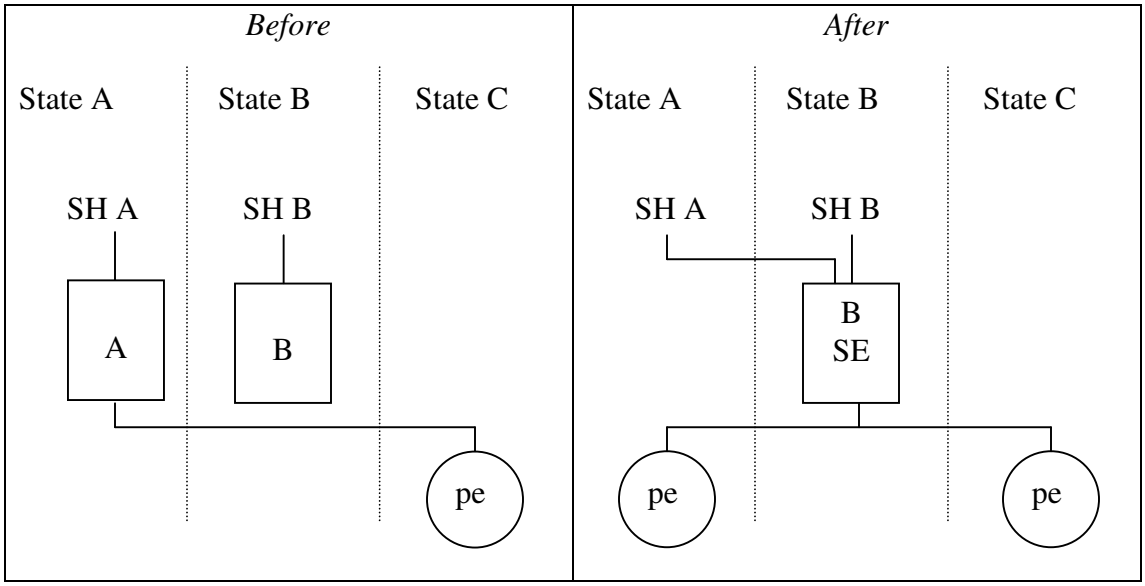
Annex 14 - Sweden

SWEDEN

CASE 1

Merger by acquisition

(Art. 2 par. 1 jo. Art 17 par. 2(a) Reg. 2157/2001)



Facts and assumptions

- SH = shareholder(s), resident in the respective country in which SH is situated
- A and B are existing companies
- A and B are public limited-liability companies (see Annex I to Reg. 2157/2001)
- State A, State B, and State C are EU Member States
- A:
  - formed under law of Member State A
  - registered office in Member State A
  - head office in Member State A
  - has a permanent establishment in Member State C
- B:
  - formed under law of Member State B
  - registered office in Member State B
  - head office in Member State B
- B SE:
  - registered office in Member State B
  - head office in Member State B
  - will be covered by the EC Merger Directive

Transactions

- A:
  - transfers all assets and liabilities to B

- in exchange for shares in B (and cash payment if any, not exceeding 10% of nominal value of shares to be issued) issued to shareholder(s) of A
- will be wound up without going into liquidation

- B / B SE:
  - as the acquiring company, B will take the form of an SE when the merger takes place (Art. 17 Reg. 2157/2001: "In the case of a merger by acquisition, the acquiring company shall take the form of an SE when the merger takes place". Consequently, there are in fact two transactions: 1) the merger and 2) a transformation of a public limited-liability company into an SE. With regard to the transformation, see also Case 9.)
  - will be regarded as public limited-liability company governed by law of Member State B

Questions

1) Member State A is Sweden

Tax effects for A (the Swedish transferring company) in A (Sweden)

a) Will the merger give rise to any taxation of capital gains (= real value of assets & liabilities transferred minus their value for tax purposes) for A, or is there rollover relief?

Mergers are covered in chapter 37 of the Swedish Income Tax Act (ITA).[1] A merger can be characterized as being either qualified or unqualified.[2] In case of an unqualified merger, no rollover relief applies. In the following only qualified mergers will be dealt with unless expressly mentioned differently.

Rollover relief applies to the situation described above with respect to capital gains and also with respect to income for the last fiscal year which is closed due to the merger provided it is a qualified merger.[3] A requirement is that the assets involved in the merger are effectively connected to a permanent establishment in Sweden.

A merger is considered qualified according to Swedish domestic law if the following requirements below are fulfilled. In addition there are requirements relating to specific Swedish real estate entities, restrictions on the length of the fiscal year and restrictions relating to whom compensation may be paid if the acquiring company does not control all the shares in the acquired company:

[1] Inkomstskattelagen 1999:1229 (Income Tax Act, ITA)
[2] ITA ch. 37 sec. 3-4
[3] ITA ch. 37 sec. 17

-Acquired company must have been subject to tax in Sweden immediately prior to merger for at least part of its business. Income may not be exempt because of tax treaty.[4]

-Acquiring company must be subject to tax in Sweden immediately after merger (through a permanent establishment) on the same type of business income that the acquired company was subject to before the merger. Income may not be exempt because of tax treaty . [5]

A limitation applies to the length of the fiscal year of the acquiring company after the merger which may not exceed 18 months.[6] *This requirement is added so as not to grant the acquiring company a long tax credit on the outstanding tax liability.*

b) May provisions and reserves, which are partly or wholly exempt from tax and which are not derived from permanent establishments outside Member State A, be taken over with the same roll-over relief by the permanent establishment of B SE in Member State A?

Provisions and reserves may be taken over with the same rollover relief as described above, provided that the acquiring company is subject to tax in Sweden after the merger i.e. through a permanent establishment. The acquiring company takes over the tax position of the acquired company[7] *and hence, also reserves and provisions are treated as if the acquiring company had made the contributions of the acquired company. This applies to the replacement reserve and the periodic reserve, which currently are the only reserves or provisions that can qualify as preferentially treated tax reserves or provisions.*

In case of a non-qualified merger any contributions to reserves or provisions are subject to tax immediately and may not be carried over to the acquiring company.

c) Will B's permanent establishment in Member State A be allowed to take over the losses of A that have not been exhausted for tax purposes? If B would be a company resident in Member State A, would it then be allowed to take over these losses?

Losses may be taken over by the PE of B as well as if B had been resident in Sweden as a company. Restrictions apply with respect to the amount of losses subject to rollover relief.[8] *Losses relating to taxable years before the year of the merger may be taken over only up to a maximum of 200% of the cost of acquiring company A in the year of the merger. Any remaining losses exceeding 200% of the acquisition cost are put in quarantine and may not be deducted until the sixth*

[4] ITA ch. 37 sec 11
[5] ITA ch. 37 sec 12
[6] ITA ch. 37 sec 19
[7] ITA ch. 37 sec 18
[8] ITA ch. 37 sec 21-26

taxable year after the year of the merger. This also applies to losses relating to taxable years before the year of the merger relating to the acquiring company (B).

Relief against the abovementioned restriction applies if group contributions under chapter 35 in the Income Tax Act would have been possible, subject to conditions, between the companies involved in the merger.

d) and e) Will Member State A renounce any right to tax the permanent establishment in Member State C? Or will Member State A tax profits or capital gains with respect to the permanent establishment as a result of the merger? If so, will Member State A give relief for any (notional) tax charged on these profits or capital gains by Member State C?

The profits or capital gains will be subject to tax in Sweden as a result of the merger.

In case the assets or liabilities are effectively connected to a permanent establishment in another Member State, Sweden will grant a tax credit on the notional tax charged in that Member State according to chapter 37, section 30 of the Income Tax Act.

f) Will Member State A reinstate in the taxable profits of A such losses of the permanent establishment as have been set off against the taxable profits of A in Member State A and which have not been recovered at the time of the merger?

No

Tax effects for SH A (Swedish resident shareholder of the Swedish transferring company) in Member State A (Sweden)

g) Will the issue of shares by B SE to SH A, resident in Member State A, in exchange for shares in A give rise to any taxation of the income, profits or capital gains of that shareholder?

Taxation of any capital gain relating to SH A's holding in A is deferred until shares in B SE are disposed of. Any cash payment is not subject to deferred taxation. The exchange of shares is not considered as a taxable event for the shareholder. The acquisition value of the shares received in the exchange is considered equal to the acquisition value of the shares transferred by the shareholder (in this case SH A)[9].

There are currently two parallel systems with respect to deferred taxation on exchange of shares being used in Sweden. The first system (ch 49 ITA) allows for deferred taxation for individuals or companies on capital gains, gains on shares in closely held companies or shares held as current assets.

[9] ITA ch 48a sec 10 and ITA ch 49

The other system (ch 48a ITA) can be applied upon request by the taxpayer and only applies to individuals on capital gains on shares in quoted companies provided these assets constitute capital assets to the owner.

h) Will the issue of shares by B SE to a shareholder of A, not resident in Member State A, in exchange for shares in A give rise to any taxation of the income, profits or capital gains of that shareholder?

With respect to individuals, deferred taxation of a capital gain is only possible provided that the seller is resident in Sweden or is continuously staying in Sweden.[10]

With respect to companies, deferred taxation may be granted also to a non-resident shareholder provided the non-resident company has a permanent establishment in Sweden to which the transferred assets are connected. Any deferred tax will be subject to immediate taxation in case of change of residency.

i) Will the answers to the questions 1g) and 1h) differ if SH A is:
i) A corporate shareholder?

Deferred taxation of capital gain is available to resident and non-resident companies under the conditions stated in h).

ii) An individual shareholder not owning a substantial interest?

Individual must be resident in Sweden.

iii) An individual shareholder owning a substantial interest?

If the seller of the acquired company is an individual, resident in Sweden, and the acquired company is a closely held company and the individual controls at least 25% of the votes in the acquiring company it is a requirement for roll-over relief of the capital gain that the acquiring company is actually running a business and is not just acting as a holding company.[11] *Any capital gain derived by an individual shareholder in a closely held company is subject to taxation as capital income and as employment income.*

iv) An individual entrepreneur?

No

2) Member State B is Sweden

[10] ITA ch 48a sec 5 and ch 49 sec 8
[11] ITA ch 49 sec 10

Tax effects for B (the Swedish receiving company) and B SE in Member State B (Sweden)

a) According to Art. 17 par. 2 Reg. 2157/2001, the acquiring company shall take the form of an SE when the merger takes place. According to Art. 37 par. 2 Reg. 2157/2001 the conversion of a public limited-liability company into an SE shall not result in the winding up of the company or in the creation of a new legal person. However, the Regulation itself does not give guidance with regard to taxation. Will the fact that B takes the form of an SE have corporate income tax consequences in Member State B?

Probably not. The situation as such is not covered in Swedish domestic law but unless the transformation involves a liquidation no tax effect should occur.

b) What is the value for tax purposes that B SE has to attribute to the assets and liabilities, which are transferred to B SE as part of the merger and that form a permanent establishment in Member States A and C?

Assets and liabilities from permanent establishments in Member States A and C are to be valued at the taxable values the assets and liabilities had in the permanent establishments.

Tax effects for SH B in Member State B

c) Will the fact that B will take the form of an SE result in tax consequences for SH B?

The transformation will probably have no tax effect provided the transformation does not involve a liquidation of B. The situation as such is not covered in domestic law.

d) Will the answer to question 2c) above differ if SH B is:
   i) A corporate shareholder?

   No.

   ii) An individual shareholder not owning a substantial interest?

   No.

   iii) An individual shareholder owning a substantial interest?

   No.

   iv) An individual entrepreneur?

No.

3) Member State C is Sweden

Tax effects for A and B SE in Member State C (Sweden) with respect to its permanent establishment in Member State C (Sweden)

a) Will the merger give rise to any taxation in A of capital gains (= real value of assets & liabilities transferred minus their value for tax purposes) or is there rollover relief?

Rollover relief applies with respect to capital gains and income provided it is a qualified merger. See above.

b) May provisions and reserves, which are partly or wholly exempt from tax and which are not derived from permanent establishments outside Member State C, be taken over with the same rollover relief by the permanent establishment of B SE in Member State C?

Yes, provided that the acquiring company is subject to tax in Sweden after the merger i.e. through a permanent establishment, see above.

c) Will B SE's permanent establishment in Member State C be allowed to take over the losses of A's permanent establishment that have not been exhausted for tax purposes?

Losses may be taken over by the PE of B. Restrictions apply with respect to the amount of losses subject to rollover relief.[12] *Losses relating to taxable years before the year of the merger may be taken over only up to a maximum of 200% of the cost of acquiring company A in the year of the merger. Any remaining losses exceeding 200% of the acquisition cost are put in quarantine and may not be deducted until the sixth taxable year after the year of the merger.*

d) If B SE would be a company resident in Member State C, would it then be allowed to take over these losses? See Merger Directive Art. 6.

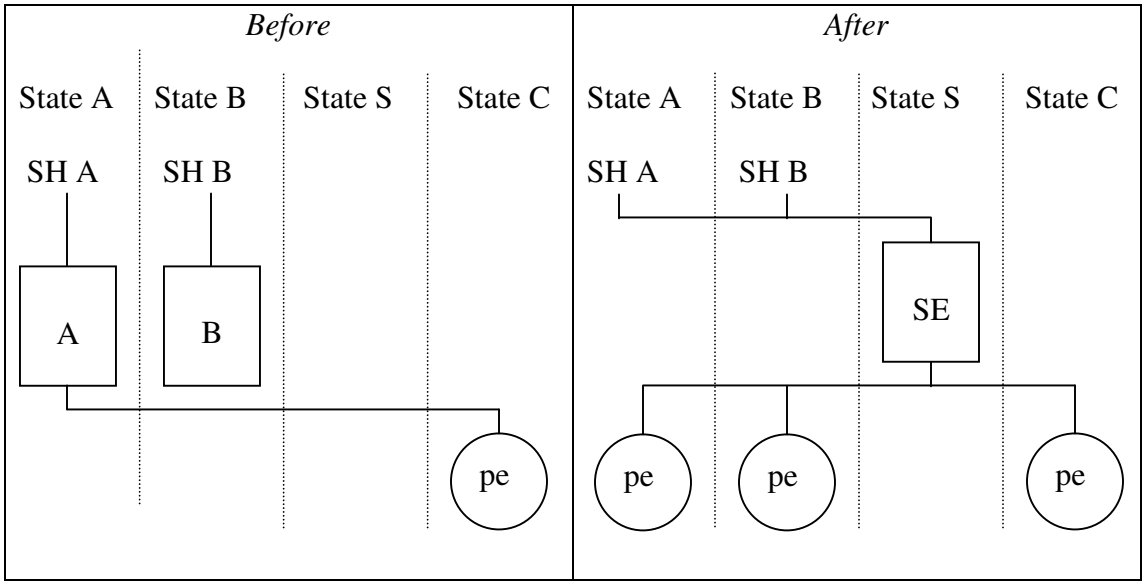
Yes, see above.

[12] ITA ch. 37 sec 21-26

CASE 2

Merger by formation of a new company

(Art. 2 par. 1 jo Art 17. par 2(b) Reg. 2157/2001)



Facts and assumptions

- SH = shareholder(s), resident in the respective country in which SH is situated
- A and B are existing companies
- A has a permanent establishment in Member State C
- SE is a new company in State S
- A and B are public limited-liability companies (see Annex I to Reg. 2157/2001)
- State A, State B, State C, and State S are EU Member States
- A:
    - formed under law of Member State A
    - registered office in Member State A
    - head office in Member State A
- B:
    - formed under law of Member State B
    - registered office in Member State B
    - head office in Member State B
- SE:
    - formed under law of Member State S
    - registered office in Member State S
    - head office in Member State S
    - will be covered by the EC Merger Directive

Transactions

- A:
  - transfers all assets and liabilities to SE
  - in exchange for shares of SE (and cash payment if any, not exceeding 10% of nominal value of shares to be issued) issued to shareholder(s) of A
  - will be wound up without going into liquidation
- B:
  - transfers all assets and liabilities to SE
  - in exchange for shares of SE (and cash payment if any, not exceeding 10% of nominal value of shares to be issued) issued to shareholder(s) of B
  - will be wound up without going into liquidation
- SE:
  - will be a newly formed SE
  - will be regarded as public limited-liability company governed by the law of Member State S

Questions

1) Assume Member State A is Sweden

   Tax effects for A in Member State A (Sweden)

   a) Will the merger give rise to any taxation of capital gains (= real value of assets & liabilities transferred minus their value for tax purposes), or is there rollover relief?

      Rollover relief applies to the situation described above with respect to capital gains and also with respect to income for the last fiscal year which is closed due to the merger provided it is a qualified merger.[13] A requirement is that the assets involved in the merger are effectively connected to a permanent establishment in Sweden.

      A merger is considered qualified according to Swedish domestic law if the following requirements below are fulfilled. In addition there are requirements relating to specific Swedish real estate entities, restrictions on the length of the fiscal year and restrictions relating to whom compensation may be paid if the acquiring company does not control all the shares in the acquired company:

      -Acquired company must have been subject to tax in Sweden immediately prior to merger for at least part of its business. Income may not be exempt because of tax treaty.[14]

[13] ITA ch. 37 sec. 17
[14] ITA ch. 37 sec 11

-Acquiring company must be subject to tax in Sweden immediately after merger (through a permanent establishment) on the same type of business income that the acquired company was subject to before the merger. Income may not be exempt because of tax treaty .[15]

A limitation applies to the length of the fiscal year of the acquiring company after the merger which may not exceed 18 months.[16] *This requirement is added so as not to grant the acquiring company a long tax credit on the outstanding tax liability.*

b) May provisions and reserves, which are partly or wholly exempt from tax and which are not derived from permanent establishments outside Member State A, be taken over with the same roll-over relief by the permanent establishment of SE in Member State A?

Yes, the same rollover relief applies, provided that the acquiring company is subject to tax in Sweden after the merger i.e. through a permanent establishment (applies to the replacement reserve and the profit periodization reserve). In case of a non-qualified merger any contributions to reserves are subject to tax.

c) Will SE's permanent establishment in Member State A be allowed to take over the losses of A that have not been exhausted for tax purposes? If SE would be a company resident in Member State A, would it then be allowed to take over these losses?

Losses may be taken over by the PE of SE as well as if SE had been resident in Sweden as a company. Restrictions apply with respect to the amount of losses subject to rollover relief.[17] *Losses relating to taxable years before the year of the merger may be taken over only up to a maximum of 200% of the cost of acquiring company A in the year of the merger. Any remaining losses exceeding 200% of the acquisition cost are put in quarantine and may not be deducted until the sixth taxable year after the year of the merger. This also applies to losses relating to taxable years before the year of the merger relating to the acquiring company.*

Relief against the abovementioned restriction applies if group contributions under chapter 35 in the Income Tax Act would have been possible, subject to conditions, between the companies involved in the merger.

d) and f) Will Member State A renounce any right to tax the permanent establishment in Member State C? Or will Member State A tax profits or capital gains of the permanent establishment resulting from the merger? If so, will it give relief for any (notional) tax charged on these profits or capital gains by Member State C?

[15] ITA ch. 37 sec 12
[16] ITA ch. 37 sec 19
[17] ITA ch. 37 sec 21-26

No, Sweden will tax the value of the assets of the permanent establishment as part of the merger. However, a tax credit for notional tax levied in the state of residence of the permanent establishment will be granted.[18]

e) Will Member State A reinstate in the taxable profits of A such losses of the permanent establishment as have been set off against the taxable profits of A in Member State A and which have not been recovered at the time of the merger?

No, Sweden will not reinstate these losses.

Tax effects for SH A in Member State A (Sweden)

g) Will the issue of shares by SE to SH A, resident in Member State A, in exchange for the shares in A give rise to any taxation of the income, profits or capital gains of that shareholder or is there roll-over relief?

Taxation of any capital gain relating to SH A's holding in A is deferred until shares in SE are disposed of. Any cash payment is not subject to deferred taxation. The exchange of shares is not considered as a taxable event for the shareholder. The acquisition value of the shares received in the exchange is considered equal to the acquisition value of the shares transferred by the shareholder (in this case SH A)[19].

h) Will the issue of shares by SE to a shareholder of A, not resident in Member State A, in exchange for the shares in A give rise to any taxation of the income, profits or capital gains of that shareholder or is there roll-over relief?

With respect to individuals, deferred taxation of a capital gain is only possible provided that the seller is resident in Sweden or is continuously staying in Sweden.[20]

With respect to companies, deferred taxation may be granted also to a non-resident shareholder provided the non-resident company has a permanent establishment in Sweden to which the transferred assets are connected. Any deferred tax will be subject to immediate taxation in case of change of residency.

i) Will the answers to the questions 1g) and 1h) differ if SH A is:
i) A corporate shareholder?

Deferred taxation of capital gain is available to resident and non-resident companies under the conditions stated in h).

[18] ITA ch 37 sec 30
[19] ITA ch 48a sec 10 and ITA ch 49
[20] ITA ch 48a sec 5 and ch 49 sec 8

ii) An individual shareholder not owning a substantial interest?

Individual must be resident in Sweden.

iii) An individual shareholder owning a substantial interest?

If the seller of the acquired company is an individual, resident in Sweden, and the acquired company is a closely held company and the individual controls at least 25% of the votes in the acquiring company it is a requirement for roll-over relief of the capital gain that the acquiring company is actually running a business and is not just acting as a holding company.[21] Any capital gain derived by an individual shareholder in a closely held company is subject to taxation as capital income and as employment income.

iv) An individual entrepreneur?

No

2) Assume Member State S is Sweden

Tax effects for SE in Member State S

a) What is the value for tax purposes that SE has to attribute to the assets and liabilities, which are transferred to SE as part of the merger and that form a permanent establishment in Member States A, B and C?

Assets and liabilities from permanent establishments in Member States A, B and C are to be valued at the taxable value the assets and liabilities had in the permanent establishments provided it is a qualified merger.

Tax effects for shareholder(s) of SE in Member State S

b) Is there any provision in the legislation of Member State S that affects the shareholder of SE whether resident in Member State S or not? For example, are there provisions with regard to the valuation of the shares received in SE?

If the shareholder of SE held shares in A or B, there are provisions regarding the valuation of the shares received in SE. Shares are to be valued at acquisition value. Any tax on capital gain on shares in A or B is deferred until shares in SE are disposed of according to the provisions in the Income Tax Act. Please note that an individual shareholder has to be resident in Sweden for the provisions regarding exchange of shares to apply.[22]

[21] ITA ch 49 sec 10
[22] ITA ch 48a sec 5 and ch 49 sec 8

3) Assume Member State C is Sweden

Tax effects for A and SE in Member State C in respect of its permanent establishment in Member State C

a) Will the merger give rise to any taxation of capital gains (= real value of assets & liabilities transferred minus their value for tax purposes) or is there rollover relief?

The merger will not give rise to any taxation, provided it is a qualified merger under chapter 37 of the Income Tax Act, see above.

b) May provisions and reserves, which are partly or wholly exempt from tax and which are not derived from permanent establishments outside Member State C, be taken over with the same rollover relief by the permanent establishment of SE in Member State C?

Provisions and reserves of this kind may be taken over by the receiving company.

c) Will SE's permanent establishment in Member State C be allowed to take over the losses of A's permanent establishment that have not been exhausted for tax purposes? If SE would be a company resident in Member State C, would it then be allowed to take over these losses?

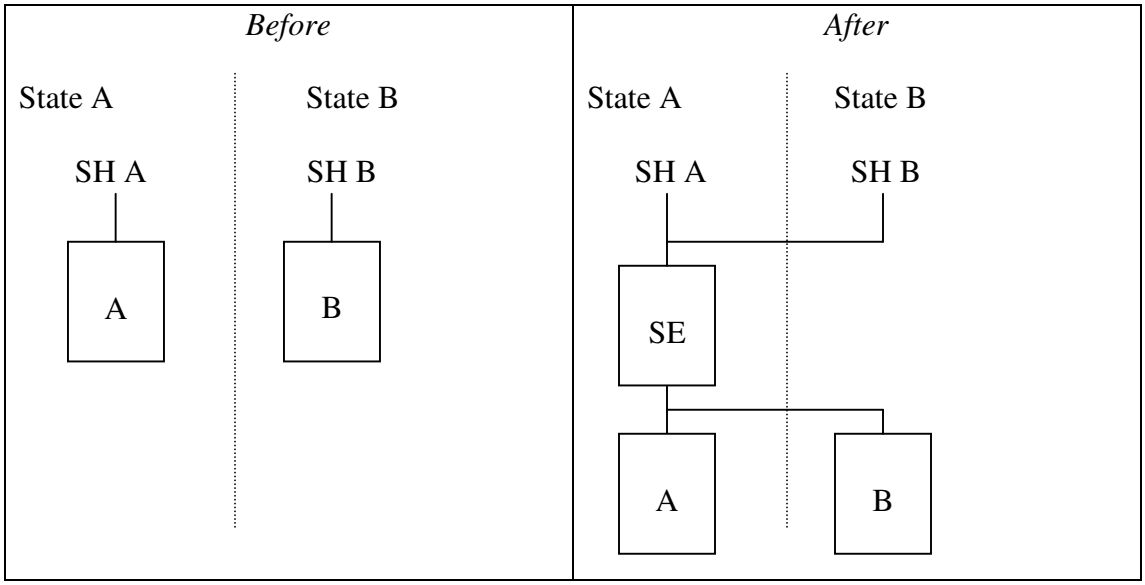
Losses arising in the year of the merger may be taken over by the PE of B SE. This also applies if SE would be accompany resident in Member State C. Restrictions apply with respect to the amount of losses arising in years before the merger to roll-over relief.[23]

[23] ITA ch 37 sec 21-26

CASE 3

Formation of a Holding – SE – 1

(Art. 2 par. 2(a) jo. Art. 32, Art. 33 and Art. 34 Reg. 2157/2001)



Facts and assumptions

- SH = shareholder(s), resident in the respective country in which SH is situated
- A and B are existing companies
- SE is a new company
- A and B are public or private limited-liability companies (see Annex II Reg. 2157/2001)
- State A and State B are EU Member States
- A:
  - formed under law of Member State A
  - registered office in Member State A
  - head office in Member State A
- B:
  - formed under law of Member State B
  - registered office in Member State B
  - head office in Member State B
- SE:
  - formed under law of Member State A
  - registered office in Member State A
  - head office in Member State A
  - will be covered by the EC Merger Directive

Transactions

- SE:
  - will be regarded as public limited-liability company governed by the law of Member State A
  - acquires holding in A and B
  - such that it obtains more than 50% of the permanent voting rights in A and B
  - in exchange for shares in SE
  - issued to the shareholders of A and B

Questions

1) Assume Member State A is Sweden

Tax effects for SE in Member State A (Sweden)

a) Are there any provisions for the valuation for tax purposes of the shares in A and B acquired by SE? Do the shares have to be valued at the book value of the exchanging shareholder or at a higher value?

Shares received by SE are to be valued at market value.

b) Are there any provisions for the valuation for tax purposes of the shares issued to SH A and SH B? Do the shares have to be valued at the book value of the shares exchanged by the shareholder or at a higher value?

Shares transferred by SE to shareholders are to be valued at market value.

Tax effects for SH A in Member State A (Sweden)

c) Will the issue of shares by SE to SH A in exchange for shares in A give rise to any taxation of the income, profits or capital gains of SH A or is there roll-over relief?

The issue of shares in SE in exchange for shares in A will not give rise to any taxation of capital gains with SH A in accordance with the provisions in chapter 48a and 49 of the Income Tax Act. Taxation of capital gain is deferred until shares in SE are disposed of. Deferred taxation does not apply to any cash contribution to the shareholder.

d) Will the answers to the question 1c) differ if SH A is:
   i) A corporate shareholder?

Deferred taxation of capital gain is available to resident and non-resident companies.

ii) An individual shareholder not owning a substantial interest?

Individual must be resident in Sweden.

iii) An individual shareholder owning a substantial interest?

If the seller of the acquired company is an individual and the acquired company is a closely held company and the seller controls at least 25% of the votes in the acquiring company it is a requirement for roll-over relief of the capital gain that the acquiring company is actually running a business.

iv) An individual entrepreneur?

No

2) Assume Member State B is Sweden

Tax effects for SH B in Member State B

a) Will the issue of shares by SE to SH B in exchange for shares in B give rise to any taxation of the income, profits or capital gains of SH B or is there rollover relief?

The issue of shares in SE in exchange for shares in B will not give rise to any taxation of capital gains with SH B in accordance with the provisions regarding exchange of shares in chapters 48a and 49 of the Income Tax Act. Taxation of capital gain is deferred until shares in SE are disposed of. Deferred taxation does not apply to any cash contribution to the shareholder.

b) Will the answers to the question 1a) differ if SH B is:
   i) A corporate shareholder?

   No

   ii) An individual shareholder not owning a substantial interest?

   Individual has to be resident in Sweden.

   iii) An individual shareholder owning a substantial interest?

   If the seller of the acquired company is an individual and the acquired company is a closely held company and the seller controls at least 25% of the

votes in the acquiring company it is a requirement for roll-over relief of the capital gain that the acquiring company is actually running a business.

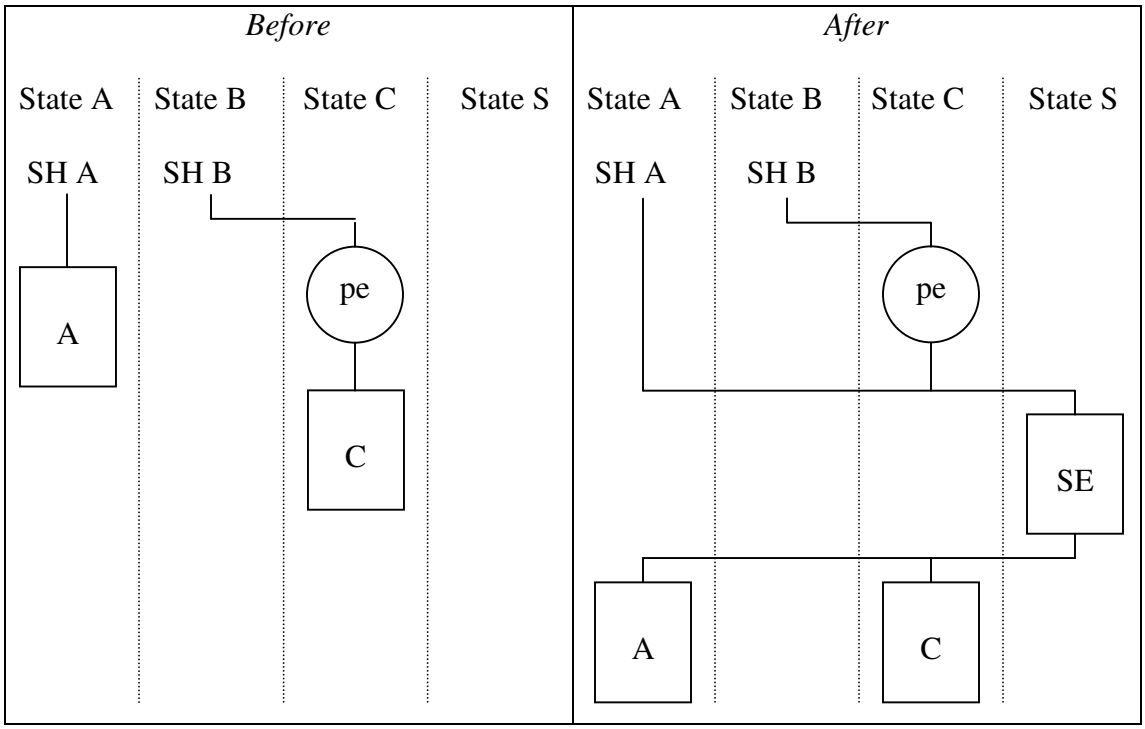
iv) An individual entrepreneur?

No

CASE 4

Formation of a Holding – SE

(Art. 2 par. 2(a) and (b) jo. Art. 32, Art. 33, and Art. 34 Reg. 2157/2001)



Facts and assumptions

- SH = shareholder(s), resident in the respective country in which SH is situated
- A and C are existing companies
- The shares in C are attributable to pe in State C
- SE is a new company
- A and C are public or private limited-liability companies (see Annex II)
- State A, State B, State C and State S are EU Member States
- A:
    - formed under law of Member State A
    - registered office in Member State A

  - head office in Member State A
- C:
  - formed under law of Member State C
  - registered office in Member State C
  - head office in Member State C
- SE:
  - formed under law of Member State S
  - registered office in Member State S
  - head office in Member State S
  - will be covered by the EC Merger Directive

Transactions

- SE:
  - will be regarded as public limited-liability company governed by the law of Member State S
  - acquires holding in A and C
  - such that it obtains more than 50% of the permanent voting rights in A and C
  - in exchange for shares in SE
  - issued to the shareholders of A and C

Questions

1) Assume Member State A is Sweden

   Tax effects for SH A in Member State A

   a) Will the issue of shares by SE to SH A in exchange for shares in A give rise to any taxation of the income, profits or capital gains of SH A or is there roll-over relief?

      The issue of shares in SE in exchange for shares in B will not give rise to any taxation of capital gains with SH B in accordance with the provisions regarding exchange of shares in chapters 48a and 49 of the Income Tax Act. Taxation of capital gain is deferred until shares in SE are disposed of. Deferred taxation does not apply to any cash contribution to the shareholder.

      With respect to individuals, deferred taxation of a capital gain is only possible provided that the seller is resident in Sweden or is continuously staying in Sweden.[24]

[24] ITA ch 48a sec 5 and ch 49 sec 8

With respect to companies, deferred taxation may be granted also to a non-resident shareholder provided the non-resident company has a permanent establishment in Sweden to which the transferred assets are connected. Any deferred tax will be subject to immediate taxation in case of change of residency.

b) Will the answer to the above question be different in the case of:
   i) SH A being an individual shareholder not owning a substantial interest?

   No

   ii) SH A being an individual shareholder owning a substantial interest?

   If the seller of the acquired company is an individual and the acquired company is a closely held company and the seller controls at least 25% of the votes in the acquiring company it is a requirement for rollover relief of the capital gain that the acquiring company is actually running a business.

   iii) SH A being an individual entrepreneur?

   No

   iv) SH A being a corporate shareholder?

   No

2) Assume Member State B is Sweden

   Tax effects for SH B in Member State B

   a) Will the issue of shares by SE to SH B in exchange for shares in C give rise to any taxation of the income, profits or capital gains of SH B or is there rollover relief?

   The issue of shares in SE in exchange for shares in C will not give rise to any taxation of capital gains with SH B in accordance with the provisions regarding exchange of shares in chapters 48a and 49 of the Income Tax Act. Taxation of capital gain is deferred until shares in SE are disposed of. Deferred taxation does not apply to any cash contribution to the shareholder.

   With respect to individuals, deferred taxation of a capital gain is only possible provided that the seller is resident in Sweden or is continuously staying in Sweden.[25]

[25] ITA ch 48a sec 5 and ch 49 sec 8

With respect to companies, deferred taxation may be granted also to a non-resident shareholder provided the non-resident company has a permanent establishment in Sweden to which the transferred assets are connected. Any deferred tax will be subject to immediate taxation in case of change of residency.

b) Will the answer to the above question be different in the case of:
   i) SH B being an individual entrepreneur?

   No

   ii) SH B being a corporate shareholder?

   No

3) Assume Member State C is Sweden

   Tax effects for SH B in Member State C

   a) Will the issue of shares by SE to SH B in exchange for shares in C give rise to any taxation of the income, profits or capital gains of SH B or is there rollover relief?

      Rollover relief applies provided SH B is a company. It is a requirement for rollover relief for individuals that the individual is resident in Sweden (Member State C).

      Normally, the issue of shares in SE in exchange for shares in C will not give rise to any taxation of capital gains with SH B in accordance with the provisions regarding exchange of shares in chapters 48a and 49 of the Income Tax Act. Taxation of capital gain is deferred until shares in SE are disposed of. Deferred taxation does not apply to any cash contribution to the shareholder.

      With respect to individuals, deferred taxation of a capital gain is only possible provided that the seller is resident in Sweden or is continuously staying in Sweden.[26]

      With respect to companies, deferred taxation may be granted also to a non-resident shareholder provided the non-resident company has a permanent establishment in Sweden to which the transferred assets are connected. Any deferred tax will be subject to immediate taxation in case of change of residency.

   b) Will the answer to the above question be different in the case of:
      i) SH B being an individual entrepreneur?

[26] ITA ch 48a sec 5 and ch 49 sec 8

No

ii) SH B being a corporate shareholder?

No

4) Assume Member State S is Sweden

Tax effects for SE in Member State S

a) Are there any provisions for the valuation for tax purposes in Member State S of the shares of A and C acquired by SE? Do the shares have to be valued at the book value of the exchanging shareholder or at a higher value?

Shares received by SE are to be valued at market value.

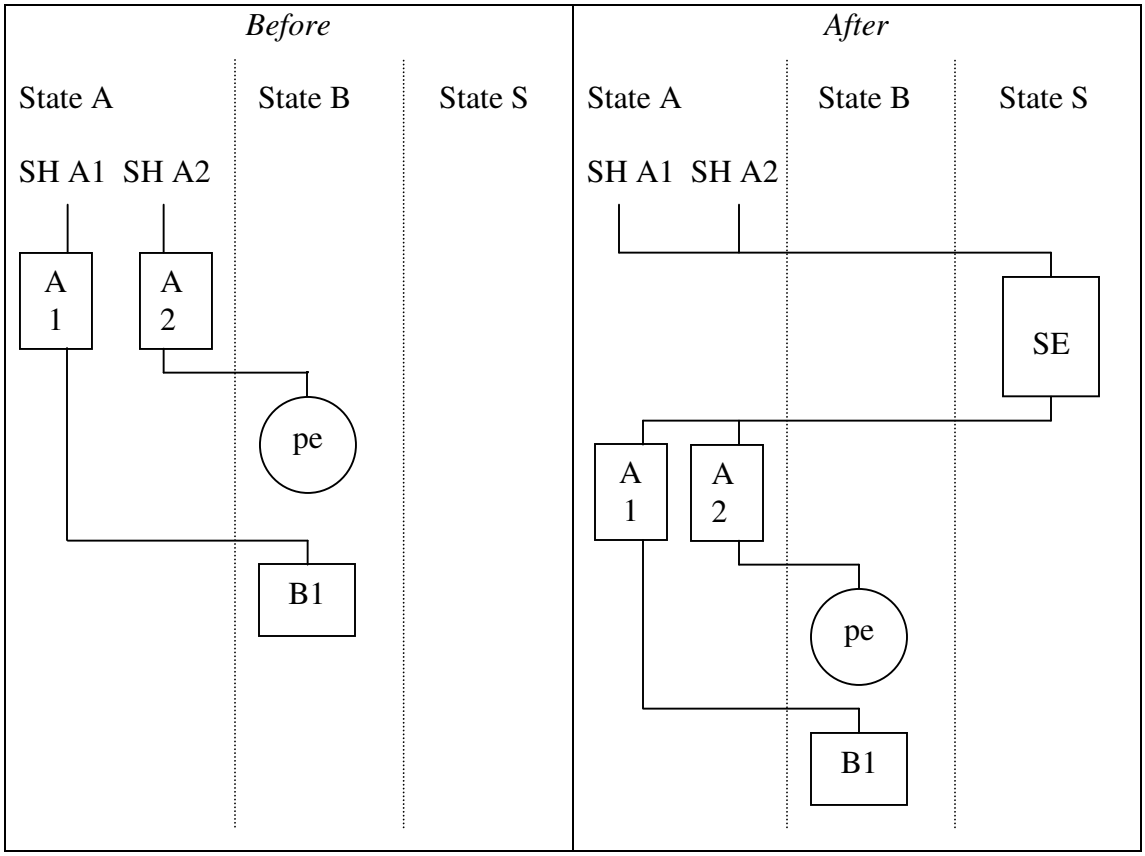
b) Are there any provisions for the valuation for tax purposes in Member State S of the shares issued to SH A and SH B? Do the shares have to be valued at the book value of the shares exchanged by the shareholder or at a higher value?

Shares transferred by SE to shareholders are to be valued at market value.

CASE 5

Formation of a Holding – SE

(Art. 2 par. 2(b) jo. Art. 32, Art. 33, and Art. 34 Reg. 2157/2001)



Facts and assumptions

- SH = shareholder(s), resident in the respective country in which SH is situated
- A1, A2, and B1are existing companies
- pe is an existing permanent establishment of A2 in Member State B
- SE is a new company
- A1, A2, and B1 are public or private limited-liability companies (see Annex II to Reg. 2157/2001)
- State A, State B, and State S are EU Member States
- A1 and A2:
    - formed under law of Member State A
    - registered office in Member State A
    - head office in Member State A
- B1:
    - formed under law of Member State B

  - registered office in Member State B
  - head office in Member State B
- SE:
  - formed under law of Member State S
  - registered office in Member State S
  - head office in Member State S
  - will be covered by the EC Merger Directive

Transactions

- SE:
  - will be regarded as public limited-liability company governed by the law of Member State S
  - acquires holding in A1 and A2
  - such that it obtains more than 50% of the permanent voting rights in A1 and A2
  - in exchange for shares in SE
  - issued to the shareholders of A1 and A2

Questions

1) Assume Member State A is Sweden

   Tax effects for SH A2 in Member State A

   a) Will the issue of shares by SE to SH A2 in exchange for shares in A2 give rise to any taxation of the income, profits or capital gains of SH A2 or is there rollover relief?

      The issue of shares in SE in exchange for shares in A2 will not give rise to any taxation of capital gains with SH A2 in accordance with the provisions regarding exchange of shares in chapters 48a and 49 of the Income Tax Act. Taxation of capital gain is deferred until shares in SE are disposed of. Deferred taxation does not apply to any cash contribution to the shareholder.

      With respect to individuals, deferred taxation of a capital gain is only possible provided that the seller is resident in Sweden or is continuously staying in Sweden.[27]

      With respect to companies, deferred taxation may be granted also to a non-resident shareholder provided the non-resident company has a permanent establishment in Sweden to which the transferred assets are connected. Any deferred tax will be subject to immediate taxation in case of change of residency.

[27] ITA ch 48a sec 5 and ch 49 sec 8

b) Will the answer to the above question be different in the case of:
   i) SH A2 being an individual shareholder not owning a substantial interest?

   Individual must be resident in Sweden.

   ii) SH A2 being an individual shareholder owning a substantial interest?

   If the seller of the acquired company is an individual and the acquired company is a closely held company and the seller controls at least 25% of the votes in the acquiring company it is a requirement for rollover relief of the capital gain that the acquiring company is actually running a business.

   iii) SH A2 being an individual entrepreneur?

   No

   iv) SH A2 being a corporate shareholder?

   No

2) Assume Member State S is Sweden

Tax effects for SE in Member State S

a) Are there any provisions for the valuation for tax purposes in Member State S of the shares of A1 and A2 acquired by SE? Do the shares have to be valued at the book value of the exchanging shareholder or at a higher value?

   Shares received by SE are to be valued at market value.

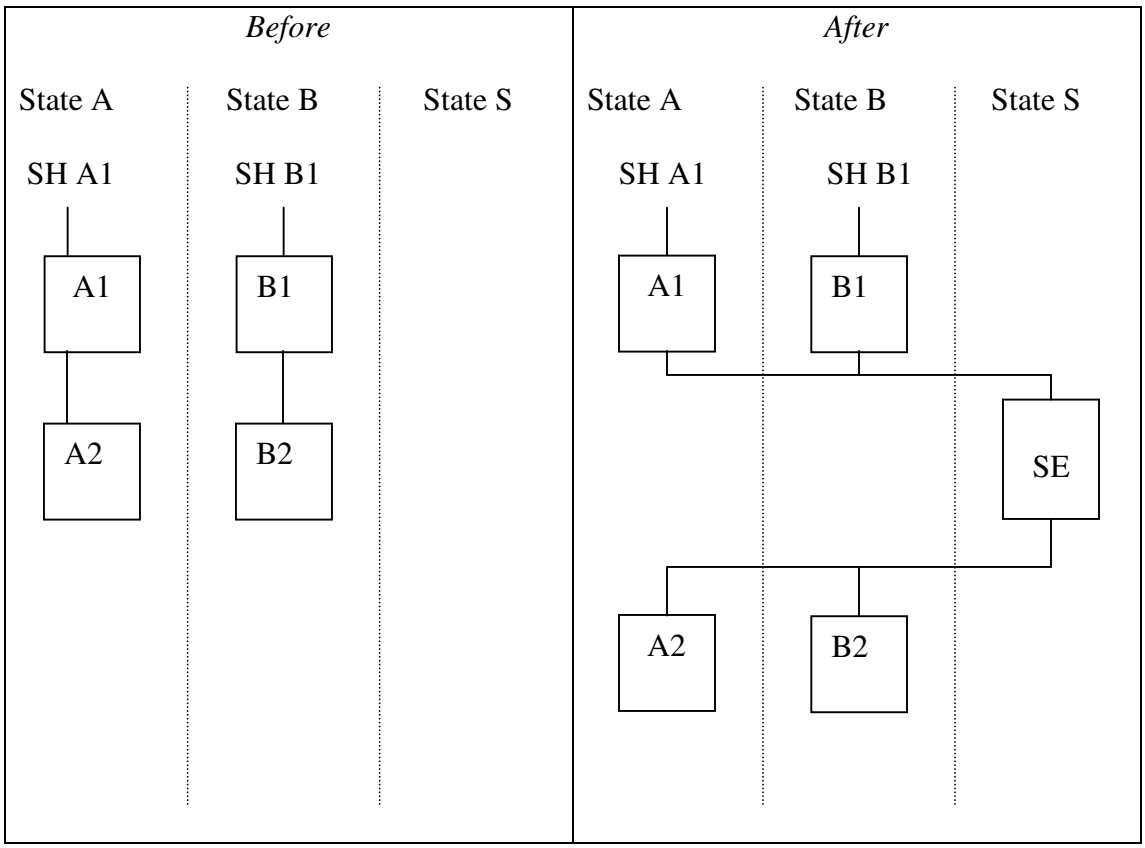
b) Are there any provisions for the valuation for tax purposes in Member State S of the shares issued to SH A1 and SH A2? Do the shares have to be valued at the book value of the shares exchanged by the shareholder or at a higher value?

   Shares transferred by SE to shareholders are to be valued at market value.

CASE 6

Formation of a Subsidiary–SE by exchange of shares

(Art. 2 par. 3(a) jo. Arts. 35 and 36 Reg. 2157/2001)



Facts and assumptions

- SH = shareholder(s), resident in the respective country in which SH is situated
- A1, A2, B1, and B2 are existing companies
- SE is a new company
- A1 and B1 are companies or firms within the meaning of Art. 48 par. 2 of the Treaty establishing the European Community or other legal bodies governed by public or private law (Art. 2 par. 3 Reg. 2157/2001)
- State A, State B, and State S are EU Member States
- A1 and A2:
    - formed under law of Member State A
    - registered office in Member State A
    - head office in Member State A
- B1 and B2:
    - formed under law of Member State B
    - registered office in Member State B

  - head office in Member State B

- SE:
  - formed under law of Member State S
  - registered office in Member State S
  - head office in Member State S
  - will be covered by the EC Merger Directive

Transactions

- A1 and B1:
  - *form a subsidiary SE by way of contributing their subsidiaries A2 and B2 respectively to SE*
- *SE:*
  - will be regarded a public limited-liability company governed by the law of Member State S
  - will acquire the shares in A2 and B2 in exchange for shares issued to A1 and B1

Questions

1) Assume Member State A is Sweden

   Tax effects for A1 in Member State A

   a) Will the issue of shares by SE to A1 in exchange for shares in A2 give rise to any taxation of the income, profits or capital gains of A1 or is there roll-over relief?

      The issue of shares in SE in exchange for shares in A2 will not give rise to any taxation of capital gains with SH A1 in accordance with the provisions regarding exchange of shares in chapters 48a and 49 of the Income Tax Act. Taxation of capital gain is deferred until shares in SE are disposed of. Deferred taxation does not apply to any cash contribution to the shareholder.

      With respect to individuals, deferred taxation of a capital gain is only possible provided that the seller is resident in Sweden or is continuously staying in Sweden.[28]

      With respect to companies, deferred taxation may be granted also to a non-resident shareholder provided the non-resident company has a permanent establishment in Sweden to which the transferred assets are connected. Any deferred tax will be subject to immediate taxation in case of change of residency.

[28] ITA ch 48a sec 5 and ch 49 sec 8

2) Assume Member State S is Sweden

Tax effects for SE in Member State S

a) Are there any provisions for the valuation for tax purposes in Member State S of the shares of A2 and B2 acquired by SE? Do the shares have to be valued at the book value of the exchanging shareholder or at a higher value?

Shares received by SE are to be valued at market value.

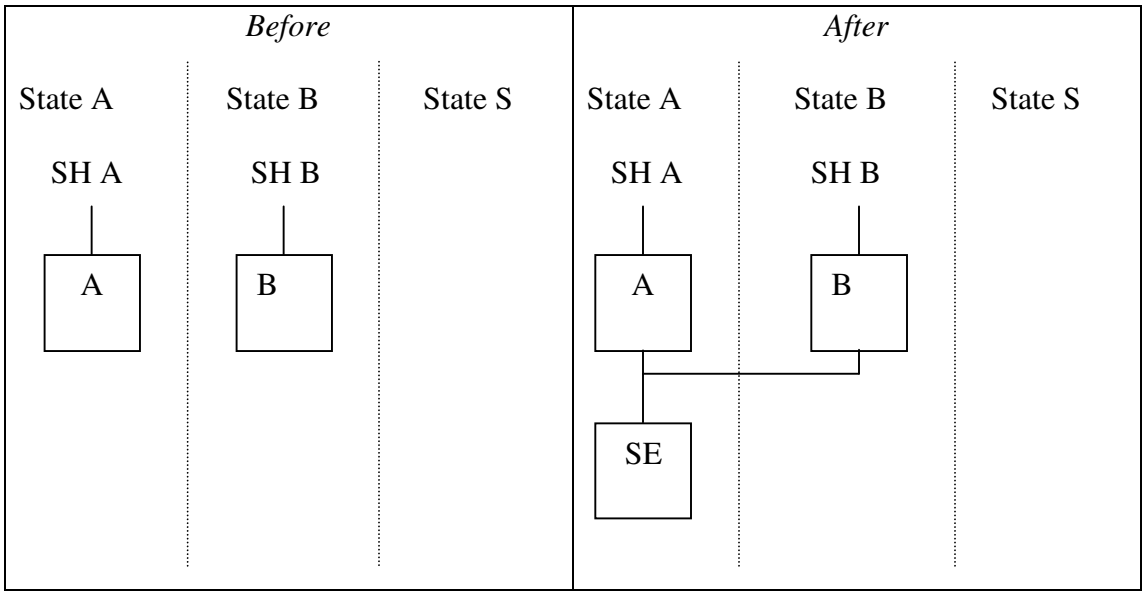
b) Are there any provisions for the valuation for tax purposes in Member State S of the shares issued to A1 and B1? Do the shares have to be valued at the book value of the shares exchanged by the shareholder or at a higher value?

Shares transferred by SE to shareholders are to be valued at market value.

CASE 7

Formation of a Subsidiary–SE by contribution of cash

(Art. 2 par. 3(a) jo. Arts. 35 and 36 Reg. 2157/2001)



Facts and assumptions

- SH = shareholder(s), resident in the respective country in which SH is situated
- A, and B are existing companies
- SE is a new company
- A and B are companies or firms within the meaning of Art. 48 par. 2 of the Treaty establishing the European Community or other legal bodies governed by public or private law (Art. 2 par. 3 Reg. 2157/2001)
- State A, State B, and State S are EU Member States
- A:
    - formed under law of Member State A
    - registered office in Member State A
    - head office in Member State A
- B:
    - formed under law of Member State B
    - registered office in Member State B
    - head office in Member State B
- SE:
    - formed under law of Member State A
    - registered office in Member State A
    - head office in Member State A
    - will be covered by the EC Merger Directive

Transactions

- *SE:*
  - will take the form of an SE
  - will be regarded a public limited-liability company governed by the law of Member State A
- A and B:
  - *form a subsidiary SE*

Questions

1) Assume Member State A is Sweden

Tax effects for A in Member State A

Will there be any tax effect for A in Member State A as a consequence of the formation of the subsidiary SE in Member State A?

No. Please note that there are currently no provisions in Swedish domestic law specifically covering SE's. With respect to e.g. the dividend distribution provisions and the group contribution provisions, these rules currently only apply to Swedish domestic limited liability companies (Aktiebolag, AB). These provisions will most likely have to be amended to also cover the SE entity.

2) Assume Member State B is Sweden

Tax effects for B in Member State B

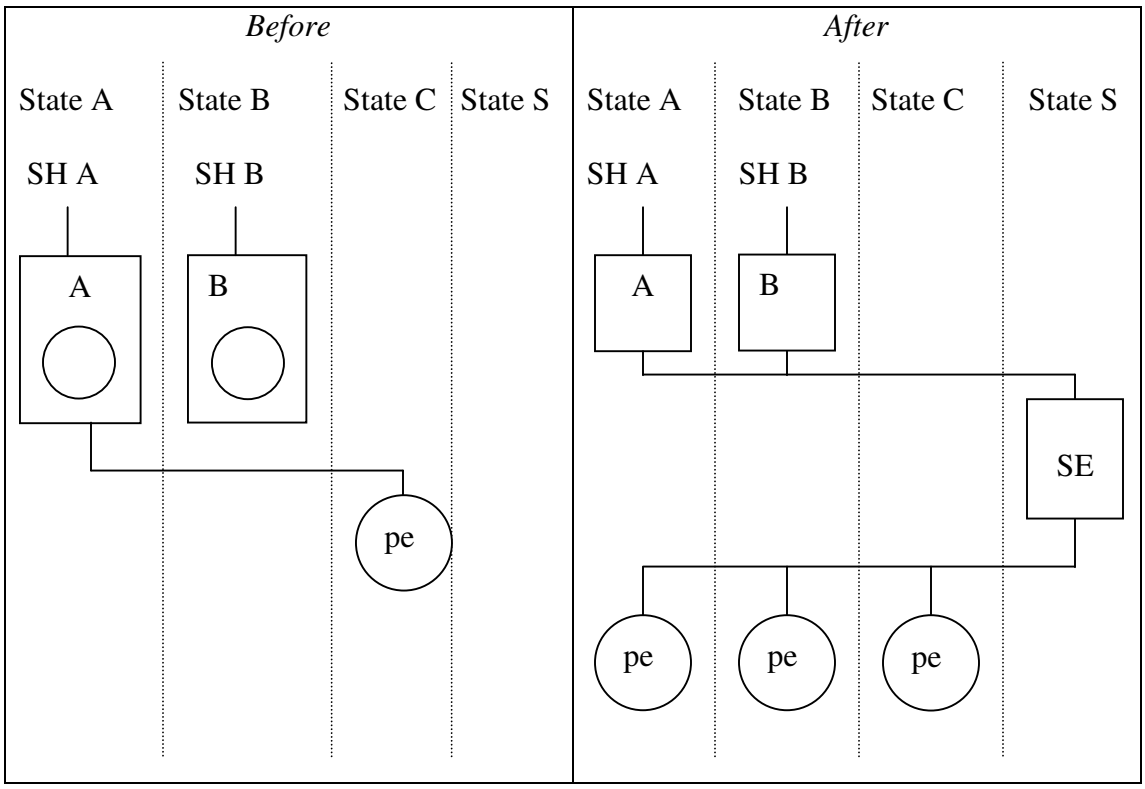
Will there be any tax effect for B in Member State B as a consequence of the formation of the subsidiary SE in Member State A?

No

CASE 8

Formation of a Subsidiary–SE by transfer of assets

(Art. 2 par. 3(a) jo. Arts. 35 and 36 Reg. 2157/2001)



Facts and assumptions

- SH = shareholder(s), resident in the respective country in which SH is situated
- A, and B are existing companies
- SE is a new company
- A and B are public or private limited-liability companies (see Annex II)
- A and B are companies or firms within the meaning of Art. 48 par. 2 of the Treaty establishing the European Community or other legal bodies governed by public or private law
- A has a permanent establishment in State C
- State A, State B, State C and State S are EU Member States
- A:
    - formed under law of Member State A
    - registered office in Member State A
    - head office in Member State A

- B:
  - formed under law of Member State B
  - registered office in Member State B
  - head office in Member State B
- SE:
  - formed under law of Member State S
  - registered office in Member State S
  - head office in Member State S
  - will be covered by the EC Merger Directive

Transactions

- *SE:*
  - will take the form of an SE
  - will be regarded a public limited-liability company governed by the law of Member State S
- A (and B):
  - *form a subsidiary by way of contributing their branches in Member State A (and B respectively) to SE in exchange for the issue of shares by SE to A (and B respectively)*
- A:
  - will transfer its permanent establishment in Member State C to SE in exchange for the issue of shares by SE to A

Questions

1) Assume Member State A is Sweden

   Tax effects for A and SE in Member State A

   a) Will the transfer of assets give rise to any taxation of capital gains (= real value of the assets and liabilities minus their value for tax purposes) or is there rollover relief?

      The provisions regarding transfer of assets are to be found in chapter 38 of the Income Tax Act.

      Rollover relief applies to transfer of certain assets upon request by both parties if the transferring company immediately before the transfer is subject to tax in Sweden and the acquiring company is subject to tax in Sweden immediately after the transfer.[29] *In this case the PE controlled by SE in Sweden will satisfy that requirement. The value of the shares in SE must exceed the taxable value of the*

[29] ITA ch 38 sec 6-7

transferred assets.[30] *A further requirement is that the price of the transferred assets must be the market value.*

The transferring company shall not be subject to tax on the market value of the shares in SE. The transferring company is subject to tax on income on the taxable value of all other assets than capital assets. Capital assets are all assets except inventory, claims and patents or other such rights.

For capital assets the transferring company may not deduct any losses. For valuation of shares in SE see question c).

For the acquiring company any assets other than capital assets are deemed to be acquired at the value the transferring company has been subject to tax on these assets.[31] *For capital assets the acquiring company will take over the acquisition values of the transferring company.*[32]

In case assets and liabilities are connected to a permanent establishment in another Member State, Sweden will tax such assets in connection to the transfer but will grant a tax credit on any notional tax levied in that other State.[33]

b) May provisions or reserves which are partly or wholly exempt from tax and which are not derived from permanent establishments outside Member State A be taken over with the same roll-over relief by the permanent establishment of SE in Member State A?

Yes, upon request, reserves and provisions can, subject to conditions, be taken over by the permanent establishment of SE. The acquiring company will take the same tax position with respect to these provisions or reserves as the transferring company.[34] *This applies to the replacement reserve and the profit periodization reserve.*

c) Are there any provisions in the legislation of Member State A for the valuation for tax purposes of the shares in SE acquired by A?

Yes, the shares in SE must be valued at the net value of the transferred assets. Net value is the difference between the taxable value of the transferred assets and the value of the debts and other liabilities taken over by SE in the transfer.[35]

d) Will SE's permanent establishment in Member State A be allowed to take over the losses of A which have not been exhausted for tax purposes? (If SE would be

[30] ITA ch 38 sec 8
[31] ITA ch 38 sec 10 and 14
[32] ITA ch 38 sec 14
[33] ITA ch 38 sec 19 and ch 37 sec 30
[34] ITA ch 38 sec 15
[35] ITA ch 38 sec 13

a company resident in Member State A, would it then be allowed to take over these losses?)

SE's permanent establishment may not take over any losses resulting from tax years before the year of the transfer.[36] *The same applies if SE had been a company resident in Member State A. In addition, capital losses on shares may also not be taken over by the acquiring company.*[37]

e) Will Member State A renounce any right to tax the permanent establishment in Member State C?

No, Sweden will not renounce any right to tax the permanent establishment in Member State C.

f) Will Member State A reinstate in the taxable profits of A such losses of the permanent establishment in Member State C as have been set off against the taxable profits of A in Member State A and which have not been recovered (see art. 10 par. 2 of the EC Merger Directive)?

No

g) and h) Or will Member State A tax profits or capital gains of the permanent establishment in State C resulting from the transfer of assets? If the question is answered affirmatively, will Member State A give relief for the notional tax charged on these profits or capital gains by Member State C, assuming that Member State C would have levied tax (see art 10 par. 2 of the EC Merger Directive)?

In case assets and liabilities are connected to a permanent establishment in another Member State, Sweden will tax such assets in connection to the transfer but will grant a tax credit on any notional tax levied in that other State.[38]

2) Assume Member State S is Sweden

<u>Tax effects for SE in Member State S</u>

a) What is the value for tax purposes that SE has to attribute to the assets and liabilities of the permanent establishments in Member States A, B and C that is transferred to SE as part of the merger?

For the acquiring company any assets other than capital assets are deemed to be acquired at the value the transferring company has been subject to tax on these

[36] ITA ch 38 sec 17 and ch 40
[37] ITA ch 38 sec 17
[38] ITA ch 38 sec 19 and ch 37 sec 30

assets. For capital assets the acquiring company will take over the acquisition values of the transferring company. Capital assets are all assets except inventory, claims and patents or other such rights.[39]

Tax effects for A as shareholder of SE in Member State S

b) Is there any provision in the tax legislation of Member State S that affects A as shareholder of SE?

No, not until a dividend is distributed from SE to A. This dividend should be tax-exempt in Sweden provided there is a sufficient holding between the companies. Provisions regarding dividend distributions from other Member States can be found in chapter 24 sec 20-22.

3) Assume Member State C is Sweden

Tax effects for A and SE in Member State C in respect of its permanent establishment in Member State C

a) Will the transfer of assets give rise to any taxation of capital gains (= real value of assets & liabilities transferred minus their value for tax purposes) or is there rollover relief?

Rollover relief applies to transfer of certain assets upon request by both parties if the transferring company immediately before the transfer is subject to tax in Sweden and the acquiring company is subject to tax in Sweden immediately after the transfer.[40] *In this case the PE controlled by SE in Sweden will satisfy that requirement. The value of the shares in SE must exceed the taxable value of the transferred assets.*[41] *A further requirement is that the price of the transferred assets must be the market value.*

The transferring company shall not be subject to tax on the market value of the shares in SE. The transferring company is subject to tax on income on the taxable value of all other assets than capital assets. Capital assets are all assets except inventory, claims and patents or other such rights.

For capital assets the transferring company may not deduct any losses.

For the acquiring company any assets other than capital assets are deemed to be acquired at the value the transferring company has been subject to tax on these

[39] ITA ch 38 sec 14
[40] ITA ch 38 sec 6-7
[41] ITA ch 38 sec 8

assets.[42] *For capital assets the acquiring company will take over the acquisition values of the transferring company.*[43]

In case assets and liabilities are connected to a permanent establishment in another Member State, Sweden will tax such assets in connection to the transfer but will grant a tax credit on any notional tax levied in that other State.[44]

b) May provisions and reserves, which are partly or wholly exempt from tax and which are not derived from permanent establishments outside Member State C, be taken over with the same rollover relief by the permanent establishment of SE in Member State C?

Yes, upon request, reserves and provisions can, subject to conditions, be taken over by the permanent establishment of SE. The acquiring company will take the same tax position with respect to these provisions or reserves as the transferring company.[45] *This applies to the replacement reserve and the profit periodization reserve.*

c) Will SE's permanent establishment in Member State C be allowed to take over the losses of A's permanent establishment that have not been exhausted for tax purposes? If SE would be a company resident in Member State C, would it then be allowed to take over these losses?

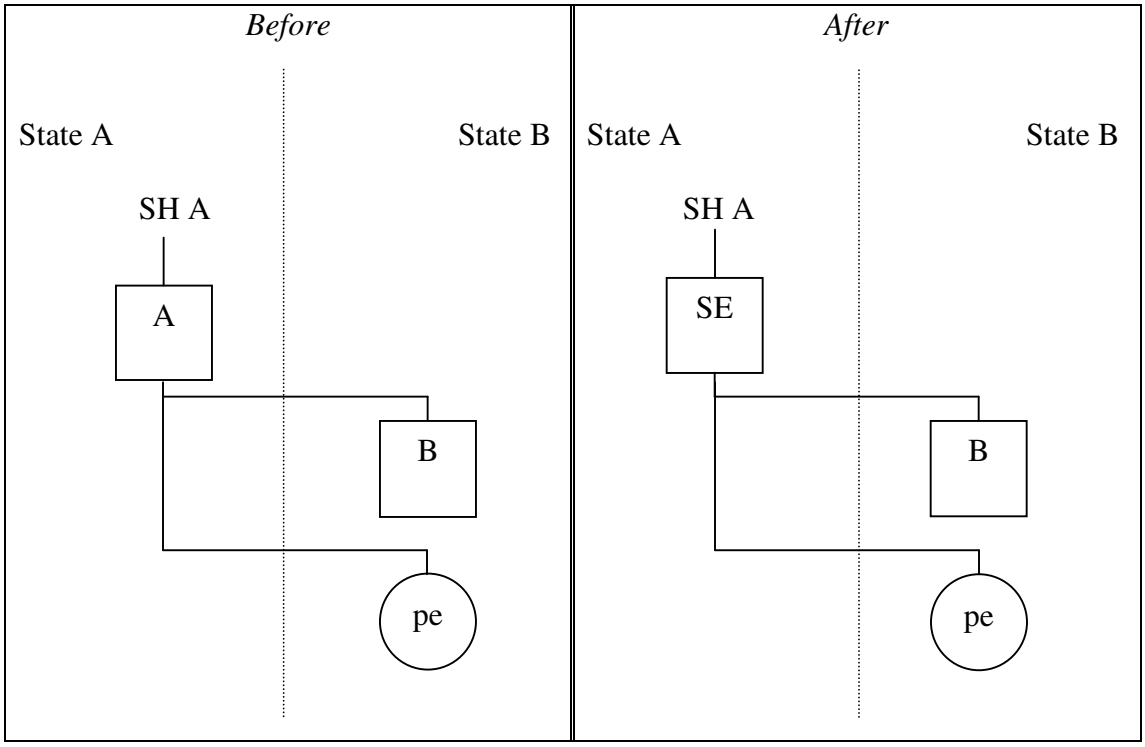
SE's permanent establishment may not take over any losses resulting from tax years before the year of the transfer.[46] *The same applies if SE had been a company resident in Member State C. In addition, capital losses on shares may also not be taken over by the acquiring company.*[47]

[42] ITA ch 38 sec 10 and 14
[43] ITA ch 38 sec 14
[44] ITA ch 38 sec 19 and ch 37 sec 30
[45] ITA ch 38 sec 15
[46] ITA ch 38 sec 17 and ch 40
[47] ITA ch 38 sec 17

CASE 9

Transformation of public limited-liability company into an SE

(Art. 2 par. 4 jo. Art. 37 Reg. 2157/2001)



Facts and assumptions

- SH = shareholder(s), resident in the respective country in which SH is situated
- A and B are existing companies
- pe is an existing permanent establishment
- A and B public limited-liability companies (see Annex I of Reg. 2157/2001)
- State A and State B are EU Member States
- A:
  - formed under law of Member State A
  - registered office in Member State A
  - head office in Member State A
- B:
  - formed under law of Member State B
  - registered office in Member State B
  - head office in Member State B

Transactions

- A will be transformed into an SE, governed by the law of Member State A (Pursuant to Art. 37 par. 2 Reg., the transformation shall not result in the winding up of A or in the creation of a new legal person. However, the Regulation itself does not give guidance with regard to taxation.)

Questions

1) Assume Member State A is Sweden

Tax effects for A in Member State A

a) Will the transformation of A into an SE give rise to any taxation of capital gains (= real value of assets and liabilities transferred minus their value for tax purposes) or is there rollover relief for the business carried on in Member State A, or in Member State B through a permanent establishment?

Most likely a rollover relief will be granted. Please note that there are no provisions covering this situation so it is impossible to answer accurately but in this situation there seems to be no reason why a rollover relief should not be granted.

b) May provisions and reserves, which are partly or wholly exempt from tax and which are not derived from permanent establishments outside Member State A, be carried over to SE in Member State A?

Since provisions and reserves may generally be carried over in case of a merger or a transfer of assets, there seems to be no reason why the same should not apply to the situation described above in case the transformation is subject to a rollover relief.

c) Will SE be allowed to take over the losses of A that have not been exhausted for tax purposes?

There are currently restrictions applicable to losses from previous tax years in case of mergers. With respect to transfers of assets it is not possible to transfer losses resulting from previous years. In this case however, there should be no obstacle in the way for SE to take over the losses of A that have not been exhausted for tax purposes.

Tax effects for SH A in Member State A

d) Will there be any effect for SH A because of the transformation of its subsidiary company A into an SE?

There will probably not be any tax consequences for SH A as a result of the transformation until he disposes of his shares in SE.

e) Will the answer to question d) be different in the following situations:
   i) SH is a corporate shareholder?

   No

   ii) SH is an individual shareholder not owning a substantial interest?

   No

   iii) SH is an individual shareholder owning a substantial interest?

   No

   iv) SH is an individual entrepreneur?

   No

2) Assume Member State B is Sweden

Tax effects for the shareholder of B in Member State B

a) Will there be any effect for the shareholder of B because of the transformation of its parent company A into an SE?

   There will probably not be any tax effect to the shareholders of B.

Tax effects for A and SE in Member State B

b) Will A be subject to any taxation of capital gains (=real value of assets and liabilities minus their value for tax purposes) or is there rollover relief?

   Most likely a rollover relief for A will be granted in case of the transformation.

c) If not, what is the value for tax purposes that SE has to attribute to the assets and liabilities of the permanent establishment in Member State B?

   Most likely the current value of the assets will be the attributable value for SE.

d) May provisions and reserves, which are partly or wholly exempt from tax and which are not derived from permanent establishments outside Member State B, be taken over with the same rollover relief by the permanent establishment of SE in Member State B?

Since provisions and reserves may generally be carried over in case of a merger or a transfer of assets, there seems to be no reason why the same should not apply to the situation described above in case the transformation is subject to a rollover relief.

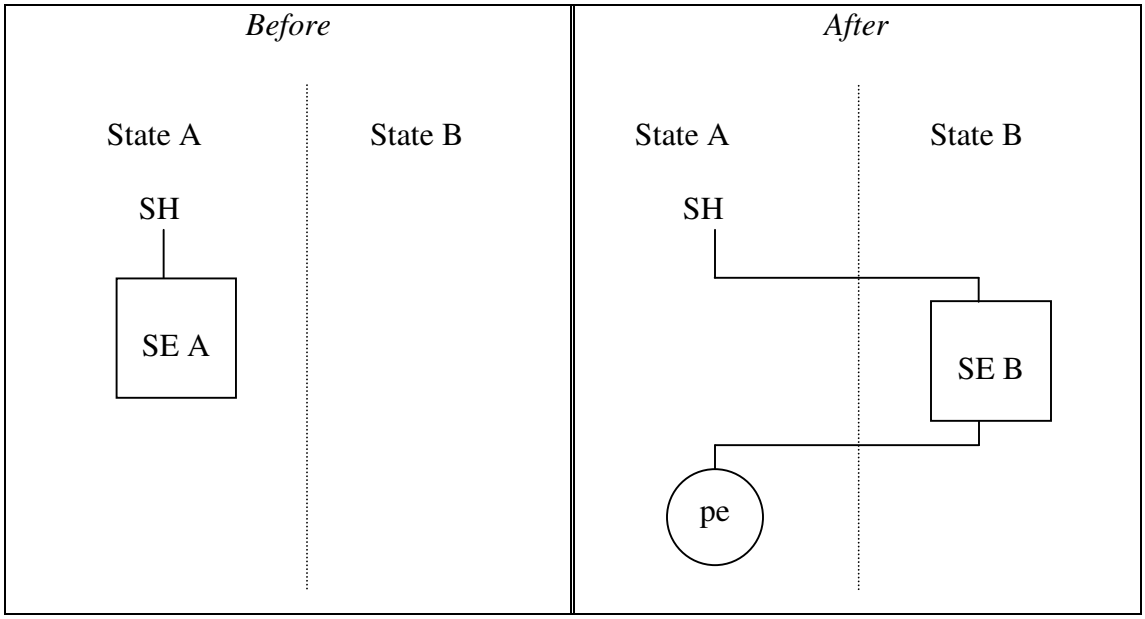
e) Will SE's permanent establishment in Member State B be allowed to take over the losses of A's permanent establishment that have not been exhausted for tax purposes?

There are currently restrictions applicable to losses from previous tax years in case of mergers. With respect to transfers of assets it is not possible to transfer losses resulting from previous years. In this case however, there should be no obstacle in the way for SE to take over the losses of A's permanent establishment that have not been exhausted for tax purposes.

CASE 10

Transfer of registered office of an SE

(Art. 8 par. 1 jo. Art. 37 Reg. 2157/2001)



Facts and assumptions

- SE is an existing SE
- State A and State B are EU Member States
- SE A:
  - formed under the law of Member State A
  - registered office in Member State A
  - head office in Member State A
- SE B:
  - statutes are amended to conform to the law of Member State B
  - registered office in Member State B
  - head office in Member State B

Transactions

- registered office and head office of SE are transferred to Member State B (pursuant to Art. 8 Reg. 2157/2001 such a transfer shall not result in the winding up of SE or in the creation of a new legal person)

Questions

1) Assume Member State A is Sweden

Tax effects of the transfer for SE

a) Does the transfer entail a winding up of SE for tax purposes?

This situation is not covered in Swedish domestic legislation since a Swedish limited liability company (AB) cannot transfer its seat to another State under domestic law.
Current legislation would therefore treat the situation above as if SE A had been wound up and SE B had been established.

b) What are the tax consequences in case of a winding up of SE?

All assets will be subject to tax at the company level as if the assets had been disposed of at market value.

Any proceeds remaining from the liquidation will be treated as a capital gain in the hands of the shareholder.

c) Does it make a difference whether or not a permanent establishments of SE B remains in Member State A?

No

d) If after the transfer of the registered office, SE B will have a permanent establishment in Member State A, can SE B take over the provisions and reserves which are partly or wholly exempt from tax with the same roll-over relief?

Only if SE A has not been liquidated. In case a transfer of seat would be possible then it is very likely that it would have been possible for SE B to take over reserves and provisions of the permanent establishment in Member State A.

e) If after the transfer of the registered office, SE B will have a permanent establishment in Member State A, can SE B's permanent establishment in Member State A take over the losses of SE A that have not been exhausted for tax purposes?

If SE A has not been liquidated it may be possible to transfer the losses but there might be restrictions attached to that transfer as in the case of a merger.

Tax effects of the transfer for SH

f) What are the tax effects for SH in case the transfer results in a winding up of SE for tax purposes?

Capital gain on the shares in SE A are taxable for the shareholder.

g) Is the answer to 1f) different if:
   i) SH is a corporate shareholder?

No

   ii) SH is an individual shareholder?

No

   iii) SH is an individual not owning a substantial interest?

No

   iv) SH is an individual owning a substantial interest?

Yes to a limited extent. Individuals holding shares in a closely held company will be subject to tax on proceeds from the liquidation as income from capital (capital gain) and partly as income from employment.

   v) SH is an individual entrepreneur?

No difference.

h) Are there any effects for tax purposes if the transfer of the registered office is not considered as a winding up for tax purposes?

If the transfer would not be considered as winding up of SE A for Swedish tax purposes, there would be no direct tax consequences for the shareholder. However, the fact that the transfer would mean that the company would become a foreign company instead of a Swedish company would have effect for example on the tax treatment of the future dividend distributions.

i) Is the answer to 1h) different if:
   i) SH is a corporate shareholder?

No

   ii) SH is an individual shareholder?

No

iii) SH is an individual not owning a substantial interest?

No

iv) SH is an individual owning a substantial interest?

No

v) SH is an individual entrepreneur?

No

2) Assume Member State B is Sweden

Tax effects of the transfer for SE

a) If SE is considered to be a new company, how should the assets and liabilities of SE be valued?

Assets would probably be valued at the current value.

Tax effects of the transfer for SH

b) Are there any tax effects for SH in case the transfer results in a formation of a new SE in your country? For example, with regard to the valuation of the shares in SE B?

Shares would probably be valued at the current value