

KLÖVERN

Klövern's tax surcharge case starts again in the lowest instance

The Supreme Administrative Court (SAC) has consented to the Tax Agency's appeal and allowed that a tax surcharge may be imposed without consideration of the substance of the matter. The case will now be referred back to the Administrative Court which will consider whether Klövern submitted incorrect information. If this is considered to be the case, a future tax surcharge of a maximum of SEK 493 million can be imposed on Klövern. The judgment of the Administrative Court is expected during 2012.

The Administrative Court will now consider whether incorrect information was provided, i.e. whether Klövern submitted incorrect or too little information in its application for a tax loss carryforward. Klövern regards the chances of a favourable outcome in this case as being very good. Since the Tax Agency's decision, Klövern has had a respite with payment of the tax surcharge, which has not yet been charged to Klövern's income statement or balance sheet. The amount will only be charged to income after a negative final judgment on the issue of provision of incorrect information. In this eventuality, it is still possible that Klövern may be exempted from the tax surcharge because of its disproportionate size among other things.

"It is unfortunate that SAC does not share the view of the Administrative Court of Appeal and the Administrative Court on the possibility of imposing a tax surcharge. In the event of consideration of whether incorrect information was provided, we are convinced that the information in the application for a tax loss carryforward was adequate and that we will win when the matter is considered on its merits by the administrative court", says Klövern's CEO Gustaf Hermelin.

"We are surprised by SAC's judgment but are optimistic that, ultimately, no surcharge will be imposed on Klövern", say Klövern's tax advisors Börje Leidhammar, Wistrand advokatbyrå and Thomas Andersson, Deloitte. "In our opinion, the information in the original application for a tax loss carryforward is correct and no tax surcharge will be imposed on Klövern when a final decision is made in the case."

The background is that Klövern requested reconsideration of tax assessment for 2003 in December 2003, when the company openly requested an additional deduction for a loss of SEK 4,933 million. This loss related to sale of a subsidiary that took place during the period when the company was an IT company. The Tax Agency considered that Klövern was not entitled to the tax loss carryforward and furthermore considered imposing a tax surcharge of SEK 493 million. For this reason, Klövern withdrew its request for a deduction. The Tax Agency imposed a surcharge in the spring of 2006 despite the Tax Agency no longer having a request for a tax loss carryforward on which to make a decision. The Administrative Court consented to Klövern's appeal and quashed the tax surcharge in December 2007. The Tax Agency appealed to the Administrative Court of Appeal which upheld the judgment of the Administrative Court in favour of Klövern in 2010. The Tax Agency then appealed to the Supreme Administrative Court and has now won the case that a tax surcharge may formally be imposed despite no consideration of the substance of the matter having taken place.

After Klövern withdrew its first request for a tax loss carryforward of SEK 4,933 million, a new request was submitted to the Tax Agency. The Tax Agency and the lower courts have not approved the tax loss carryforward, but no new tax surcharge has been imposed. Klövern has applied for leave to appeal against this judgment. SAC is expected to announce a

decision on leave to appeal during the autumn of 2011. This proceeding is separate from the issue of a tax surcharge.

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