

Tax issues in Sweden

The following is a summary of the tax consequences in Sweden related to the merger for holders of shares in Maxim that are resident in Sweden. This summary does not intend to address all tax consequences of the exchange of shares in Maxim for shares in EpiCept, or the ownership of shares in EpiCept. It does not take into account the special rules that apply for certain investors such as partnerships, investment companies, shareholders who have received their shares as compensation, or shareholders whose shares constitute current assets in a business. It does not address tax consequences to entities or individuals that are also subject to tax on a world-wide basis under the laws of a jurisdiction other than Sweden, such as U.S. citizens resident in Sweden. The tax treatment of each shareholder depends on that shareholder's specific situation. This means that special tax consequences that are not described below may arise for certain categories of shareholders. Each shareholder is urged to consult a tax adviser for information if such special circumstances apply, such as those resulting from foreign tax regulations or the provisions of tax treaties.

The Swedish rules on tax deferral that are referred to below are not directly applicable to this type of merger (reverse triangular merger) according to the law in the state of Delaware, USA. The Swedish Committee for Advance Tax Ruling has however in two advance rulings confirmed the rules applicability also in such a case. The Swedish Tax Agency has in an answer dated 19 December 2005 confirmed that, provided that all other requirements for tax deferral will be fulfilled, this specific merger is subject to the tax deferral rules. The description of the tax consequences in this section is based on the assessment made by the Swedish Tax Agency. It must be emphasized, however, that this question has not been tried in the Supreme Administrative Court in Sweden.

Taxation at disposal of shares

At disposal (which includes exchange) of shares or fractions of shares normally a taxable capital gain or tax deductible capital loss arises for individuals and limited companies that are shareholders. If the rule of tax deferral is applicable, no taxable capital gain or tax deductible capital loss arises for individuals (and estates of deceased persons) as a result of the merger, see below under "Tax deferral for individuals". A limited company can, if a capital gain arises at the exchange of shares, be granted a deferral of the taxes if certain conditions are fulfilled, see below "Tax deferral for limited companies".

Individuals are according to the main rule taxed for capital gains at a tax rate of 30 per cent. Capital gains are calculated as the sales price, reduced with the sales costs, and less the acquisition cost. The acquisition cost is according to the main rule calculated as the average acquisition cost for all shares of the same category (average cost method). The acquisition cost for listed shares can

alternatively be determined as 20 per cent of the sales price after deducting the sales costs (standard method).

Capital losses on shares are fully deductible against capital gains in the same year on shares and against capital gains on other such listed securities that are taxed as shares except for shares in Swedish mutual funds whose assets consist solely of Swedish receivables (Swedish interest funds). Capital losses that cannot be set off in this manner are tax deductible by 70 per cent against other income derived from capital. Should a deficit arise in the capital income category, a reduction of tax on income from employment and from business, as well as the tax on real estate, is allowed. The tax reduction allowed amounts to 30 per cent of any deficit not exceeding SEK 100,000 and 21 per cent of any remaining deficit. Deficits may not be carried forward to a later fiscal year.

Limited companies and other legal entities, except estates of deceased persons, are normally taxed for capital gains, in the business income category at a rate of 28 per cent. If a capital loss on shares arises, this can be off set against capital gains on shares and other securities taxed as shares only. Subject to fulfillment of certain conditions, capital losses may also be set off against such capital gains in companies belonging to the same group provided that the right to make a group contribution exists. Capital losses that have not been utilized for a particular fiscal year may be carried forward and set off against capital gains on shares and other ownership rights during subsequent years without any limitation in time.

Special rules apply for so called business-related shares. These rules means that capital gains on such shares are tax exempt and capital losses are not tax deductible. Unlisted shares are always deemed to be business-related holdings. Listed shares are deemed as business-related holdings if the holding corresponds to not less than 10 per cent of the voting rights or if the holding is conditioned by business run by the owning company (or by a company that can be regarded as closely affiliated with the owning company). For a capital gain to be tax exempt and a capital loss not to be tax deductible as regards listed shares it is also required that the shares have been business-related with the holder under a continuous period of at least one year before the disposal. If shares of the same category have been acquired at different points of time, a later acquired share is deemed to have been disposed of before an earlier acquired share. If the holding comprises of both shares that do not fulfill the one year holding requirement as well as shares that fulfill this requirement, the shares are not considered to be of the same category at the calculation in accordance with the average cost method.

Tax deferral for individuals

For shareholders that are individuals or estates of deceased persons no taxable capital gain or tax deductible capital loss arises if the rules on tax deferral are applicable.

The received shares in EpiCept are deemed acquired for remuneration corresponding to the acquisition cost for the disposed shares in Maxim. At tax deferral the disposal normally does not need to be declared. A future disposal of the shares as a rule triggers capital gains taxation and shall be declared (see below), unless the rules on tax deferral are not applicable. Capital gains taxation is also triggered if an individual moves abroad¹ and the rules on tax deferral at share exchange earlier have been applied.

As regards the share holders in Maxim who, in accordance with the description in the section "Fractional Shares" in the Proxy Statement/Prospectus, receives cash payment for fractional shares in EpiCept, the disposal will however trigger capital gains taxation for the cash payment.

For the rules on tax deferral to be applicable it is among other things required that EpiCept holds more than 50 per cent of the votes in Maxim at the end of the calendar year when the exchange of shares in Maxim for shares in EpiCept takes place. If the transaction is completed EpiCept has no intentions to dispose of the acquired Maxim-shares in such a way that would jeopardize the mentioned condition.

Currently the legislation includes a provision that means that the rules on tax deferral are not applicable if the cash payment exceeds 10 per cent of the nominal value of the received EpiCept-shares. No fractional share of an EpiCept-share will be issued. Instead shareholders in Maxim who would have had the right to receive a fractional share will receive a cash payment corresponding to the value of the fractional share. If the amount exceeds 10 per cent of the nominal value of the received EpiCept-shares, there are no grounds to apply the tax deferral rules. This rule will however be abolished as of 1 January 2006.

Tax deferral for limited companies

A limited company can, if a capital gain arises as a result of the exchange, be granted tax deferral in accordance with the tax deferral rules if certain conditions are fulfilled.

As regards the shareholders in Maxim who, in accordance with the description in the section "Fractional Shares" in the Proxy Statement/Prospectus, receive cash payment for fractional shares in EpiCept, the disposal will however trigger capital gains taxation for the cash payment.

For the rules on tax deferral to be applicable it is among other things required that EpiCept holds more than 50 per cent of the votes in Maxim at the end of the calendar year when the exchange of shares in Maxim for shares in EpiCept takes place. If the transaction is completed EpiCept has no intentions to dispose of the acquired Maxim-shares in such a way that would jeopardize the

¹ This does most likely not apply if a move is made to another EU/EES-country.

aforementioned condition. In addition it is in general required that the share exchange results in a taxable capital gain.

Shareholders who want tax deferral in accordance with the rules on tax deferral shall account for the gain in their tax return in the year of disposal and ask for tax deferral. If tax deferral is granted, the capital gain should be determined by the Tax Agency at the assessment in the form of a deferral amount. The deferral amount shall be distributed on the shares in EpiCept that have been received by the selling shareholder through the transaction.

At tax deferral the deferral amount shall be subject to tax no later than when the ownership of the received shares in EpiCept are transferred to someone else or the shares cease to exist. This does however not apply if the received shares are disposed of by a subsequent share exchange that fulfils the conditions for continued tax deferral. The deferral amount is also subject to tax if the shareholder requires that the deferral should be subject to taxation.

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Taxation at disposal of shares in EpiCept that have been received in the transaction

When shareholders dispose of shares in EpiCept that have been received in the transaction as a main rule capital gains taxation is triggered. If the rules on tax deferral have been applied to this transaction for individuals or estates of deceased persons, the received shares in EpiCept are deemed to have been acquired for the amount that the Maxim-shares have once been acquired for. The acquisition cost for the Maxim-shares are thus transferred to the EpiCept-shares. For other cases the received shares in EpiCept are deemed acquired for an amount that corresponds to the market value at the time of acquisition irrespective if a tax deferral have been granted or not.²

If the rules on tax deferral have been applied for limited companies, normally the deferred amount will be subject to tax at disposal of the shares in EpiCept.

If tax deferral has been granted for a limited company and the seller at the time of the share exchange owned shares of the same category as the received shares

² EpiCept intends to try to get the Swedish Tax Agency to determine this value by submitting an application for general advice (allmänna råd).

in EpiCept or acquires such shares after the share exchange, the shares in EpiCept shall be deemed disposed of in the following order:

- shares acquired before the share exchange, followed by
- shares received through the share exchange, followed by
- shares acquired after the share exchange.

Taxation of dividend

Dividends from EpiCept to shareholders resident outside the USA are normally subject to US withholding tax. The tax treaty between Sweden and the USA limits the US withholding tax to 15 per cent. (Under certain circumstances this percentage is lower as regards certain limited companies)

Individuals are also taxed in Sweden for received dividend as income from capital at a tax rate of 30 per cent. Limited companies are taxed for received dividend as income from business at a tax rate of 28 per cent. Special rules apply for so called business-related shares. These rules means that dividend on such shares are tax exempt. Unlisted shares are always deemed to be business-related holdings. Listed shares are deemed as business-related holdings if the holding corresponds to not less than 10 per cent of the voting rights or if the holding is conditioned by business run by the owning company (or by a company that can be regarded as closely affiliated with the owning company). For a dividend to be tax exempt as regards listed shares it is also required that the shares are business-related with the holder under a continuous period of at least one year.

The US withholding tax according to the tax treaty rate of 15 per cent can normally be credited against the Swedish taxes on the dividend under the same fiscal year. If no Swedish taxes are levied that credit can be made against under the fiscal year that dividend is distributed, the US taxes can instead with certain limitation be credited under the following three fiscal years. Alternatively a cost deduction can be claimed. For individuals a deduction shall be made in the capital income category and for legal entities in the business income category.

Wealth tax

The share in EpiCept is intended to be listed on Nasdaq and the Stockholm Stock Exchange's O-list. Shares listed on Nasdaq and the Stockholm Stock Exchange's O-list is not subject to wealth tax unless the shares hereafter become registered on a stock exchange in the company's home country.