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### NEW GUIDELINES ON EMPLOYEE STOCK OPTIONS AND EXIT TAX ISSUED IN SWEDEN

by Richard Edlepil, KPMG,  
Stockholm (KPMG in Sweden is a  
KPMG International member firm)

Recently, the Swedish Tax Agency issued guidelines concerning the taxation of stock options, particularly when an employee who holds options leaves Sweden.

#### Background

Generally, in Sweden, employee stock options are taxed only on exercise. The taxable benefit is determined as the fair market value (on the exercise date) less the strike price. The taxable benefit is taxable as employment income and subject to municipal tax (approximately 32 percent) and national tax (if any, 20 percent or 25 percent depending on total employment income). Hence, the top marginal tax rate is 57 percent. The taxable benefit is also subject to employer and employee social security contributions, if the employee is covered by Swedish social security.

#### Exit Taxation

Employee stock options can also be subject to taxation when an individual ceases to be a resident in Sweden. For example, stock options are granted to an employee in 2002. They vest in 2004, but are not exercised. The employee leaves Sweden in 2005. Upon departure from Sweden, the employee must include the difference between the strike price and the fair market value in his or her tax return for income year 2005. The employer is obliged to pay social security contributions on this taxable value. Should the employee return to Sweden and exercise the options, no further tax would be levied. Also, exit tax should only be levied for stock options that have vested while the holder of the options was resident in Sweden.

According to new guiding principles from the Swedish Tax Agency (*Skatteverket*) issued on November 4, 2005, no exit tax should be levied if the individual is moving to another European Union / European Economic Area member state.<sup>1</sup> The change in tax treatment has come because The Tax Agency has taken the position that Sweden's domestic tax law conflicts with the EC treaty.

The guiding principles issued by the Tax Agency are not enacted law. Nevertheless, the guiding principles are binding as far as Tax Agency practice is concerned.

#### Footnote:

1 Ärendemening: "Beskattnings av personaloptioner vid utflyttning till annat EU/EES-land." Datum: 2005-11-04; Diarienummer: 131 581221-05/111; Sammanfattning: En person som flyttar till annat EU/EES-land för att arbeta eller etablera sig som egenföretagare och som vid avflyttningen från Sverige innehar personaloptioner som vid utflyttningstillfället kan utnyttjas ska inte beskattas för förmånen vid utflyttningen. (Förmånen ska istället tas upp som intäkt det beskattningsår då rätten utnyttjas eller överläts.) See (in Swedish) the Web site for the Tax Agency at: <http://www.skatteverket.se/rattsinformation/stallningstaganden/stallningstagande200521.4.65fc817e1077c25b83280001029.html#31.65fc817e1077c25b83280001042>.

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