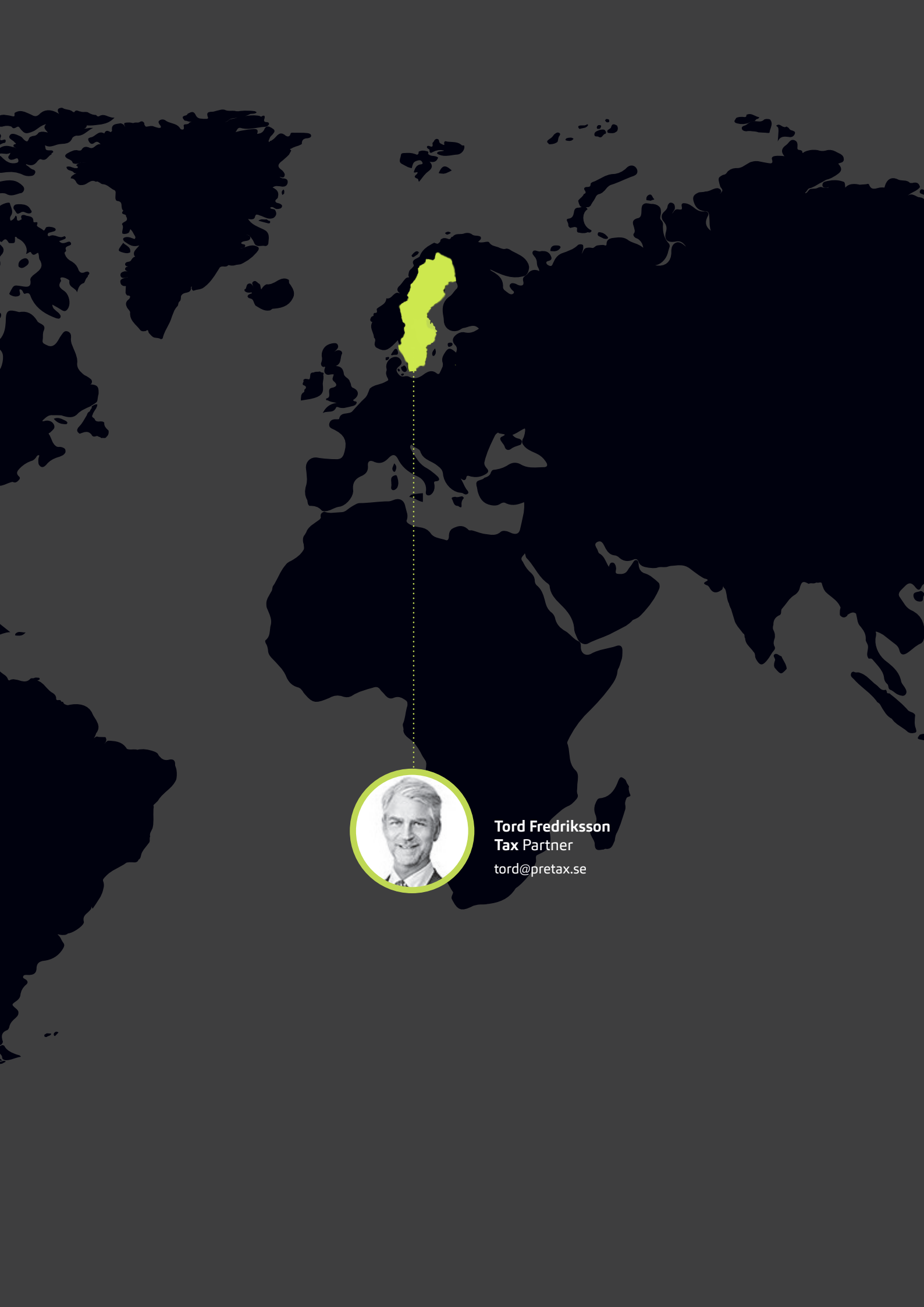
Intermediary subject to reporting: SEK 15,000 for late or incomplete filing.
Additional 30 days or more SEK 20,000 to 150,00

Taxpayer subject to reporting: SEK 7,500 for late or incomplete filing.
Additional 30 days or more SEK 10,000 to 75,000

10 Country specifics

Country specifics / deviation from EU directive

None.



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