Skatt på kemikalier i viss elektronik – “Chemical Tax”

The Dangers of Going It Alone

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I. INTRODUCTION

The Swedish government is taking the lead on environmental issues, with the stated goal of being role model to the world in its ambitions. With this in mind the new Chemical Tax has been introduced in order to reduce the presence of hazardous substances in people’s home environment. On 1 July 2017 the taxing provisions will come into effect.

A number of measures are already in place at an EU level that are designed to reduce the hazardous substances in our environment. These include both Directive 2011/65/EU on the restriction of the use of certain hazardous substances in electrical and electronic equipment, the so called RoHS Directive, and Regulation (EC) No 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH).

However, the government has decided that Sweden should have the ambition to implement national legislation where the EU’s regulations are not sufficient. Hence we are “going it alone” with a national


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legislation – and, as can be expected, doing so entails some additional challenges.

Perhaps the first of these challenges is in communication. Most of the products impacted by Sweden’s Chemical Tax are not manufactured in Sweden. In order for the environmental goals of the new tax to be met, these non-Swedish speaking manufacturers need to be informed which hazardous substances they should be reducing. I have therefore made it my goal to communicate on the subject of Chemical Tax in English, as much as is possible, and this article is I’m afraid no exception.

2. BACKGROUND

Chemical Tax will capture two categories of product, white goods (such as ovens, fridges, dishwashers, washing machines) @ 8 kr/kg and other electrical goods (such as computers, tablets, televisions, phones, games consoles and routers) @ 120 kr/kg, up to a maximum tax of 320 kr per individual product. It is the six digit customs code that determines whether a product is in-scope.

Chemical Tax is due from any business that manufactures in-scope goods in Sweden, or for business purposes brings in-scope goods into Sweden from elsewhere in the EU, or from outside the EU via import. There is an option to register as a warehouser (”lagerhållare”), which changes the time at which the tax is due to when the in-scope goods are delivered to a non-warehouser purchaser (as a main rule). A warehouser registration may therefore shift the responsibility for Chemical Tax reporting and payment to a party further down the supply chain.

Representing the environmental goal of the tax, there are two possible reductions available in respect of the tax due on any given product. These are at either 50 percent or 90 percent of the tax due, depending on the level certain potentially dangerous substances included within any circuit boards or plastic parts within an in-scope product.

3. ANY AND EVERY BUSINESS CAN BE IMPACTED

A preliminary observation is that Chemical Tax will impact almost every business in Sweden, either directly or indirectly. Whilst the tax is designed to capture household electrical products, as a consequence the
use of customs codes to define the scope it is of no relevance whether
an in-scope product ultimately ends up in a household or elsewhere.

Therefore from the 1 July 2017, any Swedish business that buys
computers, monitors, routers, telephones etc. (i.e. every business!) will
be impacted by a higher cost base for these products. Perhaps more
concerning, is that any business that buys these goods with delivery
from an EU supplier rather than a local supplier, will itself as the
customer be responsible the Chemical Tax reporting and payment (on
the basis that it brings in-scope goods into Sweden from elsewhere in
the EU). This entails filing a declaration within five days, knowing
and tracking the weight of the product, and knowing and maintaining
documentation in respect of the product’s chemical content in order to
support any applicable reductions in the tax.

For companies whose core business involves white goods and/or
other electrical products, the financial impact of Chemical Tax may be
very significant. However, many other businesses, that were perhaps
not expecting to be involved in reporting the tax, could also be faced
with a significant administrative burden due to the collection mecha-
nism.

4. SOME QUIRKS OF THE TAX

There are some further quirks of Chemical Tax, that to some extent are
representative of the challenges of going it alone without the rest of the
EU.

As a first example is the exemption from Chemical Tax for sales of
in-scope products by overseas companies with delivery from outside
of Sweden directly to a Swedish consumer. The rationale provided for
this exemption within the proposition to the law (2016/17:1) is the
challenge for overseas companies in being able to understand and file
Chemical Tax, as well as the challenge for Skatteverket in enforcing the
tax on non-Swedish entities. Two reasons that would most likely not be
a factor in EU level tax legislation. As a consequence, Sweden’s going it
alone will create some significant pressures on the Swedish retail sector
due to the competitive advantage that this creates for offshore sellers.

Secondly, second hand goods. The Chemical Tax legislation includes
an exemption for goods that have previously been subject to Chemical
Tax, but no general exemption for second hand goods. Therefore in the
short term essentially all in-scope second hand goods will be subject to
Chemical Tax, as it will take time for previously taxed goods to enter
the second hand market. Also, and again reflecting the challenge of
going it alone, any in-scope second hand good that was originally sold outside of Sweden will most likely not have previously been subject to Swedish Chemical Tax, and therefore will be subject to Chemical Tax if brought into Sweden to be sold second hand. One can question whether taxing second hand electrical goods in this manner is in line with Sweden’s environmental goals.

A final example is the mechanism of the tax calculation. Chemical Tax is calculated based on “net weight” of the in-scope good. However, the hazardous substances that the tax aims to reduce, and on which the available reductions are based, are contained within circuit boards or plastic parts within the product. Therefore a heavy product with a small circuit board and low hazardous substance levels could be heavily taxed, whereas a light product with a large circuit board and higher hazardous substance levels could be lightly taxed. This creates a mismatch between the aims of the tax and its calculation result. Whilst not clearly a result of going it alone, this mismatch is perhaps caused by the legislator’s desire to create a simpler calculation due to the smaller national nature of the tax.

5. THE WAREHOUSE CHALLENGE

Businesses that will be required to report and pay Chemical Tax, should now be considering whether to take the available option to register as a warehouser. As of 1 April 2017, it is already possible to apply to be a Chemical Tax warehouser in order to allow time for the application to be processed by 1 July 2017 when the taxing provisions take effect.

5.1 LOOKS GREAT ON THE SURFACE

At first look there are some clear advantages to registering as a warehouser. For non-warehousers reporting is required within 5 days of any manufacture or EU movement into Sweden of in-scope goods, or at the time of import for non-EU movements. For warehousers monthly electronic reporting is available with the return and payment due on the 26th of the month following the taxable event. This is a significant administrative simplification and cash flow advantage for any business making regular movements or manufacture of in-scope goods.

Furthermore, the time at which Chemical Tax becomes due is changed for warehousers. For non-warehousers a tax liability arises at the time of manufacture or movement into Sweden. For warehousers a tax liability arises when (a) in-scope goods are delivered to a non-ware-
houser purchaser, (b) in-scope goods are moved to own retail outlet, (c) in-scope goods are put to a use other than sale, or (d) when a warehouser registration is withdrawn. In all cases the tax should be due later for a warehouser, giving an additional cash flow advantage vs a non-warehouser.

5.2 THE DEVIL IS IN THE DETAIL

Once you explore the implications of warehousing it is perhaps not as good as it seems.

As a short term impact, a warehouser registration will bring any stock held on 1 July 2017 within the scope of Chemical Tax. This follows due to difference in taxation timing for a warehouser, effectively to the time of sale as opposed to the time of purchase.

A warehouser will also take on responsibility for Chemical Tax payment and reporting in respect of all purchases from in-scope goods from other warehousers. As an example, a business with one EU supplier and ten local suppliers may consider warehousing to simplify the Chemical Tax reporting that it is required to do for its EU deliveries. However, assuming that its local suppliers are also warehousers, if this business chooses to be a warehouser it would take on the Chemical Tax reporting and payment obligations in respect of all of the in-scope goods it purchases from its ten local suppliers. As well as the filing itself, this involves knowing and tracking the weight of the product, and knowing and maintaining documentation in respect of the product’s chemical content in order to support any applicable reductions in the tax.

5.3 BUT IS THERE ANY OTHER WAY?

In light of the above, a warehouser registration may not appear so appealing for certain businesses. As such, an impacted business might consider whether it is able to put processes in place that will allow it to pick up and report Chemical Tax within five days of receiving any EU deliveries of in-scope goods.

Here Skatteverket have added an additional challenge by not providing for a system of electronic returns for non-warehousers. Paper returns must be signed by an authorized signatory of the company. Ensuring that an authorized signatory is willing and available to sign a return within 5 days of every reporting event could for some businesses be an insurmountable practical challenge.
6. FINAL COMMENTS

Sweden has been bold in going it alone in advancing its environmental goals through the new Chemical Tax. However, there can be no doubt that implementing this tax will entail a significant administrative challenge for a large number of businesses. In addition, some of the “quirks” in the legislative implementation, of which I have provided just some examples above, may have a fundamental impact on certain sectors of the economy.

It remains to be seen whether Sweden is leading the way for the rest of the world. Or whether Chemical Tax simply won’t survive the many challenges of going it alone.

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