

"Wealthy tax evaders given preferential treatment under Swedish tax rules"

Today, the consultation period expires for the government's proposal to amend the rules for self-disclosure of assets and income hidden abroad. But this amendment is not going to prevent tax evaders from sleeping peacefully. The government should instead, in the wake of the Paradise Leak, review how Swedish self-disclosure rules may be modernized through legislation and decrees, write Torsten Fensby and Leif Rosenfeld.

The Swedish self-disclosure rules came into focus in March 2016 in connection with Mission: Investigate's TV episode "Dine and ditch". It followed from that episode that wealthy Swedes who had broken tax laws had been granted preferential treatment under current self-disclosure rules. The episode raised legitimate questions about whether government and authorities really ensure that all citizens are treated equally and fairly under tax laws. These are not trivial issues. If citizens begin to suspect that wealthy people are treated differently, there is a great risk that their tax morale will be undermined.

Politicians often stress that we have a long tradition of giving tax evaders a second chance to do the right thing. It is true that the Swedish self-disclosure rules have existed in one form or another since 1923. However, this can just as easily be taken as evidence that the rules are strongly outdated. Today, those who make self-disclosures no longer consist of people who, due to moral considerations, are driven by a desire to do the right thing. Rather, they have started panicking because of the increased number of tax audits undertaken by the Swedish Tax Agency and because Sweden has entered into a large number of tax information exchange agreements with tax havens. Others are driven by pure opportunism. They take advantage of the possibility of declaring hidden assets at minimal tax expense or of the

absence of any verification of the origin the declared funds. The latter category uses in fact the Tax Agency to launder criminally obtained funds!

In 2010, the OECD published the report “Offshore Voluntary Disclosure, Comparative Analysis, Guidance and Policy Advice”(updated in 2015) that outlines OECD countries' self-disclosure rules and provides advice on how these should be designed so that confidence in the tax system is not undermined. The report notes that the legislator is faced with a delicate balancing act to create incentives for the tax evader to make a self-disclosure without at the same time rewarding or encouraging tax evasion. Let us therefore examine the extent to which current Swedish rules are compatible with the OECD guidelines on this matter.

It should not pay to cheat on taxes. The OECD emphasizes that the rules should be designed so that the person pays more than if the capital had been declared in the ordinary taxation process, but less than if he had been caught. Current rules, however, give the tax evader full freedom to assess whether it pays more to cheat or declare. If he is at risk of getting caught, the evader can make a self-disclosure without that costing him one penny more than if the assets had been declared in the ordinary assessment. Mission: Investigate's episode showed that some of those making a disclosure even got a tax refund!

Current law allows the Swedish Tax Agency to reassess ten tax years, but this option has not been used by the Agency for reasons unknown to the public. The reassessment is not only limited to five years, but the Agency also refrains from lodging a criminal complaint. Needless to say, many millions have been lost because of these procedures.

Sanctions should be imposed if the self-disclosure is not complete. The OECD emphasizes that it should be stated explicitly in relevant legislation that the disclosure must cover all assets and income withheld and that the decision to allow a self-disclosure should be revoked if it later turns out that the person has other capital hidden abroad or if he has continued engaging in tax evasion after the disclosure. All penalties avoided should then be imposed. Sweden completely lacks such rules.

The rules should evoke a sense of urgency. The right to self-disclose should not be unconditional. If self-disclosures may be made without any threats or restrictions, such rules

rather encourage tax evasion. The self-disclosure framework should contain time limits of one kind or another that pressure the tax evader to submit a self-disclosure. The Government's proposal goes in this direction by limiting the right to self-disclosure in certain cases.

The rules must not be turned into a public laundromat. The OECD cannot stress enough the importance of self-disclosure rules being subject to national money laundering legislation. Such rules should be supplemented with regulations on how the Swedish Tax Agency should proceed to determine the origin of self-declared assets and income. Claims that the declared capital originates from an inheritance must be substantiated. Declared assets may in fact constitute taxable income or even worse derive from crime, in which case the Tax Agency is under an obligation to submit a money laundering report to relevant AML authorities. Both the TV episode and available information on tax advisers' websites suggest that the Swedish Tax Agency applies a "no questions asked policy". This raises both possible undue preferential treatment and legal certainty issues, which can only be dispelled by the government regulating them in decrees.

The rules should allow for the maximum collection of information on the tax evasion schemes. The "no questions" policy means that the Swedish Tax Agency misses out on a unique opportunity to gain insight into the shady business of tax evasion. The OECD notes that knowledge of who the intermediaries are and how the schemes work makes it possible for the tax authorities to refine their control actions.

Politically exposed persons (PEPs) should not be allowed to submit self-disclosures. The OECD's work on bribery, money laundering and tax crime targets specifically PEPs. The clear message is that this category should be treated strictly because they hold public office. If the Swedish principle of 'equal treatment' prevents the government from imposing such restrictions, PEPs should instead be forced to resign from all public functions if a self-disclosure is submitted. Unsurprisingly, the OECD considers it incompatible with holding public office to accept bribes, launder money or cheat on taxes.

The generous Swedish self-disclosure rules are ultimately a political issue. The Swedish rules are among the most generous in the world, which also explains why our rules have generated relatively little tax revenue compared to other countries. The question politicians must ask themselves is how generously we should treat international tax evaders without undermining the confidence in the Swedish tax system. Because let's not be hypocritical - virtually all persons submitting self-disclosures today consist of wealthy people with capital hidden abroad who have been pushed into making a self-disclosure out of fear of getting caught.

The government should undertake a review of how the Swedish self-disclosure rules may be modernized through legislation and decrees. Such a review should, however, be preceded by a National Audit Office review of how the rules have been applied to date.