

# Rules and comparison between deed transactions and share deals

Petra Wiklander, 2011-04-05

## Selling real estate

When a property is sold in Sweden the seller is obliged to pay income tax for the profit. A legal way to get around the tax obligation is to sell the property for a price below the purchase price to a subsidiary, a shell company, and then sell the shares in the subsidiary. This has become the most common way to sell individual properties in Sweden.

It is not rare that an existing real estate company is for sale, it can be just the one company owning several properties or it can be one company with one or more subsidiaries owning the properties.

The transaction process is in many ways the same if the property is sold as a deed transaction or a share deal, but there are some differences, differences of great economical importance, for both the buyer and the seller.

## Deed transaction

When a property is sold it is called a deed transaction. The deed is the legal document that states the property's rightful owner and when the property is sold it is the deed that changes hands. The Swedish land law states in the 20<sup>th</sup> chapter that a new owner of a property is obliged to apply for ratification of the transaction within three months from the purchase. The authorities then issue the deed and the applicant is billed for the ratification costs.

## **Mandatory requirements for property sale**

For the transaction to be legally completed a bill of sale has to be drawn up. This has to contain information about the purchase price and a statement that the seller releases the property to the buyer. If the bill of sale is not drawn up according to these requirements, or if the buyer and seller have reached other agreements regarding the price that is not stated in the bill of sale, the transaction is considered invalid.<sup>1</sup>

## **Ratification costs**

The ratification application is to be issued to the Swedish mapping, cadastral and land registration authority. One of the authority's main purposes is to maintain the Swedish land registration system and this is the reason for why all property buyers need to apply for ratification. It is the only way for the authority to make sure that the land registration system always has accurate information of who owns the property.

The ratification costs are quite expensive, currently it is set to 4.25 percent of the purchase price for companies. Individuals pay a percentage of 1.5 percent. In addition to this there is an administrative fee of SEK 825 for all properties.<sup>2</sup> It is always the buyer's responsibility to apply for ratification and to stand the cost.

### **Example 1**

Question: A property is sold to Akelius from John Smith (a person individual) for SEK 4,756,000, how much is the total ratification costs?

Answer: The percentage is determined by who the buyer is, in this case a company, so Akelius should pay a percentage of 4.25 percent.

$$4.25\% * 4,756,000 = 202,130$$

Administrative fee SEK 825

$$\text{Total ratification costs: } 202,130 + 825 = 202,955$$

## **Tax**

All profits from business are considered incomes, including sale of property. The tax that a company should pay when selling a property is regulated in the income tax law (direct translation of "inkomstskattelagen").

---

<sup>1</sup> The Swedish land law

<sup>2</sup> The Swedish mapping, cadastral and land registration authority

The purchase costs are calculated as the purchase price and the relating costs in connection with the purchase, such as ratification costs. Costs for new or additional constructions or reconstructions during the last five years can be added to the purchase costs. Costs for improving refurbishments and maintenance can also be added. However, costs for the mentioned measures are only able to be added if the property now is in a better condition than at the purchase date because of them. The profit is then calculated as the selling price minus the purchase costs. If there is a loss in the selling company the profit should be reduced with this.<sup>3</sup> The income tax for 2011 for companies is 26.3 percent.<sup>4</sup>

### Example 2

Question: Akelius is about to sell a property as a deed transaction, the day of sale will be 2011-04-30. The property was bought in 1995 for 15 million SEK, and is now sold for 45 million SEK. The ratification costs were 450,700SEK. The following measurements have been made since the purchase:

1. 1997 Pipe work restoration 7 million SEK
2. 2008 Fixing a leaking roof 2.5 million SEK
3. 2010 A change of ventilation system that reduces energy consumption 4 million SEK.

Calculate the income tax for the sale.

Answer: Of the mentioned measurements only number three is valid; number one is more than five years ago and number two was not an improving measure. The purchase costs can then be calculated as follows:

$$15,000,000 + 450,700 + 4,000,000 = 19,450,700$$

$$\text{Profit: } 45,000,000 - 19,450,700 = 25,549,300$$

$$\text{Tax: } 26.3 \% * 25,549,300 = 6,719,466$$

---

<sup>3</sup> The national tax board of Sweden

<sup>4</sup> [www.skatteverket.se](http://www.skatteverket.se)

## Share deals

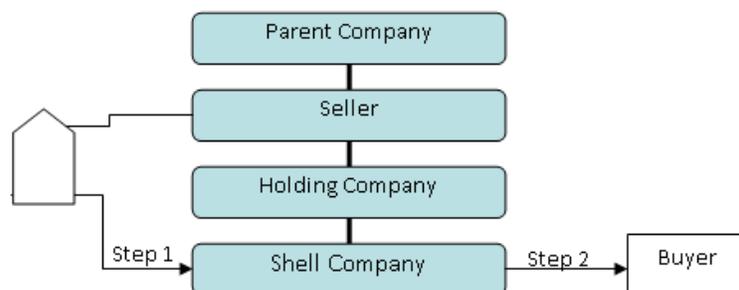
It might seem complicated to package the property in a company to avoid taxes, but in comparison with the large amounts possible to save it is worth it in the end. The tax does not cease to exist though, when the company sells the property outside the group the profit will be taxed. The concept of tax being postponed to the future is commonly called deferred tax.

Not long ago it was standard that a buyer of this kind of newly formed company owning one property asked for a discount due to the deferred tax. The reason for the discount is that the deferred tax has to be booked as a liability since the idea is that sometime in the future it will be paid.<sup>5</sup> The deferred taxes still need to be accounted for in the bookkeeping but today there is no discussion regarding discounts.

The phenomenon to sell a property within the group to a price below market value is called an under price transaction. The rules regarding under price transactions is only applicable to limited companies. According to the Swedish tax law commission under price transactions between trading companies or limited partnership companies is legally considered as tax evasion.<sup>6</sup>

### The process

The parent company sells the property to a newly formed company, the shell company; the property has to be the company's only asset beside the share-capital.<sup>7</sup> The owner of the shares in the shell company is a holding company, owned by the seller. The holding company then sells the shares in the shell company to the buyer.



**Picture 1. The process of selling a property in a company**

<sup>5</sup> Bokföringstips.se

<sup>6</sup> The Swedish tax law commission

<sup>7</sup> Fischer

## Calculating the price for the shares

When the property is sold in step one, the subsidiary has no money to pay for the property. This is solved by a promissory note from the seller. A promissory note means that the seller and the buyer reach an agreement that part of, or the whole purchase price will be paid at a later date, in this case when the shell company is sold. The companies purchase price is the lowest value of tax value or the booked tax value.

When the purchase price for the shares in the company is to be calculated a balance sheet must be drawn up. As mentioned earlier the property is the company's only asset, besides the share-capital. When Akelius uses this method to sell properties the share-capital is usually not inserted to a bank account belonging to the company, the company instead has a claim towards Akelius for this amount. The property value is adjusted to meet the negotiated value of the property.

When buying or selling an existing company the same method of calculating the price is used, but the balance sheet will contain more posts.

<b>Assets</b>	<b>The companys balance</b>	<b>Adjusting</b>	<b>Adjusted balance</b>
Properties	174 422 155	285 577 845	460 000 000
Claim parent company	100 000		100 000
<hr/>			
SUM	174 522 155	285 577 845	460 100 000
<hr/>			
<b>Liabilities</b>			
Tied up capital	100 000	285 577 845	285 677 845
Debt parent company	174 422 155		174 422 155
<hr/>			
SUM	174 522 155	285 577 845	460 100 000

*Table 1. Typical balance sheet for a sale from Akelius*

Negotiated property value	460 000 000
-Booked value properties	-174 422 155
+ Shareholders equity	100 000
<b>Sum purchase price</b>	<b>285 677 845</b>
Payment debt parent company	174 422 155
Settlement debt parent company	-100 000
<b>Sum payment debt parent company</b>	<b>174 322 155</b>
<b>Sum to pay</b>	<b>460 000 000</b>

*Table 2. Calculations of purchase price and payment of the debt to the parent company*

### Loss price transactions

Loss price transactions (direct translation of “underprisöverlåtelse”) are regulated by the Swedish companies act. It is stated that you are allowed to sell a property to a subsidiary without tax if certain requirements are fulfilled.

- Both the seller and buyer have to be either a individual or a company. It cannot be a foundation or a non profit association.
- The buyer has to, immediately after the purchase, be liable to income taxation for a line of business in which the property belongs.
- If the rules for group contribution are not applicable the transaction has to regard a complete line of business.<sup>8</sup>

A business line is defined as a part of the business that is suitable to be separated from the rest of the business and to form an independent business.<sup>9</sup> This definition is rather vague but the Swedish tax law commission has stated that a property is to be considered a business line.<sup>10</sup>

### Right to group contribution

The Swedish concept of group contribution (direct translation of “koncernbidrag”) aims to even out the differences between having all of the business gathered in one company and having it divided in two or more companies.

The idea is that a group is allowed to transfer money from the parent company to a subsidiary, the other way around or between two subsidiaries. The purpose is to even out differences

---

<sup>8</sup> The Swedish companies act

<sup>9</sup> The Swedish income tax law

<sup>10</sup> The Swedish tax law commission

in results between companies within the same group. This procedure is only deductible if the parent company owns more than 90 percent of the shares.<sup>11</sup>

Group contribution is allowed if the following requirements are met.

- The parent company owns more than 9/10 of the shares in the subsidiary.
- The contribution is booked as an expense in the giving company's bookkeeping and as an income in the receiving company's bookkeeping.
- The contribution cannot exceed the business's result before deduction for the group contribution.
- The group condition between the companies has been going for the complete fiscal year.
- Both the giving and the receiving companies accounting period expires at the same time. Exceptions can be granted according the 10§ in the 11<sup>th</sup> chapter in the Swedish companies act.<sup>12</sup>

### **Consequences for the buyer**

Even though it is a matter of negotiation, the standard when selling properties in companies is that the buyer should pay the ratification costs for the shell company's purchase of the property. If this is compared to what the buyer would have had to pay in ratification costs if the property was sold as a deed transaction it is profitable for the buyer.

Even though the property is sold to the shell company for the lowest of the tax value and the booked tax value, the ratification costs is always calculated from the higher of the two values.

In the balance sheet above we can see that the property was sold to the company for 174,422,155SEK and the negotiated property value (e.g. purchase price if it were a deed transaction) is 460,000,000 SEK. The property was sold to the shell company for only a part of the negotiated property value. In example 2 we calculate the different ratification costs if the property is sold as a deed transaction or in a company.

---

<sup>11</sup> Björn Lundén information

<sup>12</sup> The group contribution at taxation law

### Example 3

#### a, Deed transaction

The property is sold directly from seller to buyer for 460,000,000SEK. The ratification costs are then:

$$4.25\% * 460,000,000 + 825 = 19,550,825 \text{ SEK}$$

#### b, Share deal

The property is sold from the seller to a subsidiary for 174,422,155, the tax value is 204,112,000 SEK. The shares in the company are later sold to the buyer. The ratification costs are then:

The tax value is higher than the company's purchase price so the ratification costs are calculated from the tax value.

$$4.25\% * 204,112,000 + 825 = 8,675,585 \text{ SEK}$$

As you can see the ratification cost is lower when the property is sold in a company.

Another consequence for the buyer is that the company's commitments come with the deal when a property is sold in a company as a share deal. A company is a juridical person that can reach agreements that follow the company when it is sold. If the property is sold as a deed transaction the commitments remains with the seller.

A share deal compared to a deed transaction means that the buyer's due diligence is going to be more extensive. In most cases the company is newly formed and the difference is not so big, but if the company has been existing for a while its business has to be carefully reviewed.

## Conclusion

A deed transaction is a more simple procedure, but both the seller and the buyer benefits economically from packaging the property in a company and sells the shares instead.

- The seller escapes the income tax on the profit
- The buyer have to pay less in ratification costs

## References

Björn Lundén Information; 2011-03-20; [www.blinfo.se](http://www.blinfo.se);  
*Ekonomisk ordbok – koncernbidrag*

Bokföringstips.se; 2011-03-20; [www.bokforingstips.se](http://www.bokforingstips.se);  
*Bokföring – uppskjuten skatteskuld*

Fischer, Henrik; 2010; *Går det att undvika beskattning vid försäljning av fastigheter? – Skattemässiga konsekvenser vid försäljning av fastigheter*

The group contribution at taxation law (translation of Lag om koncernbidrag vid beskattningen)

The national tax board of Sweden; 2011; *Brochure Försäljning av fastighet SKV 313 edition 11*

The national tax board of Sweden; 2011-03-21;  
[www.skatteverket.se](http://www.skatteverket.se); *Startsida - Företag & organisationer - Svar på vanliga frågor - Belopp och procentsatser*

The Swedish companies act (translation of Aktiebolagslagen)

The Swedish income tax law (translation of inkomstskattelagen)

The Swedish land law (Translation of Jordabalken)

The Swedish mapping, cadastral and land registration authority; 2011-03-20; [www.lantmateriet.se](http://www.lantmateriet.se); *fastigheter – inskrivning*

The Swedish tax law commission (translation of skatterättsnämnden); 2011-03-20; [www.skatterattsnamnden.se](http://www.skatterattsnamnden.se);  
*Förhandsbesked*

# Rules and comparison between deed transactions and share deals – group work

Petra Wiklander, 2011-04-05

Akelius is about to sell a property to Wallenstam. The property was bought in 2001 for 195 million SEK and it is now being sold and the negotiated value is 275 million SEK. The tax value is 164 million SEK and the booked tax value is 153 million SEK.

Answer the questions below.

1, The property is sold as a deed transaction.

- a, What tax percentage does Akelius pay?
- b, Calculate the income tax for Akelius
- c, What percentage of the purchase price is the ratification costs?
- d, How much is the administrative fee for the ratification?
- e, Calculate the ratification costs
- f, Who pays the ratification costs?
- g, If the buyer was a individual, would any of the answers in 2a-k be any different?

2, The property is being sold as a share deal.

- a, To what price is the property sold to Akelius subsidiary?
- b, What tax percentage does Akelius pay?

- c, Calculate the income tax for Akelius
- d, What percentage of the purchase price is the ratification costs?
- e, How much is the administrative fee for the ratification?
- f, Calculate the total ratification costs
- g, Who pays the ratification costs?
- h, Draw up a balance sheet for the sale
- i, What is price for the shares in the company
- j, What is the debt to the parent company
- k, What is the sum of the price for the shares in the company and the debt to the parent company?
- l, If the buyer was an individual, would any of the answers in 2a-k be any different?

3, Which of the two alternatives above is most profitable for

- a, The seller?
- b, The buyer?