FACULTY OF LAW
University of Lund

Li Ankel

Establishment of a foreign trust or an international holding company

A tax study of two alternative ways to reconstruct a Swedish close company

Master thesis
20 points

Supervisor: Mats Tjernberg

Taxation

Spring 2000

Contents

Summary

To achieve a kind of neutrality between insiders of close companies and other taxpayers in Swedish society the Swedish tax law states that capital gains, which derive from ownership in close companies, and dividends distributed to owners of close companies will be subject to high taxation. However, changes in ownership may involve a tax reduction. The establishment of a foreign business can be carried out in a number of ways, for example, investments may be transferred to a foreign trust or an international holding company in a suitable country. Every solution involves tax consequences which must be taken into consideration.

The establishment of a foreign trust may, in certain circumstances, result in the avoidance of tax or at least deferral of tax. However, there are difficulties in relation to the taxation of trusts, which depend on the distinct legal and taxation systems of common law and civil law countries. Civil law countries do not recognise a separation of legal and equitable ownership of property, which a trust requires. When establishing a trust, the settlor gives the legal interest to the trustee and the equitable interest to the beneficiaries. The trust is in addition not a legal entity. These differences of property law create difficulties in the application of the Swedish tax law.

The setting up of a foreign trust is associated with uncertainty concerning the Swedish tax claims, the reason being that the question of ownership is hard to determine. It is important that the settled property is irrevocably separated from the settlor's property, otherwise the settlor may be treated as if he or she still is the owner of the trust property. A trust is not a legal entity, which means that it is not possible to treat the trust as an object liable to pay tax. This means for example that the trust is not liable to pay tax on dividends distributed from the Swedish company nor is the trust subject to the Swedish CFC-legislation. In accordance with the common-law, the trustee is the official, legal owner of the trust. However, the trustee will not obtain any economic gain from the property and should therefore not be taxed as its owner. The main principle in taxation is that the one who benefits from the property, is the one who will be subject to taxation. The real problem arises in respect of discretionary trusts, in which there is no interest in possession. The consequence will be that where a beneficiary is not absolutely entitled to the income, the income will not be subject to Swedish tax until it is distributed to a resident taxpayer. The establishment of a foreign trust may trigger Swedish gift tax; however, when dealing with discretionary trusts, the same problem that affects income tax applies. The reason being the difficulty in determining the owner of the trust property. The establishment of a discretionary trust possesses other characteristics, for example that the assets are not aggregated with either the estate of the settlor or

the beneficiary. Taxpayers can in other words defer domestic tax by accumulating income in a foreign trust. However, to repatriate the income without taxation the beneficiaries have to move to a country which does not tax distributions.

Another way to reconstruct a Swedish close company is to transfer the ownership to a Danish holding company. Denmark may be said to have improved its attractiveness as an international holding company location by the inauguration of some favourable rules. Denmark will for example be unique, since both inbound and outbound dividends will be exempt from taxation. This will enable multinational companies, which have their residents in countries outside EU, to obtain substantial tax savings by repatriating profits from Europe through a Danish-based holding company. Another advantage of establishing a holding company in Denmark is that capital gains are free from tax after three years of holding.

One possibility is to transfer the ownership of the Swedish close company to a Danish holding company. This transaction will however trigger Swedish capital gains taxation, and it is therefore not an attractive option. However, there are, under certain conditions, possibilities to transfer the business of the close company at book value to a Swedish subsidiary of a Danish holding company. In accordance with Danish rules of taxation, an owner will get the market value of the shares of the Danish holding company as the acquisition value, when he or she immigrates to Denmark. The result is that only gains which will arise in the future are subject to Danish tax. The shareholder has to move to Denmark and cut the essential connections to Sweden to avoid the Swedish taxation applicable to owners of close companies. The old Swedish company has therefore to be liquidated and the subsidiary of the Danish holding company has to be sold. However, to be able to obtain the capital gains tax-free, the Danish holding company can first sell the shares of the Swedish subsidiary after three years of holding.

Consequently the establishment of a foreign trust or a Danish holding company may, under certain conditions, result in that the Swedish taxation concerning close companies will not be applicable. The constructions may be favourable if there is a wish to accumulate profits for the future. However, to be able to repatriate profits without burdensome taxation, the shareholders or the beneficiaries have to immigrate to a country which does not tax distributions.

Acknowledgements

First I would like to thank my supervisor Mats Tjernberg for his guidance and encouragement during the work with this thesis.

Furthermore, I would like to thank Ernst & Young in Malmö, especially tax consultant Klas Svanberg for useful advice and comments. Klas Svanberg has shared his valuable knowledge with me and been of great support.

I will also thank the persons who have helped me with the proof-reading of the thesis.

Li Ankel

Abbreviations

AB	Aktiebolag, company limited by shares
AGL	Lag (1941:416) om arvsskatt och gåvoskatt, Inheritance and Gift Tax Act
ApS	Anpartsselskab, private limited company
art.	article
A/S	Aktieselskab, public limited company
bet.	betänkande, reports given by committees
CFC	Controlled Foreign Companies
DKK	danska kronor, Danish crowns
ed.	edition
IBFD	International Bureau of Fiscal Documentation
KL	Kommunalskattelagen (1928:370), the Swedish Municipal Income Tax Act
LSR	Landskatteretten, a Danish quasi judicial tax court
mom	moment, clause
NJA	Nytt juridiskt arkiv, the Swedish official publication, which contains judgements from the Swedish Supreme Court
PFIF	Passive Foreign Investment Funds
prop.	regeringens proposition, government bill
ref	referat, report
RSV	Riksskatteverket, The National Tax Board
RÅ	Regeringsrättens årsbok, the Swedish official publication, which contains judgements from the Swedish Supreme Administrative Court
SEK	svenska kronor, Swedish crowns
SFS	Svensk författningssamling, the Swedish official publication of statutes
SIL	Lag om statlig inkomstskatt (1947:576), the Swedish State Income Tax Act
SINK	Lag (1991:586) om särskild inkomstskatt för utomlands bosatta, special Swedish income tax applicable on employment income
Skriv.	Regeringens skrivelse, official letter from the Swedish Government
SN	Skattenytt, Swedish periodical in taxation
SOU	Statens offentliga utredningar, Public Report Series
vol.	volume

1 Introduction

1.1 Purpose

Swedish tax legislation contains a number of rules aimed at preventing companies[1] giving managers, co-owners and relatives of owners of close companies special privileges. The purpose of the Swedish rules applicable to close companies is for example to prevent an owner from declaring dividends instead of higher-taxed wages. The purpose of this thesis is to investigate whether a change of ownership will involve a reduction of the tax burden which rests on an owner of a close company. The investigation will be restricted to constructions including foreign trusts and international holding companies.

Lately it has been popular for people to place their funds in offshore investments such as foreign trusts, which is an invention of the English common law. There are specific problems which arise when dealing with trusts, particularly concerning the use, acceptance and taxation under civil law jurisdictions. One of this paper's aims is to describe and discuss the institute of trust from a fiscal point of view. The trust is usually said to be a useful tool in fiscal planning and there will, in this thesis, be an investigation to find out whether a Swedish close company will gain tax advantages in a construction which includes a foreign trust.

Another more common way for taxpayers to avoid or reduce tax in their country of domicile is to create an international holding company. An international holding company[2] is mainly set up to minimise the tax costs in a group of companies. Not only multinational companies but also medium and small sized companies use this structure. For a long time Belgium, Holland and Luxembourg have been examples of appropriate countries of where to establish holding companies. Lately it has been observed that Denmark could be a country of similar advantages. Denmark has introduced some new rules of taxation which in some circumstances makes it more advantageous to establish an international holding company in this country. Because of these rules, it is interesting to investigate whether it is advantageous also for an owner of a close company to establish a holding company in Denmark. The choice of Denmark as the country of domicile is especially interesting due to the proximity to Sweden. The bridge across the Sound will be finished during the year 2000 which means that the earlier inconveniences from lack of infrastructure will no

[1] For this thesis, the term company is going to be used to mean a company limited by shares.
[2] In the following, the term holding company is going to be used to mean international holding company, although the more usual meaning of holding company covers the holding of shares within one country.

longer apply. From both sides of the Sound the development is expected to gain many enterprises because of the increased market and better access to labour. The region forms a homogenous area of Europe with a culture and legal environment that have a lot in common. This thesis will provide an outline of the preferential tax conditions initiated in Denmark. Another aim of this thesis is to find out whether a transfer of the ownership of a Swedish close company to a Danish holding company will result in capital gains and dividends being taxed at a lower rate.

1.2 Limitation

The subject is extensive and I have therefore been obliged to restrict this thesis. When establishing a company or a trust abroad, in addition to the Swedish rules of taxation, the rules of the foreign country and a tax treaty may be applicable. In other words, the establishment of a foreign enterprise demands knowledge of many different areas of taxation. I will however concentrate my investigation on the Swedish and to some extent the Danish taxation systems.

When it comes to trusts I have chosen not to select a country of domicile. The location that is the most suitable in a specific case ultimately depends on the actual conditions, particular circumstances and on individual objectives. The investigation will be made from a Swedish perspective. In addition, I have chosen to restrict my investigation regarding Swedish taxation claims to income tax, capital gains tax and inheritance or gift tax.

This paper will also concentrate on the tax aspects. There are other factors to take into consideration when establishing a holding company or a trust in another country, these will be dealt with only briefly. Furthermore, I have chosen not to discuss the Swedish Law of Tax Avoidance[3].

1.3 Method

This paper is mainly based on studies of regulations, legal cases, preparatory works, books, articles and electronic sources. The preparatory works and comments on these have been helpful in understanding the Swedish law. In the course of this thesis it has been necessary to make comments on the legal and fiscal systems of other countries. I have taken every care to ensure that the comments are accurate in relation to them but it has not, due to the time limit, been possible to study the preparatory works of foreign law systems. Instead, I have been obliged to put my trust in the different literature and articles that I have been reading.

---

[3] Lag (1995:575) mot skatteflykt.

In addition, I have had the privilege of discussing the different issues of this thesis with Klas Svanberg, who operates as a tax consultant at Ernst & Young in Malmö. Klas has been a useful source of information, particularly concerning the comprehension of the Danish tax regulations.

1.4 Outline

The thesis is arranged in five separate parts which this introductory part is the first.

The second part provides a general background to the subject issue of the thesis. As an introduction the special tax situation, which Swedish close companies are subject to, will be briefly discussed in this chapter. I will start to give a short description of the taxation of dividends followed by the taxation of capital gains.

In chapter three there will be a presentation of the concept of trust. There will be a description of the legal status of trusts in civil law countries and a discussion about some of the problems that can arise when civil law countries are dealing with trusts. The main emphasis however will be on the Swedish taxation claims regarding foreign trusts.

Chapter four will begin with an overview of the Danish tax law. The focus will be on the most important features of the Danish tax law applicable to Danish holding companies. There will be an investigation about the consequences that will arise when a Swedish owner establishes an international holding company in Denmark.

Since this thesis consists of two main parts which are foreign trusts and Danish holding companies, and as these are quite separate from each other I have chosen to place the conclusions directly after each of these two parts. There will therefore only be a brief summary and evaluation of the subject issue of this thesis in the fifth part.

2 Swedish rules of taxation concerning close companies

2.1 The rules' applicability

2.1.1 Definition of a close company

Special tax rules apply in Sweden in respect of so called “close companies”. The expression close company is used to describe a company which is sufficiently closely controlled by its shareholders to enable them to manipulate the company's affairs and thereby procure certain advantages. A shareholder of a close company may, for example, act in several different ways in relation to its company. A shareholder may, besides being a shareholder, also be an employee of the company, or a party to a contract with the company.

A close company is defined as a company in which four, or less, natural persons, either directly or indirectly, own shares representing more than 50 per cent of the voting rights.[4]

2.1.2 Qualified shares

The special rules concerning taxation of dividends and capital gains are applicable when the shares are “qualified”. The conditions for the shares to be qualified are that the person liable to pay tax, or a closely related person, operates or has been operating, during the last five years, in the company of considerable proportions.[5] [6]

2.1.3 Foreign companies

In RÅ 1994 ref 3, was a foreign Danish company not subject to any rules of taxation concerning close companies. However, through an alteration of the Act, which applies since 1997, the special rules may be applicable to foreign

---

[4] Section 3, clause 12 a, paragraph 4 SIL, which refers to section 32, instruction 14, paragraph 8 KL.
[5] Section 3, clause 12 a, paragraph 1 SIL.
[6] According to prop. 1989/90:110 p. 703, is a person operative of considerable proportions if the performance is of great importance for the profit making.

companies.[7] Consequently, when classifying a close company, foreign companies are ranked in the same category as Swedish companies.[8]

2.2 Taxation of dividends

2.2.1 Purpose of the rules

The special rules concerning close companies cover, for example, the distribution between employment incomes and capital incomes.[9] The reason for this is that capital incomes are taxed at a rate of 30 per cent, whereas employment incomes are taxed at a rate of 30-56 per cent on a progressive scale. Despite the fact that Sweden has double taxation, corporation tax as well as income tax on dividends, it is still often advantageous to declare dividends rather than salaries. The purpose of the special rules for close companies is therefore to reduce the shareholders' possibilities to distribute dividend instead of salary.[10]

Consequently dividends received from a close company will be taxed at a higher rate than dividends deriving from an ordinary company. Surplus distribution is taxed as employment income and is considered to be compensation for work performed. In other respects, dividends paid are treated in the same way as ordinary distribution. The payment is neither deductible as an expenditure nor is the distribution subject to social insurance contribution.[11]

2.2.2 Capital taxed amount

The rule in section 3, clause 12 of the State Income Tax Act states that "normal" return on qualified shares will be treated as dividend, which means that it will be taxed as capital income. However, dividends which exceed the normal return will be taxed as employment income.

If a shareholder does not receive dividend during a particular year, it is possible to determine an amount to save for later years. The shareholder may calculate a capital taxed amount even during years when no dividend is distributed.[12]

[7] Tivéus, 1997, p. 85.
[8] Section 3, clause 12 a, paragraph 4 SIL.
[9] Section 3, clause 12 SIL.
[10] Lundén, 1997, pp. 7 ff.
[11] Tivéus, 1997, p. 85.
[12] Lundén, 1997, p. 145.

2.2.3 Tax exempt amount

Tax relief concerning the taxation of dividend and capital gains applies since 1997, which means that the shareholder may receive some of the dividends or capital gains tax-free.[13] It is possible for the owner to save the amount, which is subject to relief, for later years. It is however a very limited part of the dividend, which will be subject to relief.

2.2.4 Wage increment

When determining the capital taxed amount and the tax-free amount it is possible to add a wage increment-amount. The calculation of the wage increment is based on the total compensation made to the employees. However, compensation made to shareholders, who are subject to the special rules in section 3, clause 12 of the State Income Tax Act, is not included. In addition, the wage increment constitutes an amount which exceeds ten times the basic amount.[14] Furthermore the maximum amount of the wage increment is fifty times the compensation made to the shareholders', who have been working for the company.[15] Another requirement that has to be fulfilled is that during the year the shareholder has received 120 per cent of the highest paid compensation to an employee or an amount which corresponds to ten times the basic amount, otherwise, the wage increment rule can not be used.[16]

2.2.5 Foreign companies

Foreign companies are subject to withholding tax on dividends received from a Swedish company. The withholding tax, which is a state tax, is 30 per cent. However, a lot of the tax treaties which Sweden has entered into prescribe that the withholding tax will be restricted to a lower rate than 30 per cent. Dividends which are distributed to a foreign parent company will often be exempted from tax. This will be the case when the parent company is resident in EU, according to Art. 5 of the EC Parent-Subsidiary Directive.[17] [18]

---

[13] Prop. 1996/97:45 p. 23, bet. 1996/97:SkU13.
[14] Section 3, clause 12 d, paragraph 1 SIL.
[15] Section 3, clause 12 d, paragraph 3 SIL.
[16] Section 3, clause 12 d, paragraph 2 SIL.
[17] The Parent-Subsidiary Directive, Council Directive 90/435/EEC of 23 July 1991 on the Common System of Taxation applicable in the Case of Parent Companies and Subsidiaries of Different member States, provides for tax relief with regard to profit distributions made by a qualifying EU subsidiary to its qualifying EU parent (outbound dividends), or received by a qualifying EU parent from its qualifying EU subsidiary (inbound dividends). Sorabjee, 1995, p. 193.
[18] Tivéus, 1997, p. 88.

The rules concerning the calculation of the amount which is subject to relief, the tax-exempt amount, applies on shares in a foreign company with one exception. The possibilities to use the wage increment rule are restricted. It is for example only possible to include compensation which forms the basis of Swedish employer's declaration (or special employer's contribution), which means that wages deriving from foreign companies do not form part of the wage increment.[19] However, compensations which have been distributed from a Swedish subsidiary of the foreign parent company will be included in the calculation.

2.3 Taxation of capital gains

Capital gains deriving from a close company will be taxed at a higher rate than capital gains on shares in an ordinary company, since some of it will be taxed as employment income. Half of the capital gain will normally be taxed as employment income and half as capital income. There are, however, some exceptions which involve that some part of the capital gain will be subject to relief.[20] These rules are in principal the same as apply for dividends, which are stated above. In addition there is the "basic amount" rule, which stipulates that no more than 100 basic amounts will be taxed as employment income.[21] This rule states that capital gains, which exceed the amount of 200 basic amounts[22], will never be taxed at a higher rate than 30 per cent. However, the Swedish rules of taxation still constitute that the taxation will be high.

2.4 Exception

According to section 3, clause 12 e of the State Income Tax Act, there is an exception to the rules stated above. The special rules concerning close companies are not applicable if the person liable to pay tax proves that an outsider owns a considerable amount of the shares in the company and, that the person has the right to receive dividends. In accordance with the preparatory works the rule aims at cases when dividends from the company to the shareholders do not constitute any advantage in comparison to receiving salary. According to the preparatory works this will be the case when an outsider owns 30 per cent of the shares in the company.[23] It is however uncertain whether the percentage, after the increase in taxation during the latest years, can be comprehended as fixed.[24]

---

[19] Section 3, clause 12 d SIL.
[20] There is uncertainty as to whether it is possible to use the wage increment rule. It is probably not possible since the rule is already used when calculating the capital taxed and the tax free amount, see for example Tjernberg, 1998, p. 71.
[21] Section 3, clause 12 b, paragraph 5 SIL.
[22] In 1999 this amount corresponded to SEK 7.280.000.
[23] Prop. 1989/90:110 p. 704.
[24] See for example Tjernberg, 1998, p. 83.

The rule is not applicable if there are special reasons, such as if there is an agreement between the shareholders which regulates the actual distribution of profits.[25]

[25] Prop. 1989/90:110 p. 704.

3 Trust

3.1 In general

One of the major motivations for the use of trusts is that a trust can be used effectively to reduce taxation. The classical purpose of trusts includes providing for property to remain in the family over several generations. In addition a trust is an essential aspect of tax planning which aims to achieve legitimate tax avoidance.[26]

In this chapter there will be an investigation to find out whether it is efficient for a Swedish owner of a close company to establish a trust in a foreign country. Firstly there will be a presentation of the concept of trust. Secondly the chapter will provide a simplified picture of how a trust is taxed in common law countries. Thirdly, there will be a description of the legal status of trusts in civil law countries and the Swedish taxation claims regarding foreign trusts.

3.2 The legal nature of trusts

The trust is a peculiar creation of the common law and is a well-known concept in countries which has a common law based legal system.[27] A trust is a legal arrangement whereby the owner of the property, the settlor, transfers ownership to a person, the trustee, who is to hold and control the property according to the owner's instructions for the benefit of another person, the beneficiary. The trustee is in other words the legal owner of the property, but he or she is obliged to use the property in favour of the beneficiaries. Due to the beneficiaries' legal protection, it is possible to characterise them as the beneficial owners of the property.[28]

---

[26] Sundgren, 1997, p. 25 f.

[27] Common law countries is a common term among continental lawyers for the countries belonging to the Anglo-American legal family, Werlauff, 1998, p. 145.

[28] Gardner, 1990, p. 1 f., Simon, 1998, p. 462, Werlauff, 1998, p. 145.

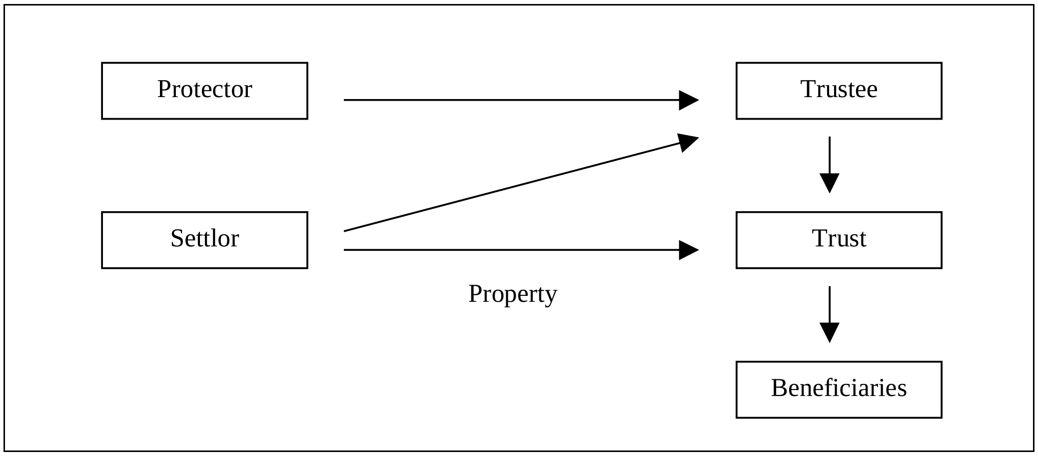

Figure 1. Model to describe the institute of trust.[29]

The trustee can be one or several natural or legal persons.[30] Even the settlor could be a trustee. If the settlor is going to be the trustee, the trust will arise when the settlor has separated the trust property. It is not possible however, for the settlor to be the trustee and at the same time the only beneficiary, since in that case there is no equitable obligation to another person.[31]

A trust can be fixed or discretionary. Whether a trust belongs to one or the other category is dependent on whether the beneficiaries are individually decided or decided from hereditary.[32] A fixed trust is a trust with individually decided beneficiaries, which, in addition, mean that the trustee has to follow the instructions given by the settlor. The trustee does not in other words have a say in the amount or the time of the distributions to the beneficiaries.[33]

A discretionary trust gives the trustee the power to distribute income or capital among beneficiaries at his or her discretion. A beneficiary under a discretionary trust has no right to income or capital until the trustee decides to distribute it in favour of that beneficiary. Under a discretionary trust the beneficiaries need not be named if they are a specified class, for example “my grandchildren”.[34]

The trust property is protected from the creditors of the settlor, the trustee and the beneficiaries.[35]

---

[29] Simon, 1992, p. 410.
[30] Baker, 1995, p. 244, Kim AB, 1999.
[31] Hagstedt, 1972, p. 76.
[32] Simon, 1992, p. 411, Sundgren, 1997, p. 6.
[33] Simon, 1992, p. 411.
[34] Courtney, 1990, p. 9 f., Pearce, 1995, p. 328 f., Simon, 1992, p. 411.
[35] Simon, 1992, p. 411, Sundgren, 1997, p. 5.

3.3 Taxation of trusts in common law countries

3.3.1 Taxation in general

This part of the thesis will provide the reader with a brief description of the taxation of trusts in common law countries. The purpose of showing the taxation claims of common law countries is to give a background to the following chapters, which are about taxation claims of civil law countries.

There are three main types of taxation in common law countries, which will affect the trust: income taxation, capital gains taxation and inheritance or gift taxation.

3.3.2 Income taxation

Taxation of income relating to a trust may be done on two different levels, on a trust level and on a beneficiary level. The fundamental principle concerning liability to pay tax is that the one who will receive advantages from the assets is the one who will be taxed for the income deriving from the trust property. This will usually be the beneficiary. However, for practical reasons deviations from this rule are made. It has been considered desirable to be able to tax income relating to a trust even if there are no defined beneficiaries.[36]

In accordance with English common law, a trust is not regarded as a legal entity. However, when no one has right to the trust income the trust is generally treated as a separate taxpayer and taxed at the same rates which apply to individuals.[37] When trust income is distributed to the beneficiaries they are not liable to pay further tax, provided that the trust income does not have any effect on the marginal tax. The reduction of the tax paid by the trust prevents double taxation.[38]

However, to make the trust liable to pay tax, some requirements have to be fulfilled. The trust arrangement has to be irrevocable. If the settlor has the right to revoke the trust, the settlor will be taxed on incomes deriving from the trust.[39] In addition, there are circumstances where the settlor thinks the possibilities to control the trust property are insufficient and therefore uses a protector. The function of the protector is to control the trustee, which could mean that the trustee needs the protector's approval before acting.[40] This construction is

---

[36] Cf. Simon, 1992, p. 412, Sundgren, 1997, p. 5.
[37] Courtney, 1990, p. 11.
[38] Simon, 1992, p. 412 f.
[39] Pearce, 1995, p. 110, Simon, 1998, p. 463.
[40] Simon, 1992, pp. 409, 418.

another example where the settlor could be subject to income taxation on incomes deriving from the trust, since it is considered that he or she has the control over the property and therefore is the real owner of the property.

3.3.3 Capital gains taxation

A transaction where a settlor settles property on trust in the form of shares may be considered a disposal, which means that he or she will be liable to pay capital gains tax. It is considered that a community of interest exists between the settlor and the trustee and the shares will therefore be valued at market value at the time of the disposal. This means that the taxable amount is the difference in values of the asset between the date of disposal and the date of acquisition.[41] However, in regard to some assets, for example shares in unquoted companies, there is a possibility to get a holdover relief, which is a postponement of the payment.[42]

In addition, the trust may have gains in the ordinary course of managing its assets. The trustee will be subject to taxation, on behalf of the trust, on capital gains which have arisen during the trustee's administration of the trust.[43]

3.3.4 Inheritance or gift taxation

Inheritance or gift tax is paid when there is a transfer of value. This will occur when a person makes a disposition and the value of his or her estate is less than it would have been without the disposition. When dealing with inheritance and gift tax, there is an important distinction between trusts in favour of beneficiaries who have an interest in possession and those who have not. Interest in possession means that the beneficiaries are immediately entitled to an interest in the fund. This distinguishes a fixed trust from a discretionary trust, in which the beneficiaries have no immediate entitlement to any of the trust fund unless the trustee decides to distribute some of the property to them, because of this distinction different tax rules apply.[44]

Where the beneficiaries are beneficiaries of a fixed trust, inheritance or gift tax will be paid on the relevant proportions of the trust capital to which the beneficiary's interest relates.[45]

---

[41] Pearce, 1995, p. 110, Simon, 1992, p. 413.
[42] Simon, 1992, p. 413.
[43] Courtney, 1990, p. 43, Simon, 1992, p. 413.
[44] Pearce, 1995, p. 112.
[45] Pearce, 1995, p. 112.

The beneficiaries of a discretionary trust have no rights to the property, which is held on trust until the trustee decides to make a contribution in their favour. Inheritance tax is therefore paid when there is a distribution of the property to the beneficiaries.[46]

3.4 Recognition of foreign trusts in civil law countries

The trust concept constitutes, as is stated before, an important part of equity law and has a different meaning than foundations have in civil law countries. The Swedish Law of Foundation Act will for example not be applicable on trusts.[47] An important difference between common law and civil law countries is that a foundation in civil law countries is considered to be a legal entity which a trust in common law countries is not.[48] It is instead the trustee, who is the owner of the trust property. In addition, civil law countries do not have institutions that allow the separation of legal and equitable ownership of property, which a trust requires.[49]

A trust creates difficulties when a civil law country has to deal with its legal consequences. Swedish tax authorities will for example come in contact with trusts, either because its settlor or trustee or beneficiary is or will be domiciled in Sweden, or because some of the assets invested in the trust are subject to Swedish taxation, for example real property in Sweden. A question of fundamental character is therefore if Sweden and other countries recognise a foreign trust. The question has been subject of regulation in a special multilateral convention from 1985 in Haag: “Convention on the law applicable to trusts and their recognition”, which means that a recognition of the trust is done on an international level. The preamble states that the purpose of the Convention has been to produce a document for civil law countries to deal with the different problems trusts create. The Convention specifies the law applicable to trusts and governs their recognition.[50] In accordance with article 19 may the Convention not limit the powers of States in fiscal matters.

However, not many countries have ratified the Convention. On the 1st of July 1996 only Australia, Canada, France, Italy, Luxembourg, Malta, The Netherlands and Great Britain had ratified the Convention. In other words Sweden is

[46] Pearce, 1995, p. 113.
[47] Chapter 1, section 7 of the Law of Foundation Act, Stiftelselag (1994:1220). See also prop. 1993/94:9 p. 50.
[48] In addition, the Swedish foundation is an independent taxation subject.
[49] Simon, 1992, p. 411 f., Sundgren, 1997, p. 4.
[50] Art. 1 of the Convention.

not committed to this Convention.[51] It is therefore possible for Sweden to disregard the existence of the trust in a legal respect. The consequences will then be that the settlor is still the owner of the property. This is however not an appropriate position. The trust consists of a binding agreement between the settlor and the trustee. Similar constructions may be found in Sweden, that is foundations, which are legally accepted. In addition the trust is connected with legally effects in relation to third parties, which to a large extent is the same as will arise in a construction with a foundation. Peter Sundgren's opinion is that a discretionary foreign trust could be ranked in the same category as a foundation, even if it does not constitute a legal person. The only difference compared to a foundation is that the person who has been entrusted the property is called a trustee and has the residence abroad.[52] Support for this thesis is found in a Swedish advance ruling, where the first instance found that the trust has obvious likeness to a Swedish foundation and that it, therefore, should be considered to be a foreign legal entity. The appeal was, however, dismissed by the Swedish Supreme Administrative Court.[53]

Some civil law countries within the European Union have recognised the trust judicially. One example is a decision from 1994, where a Danish Tax Court (Landskatteretten) recognised a Guernsey discretionary trust. The Danish Tax Court held that a trust does not need to correspond with the foundation requirements to be recognised for tax purposes. The Court referred to the fact that the trust complied with the requirements under foreign law and that the trustees enjoyed sufficient confidence and showed sufficient integrity. In addition, the Court found that an irrevocable separation had taken place between the settlor and the trust, which meant that the settlor could no longer be considered to be the owner of the property. Since the settlor was not named as one of the beneficiaries, the Court found that there were no grounds for holding that the settlor was subject to income taxation with respect to the trust property.[54]

The conclusion that can be drawn is that Sweden may have the possibility not to recognise a foreign trust, however, this solution does not seem to be suitable. To insist upon a strict link between the Swedish foundation requirements and the recognition of a foreign trust is not easily complied with in reality. Instead, one has to find a way to deal with the institution of trust even within the judicial systems of civil law countries.

[51] Sundgren, 1997, p. 8.
[52] Sundgren, 1997, p. 12.
[53] RÅ 1988 not 56.
[54] Decision of the Danish Tax Court of 11 July 1994, No. 641-1859-9. In addition, see Lyons, 1997, p. 81, Sundgren, 1997, p. 12, Weizman, 1995, p. 92.

3.5 Swedish taxation claims on foreign trusts

3.5.1 In general

As is stated in the previous chapter, the setting up of a foreign trust is associated with uncertainty concerning the Swedish acceptance of the trust. The reason is that we do not have constructions like trusts in Sweden. To be able to determine whether the establishment of a foreign trust is an effective tax planning structure, one has to consider the Swedish taxation claims, which will be analysed in this section.

3.5.2 Swedish income taxation

3.5.2.1 Swedish income taxation of the settlor

It is important to consider how income deriving from a foreign trust should be taxed, in the country of which the settlor is resident.

There are not many decisions from the Swedish Supreme Administrative Court which are related to trusts. There are however some more which are about foundations. These decisions may be of use when dealing with the Swedish taxation claims of the settlor. In one of the cases the founder established a revocable foundation. The Supreme Administrative Court held that a valid foundation had not been established since the founder had the possibility to use the assets, no transfer of the property had therefore taken place.[55] Another situation where a foundation has been found invalid was when the founder was one of the beneficiaries in combination with a revocable foundation.[56] The same principles ought to be applied to trusts. Kent Simon suggests a method, which consists of an examination of the trust document to find out whether the settlor has irrevocably separated the trust property from the settlor's property. One example where the trust property is not considered to have left the settlor's sphere of assets is when distributions to the beneficiaries require the consent from a protector. Since it is considered that a definite separation has not taken place, the settlor will be subject to taxation for the income of the trust.[57] Consequently the question of ownership is decisive as to whether the settlor is liable to pay tax for the asset in question. To secure that the trust property will not comprise part of the settlor's estate for tax purposes it is important that the settlor has removed the property.

[55] RÅ 1964 fi 1656.
[56] RÅ 1956 fi 409.
[57] Simon, 1992, p. 418, Sundgren, 1997, p. 15.

3.5.2.2 Swedish income taxation of the beneficiary

In accordance with Peter Sundgren, the tax authorities may look through a trust arrangement in which a beneficiary is entitled to the income of a trust, that is a fixed trust, and tax him or her even if no money is actually paid to the beneficiary. The property of the trust may be considered to have been transferred to definite and known beneficiaries.[58]

To avoid income taxation of the beneficiary it is practice to use the discretionary trust, which means that the trust property is settled on the trustee to be held by him or her to distribute the income or the capital as the trustee thinks fit. It cannot then be said that any one beneficiary has any legal entitlement to a share in the income or capital of the trust property, since the trustee may exclude him or her in favour of the other beneficiaries. The beneficiary will only be assessed to tax by the mainland authorities on such amounts as are remitted to him or her while he or she remains resident within the jurisdiction.[59] The Danish National Tax Tribunal has for example held that a beneficiary resident in Denmark, who received a stipulated annuity, was liable to pay tax on the annuities. The capital, which was settled by the beneficiary's father by will in a trust resident in USA, was not passed to the beneficiary and the beneficiary was therefore not found liable to pay any tax on this settled capital.[60] In addition, this is the opinion in a Swedish advance ruling, where the first instance held that the beneficiaries, who were resident in Sweden, would be liable to pay tax only on distributions made.[61]

Distributions made to a beneficiary resident in Sweden from a foreign trust will be taxed in accordance with section 31, instruction 2 of the Swedish Municipal Income Tax Act which states that the distributions will be taxed as employment income. This may be a disadvantage if the assets, which are distributed to the trust, are bonds or shares. However, under condition that the rules concerning close companies otherwise would have been applicable, the distributions may have been taxed as employment income anyway.

The question is whether it may be possible to look at the distribution as something that originally derives from a close company in Sweden. In RÅ 1990 ref 15 the Supreme Administrative Court held that an owner and employee of a close company was subject to taxation on a benefit consisting of accommodation, which was received from a pension fund, to which the company was related.[62] The Court found that due to the community of interest that existed

[58] Sundgren, 1997, pp. 19 ff.
[59] Sundgren, 1997, p. 21.
[60] Michelsen, 1999, p. 280.
[61] Decision of the Swedish Supreme Administrative Court of 15 February 1999. The decision was however dismissed by the Supreme Administrative Court.
[62] This was in accordance with section 32, clause 1 KL.

between the owner, the company and the pension fund, the benefit received was considered to have been pay for his work in the company and would therefore be taxed accordingly. It is in other words not necessary that a benefit received is directly obtained from the company. One assumption is that the company in one way or another has contributed to the benefit received or that a community of interest exists between the company and the person who has received the compensation. To be able to tax the beneficiary for the distribution from a trust on similar grounds one can argue that the distribution derives from the company and is paid to a relative of the owner. To be able to do this it is once again necessary to decide who the owner is. To decide that the original manager and shareholder is the owner, will mean that we do not accept the trust, as said before, this is not an appropriate solution. Since it is not possible to find an owner of the trust property, it is not possible to apply the special Swedish rules. In other words, due to the rule of law, it is not possible to tax the distribution in accordance with the special rules in section 3, clause 12 of the State Income Tax Act, as a benefit that originally derives from the close company in Sweden and which is distributed to a closely related person of the owner of the company. However, as stated above the distributions will still be taxed as employment income in accordance with section 31, instruction 2 of the Municipal Income Tax Act.

Consequently the possibility to use the discretionary trusts makes it possible to avoid Swedish taxation on the returns of the trust property. It is at least possible to obtain tax credits. A beneficiary, who is resident in Sweden, will only be liable to pay tax in Sweden on the amounts which are distributed to him or her. However, to obtain a total tax-relief the distributions should be made to beneficiaries, who have their residence abroad, in a country which does not tax distributions.

3.5.2.3 Swedish income taxation of the trust

When dealing with discretionary trusts problems can arise if the trustee has not yet decided to whom he or she will distribute the income. One possibility is to tax the settlor. As said before a determining factor could be whether a valid donation has taken place. If this is the case and the receivers are unspecified the question arises whether it may be possible to tax the trust.

The extent of the liability of the trust must then be determined. For Swedish tax purposes companies are classified as resident companies and non-resident companies. All companies not registered in Sweden are non-resident legal entities. In respect of non-resident companies, some provisions make a distinction between a foreign legal entity other than foreign companies and foreign companies. In accordance with section 16, clause 2 of the State Income Tax Act, a foreign company exists if the foreign legal entity is subject to taxation in the country of domicile which is similar to the Swedish taxation concerning

Swedish corporations. In addition, if the foreign legal entity is domiciled in a country, with which Sweden has a tax treaty, the foreign legal entity is usually a foreign company. If the requirements to be a foreign company are not fulfilled a foreign legal entity other than a foreign company may exist.

A trust is not a foreign company, however, the question arises as whether it may be included in the definition of a foreign legal entity. In accordance with section 16, clause 2 of the State Income Tax Act, a foreign legal entity is defined as an association which has partners. For a trust none of these requirements are met. Even if it is possible to consider the beneficiaries as the final owners of the property, a trust is distinguished from an association since the beneficiaries do not have any possibilities to change the purposes of the trust. They could consequently not be considered to be partners.

The Swedish first instance has held that a foreign trust should be treated as a foreign legal entity due to the likeness to a Swedish foundation.[63] A later advance ruling states however that a foreign trust could not be considered to constitute a foreign legal entity.[64] Both appeals were, however, dismissed by the Swedish Supreme Administrative Court.

Since the requirements are not fulfilled, the trust is not a foreign legal entity in accordance with the Swedish definition.[65] [66] This will for example mean that a trust, which owns real property in Sweden or carry on business from a permanent establishment in Sweden, is not subject to taxation in accordance with the State Income Tax Act.[67]

The arguments concerning foreign legal entities may be applied also in relation to the Dividend Withholding Tax Act[68]. Section 4 of the Act states that foreign legal entities are liable to pay withholding tax on distributed dividends. There are reasons to believe that the same judgements are going to be applied as regarding the definition of foreign legal entities in the State Income Tax Act.[69] A foreign trust is consequently not liable to pay tax on dividends derived from Swedish companies.

[63] RÅ 1988 not 56.
[64] Decision of the Swedish Supreme Administrative Court of 15 February 1999.
[65] The question was however not mentioned in the preparatory works.
[66] Nils Mattsson's opinion is also that trusts are not included in the Swedish definition of foreign legal entities. He suggests however a change of the definition, to include foreign trusts. Mattsson, 2000, p 104 f.
[67] Cf. section 6, clause 1 SIL.
[68] Kupongskattelag (1970:624).
[69] The connection between the two statutes is evident in the bill regarding the new definition of "a foreign legal entity", prop. 1989/90:47 p. 19.

3.5.2.4 Swedish income taxation of the trustee

Another possibility for Swedish tax authorities is to direct the income taxation claims against the trustee. As said before, the trustee is the legal owner of the trust property, but the ownership is different compared to the Swedish definition, since the trustee is obliged to use the property in favour of the beneficiaries. The first instance in a Swedish advance ruling has held that it is not possible to consider the trustee as the owner of the trust property.[70] Since the trustee will not obtain any economic gain from the property, he or she should not be taxed as its owner.

Section 4 of the Swedish Dividend Withholding Tax Act states for example that a natural person, who is domiciled abroad, is liable to pay withholding tax on distributed dividends under the condition that the person is entitled to dividends. This requirement is not fulfilled since the trustee is the administrator of the trust property and not entitled to the dividends. A trustee is consequently not liable to pay tax on dividends, which derive from Swedish companies.

3.5.3 Swedish capital gains taxation

When property is transferred to a trust, the question arises whether the Swedish law recognises this transaction as a disposal. The answer is important since, according to the Swedish law, taxable capital gains are considered to have arisen when there has been a disposal of assets. This is in accordance with the Swedish realisation concept.[71] In accordance with section 24, clause 2 of the State Income Tax Act, a sale, exchange or equivalent transfer of property is comparable to a disposal. Consequently the concept of disposal does not seem to comprise transfer of property to a foreign trust, which would mean that there is no liability for a settlor to pay capital gains tax when property is transferred to a foreign trust. This conclusion is compatible with another Swedish tax principle which states that there should not be any tax claim when the capacity to pay tax has not increased.[72]

There is a rule in section 3, clause 1 h, paragraph 3 of the Swedish State Income Tax Act, which states that a transfer of assets, for example shares, to a foreign legal entity, will be treated as if the assets are sold at a price which corresponds to the market value. The use of the market value may trigger capital gains taxation in Sweden. However, since a trust is not a foreign legal entity, the rule does not cover situations where shares are transferred to a foreign trust.

---

[70] Decision of the Swedish Supreme Administrative Court of 15 February 1999. The appeal was however dismissed by the Swedish Supreme Administrative Court.
[71] Pelin, 1997, p. 44, 256.
[72] Cf. Pelin, 1997, p. 44.

Capital gains may however arise during the time when the property is in the hands of the trust. What will happen for example if the trust sells trust property, consisting of shares in a Swedish closely held corporation? Once again the ownership of the shares is decisive as to whether it is possible to tax the capital gain in Sweden. As said before, we do not recognise the trust as a foreign legal entity, which means that we could not tax the trust.

However, if we are dealing with a fixed trust, there might be a possibility to consider the beneficiaries as the owners and consequently tax them. In addition, in Sweden there is a ten-year rule on share sales by emigrants in section 53, clause 1 of the Municipal Income Tax Act and section 6, clause 1 a of the State Income Tax Act, which might be of interest if the beneficiaries have moved abroad. The rule secures the Swedish right to impose taxes on capital gains for a period of ten years when the shareholder has moved to another country. Due to this rule it is often hard to escape the tax liability, even after having fulfilled the tough requirements of cutting all significant connections to Sweden. The rule makes no difference between citizens and non-citizens, thus hindering the shareholder to escape the capital gains tax by giving up his citizenship. The rule will however only be applicable under condition that it is possible to treat the beneficiaries of a fixed trust as the owners of the trust property. In addition the rule can be avoided by emigration to one of those several countries with which the existing tax treaties preclude the use of the rule, reserving the right to tax capital gains to the country of domicile.

If we are dealing with a discretionary trust it is, as is stated before, even harder to find an owner. The possible outcome will be that Sweden does not have any possibility to tax capital gains, which arise during the time when the trust property is in the hands of the trust.

3.5.4 Swedish gift taxation

The establishment of a foreign trust may trigger Swedish gift tax if the settlor is resident in Sweden, this includes a period of ten years from a migration from Sweden. In addition, when the trust property consists of shares in a Swedish company and the settlor is a Swedish citizen, there may be Swedish gift tax, irrespective of the country of domicile of the settlor.[73] At least the setting up of a fixed trust by a Swedish resident ought to create a taxable gift. However, the Swedish taxation claims are uncertain when property is transferred to a foreign discretionary trust.

The Supreme Court of the Netherlands has found that the setting up of an irrevocable discretionary trust in Jersey could be viewed as a gift for purposes

[73] Sundgren, 1997, p. 25.

of Dutch gift tax. Initially the Court concluded that the trust had been established in a legally valid way; next the Court analysed the interests of the parties involved, who were: the settlor, the beneficiaries, the trustee and the protector. The Court's conclusion was that no monetary value could be ascribed to any of the parties, but the Court found it unthinkable that a Dutch resident, having donative intent would irrevocably part with certain assets without incurring gift tax. The Court therefore found that the trust, a separate fund without legal personality, was taxable.[74] A conclusion from this case is that a trust may be characterised as a recipient of a gift.

The decision can however be criticised.[75] Three elements have to be present to constitute a taxable gift; they are enrichment of the recipient, the impoverishment of the donor and a donative intent.[76] The impoverishment as well as the donative intent is beyond doubt; the intent was however directed towards the indefinite class of beneficiaries and not towards the trust. It is generally held that the donative intent should be directed towards the recipient. In addition, when it comes to the enrichment, things are even more complicated. The Supreme Court of the Netherlands found that none of the parties involved were economically enriched by the transfer of assets. This means in my opinion that none of the parties involved may be considered recipients of a gift. Transfer of assets to a foreign discretionary trust would consequently not be characterised as a gift for Swedish tax purposes.

Another possibility is to tax the beneficiaries when distributions are made. Peter Sundgren considers this as a thinkable solution. He states that the time for the liability to pay gift tax will be postponed when establishing a discretionary trust, due to the uncertainty about the ownership of the property.[77] It is possible to criticise this opinion too. The enrichments will not be made by resident donors. To be able to tax distributions made to beneficiaries one has to view the trustee as an agent of the settlor.

Peter Sundgren has suggested a construction to avoid Swedish gift tax. In accordance with this recommendation one could sell the shares of a Swedish close company to a company in, for example, Ireland at a price which corresponded to the acquisition value. This would mean that no capital gain would arise. The next step would be to transfer the ownership of the shares to a trust in Liechtenstein. In accordance with section 37, clause 1 of the Swedish Inheritance and Gift Tax Act, gift tax will be triggered if it is obvious that the agreement has characteristics as a gift. The difference between the market value

---

[74] Decision of the Supreme Court of the Netherlands of 18 November 1998, Nos.31.757 and 31.758.
[75] In addition, see Sonneveldt, 1999, p. 190 f.
[76] See for example Englund, 1994, p. 104 f.
[77] Sundgren, 1997, p. 25.

and the acquisition value would be a gift; however, since the shares would be transferred to a company in which the owner of the Swedish close company would own all shares, complete conformity concerning the ownership would exist. This would exclude gift tax. The giver and the receiver were going to be the same person and there could therefore not be any donative intent.[78] If the Irish company then transferred the shares to the trust in Liechtenstein, a transaction which would be subject to gift tax would be found, in accordance with the Swedish rules concerning limited liability to pay gift tax. The reason would be that the assets would consist of shares in a Swedish company. However, in accordance with the same rules, there is a requirement that either the giver or the receiver has to be a Swedish citizen or a Swedish legal person. This criterion would not be fulfilled since the giver would be a foreign legal entity and the receiver a foreign trust.[79]

The construction which Peter Sundgren has suggested is not possible to realise today due to new Swedish rules. Section 3, clause 1 h of the Swedish State Income Tax Act states that the market value has to be used when shares are transferred to foreign legal entities.[80] The use of the market value will trigger capital gains taxation. To obtain tax advantages, one has to, instead of transferring the shares, transfer the business, that is, the assets and liabilities of the Swedish close company to a foreign legal entity. In accordance with Lag (1998:1600) om beskattningen vid överlåtelser till underpris, there are possibilities to transfer assets to another source of income at book value without taxation but only under certain circumstances. Withdrawal taxation may be omitted even if the acquisition company is a foreign legal entity.[81] [82]

Consequently when establishing a foreign discretionary trust it may be difficult to point out the recipients, which makes it impossible to make anyone liable to pay gift tax. There may be a possibility to consider the trustee as an agent and tax the recipients when distributions are made. However, it may be possible to avoid the Swedish gift tax by using different structures.

3.5.5 CFC legislation

As a principal rule in Swedish international law of taxation a partner will not be liable to pay income tax until there has been a distribution. However, the CFC (controlled foreign corporation) legislation may break this principle and

[78] However, cf. NJA 1980 s 642.
[79] Sundgren, 1997, p. 27.
[80] Prop. 1998/99:15 p. 175.
[81] Section 5 of Lag (1998:1600) om beskattningen vid överlåtelser till underpris.
[82] The rules concerning acquisition values, when shares or the business is transferred to a foreign legal entity, will be described in more detail in the chapter, which deals with Danish holding companies.

extends, under certain conditions, the possibilities for the country of domicile of the partner to currently tax the partners for the income of the foreign legal entity, even when there has been no distribution. In Sweden, like in many other countries, CFC rules are applied on residents with shares in foreign corporations deemed to be CFC in accordance with the partnership rule.[83] The purpose of the CFC legislation is to prevent resident taxpayers from transferring income to a controlled foreign corporation or partnership, especially one established in a tax haven for the purpose of avoiding domestic tax.[84] The effect of the rules is that income of a foreign legal entity in a tax haven may be currently taxed in the hands of the shareholder or partner domiciled in the country with the CFC legislation.

The foreign trust and the treatment in relation to the above-mentioned rules are interesting. Since the purpose behind the CFC legislation is to prevent taxpayers from creating constructions abroad which may result in the avoidance of Swedish tax, one may say that this purpose covers establishments of foreign trusts. However, as is described above, the Swedish definition of a foreign legal entity does not include foreign trusts. The trust is, for example, not an association.[85] Consequently, since it is not possible to include a foreign trust in the definition of a foreign legal entity, the Swedish CFC legislation is not applicable on an establishment of a foreign trust.[86]

Several countries have introduced PFIF (Passive Foreign Investment Funds) legislation to prevent avoidance of the CFC rules. Denmark has for example rules concerning the taxation of investments of capital in foreign trusts in tax havens since 1996. In accordance with these rules, the investor has to pay a tax of 20 per cent of the contributed capital made to trusts domiciled abroad at the time of the investment if tax levels in the country in question are “significantly lower” than under Danish rules.[87]

There is a possibility that Sweden inaugurates similar rules. In accordance with Aage Michelsen is it a controversial issue whether the Danish rules are compatible with Community law. The Danish Government presumes that it is not incompatible with article 73 b of the Maastricht Treaty concerning the free movement of capital, since the member states, in accordance with article 73 d (1) (b) of the Maastricht Treaty, have the right to adopt necessary measures to

[83] Section 16, clause 2 SIL and section 53, instruction 10, paragraph 2 KL.
[84] Lauritzen, 1998, p. 825, Wenehed, 1997, p. 651.
[85] Cf. section 16, clause 2 SIL. In addition, see Lauritzen, 1998, p. 830, Tivéus, 1997, p. 86 f.
[86] Kent Simon suggests that it should be possible to include a foreign trust in the definition of a foreign legal entity, since such an extension would not be contrary to the purpose of the legislation. Simon, 1992, p. 416 f.
[87] Michelsen, 1999, pp. 274 ff., Werlauff, 1998, p. 150.

prevent violations of their national law, the issue has not yet been tested before the domestic court.[88]

3.5.6 Control

This chapter has shown some of the taxation complexities which are associated with the establishment of foreign trusts. This part will in addition present the tax authorities' problems in obtaining information about foreign trusts.

3.5.6.1 Access to information

If a trust is established in countries where tax treaties provide for the exchange of information, the assets may be reported to Sweden. However, it is likely that a number of Swedish taxpayers establish trusts abroad that are not disclosed to the Swedish authorities.[89]

Trusts may be established in countries which have a combination of very favourable, often non-existent, taxation of incomes for trusts and strict rules concerning bank-secrecy. In addition the countries of domicile often do not have tax treaties with the countries of domicile of the settlor or the beneficiary, which would have made control and exchange of information possible.[90] The Swedish Tax Authorities' possibilities to get control of foreign trusts are in practice non-existent, at least when dealing with countries which have not concluded tax treaties with Sweden. Even when it comes to countries which have tax treaties the exchange of information is very limited. The tax treaties can for example not be used to get access to information, which is subject to bank-secrecy.[91]

3.5.6.2 Liability to supply information

When establishing a foreign trust, there may for example be problems for the Swedish Tax Authorities regarding the Swedish gift tax. The settlor does not have any liability to inform the Tax Authorities about the establishment of the foreign trust. In addition, the settlor cannot be liable to withhold the gift tax when he or she transfers the trust property.[92]

When it comes to income taxation however the settlor has to, without request, include the returns and capital of the trust in his or her Swedish income tax return, but only under condition that the settlor is still considered to be the

[88] Michelsen, 1999, p. 283.
[89] See for example Mutén, 1995, p. 17.
[90] Relatively few countries have for example entered into treaties covering tax on inheritances and gifts. Lyons, 1997, p. 76.
[91] Moerman, 1999, pp. 369, 374 f., Sundgren, 1997, p. 28.
[92] Sundgren, 1997, p. 29.

owner of the trust property. Beneficiaries, who are resident in Sweden, are liable to give information in the Swedish income tax return when they have received distributions from a foreign trust.[93] Omission to give the information stated above may result in additional assessment and tax surcharge.

3.5.6.3 The Tax Authorities' possibilities

The Swedish Tax Board has recently been investigating a construction which included the establishment of a foreign capital insurance and an agreement between a Swedish owner and a foreign insurance company. Since the purpose was the same and the construction similar to a construction including a trust, it is interesting to look at the arguments and conclusions of the Tax Board. The purpose of the construction was to convert the premium paid to the capital insurance into interest, because of the possibility to obtain a deduction for non-deductible capital insurance premiums.[94]

One possibility was to finance the acquisition of the capital insurance through an acquisition of a bond. The same amount was borrowed from the insurance company. The interest was then paid to an account, which was connected to the insurance. The holder of the insurance became therefore indirectly the owner of a demand on himself. The refunded amount corresponded to the value of the insurance that is, the value of the demand on the holder of the insurance. The insurance was a mortgage for the loan, and the interest was determined without consideration of the current market interest. The interest that had been paid was invested in assets on market rules to generate an ordinary return on the capital insurance.[95]

Persons liable to pay tax then claimed for deduction for interest costs. The Swedish Tax Board however found that the two agreements, which the holder of the insurance and the insurance company have entered into, were connected to each other in a way that there was reason to consider them as part of the same transaction. The purpose of the transaction was the possibility to obtain a deduction of the loan amount against the insurance amount. In addition there had been no possibility to dispose the amount freely. The result was that the holder of the insurance was not considered to have obtained a loan, which met the demands for a credit need. The payments, which were termed interest, could therefore not be considered to be compensation for credit. The only purpose of the construction was to be able to receive tax-deductions. Since the Tax Board found that this was comparable with a non-deductible capital insurance premium[96] it did not admit a deduction for interest in this case.[97]

---

[93] Sundgren, 1997, p. 29.
[94] RSV, 1999.
[95] RSV, 1999.
[96] Section 20 KL.
[97] RSV, 1999.

The purpose of the establishment of a trust may be the same as the above-mentioned arrangement. The conclusion that can be drawn is that the Tax Authorities have an intention to look at the purposes of different arrangements to be able to tax income or deny deductions. They have however to secure the rule of law.

Consequently the Swedish tax authorities are to a very large extent dependent on the involved parties' willingness to provide necessary information. However, if the tax authorities have reasons to believe that there is a liability to pay gift or income tax in Sweden, because of the establishment of a foreign trust, they have the possibility to request the settlor, the trustee or the beneficiary to give information.[98] The authorities' largest problem, however, seems to be that they do not have any devices to decide whether the establishment of a foreign trust results in Swedish claims or not. Actually they may have problems even to decide whether a foreign trust is established or not. In addition, many foreign trusts are probably established in tax havens with the purpose to hide their existence.[99]

3.6 Conclusion

There are no international commitments for Sweden to recognise a foreign trust. However, the trust is a legal reality and consists of a binding agreement. It is in addition connected with legal effects in relation to a third party. It is consequently not a tenable solution for Sweden to disregard the trust. On the other hand, the Swedish tax law presents no obstacles to the establishment of a discretionary trust abroad by a settlor domiciled in Sweden. In addition art. 73 (b) of the Maastricht Treaty secures the free movement of capital within the European Union. The member States may however, under certain conditions, adopt measures in order to prevent attempts by its nationals to evade domestic legislation. In accordance with a judgement from the European Court of Justice, the fact that a taxpayer obtains tax relief is not enough to deny the existence of an arrangement.[100] A conclusion that may be drawn from the case is that, under condition that a foreign trust is legally established in another member state, Sweden will not have the right to deny the existence of the trust.

The Swedish taxation claims regarding foreign trusts are hard to determine. The reason is that the trust is a feature of common law and it does not fit in the civil law legal systems. The trust needs for example the possibility to make a

[98] Sundgren, 1997, p. 29.
[99] It is in addition unknown to what extent there has been Swedish taxation concerning trusts, settlors or in Sweden domiciled beneficiaries. The figure is probably low.
[100] C-212/97 Centros.

separation of the legal and equitable ownership, something which is not used in civil law jurisdictions. In addition, the trust is not a legal entity, which results in that many Swedish regulations cannot be applied on transactions where trusts are involved.

The liability to pay Swedish tax rests on the question of ownership, something which is hard to decide when dealing with trusts. It is decisive as to whether the property has left the settlor's sphere of assets. If it has not, it follows that the settlor will still be taxed as the owner of the property. It is therefore important that the trust property is irrevocably separated from the settlor's property. In addition, where a resident taxpayer establishes a foreign, discretionary trust, such income is generally not subject to Swedish tax until it is distributed to a resident taxpayer. The beneficiaries cannot be taxed for the simple reason that they do not receive a benefit at the moment the trust is set up. They cannot be said to have received anything more than a mere expectation; this will involve a tax credit.

One advantage of the establishment of a foreign trust is that the assets are never aggregated with the estate of the settlor or the beneficiary. The most important advantage however is that trusts are not liable to pay Swedish tax for operating income deriving from a Swedish company or dividends distributed from Swedish companies. This makes it possible to accumulate income in the trust. In addition foreign trusts are not covered by the CFC legislation.

There are other taxes to take into consideration. The establishment of a foreign trust may for example trigger Swedish gift tax. At the establishment of a discretionary trust the taxation may be postponed. In addition the return of the trust property may be taxed in the country in which it is domiciled. There is still the problem how to repatriate the profits in a tax-exempt form. If the beneficiaries are resident in Sweden, distributions will be taxed as employment income. To obtain a total tax-relief the beneficiaries have to move abroad, to a country which does not tax distributions.

Consequently, the establishment of a foreign trust looks like an effective tax planning structure, under condition that the beneficiaries move abroad.

4 Danish holding company

4.1 Danish rules of taxation

4.1.1 Presentation of the new legislation

On 18 December 1998, the Danish Parliament passed Bill No. 53, which made Denmark an attractive European holding company location, especially for third-country investors.[101] The object of the new legislation was to harmonise the Danish taxation of dividends and capital gains. Capital gains on shares held in foreign subsidiaries were already exempted from taxation regardless of the taxation suffered by the subsidiaries, whereas a "subject to tax"-requirement did exist for dividends. Another object was to harmonise the Danish taxation of foreign parent companies, which meant that it should not make any difference whether foreign parent companies were resident in another EU member state or not.

4.1.2 Income taxation

Resident companies are subject to the corporate income tax which is levied on the world-wide income. Dividends and interest from domestic and foreign sources are for example included in the taxable income. The rate of the corporate income tax is 32 per cent.[102]

4.1.3 Taxation of dividends

Dividends which a Danish parent company receive from a foreign company are excluded from Danish taxation. The new legislation abolishes the subject to tax requirement, making dividends received by a Danish holding company exempt from taxation regardless of the underlying taxation of the foreign subsidiary.[103] However, to receive exempt from taxation, some requirements have to be fulfilled. The Danish parent company has to own at least 25 per cent of the capital or the votes in the distributing company. In addition the holding must extend over a period of one year. It is however possible to receive a dividend free from tax during the first year, on condition that the holding will extend over one year.[104] This means that tax exempt dividends may be received

[101] Bundgaard, 1999, p. 7, Shelton, 1999, p. 33.
[102] Ernst & Young, 1999, p. 13, IBFD, 1999, vol. I, Denmark, p. 1 f.
[103] IBFD, 1999, vol. II, Denmark, p. i, Wittendorff, 1999, p. 194.
[104] Hultman, 1999, p. 483, IBFD, 1999, vol. II, Denmark, p. ii.

immediately after the purchase of a subsidiary, provided that the holding company keeps possession of at least 25 per cent of the share capital for at least one year afterwards.

As is stated above, the tax-exempt will apply regardless of whether the subsidiary is subject to any income taxation or not. However, the exemption will not apply to dividends received from foreign low-taxed finance companies. In other words separate rules apply to the taxation of dividends from subsidiaries which are subject to CFC taxation.[105]

Another advantage of setting up a holding company in Denmark is that the withholding tax on dividends paid to a foreign parent company is abolished, provided that the foreign shareholder is a company which has or will own at least 25 per cent of the shares in the Danish distributing company for a period of one year, during which the dividend is declared. The exemption applies regardless of the state of residence of the foreign parent company and whether Denmark has concluded a tax treaty with the state of residence or not. However, if the requirements are not met, dividends will be subject to 25 per cent withholding tax, which may be reduced according to a tax treaty.[106]

4.1.4 Taxation of capital gains

The profit that may arise when a company is selling shares will be subject to taxation in accordance with ordinary Danish rules of taxation. Capital gains on shares are in normal cases subject to corporate tax at 30 per cent.[107] However, Danish rules of taxation have an exception from this principal rule. A Danish company is exempt from tax on capital gains on the sale of shares owned for at least three years. The exemption applies regardless of the taxes paid by the subsidiary, the residence of the subsidiary and the size of the shareholding. Capital losses on the other hand may be deducted from capital gains on shares owned for less than three years.[108]

Capital gains on shares held in low-taxed finance companies are however always subject to taxation.[109]

[105] Hultman, 1999, p. 483.
[106] Ernst & Young, Danish holding company provisions, p. 4, IBFD, 1999, vol. II, Denmark, p. i, Romano, 1999, p. 260, Wittendorff, 1999, p. 194 f.
[107] Wittendorff, 1999, p. 195.
[108] Ernst & Young, Danish holding company provisions, p. 3.
[109] Wittendorff, 1999, p. 195.

4.1.5 Other tax issues

4.1.5.1 Share capital

In Denmark, a limited liability company may be formed either as a public limited company, A/S (Aktieselskab) or as a private limited company, ApS (Anpartsselskab). A public limited company must have a minimum share capital of DKK 500.000 and a private limited company must have a share capital of DKK 125.000.[110]

4.1.5.2 Financing expenses

Financing expenses to fund an acquisition of a foreign subsidiary are normally fully deductible in Denmark. However, restrictions have been introduced regarding a company's right to deduct interest expenses. Thin capitalisation rules are often used to prevent equity being converted into loans and interest being substituted for dividend, since interest normally is deductible and dividend is not. The Danish rules apply to resident companies with debt to controlling non-resident natural or legal persons. A company cannot according to these rules deduct interest expenses on debt owed to foreign group companies where the total debt of the company exceeds four times the company's equity, unless the taxpayer is able to prove that a similar loan can be obtained from an independent third party.[111]

4.1.5.3 The Nordic Tax Treaty

The present multilateral treaty among the Nordic countries for avoidance of double taxation with respect to taxes on income and capital, the Nordic Convention of 23 September 1996, as amended by the protocol of 6 October 1997, is effective as of 1 January 1998.[112] The Tax Treaty is based on the OECD draft double taxation convention on income and capital of 1963 and on the model double taxation convention of 1977. According to the Nordic Tax Treaty, a contracting party eliminates double taxation basically by using the ordinary credit method. The taxes paid in other Nordic countries by a resident in one country are, in other words, credited against the resident country's tax on the same income or on the same capital.

[110] Ernst & Young, 1999, pp. 5, 8, Gustafsson, 1998, p. 79, Hansen, 1998, pp. 17, 21.
[111] Andersen, 1998, p. 351 f., IBFD, 1999, vol. I, Denmark, p. 2, Wenehed, 1998, p. 14.
[112] IBFD, 1999, vol. I, Denmark, p. 10.

4.2 Transfer of shares

4.2.1 In general

Since the special Swedish rules, concerning dividends and capital gains related to close companies, will lead to a considerably higher taxation than otherwise, an investigation follows in order to find out whether a change in ownership of a Swedish close company, to a Danish holding company, will involve a tax reduction. The owner of a company may choose to change the ownership by selling the shares of the company or by selling the business (that is, the assets and liabilities). If the shares are sold, the business does not expire; instead it is transferred to other owners. If on the other hand the owner chooses to sell the business, the company will remain in the hands of the owner, but the business will expire. The company can then cease to exist through liquidation.

In this part of the thesis there will be an investigation to find out whether a disposal of the shares to a Danish holding company will involve a tax reduction for the owner of the Swedish close company.

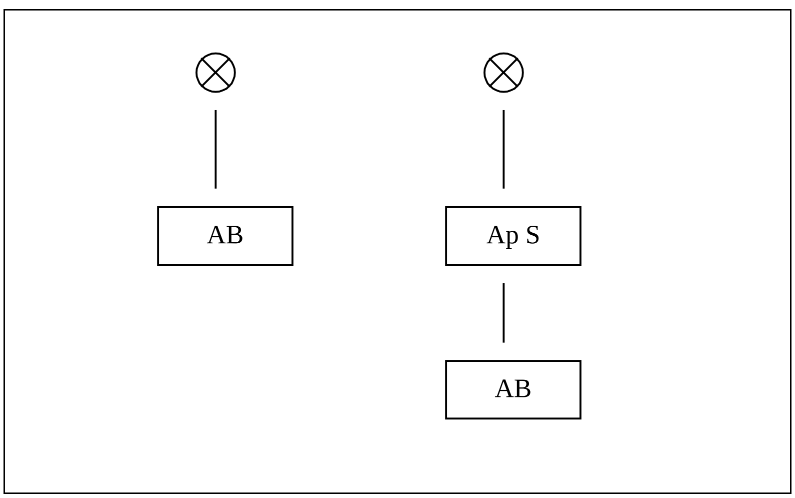

Figure 2. The structure before and after the establishment of an international holding company in Denmark.

In determining the benefits of using Denmark as a site for an international holding company location, the focus will be on (1) taxes in the country of source; (2) taxes in the holding company country, that is; taxes on foreign income, taxes on accumulated income and taxes levied on income paid to the non-resident or resident shareholder; and (3) taxes levied by the shareholder's country on incomes paid to the shareholder, if the shareholder is non-resident.

4.2.2 Natural person resident in Sweden

4.2.2.1 In general

First, there will be an investigation to determine the different tax consequences that will appear when a Swedish natural person establishes an international holding company in Denmark and then transfers the shares to the holding company.

4.2.2.2 Taxes in the country of source

The correct acquisition value has to be used when transferring the shares to the Danish holding company. In accordance with section 3, clause 1 h of the Swedish State Income Tax Act, there is a possibility to receive a postponement of the capital gains taxation when shares are transferred to a Swedish company. The rule has however not been extended to situations where the acquisition company is a foreign legal entity, due to the risk that an owner will receive unreasonable tax advantages.[113] Instead, the transferred company's acquisition value has to correspond to the market value, which is in accordance with paragraph 3 of the same section. The use of the market value will, however, result in that the transfer of the shares to the Danish holding company will trigger capital gains taxation in Sweden.

Swedish withholding tax is as a principal rule levied at a rate of 30 per cent on dividends distributed to non-resident companies. However, under the Swedish law implementing the provisions of the EC Parent-Subsidiary Directive, there is no withholding tax on dividends paid to a parent company in another member state if the parent company owns at least 25 per cent of the Swedish subsidiary's capital and if the profits out of which the dividends are paid have been subject to a tax which is comparable to Swedish corporate tax.[114] The directive has only limited effect, since Sweden has a lot of tax treaties which reduce the withholding tax rate. According to the Nordic Tax Treaty, there will not be any income taxation if the Danish company owns at least 10 per cent of the capital of the Swedish company.[115]

Consequently Sweden cannot claim any withholding tax when a Swedish subsidiary distributes dividends to a Danish parent company, under condition that the requirements are fulfilled.

[113] Prop. 1998/99:15 p. 175 and Wiman, 1999, p. 527.
[114] Art. 5 of the Parent-Subsidiary Directive and section 7, clause 8 SIL.
[115] Art. 10 of the Nordic Tax Treaty.

4.2.2.3 Taxes in the holding company location

When the Swedish shares are transferred to the Danish holding company, the difference in values between the market value and the acquisition value of the shares may be taxed in Denmark as well.[116]

Foreign dividends are generally tax exempt in Denmark. Foreign dividends which a resident company receives are exempt if the resident company has a capital of at least 25 per cent in the distributing company and has had the holding for at least 12 months.

Companies resident in Denmark are subject to the corporate income tax. The rate of the corporate income tax is 32 per cent. There are however no net worth or other taxes levied on the accumulated income of holding companies in Denmark.

Danish withholding tax is levied on distributed dividends. However, an exemption exists for dividends paid to parent companies, regardless of the residence of the parent company. This means that dividends paid to non-resident parent companies are exempt, regardless of the form of the parent company and whether or not resident in the European Union. However, dividends which are distributed to individual shareholders, whether resident or non-resident, are subject to withholding tax at the rate of 25 per cent. In addition distributions which exceed the amount of DKK 37.000, will be taxed at a rate of 40 per cent.[117]

If the shareholder is resident in Sweden a reduced rate will apply, due to the Nordic Tax Treaty. In accordance with article 10 of the Nordic Tax Treaty, Denmark may claim a withholding tax of 15 per cent when the dividend is distributed from a Danish holding company to an individual shareholder, who is resident in Sweden.

Gains on shares held for three years are not taxable in Denmark. However, individual shareholders are generally taxed, which means that capital gains will be taxed, using the same rates as when taxing dividends.[118] However, if a natural person, who is domiciled in Sweden, is going to sell the shares in the Danish holding company, the Nordic Tax Treaty will limit the Danish claims. In accordance with article 13 paragraph 6 of the Treaty, the capital gain will only be taxed in Sweden.

---

[116] Tivéus, 1997, p. 252.
[117] IBFD, 1999, vol. II, Denmark, p. 130, Tjernberg, 1999, p. 60.
[118] IBFD, 1999, vol. II, Denmark, p. 80, Tjernberg, 1999, p. 60.

4.2.2.4 Taxes levied by the shareholder's country

Dividends which are received by a Swedish resident shareholder will be fully taxable in Sweden. The special rules applicable to owners of close companies in Sweden are also applicable to Swedish owners of foreign legal entities.[119] This means that the Swedish tax could be anything from 30 to 56 per cent.[120] As said before there will also be a Danish claim. According to art. 25 of the Nordic Tax Treaty the ordinary credit method is used to eliminate double taxation, which means that Sweden has to deduct the tax paid in Denmark.

In addition the capital gain which may arise if a Swedish natural person sells the shares in the Danish holding company will be taxed according to the special Swedish rules, under condition that the owner is or has been active in the Swedish company. Half of the capital gain will normally be taxed as employment income (56 per cent tax) and half as capital income (30 per cent tax). There are however some exceptions, which stipulate that some part of the capital gain will be subject to relief. The Swedish rules concerning calculation of a capital taxed amount and a tax-exempt amount are applicable also in a construction with an international holding company. However, one disadvantageous, compared to a sale of shares in a Swedish company, is that the possibilities to use the wage increment rule are restricted.[121]

4.2.3 Natural person moves to Denmark

4.2.3.1 In general

There is a possibility for the Swedish shareholder in addition to transferring the shares to a Danish holding company to move to Denmark. The question arises as to whether this construction is advantageous from a tax-perspective. This section will focus on the differences that will appear when the shareholder is resident in Denmark compared to the previous section, where the shareholder was resident in Sweden.

4.2.3.2 Taxes levied by the holding company country

Dividends which are distributed to individual resident or non-resident shareholders are subject to Danish withholding tax at the rate of 25 or 40 per cent, depending on the amount of the dividends. It does not, according to Danish rules of taxation, make any difference if the shareholder is a resident or not, as long as the shareholder is a natural legal person.[122]

---

[119] Section 3, clause 12 a, paragraph 4 SIL.
[120] Tivéus, 1997, p. 85 f.
[121] Tivéus, 1997, p. 85 f.
[122] IBFD, 1999, vol. II, Denmark, p. 130.

4.2.3.3 Swedish taxation of dividends

In Sweden the principal rule is that a person is considered to be resident in Sweden and has unlimited liability to pay tax, if the real residence is in Sweden. However, a person, who moves to another country may still be found resident in Sweden if that person has essential connections to Sweden. The taxpayer has the burden of proof during a period of five years from the move.[123]

If a person runs a business in Sweden or if the holding of shares gives the person an essential influence on a company in Sweden, this may be enough to fulfil the requirements of essential connections.[124] Consequently the shareholder of a Danish holding company may be found to have unlimited liability to pay tax in Sweden due to the indirect ownership in a Swedish close company. As is stated above the special rules applicable to owners of close companies may be applied even to Swedish owners of foreign legal entities. This means that there will, as long as the Danish holding company is still the owner of the Swedish close company, be Swedish claims to tax dividends distributed from the Danish holding company. However, the Nordic Tax Treaty has to be applied to investigate whether the Treaty restricts the Swedish claims.

First one has to decide the shareholder's residence according to the Nordic Tax Treaty. The definition of residence is found in article 4 of the Tax Treaty. It says that an entity, who is liable to pay tax only for income from a source in one of the countries is not considered to have the residence in this country. One may therefore argue that according to the Tax Treaty the shareholder, who is an indirect owner of a Swedish close company, is resident in Denmark after the move. In accordance with the Treaty there are no possibilities for Sweden to tax distributions made from a Danish holding company to a shareholder who is considered to be resident in Denmark in accordance with the Tax Treaty.[125]

4.2.3.4 Swedish capital gains taxation

As stated above a person who moves to another country, may still be found resident in Sweden if that person has essential connections to Sweden.[126] In addition some countries want to maintain the possibility to tax residents, who try to become non-residents. In Sweden there is an emigration rule of special character in section 53, clause 1 of the Municipal Income Tax Act and section 6, clause 1 a of the State Income Tax Act, which gives Sweden the right to tax capital gains, which have arisen during a period of ten years after the person has ceased to be resident in Sweden. Through the inauguration of this rule, the liability to pay tax has extended. The reason for this rule is that capital gains arising due to shares in Swedish companies derive from Swedish sources and

[123] Section 53, instruction 1 KL.
[124] Cf. RÅ 1972 ref 46 and SOU 1962:59 p. 76.
[125] Cf. art. 10 of the Nordic Tax Treaty.
[126] Section 53, instruction 1, paragraph 3 KL.

therefore give reason for Swedish claims.[127] However, a person who is considered to be resident in Sweden because of essential connections is not covered by the emigration rule, since such a person has an unlimited liability to pay tax.[128] In addition the rule only covers ownership in Swedish companies, which means that it is not applicable on shares in a Danish holding company.

Since the holding of shares in a close company has been considered to fulfil the requirement of essential connections,[129] the natural shareholder will probably be found to have unlimited liability to pay tax in Sweden, as long as the Danish holding company is the owner of the Swedish close company. The result is that Sweden has a claim to tax capital gains, in accordance with the special rules in section 3, clause 12 of the State Income Tax Act, if the owner decides to sell the Danish holding company. It is however possible that the Nordic double taxation treaty prevents the application of the Swedish rules. The main rule is, as is stated before, that capital gains will be taxed only in the state where the natural owner is resident. This means that, under condition that the owner is resident in Denmark according to the Treaty, he or she will be liable to pay Danish capital gains tax when the shares are sold. However, there is an exception to the main rule. Article 13, paragraph 7 of the Treaty declares that under condition that the capital gain may be related to a Swedish company, Sweden has taxation claims on the capital gain during a period of five years from the shareholder's move. The final result however is dependent on where the owner is considered to be resident in accordance with the Nordic Tax Treaty. To make this judgement one has to consider all the relevant facts. Consequently under the condition that the owner has unlimited liability to pay tax in Sweden in accordance with the Swedish law and found to be resident in Denmark in accordance with the Treaty, the time limit during which Sweden may tax the capital gain is reduced to five years.

4.2.4 Merger

The regulations concerning the possibilities to transfer shares of a Swedish company and then make a merger between the Swedish acquisition company and a foreign company, with the purpose of receiving tax advantages, have been changed lately. This part of the chapter will make a presentation of the rules.

As is stated above contributions to companies, which are not liable to pay tax in Sweden, will be treated as if the assets are sold at an amount corresponding to the market value. The purpose of these rules is that a transfer of shares to a foreign company otherwise can obstruct unjustified tax relief. A Swedish share-

[127] Prop. 1982/83:144 pp. 11, 15 f., Lodin, 1995, p. 485, Lyons, 1997, p. 76.
[128] Cf. section 53, instruction 1 KL, Estberg, Karnov, 1998/99 p. 3146.
[129] RÅ 1972 ref 46, RÅ 1977 ref Aa 217, RÅ 1982 ref Aa 145. Cf. SOU 1962:59 p. 76.

holder of a close company could for example otherwise gain tax relief when selling the shares to a foreign company, in which the shareholder of the close company is the owner.[130] However, the same effect could, before the change of the regulations, be obtained if the shareholder sold the shares to a Swedish company which was a subsidiary of a foreign company of the seller. A merger was then made between the two companies. Since this unjustified tax relief was not in accordance with the purpose of the rule,[131] it led to a change of the regulations.[132] The new regulation, which was inaugurated during the year 1999, stipulates that the rule concerning transfer to a foreign company, in which the seller or a closely related person directly or indirectly owns shares, will be applied even when there is a transfer to a Swedish subsidiary of a foreign company.[133] [134] This means that a Swedish owner of a close company no longer can dispose the shares of the transferred company without taxation. Instead, the Swedish shareholder has to trigger capital gains taxation.

Consequently this part of the thesis has shown that it is not advantageous for a Swedish owner of a close company to transfer the shares to a Danish holding company, since Swedish capital gains taxation will be triggered. In the next part of this thesis there will be an investigation to find out whether it is more attractive for the Swedish owner to transfer the business.

4.3 Transfer of the business

4.3.1 In general

A transfer of the shares in a Swedish close company to a Danish holding company is, as was shown above, not very attractive for the owner. There is a possibility however to transfer the business of the Swedish close company, that is, the assets and liabilities, to a Swedish subsidiary of a Danish holding company. The owner of the Swedish close company and the Danish holding company is considered to be the same person.

[130] Prop. 1998/99:15, p. 175, Skriv. 1998/99:50.
[131] Prop. 1998/99:15 p. 175.
[132] Prop. 1998/99:113 p. 1, 21, Skriv. 1998/99:50.
[133] Section 3, clause 1 h, paragraph 3 SIL.
[134] Bertil Wiman questions the formulation of the rule. His opinion is that the extent of the rule is very wide. It is for example enough that the transferring person owns a share of the foreign legal entity. Wiman, 1999, p. 528.

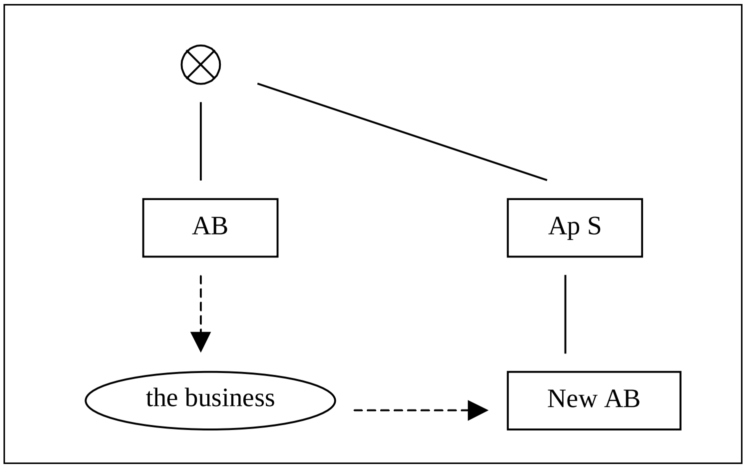

Figure 3. Transfer of the business at book value.

4.3.2 Acquisition value

In accordance with section 22, instruction 1 a of the Swedish Municipal Income Tax Act, there will be withdrawal taxation if assets are transferred or sold to another source of income at a price which is lower than the market price. The taxable amount is the difference between the market value and the acquisition value.

There are however exceptions to the main rule. New Swedish rules were inaugurated in 1999, which make reconstruction of companies possible, without immediate taxation. In accordance with Lag (1998:1600) om beskattningen vid överlåtelser till underpris, there is a possibility to transfer assets to another source of income at book value without taxation. Some requirements have to be fulfilled to be able to use the book value on the transaction. In accordance with the preparatory works it is of importance that the rules do not give rise to illegitimate tax benefits, which for example mean that it should not be possible to evade the Swedish rules concerning close companies.[135] Under condition that the shares of the transferring company are qualified, there is a requirement that the shares of the purchasing company have to be qualified too.[136] If the purchasing company is owned by another company, whose shares are qualified, the shares of the purchasing company are considered to be qualified too in accordance with section 30 of the Act.

Withdrawal taxation may be omitted even if the acquisition company is a foreign legal entity. However, the rule only covers foreign legal entities who are foreign companies in accordance with section 16, clause 2 of the State Income

[135] Prop. 1998/99:15 pp. 127 ff. In addition, see Tjernberg, SN, 1999, pp. 498 ff.
[136] Section 27 of Lag (1998:1600) om beskattningen vid överlåtelser till underpris.

Tax Act.[137] In addition, in accordance with the preparatory works the acquisition company has to be liable to pay tax on income deriving from the business activity immediately after the acquisition**.** In addition the income cannot be subject to exception due to a tax treaty.[138]

When the Swedish close company transfers the assets and liabilities to another Swedish company, which is a subsidiary of a Danish holding company, the requirements to use the book value on the transaction are fulfilled.

The effect of this rule is that the transferring company is not liable to pay tax on the difference in values between the market value and the acquisition value, which means that the tax will be zero if the book value is used. The purpose of the rules is that the difference in values will be taxed when the buying company transfers the assets. The primary owner will, in other words, not be subject to further taxation.[139]

4.3.3 Liquidation of the Swedish close company

However, it is not possible to transfer all of the untaxed reserves of the close company to another company without taxation.[140] The tax allocation reserve of the Swedish close company will be subject to taxation when the company is liquidated. Since liquidation is comparable to a disposal, the company’s tax allocation reserve will be taxed in accordance with the special rules in section 3, clause 12 of the State Income Tax Act.[141]

4.3.4 Natural person moves to Denmark

4.3.4.1 Danish claims

Dividends which a Danish parent company receives from a Swedish subsidiary are exempt from taxation in Denmark, under condition that the Danish holding company owns at least 25 per cent of the share capital in the Swedish company. In addition capital gains are tax-exempt if the Danish holding company has held the shares in the Swedish company for at least three years.

Danish claims on share income, which include capital gains and dividends, distributed to an individual shareholder resident in Denmark are 25 per cent on

[137] Section 5 of Lag (1998:1600) om beskattningen vid överlåtelser till underpris.
[138] Prop. 1998/99:15 p. 166 f.
[139] Prop. 1998/99:15 p. 126.
[140] Pelin, 1997, p. 371.
[141] Tivéus, 1997, p. 163.

distributions which are less than DKK 37.000 and 40 per cent on amounts exceeding DKK 37.000.[142]

When an individual shareholder moves to Denmark he or she will be covered by favourable Danish rules. Since the Danish tax liability will commence from the day of arrival, only profits which will arise during the time when the natural person is resident in Denmark will be taxed in Denmark. This means that the individual shareholder will obtain the market value of the shares at the day of the immigration as the acquisition value.[143] If the owner decides to leave Denmark and become resident in another country Danish capital gains taxation will be triggered, even if there has been no disposal of the shares.[144]

From the rule follows that there will be no Danish claims to tax the difference in values, when the natural owner of the Danish holding company moves to Denmark. Instead Denmark is only going to tax profits which will arise in the future when the owner is resident in Denmark.[145]

4.3.4.2 Swedish claims

Sweden does not have any right to claim withholding tax on dividends distributed from a Swedish company to a Danish parent company. This is in accordance with the EC Parent-Subsidiary Directive[146] and with the Nordic Tax Treaty[147]. This means that the Danish holding company will not be liable to pay any tax in Sweden for received dividends which are distributed from the Swedish company. This makes it possible to accumulate profits in the Danish holding company.

The Danish holding company will in accordance with Swedish rules constitute a close company, if this would have been the case if the company was Swedish. The result is that dividends which the Danish holding company distribute to a natural person resident in Sweden will be subject to the special Swedish rules in section 3, clause 12 of the State Income Tax Act. Since this taxation is not tempting, it is interesting to look at the Swedish claims after the owner's immigration to Denmark.

To determine the Swedish claims after the shareholder's immigration to Denmark, it is as stated before decisive whether the shareholder has an unlimited or

---

[142] Tjernberg, 1999, p. 60.
[143] The rule has however been criticised since it is not evident from the preparatory works how to calculate the market value, when the shares will be realised a long time after the day of arrival. Engholm, 1999, p. 664.
[144] Engholm, 1999, p. 663 f., Gustavsson, 1998, p. 203.
[145] Engholm, 1999, p. 663 f.
[146] Art. 5 of the Parent-Subsidiary Directive and section 7, clause 8 SIL.
[147] Art. 10 of the Nordic Tax Treaty.

limited liability to pay tax in Sweden. One may argue that the owner will have essential connections to Sweden even after the emigration since the owner is indirectly an owner of a Swedish company, which would mean that the rules in section 3, clause 12 of the State Income Tax Act are applicable on dividends and capital gains.

However, under condition that the owner breaks all connections to Sweden, there will not be any Swedish claims to tax capital gains deriving from shares in the Danish holding company or distributed dividends. To not be found to have unlimited liability to pay tax in Sweden, the owner will have to liquidate the Swedish company and the Danish holding company has to sell the Swedish subsidiary. Since capital gains are tax-exempt in Denmark after three years of holding, the disposal can however first be made after three years.

4.3.4.3 The Nordic Tax Treaty

Under condition that the shareholder has essential connections to Sweden, there are Swedish claims to tax capital gains and dividends which derive from the Danish holding company, even after the shareholder's move to Denmark. The Nordic Tax Treaty will however limit the Swedish claims. Under condition that the shareholder will be found resident in Denmark in accordance with the Tax Treaty, the Treaty restricts the time limit, during which Sweden has the right to tax capital gains to five years from the move.[148] Furthermore in accordance with the Tax Treaty there are no rights for Sweden to tax dividends distributed from a Danish holding company to a shareholder, who according to the Tax Treaty is resident in Denmark.[149]

However, under condition that the shareholder breaks the essential connections to Sweden, the shareholder will no longer have unlimited liability to pay Swedish tax. The result is that there will be no Swedish claims to tax capital gains and dividends, deriving from the Danish holding company in the future, since according to Swedish tax law there are no liabilities for a Danish resident to pay tax on dividends or capital gains deriving from a Danish holding company. The Tax Treaty cannot extend the Swedish internal taxation claims.[150]

4.3.4.4 SINK

After a sale of the shares of the Swedish subsidiary by the Danish holding company, the new owner may find it useful if the owner of the Danish holding company works in the company for some time afterwards. The owner of the Danish holding company is resident in Denmark, but will be working in Sweden, something which may be found favourable from a tax perspective.

[148] Art. 4, 13 of the Nordic Tax Treaty.
[149] Cf. art. 10 of the Nordic Tax Treaty.
[150] Cf. Lag (1996:161) med vissa bestämmelser om tillämpningen av dubbelbeskattningsavtal.

In accordance with the Nordic Tax Treaty a person is liable to pay income tax to the country where the person works.[151] The main rule concerning employment income is in other words that a person who is resident in Denmark and works in Sweden is liable to pay Swedish tax. Under condition that the person will be found to have limited liability to pay tax in Sweden, the income will be subject to a special income tax, SINK, in accordance with Lag (1991:586) om särskild inkomstskatt för utomlands bosatta. The standard tax, which is a rate of 25 per cent, will be paid on payments and on benefits received from the employer.[152]

4.4 Conclusion

When choosing an appropriate country for the establishment of an international holding company, the following requirements used to be set up on the host country:[153]

* No or low tax on dividends received
* No or low tax on dividends distributed
* No or low tax on capital gains
* No or low property tax
* No or low tax at the formation of the holding company
* Extensive network of double taxation treaty

No country fulfils all of the above-mentioned requirements. However, the Netherlands is a country which used to be considered as a suitable country of domicile for international holding companies. Today when Denmark has inaugurated some new rules of taxation regarding international holding companies, it may be interesting as a holding company location. Denmark will be unique, since both inbound and outbound dividends will be exempt from taxation. In comparison with a traditional holding company location like the Netherlands, a Danish holding company will offer additional advantages of no capital duty and normally full deductibility of financing expenses, incurred with respect to foreign subsidiaries. In addition Denmark has an extensive network of tax treaties.[154] This means that Denmark fulfils the majority of the above-mentioned demands on a host country.

However, the question arises as to whether the use of Denmark as a holding company location is suitable, not only for multinational companies, but also for owners of Swedish close companies. First it is important to distinguish between

[151] Art. 15 of the Nordic Tax Treaty.
[152] RSV, 2000, Pelin, 1997, pp. 251 ff.
[153] Cf. Tivéus, 1997, p. 246.
[154] Cf. Shelton, 1999, p. 33.

two different ways to reconstruct a close company. The owner may choose to sell the shares of the close company or the business.

A construction where the shareholder chooses to sell the shares of the close company does not look like a good investment, since the transfer of the shares to a Danish holding company will trigger capital gains taxation in Sweden. In addition, it is, due to rules which were inaugurated lately, no longer possible to transfer the shares to a Swedish subsidiary of a Danish holding company at a value beneath the market value of the shares and then merge the two companies.

There is a possibility, instead of transferring the shares, to transfer the business. New Swedish rules concerning restructuring make it possible to accomplish a change in ownership without burdensome taxation. It is, under certain conditions, possible to transfer assets to a foreign company without taxation. The shares must for example be qualified even after the restructuring. In addition Denmark has favourable rules concerning the calculation of capital gains taxation. The Danish rules state that an owner, when immigrating to Denmark, will get the market value of the shares as the acquisition value. This means that only gains which will arise in the future are subject to Danish capital gains taxation.

The Swedish rules concerning close companies will still be applicable on capital gains deriving from the Danish holding company and on dividends distributed to the owner, under condition that the owner is resident in Sweden or has essential connections to Sweden. To avoid this taxation, the shareholder has to move abroad and cut the essential connections to Sweden. The old Swedish company has therefore to be liquidated and in addition the Danish holding company has to sell the Swedish subsidiary. However, the capital gains will be tax-exempt in Denmark first after three years of holding. This rule makes Denmark less attractive as a holding company country, since the traditional holding company countries often do not claim any capital gains taxation at all. However, if it is possible for the shareholder to wait three years before a sale, Denmark could still be a good alternative. Another advantage with this construction is that special taxation rules on income apply if the owner of the Danish holding company continues to work in the Swedish close company after a sale. The favourable taxation will be used under condition that the taxpayer has limited liability to pay tax in Sweden.

The Swedish and Danish rules together will result in that the establishment of a Danish holding company may be favourable, if there is a wish to accumulate profits for the future or if the shareholder is going to sell the enterprise in the long run.

5 Conclusion

It is obvious that all kinds of businesses try to minimise the tax costs like all other costs. As is shown in this thesis the Swedish taxation of owners of close companies is high, this is why it has been interesting to look at alternative ways of restructuring a Swedish close company. There are many different constructions individuals can use to protect their fortunes from tax; however, this thesis has focused on arrangements including foreign trusts and Danish holding companies.

At first sight it may seem odd to present a thesis on the taxation of trusts in a country that does not have trusts, but it is precisely because some countries do not know the concept that this topic is so interesting. The trust is unique in that it is unknown in half of the world and considered indispensable in the other half. Trusts have been known and accepted for hundreds of years, and it will not be dispensed with just because the civil law has difficulties in classifying it. Instead the acceptance of the trust has to become more widespread.

The thesis has shown some of the complexities of the Swedish taxation claims concerning foreign trusts. The setting up of an irrevocable discretionary trust in a foreign country is for example associated with a great amount of uncertainty. The reason is that the disparity of property law creates difficulties in the application of the tax law.

The other topic of this thesis has been to investigate whether the establishment of a Danish holding company is an attractive construction for an owner of a close company or not. One of the main reasons to own a company through an international holding company is that this structure often results in major tax advantages for the owner.

The conclusion of this thesis is that it may, under certain conditions, be advantageous to transfer investments to a foreign trust or a Danish holding company. The applicability of the rules which apply to owners of Swedish close companies may, in other words, be prevented when these structures are used. One has however to keep in mind the complexities and uncertainties which are associated especially with trusts. In addition, when restructuring companies in a tax effective way it is of course important to investigate the present legal rules of such a structure, but it is as important to look into the future risks that the jurisdictions involved will change their legal systems.

It is for example possible to accumulate dividends in a trust, free of tax. Other advantages are related to the establishment of a Danish holding company. It is according to Swedish rules of taxation possible to transfer the business of a

Swedish close company to a Swedish subsidiary of a Danish holding company at book value. It is then possible to sell the Swedish subsidiary free of tax after three years of holding. Another advantage is that Danish capital gains taxation only covers gains which arise during the shareholder's residence in Denmark.

However, a definite tax relief will only be reached if the shareholder moves to a country, which does not tax capital gains or dividends of natural persons. The same problem applies to trusts. The establishment of a trust in a foreign country may result in the deferral of tax. However, there is still the problem how to repatriate the profits in a tax-exempt form. The answer is that the beneficiary has to move to a country which does not tax distributions.

Bibliography

Preparatory works

Government bills

Regeringens proposition 1982/83:144 om utvidgning av skattskyldigheten i Sverige för aktievinster, m. m.

Regeringens proposition 1984/85:175 om nya bosättningsregler i skattelagstiftningen samt nya regler vid beskattning av lön vid utlandstjänstgöring.

Regeringens proposition 1989/90:47 om vissa internationella skattefrågor.

Regeringens proposition 1989/90:110 om reformerad inkomst- och förmögenhetsbeskattning.

Regeringens proposition 1993/94:9 om stiftelser.

Regeringens proposition 1996/97:45 Lättnad i ägarbeskattningen i små och medelstora företag.

Regeringens proposition 1998/99:15 Omstruktureringar och beskattning.

Regeringens proposition 1998/99:113 om vissa justeringar i skattereglerna vid omstruktureringar.

Public Report Series

SOU 1962:59 Internationella skattefrågor. Betänkande av dubbelbeskattningssakkunniga.

Reports given by committees

Skatteutskottets betänkande 1996/97:SkU13 Lättnad i ägarbeskattningen i små och medelstora företag.

Official letter from the Swedish Government

Skrivelse 1998/99:50 Meddelande om kommande förslag om ändring av reglerna för beskattning vid omstruktureringar.

Literature

Books and articles

Andersen, Peter, S, Denmark, Tax Changes Enacted. *European Taxation* 1998 pp. 347 ff.

Baker, Andrew, J, Trusts in international tax strategies. I: Campbell, Dennis, *International tax planning*. London 1995.

Bundgaard, Jakob, Placering af holdingselskaber i Danmark? *Skat Udland* 1999 pp. 7 ff.

Courtney, Brian, *Trust taxation manual*. London 1990.

Engholm, Jacobsen, Jens, Olav, *Skatteretten 1*, Århus, 1999.

Englund, Göran and Silfverberg, Christer, *Beskattning av arv och gåva*. 10th ed. Stockholm 1994.

Estberg, Staffan, Karnov 1998/99 p. 3146.

Föreningen auktoriserade revisorer, FAR, *FARs engelska ordbok.* 8th ed. Stockholm 1998.

Gardner, Simon, *An introduction to the law of trusts.* New York 1990.

Gunne, Cecilia, Beskattning av "svävande äganderätter". *Svensk Skattetidning* 1997 pp. 595 ff.

Gustafsson, Leif, *Business laws in the Nordic countries. Legal and tax aspects.* Stockholm 1998.

Hagstedt, Jan, Anders, *Om beskattning av stiftelser.* Stockholm 1972.

Hansen, Soren, Friis and Krenchel, Jens, Valdemar, *Introduktion til selskabs- og foreningsretten.* Copenhagen 1998.

Hessler, Henrik, *Om stiftelser. Studier över stiftelseinstitutet i svensk rätt.* Stockholm 1952.

Hultman, Erik, Nya regler för danska holdingbolag. *Svensk Skattetidning* 1999 pp. 482 ff.

International Bureau of Fiscal Documentation, *International tax glossary*. Amsterdam 1992.

International Bureau of Fiscal Documentation, *Guides to European taxation volume I, The taxation of patent royalties, dividends, interest in Europe*. Amsterdam 1999.

International Bureau of Fiscal Documentation, *Guides to European taxation volume II, The taxation of companies in Europe.* Amsterdam 1999.

Lauritzen, Suzanne, Analys av den svenska CFC-lagstiftningen – en effektiv skatteflyktslagstiftning? *Skattenytt* 1998 pp. 825 ff.

Lodin, Sven-Olof, Lindencrona, Gustaf, Melz, Peter and Silfverberg, Christer, *Inkomstskatt – en läro- och handbok i skatterätt.* 5th ed. Stockholm 1995.

Lundén, Björn and Svensson, Ulf, *Fåmansföretag. Skatteregler och skatteplanering.* 2nd ed. Näsviken 1997.

Lyons, Timothy, Double Taxation of estates, inheritances and gifts in the EU and the Anglo-American trust. *European Taxation* 1997 pp. 74 ff.

Mattsson, Nils, Begreppet utländsk juridisk person i de svenska skatteförfattningarna. Några kritiska synpunkter. *Skattenytt* 2000 pp. 100 ff.

Michelsen, Aage, The tax treatment of foreign foundations and foreign trusts in Danish law and the taxation in Denmark of investments in foreign foundations and trusts in tax havens. I: Lindencrona, Gustaf, Lodin, Sven-Olof and Wiman, Bertil, *International studies in taxation: law and economics.* Liber Amicorum Leif Mutén. Stockholm 1999.

Moerman, Sébastien, The main characteristics of tax havens. *International Tax review*, 1999 pp. 368 ff.

Mutén, Leif, *Tax reform and international tax planning.* Stockholm 1995.

Norgaard, Jorgen and Hedegaard, Kristensen, Lars, Aktieselskaber og anpartselskaber. I: Munck, Noe, Hedegaard, Kristensen, Lars and Norgaard, Jorgen, *Selskabsformerne – laerebog i selskabsret.* 3rd ed. Copenhagen 1997.

Pearce, Robert and A, Stevens, John, *The law of trusts and equitable obligations.* London 1995.

Pelin, Lars, *Svensk intern- och internationell skatterätt.* 2nd ed. Lund 1997.

Riddall, J, G, *The law of trusts.* London 1992.

Romano, Carlo, Holding company regimes in Europe: A comparative survey. *European Taxation* 1999 pp. 256 ff.

Shelton, Ned, Holding company regime introduced. Denmark. *European Taxation* 1999 p. 33.

Simon, Kent, Truster. *Skattenytt* 1992 pp. 408 ff.

Simon, Kent, Några problem kring upprättande av truster. *Svensk Skattetidning* 1998 pp. 461 ff.

Sonneveldt, Frans, Setting up of irrevocable discretionary trust characterized as a taxable gift. The Netherlands, *European Taxation* 1999 pp. 190 ff.

Sorabjee, Pheroze, European tax policy: Mergers, parent-subsidiaries and value-added tax. I: Campbell, Dennis, *International tax planning.* London 1995.

Steenholdt, Soren and Niels Josephsen, The new holding company regime – the best of both worlds. *European Taxation* 1999 pp. 146 ff.

Sundgren, Peter, *Beskattning av utländska privata truster och familjestiftelser.* Institutet för utländsk rätt, IUR-information 24/1997.

Svenska Språknämnden, *Svenska skrivregler.* Uppsala 1991.

Tivéus, Ulf, *Internationella skattehandboken*. 3rd ed. Stockholm 1997.

Tjernberg, Mats, *Beskattning av fåmansföretag*. 4th ed. Lund 1998.

Tjernberg, Mats, *Fåmansaktiebolag – en skatterättslig studie av alternativen särreglering och allmän reglering för beskattning av fåmansaktiebolag och dess ägare m.fl.* Uppsala 1999. (Cit. Tjernberg, 1999)

Tjernberg, Mats, Omstruktureringsreglernas förhållande till 3:12-bestämmelserna för fåmansföretag. *Skattenytt* 1999 pp. 498 ff. (Cit. Tjernberg, SN, 1999)

Weizman, Leif, Status of trusts in Danish tax law. *European Taxation* 1995 pp. 91 ff.

Wenehed, Lars-Erik, Löpande delägarbeskattning i utländska bolag. *Skattenytt* 1997 pp. 651 ff.

Wenehed, Lars-Erik, *A guide to effective tax planning within a global group.* Helsingborg 1998.

Werlauff, Erik, The taxation of trusts in civil law countries. Denmark. *European Taxation* 1998 pp. 143 ff.

Wiman, Bertil, Några internationella aspekter på de nya omstruktureringsreg-lerna. *Skattenytt* 1999 pp. 519 ff.

Wittendorff, Jens, New legislation makes Denmark an attractive holding company location. *International tax review* 1999 pp. 194 ff.

Materials from Ernst & Young

Ernst & Young – Tax Department, *Danish holding company provisions.*

Ernst & Young, *Etablering af virksomhed i Danmark – virksomhedsformer – beskatning af ansatte – virksomhedsbeskatning.* 2 ed. 1999.

Electronic sources

Deloitte, Quick guide to taxation in Denmark. http://www.deloitte.com/tax/news/guides/text/weu/dk0698-1.htm 1999-10-07.

KIM AB, Trust and tax planning, http://www.kimab.se/eng_fs.html 1999-11-10.

Mikelson, Robert, Denmark has become an attractive holding company location. http://www.dhn.dk/us/News/Holding.html 1999-09-02.

RSV, Kapitalbeskattning, http://www30.rsv.se/web/W0000054.nsf/ 1999-11-11.

RSV, Inkomstskatt – inkomst av anställning, http://www.rsv.se 2000-03-03.

RSV, Rättsfallsprotokoll 6/99, http://rsv.se/skatter/rattsprotokoll/99/protokoll199906.html 2000-03-29.

Shelton, Viking holding company – Denmark to conquer the Netherlands? http://www.sheltons.tax.com/article.html 1999-08-30.

Utlandsjuristen, Senaste nytt - det danska alternativet. http://www.ujoffshore.com/kurs/senastenytt.htm 1999-09-27.

Utlandsjuristen, Skattetrycket 3/99, Effektivaste formen för skatteplanering när det gäller svenska bolag heter utländskt holdingbolag. http://www.ujoffshore.com/kurs/arkivst.htm 1999-09-27.

Utlandsjuristen, Skattetrycket 4/99, Danska holdingbolag framtiden för svenska dotterbolag. http://www.ujoffshore.com/kurs/skattetrycket.htm 1999-09-27.

Table of Cases

Decisions of the Swedish Supreme Administrative Court

RÅ 1956 fi 409
RÅ 1964 fi 1656
RÅ 1972 ref 46
RÅ 1977 ref Aa 217
RÅ 1982 ref Aa 145
RÅ 1988 not 56
RÅ 1990 ref 15
RÅ 1994 ref 3
Decision of the Swedish Supreme Administrative Court of 15 February 1999.

Decision of the Swedish Supreme Court

NJA 1980 s 642

Decision of the Supreme Court of the Netherlands

Decision of the Supreme Court of the Netherlands of 18 November 1998, Nos. 31.757 and 31.758.

Decision of the Danish Tax Court

LSR of 11 July 1994, No. 641-1859-9.

Decision of the European Court of Justice

C-212/97 Centros Ltd ./. Erhvervs- og Selskabsstyrelsen, 9 March 1999.