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# Unclear rules impact adversely on Swedish real estate market

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*Unclear tax rules deter real estate investors and in the worst case may impact on new construction in Sweden. Today there is a risk that the Swedish real estate market will be drained of billions of kronor. The reason lies in the unpredictable application of a complex regulatory framework for taxation of real estate. In recent years, the law and its application has become more and more unpredictable and difficult to interpret. The risk is that international players will look to exit the Swedish market which, due to its high degree of transparency, is currently an attractive market in which to invest. If this changes, we will experience an excessively large business risk which in turn will impact negatively on the willingness to invest in Sweden, which in turn may affect the willingness to build new homes in Sweden.*

In 2003 legislation came into force in Sweden which made it possible to sell businesses without incurring taxation by way of a process called enveloping. The legislation expressly permits a business to be packaged into a limited liability company free of tax and the shares then to be sold free of tax. The purpose of the legislation is to enable business operators to carry out structurally sound transaction. Swedish real estate companies can, in other words, sell properties by enveloping them into a limited liability company, which is completely in accordance with the legislation and its objectives. This has become a popular move since the legislation came into force. Unfortunately recent legal developments in the field of property taxation have created an increasing lack of certainty as to the rules on real estate transactions. As a response to this, we now see a frustration which is rapidly growing as the realisation dawns that it is virtually impossible to predict the tax consequences. The reason is the unclear and ever-changing prerequisites and where the primary cause of the lack of certainty is the Swedish Tax Agency's and the court's application of a complex regulatory framework. The problem has, thus far, affected Swedish listed companies, state-owned companies and foreign investors with considerable sums of money being involved. A Swedish real estate company recently had its tax adjusted up by almost SEK 7 billion. Another example is a recent decision handed down by the administrative court in Göteborg in which enveloping in conjunction with conversion of rental apartments to tenant-owner's rights – something which is common on the Swedish market – was unexpectedly taxed. And here again, in the order of several billion kronor. A further example is a new ruling handed down by the Swedish Advance Tax Rulings Board in which sales of participations in a real estate company were deemed to be liable for tax, completely in contradiction of the principles set out in the preparatory work on application of the rules.

To create reasonable expectations for investors on the Swedish real estate market, the rules on property investment and the application of those rules must be made clearer. We would expect the Tax Agency to accept its responsibility and to create some clarity in these issues. The new

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corporate tax committee has until 1 November 2013 to present its findings and it would not be unreasonable to task the committee to take a look at how the rules on real estate investments can be made clearer. Such a task would also seem to fall within the brief given to the committee and which has already been resolved upon.

It is, therefore, of the utmost importance that the legislator and the Tax Agency both put their foot down to create predictable taxation of that vital part of Swedish commerce which is the real estate sector. Otherwise there is a substantial risk that international players will leave the Swedish market – something which we perhaps cannot afford. There is also a considerable risk that an unforeseen application of the somewhat impenetrable regulatory framework will result in a completely random legal order, which would be greatly unfortunate and harmful for the investment climate in Sweden.

Anders Hulegårdh and Mikael Knutsson  
Real Estate Advisors  
Delphi, Göteborg



Anders Hulegårdh, Partner



Mikael Knutsson, Senior Tax Advisor