

The Swedish Tax Agency's approach to transfer pricing and profit attribution audits

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This document describes the working approach of the Swedish Tax Agency when performing audits relating to transfer pricing or profit attribution to permanent establishments. The original Swedish version of this document is named [*Skatteverkets arbetssätt vid utredning av interprissättning och vinstallokering*](#)

The information is relevant to

- companies who enter into cross border transactions with related parties and
- permanent establishments of non-resident legal persons who enter into cross border dealings within the same legal person.

The aim is to provide a guide to how the Swedish Tax Agency perform such audits from the moment they begin until they are finalised.

[*More information about transfer pricing*](#)

[*More information about profit attribution*](#)

What is a pricing audit?

There are many similarities between a transfer pricing audit and an audit involving profit attribution to a permanent establishment. The purpose of both is to identify cross border transactions or dealings, including their conditions and economically relevant circumstances and to subsequently compare and evaluate these with transactions between independent enterprises. There are, however, some differences between these two types of audits.

The purpose of a transfer pricing audit is to evaluate whether the intra-group transactions undertaken are consistent with the arm's length principle, i.e. that the prices and terms agreed between related enterprises correspond to the prices and terms that would have been agreed between independent enterprises.

In an audit of profit attribution, we evaluate the arm's length result based on the treatment of a permanent establishment as a separate and independent entity with operations of the same or similar kind under the same or similar conditions. The profit attribution is dependent on transactions with other enterprises within the same group and of transactions (dealings) with other parts of the enterprise. The Swedish Tax Agency uses the same working method for audits concerning the attribution of profit to a permanent establishment and transfer pricing audits of separate legal entities.

The Audit is divided into three different parts

The Swedish Tax Agency pricing audit can be broken down to three different parts:



The Swedish Tax Agency starts a pricing audit

Before initiating a pricing audit, information about the company is gathered. We collect the information from various public sources, databases, internal records (e.g. previously submitted annual returns) and from the Internet. After gathering and evaluating the information, the Swedish Tax Agency choose the most suitable legal form for the audit at hand.

The Swedish Tax Agency has a team-based approach to pricing audits. Two or three auditors/investigators are typically involved together with a tax lawyer (in Swedish förankrande särskilt kvalificerad beslutsfattare, abbreviated FSKB). The auditors/investigators are responsible for the audit while the tax lawyer handles questions relating to evidence and the formal assessment of taxes. The team may also include a senior advisor providing support on certain issues that are relevant in the specific case.



The legal form of an audit

The Swedish Tax Agency may perform an audit before, or after the company has submitted its annual return.

The various forms of audits or formal requests are the following:

- Preventive control of an ongoing fiscal year, that is before the submission of the annual return, in the form of an audit.
- Desktop audit of closed fiscal years, that is after the submission of the annual returns (in Swedish skrivbordsutredning).
- Audit of closed fiscal years, i.e. after the submission of the annual returns.

According to the facts of each case, the form of control seeks to minimise the intrusion in the company's business based on the principle of proportionality.

[About formal request \(föreläggande\)](#)

[The principle of proportionality](#)

Choice of year(s)

A pricing audit starts with a formal ‘decision of audit’ that stipulates the covered years. The basis of the decision is the initial reason or reasons for the audit, the transfer pricing risk and the need for further information.

By allowing the audit to cover more than one year, the Swedish Tax Agency can take into account facts and circumstances outside a single year that may, or should have, affected the pricing. This does not necessarily mean that a pricing audit must cover a deeper analysis of more than one year. Sometimes it may be enough to include relevant information from previous or later years in a ‘single year audit’. This means, for example, that the Swedish Tax Agency can examine two years, but that in addition to this audit period, we use information from other years that may be significant for the current tax audit period.

In certain circumstances, it is possible to override the principle of a closed fiscal year when applying the arm’s length principle in the Swedish Income Tax Act. Intra-group pricing that leads to overcharging one year and undercharging another year may, in a longer perspective, be fully acceptable from an arm’s-length point of view. Intra-group pricing that entails overcharging of costs over a period of years, can also lead to higher incomes or the absence of losses at a later stage. Therefore, conditions that leads to a result that is lower than arm’s length in one year may be offset by conditions that leads to a result above arm’s length in another year – if the same parties are involved in the same transactions and the same terms are applied.

Our first contact

The Swedish Tax Agency’s first contact with the company depends on the form of the audit at hand.

Desktop audit

A desktop audit of a *closed fiscal year* begins with a written request specifying the required initial information.

Audit

The Swedish Tax Agency always issues a formal ‘audit decision’ when formally initiating an audit. This notice states the covered years and whether the audit is addressing a closed fiscal year, ongoing fiscal year or a mix of both.

A letter accompanies the audit decision giving more information about the audit process and proposing a date for the first meeting. Shortly after, we contact the authorised representatives of the company to describe in more detail the meaning and scope of the audit. During the telephone call, we include:

- Information on what the audit entails.
- The purpose of the audit and the information we would like to receive at the first meeting.
- The employees with relevant knowledge of the company who should participate at the first meeting.

- Timing and duration of the first meeting. We may propose that a full day is set aside in order to get a good start and an efficient examination.
- Documents that we would like the company to send before our first meeting.
- Documents that we would like to be available at the first meeting, e.g. details of an intragroup transaction during the year under review (type, amount and counterpart).
- A request for a visit to the company's premises in order to better understand the company's activities and processes and how they create value for customers and other stakeholders.
- A brief outline of the next steps after the first meeting.
- A preliminary timetable for the audit.

After the initial telephone contact, we send a confirmation letter to the company's nominated contact person. This letter confirms the details of our telephone conversation including the agreed date for the meeting, the agenda for the meeting and the information requested. This may include

- transfer pricing documentation for the years under review
- relevant intra-group agreements
- the group's and the company's organisational structure.

[General information about audits](#)

The first meeting with the company

When the form of the control is an audit, the Swedish Tax Agency usually requests a meeting with the company. We usually perform our desktop audits solely through written correspondence, however, if deemed needed we may also ask for a meeting at the beginning of an enquiry.

What is the purpose of the first meeting?

The core purpose of the first meeting is to receive information about the company, the group to which it belongs and the industry within it operates. We also want to get an overall picture of the company's intra-group transactions.

Regardless of the scope of the audit, we need to acquire a broad based knowledge of the company and the group in order to place the transactions in context. During the first meeting, we particularly need to get an as good picture as possible of all relevant economically circumstances in order to subsequently accurately delineate the controlled transactions.

To help form the basis of the first aspect of the comparability analysis we need:

- A background presentation containing facts about the industry, external factors affecting the business, the group's and the company's business and organisation.
- A shorter overall presentation of intra-group transactions and an overview of the transfer pricing model applied during the years under review.

During the first meeting, it is also helpful to discuss factors that are important in understanding the company's intragroup transactions. For example, it is appropriate that the company provides information about their products, any valuable intellectual property that the company owns or has the right to use (e.g. trademarks or patents), relevant business strategies and important economic circumstances, such as market conditions. During the first meeting we

- describe the different phases of the audit approach and analysis process
- explain how the work will be carried out and proceed including our internal reviews
- propose a timetable
- explain what the company can expect from the Swedish Tax Agency and what the Swedish Agency expects from the company in order to meet the timetable.

Given the purpose of the first meeting and the amount of information needed, it is common for the meeting to take place over a whole day.

Timetable

Pricing audits differ based on their particular facts and circumstances. Consequently, the Swedish Tax Agency makes an individual analysis in each case. An effective and efficient audit process is what we aim for at all times.

Before we issue the audit decision, we prepare a draft timetable setting out the various steps of the audit. We discuss this preliminary timetable with the company during the first phone call and the first meeting. It is important that the company and the Swedish Tax Agency agree on a timetable taking into account reasonable and achievable timescales and expectations. The timetable is always a shared commitment.

On occasion, it can be difficult to stay within the set timeframe, but a timetable that sets out expectations should minimise delays. The parties should inform each other about possible delays and the plan forward. It is often appropriate to update the timetable throughout the audit process to ensure that it remains reasonable and achievable.

Who should attend the first meeting?

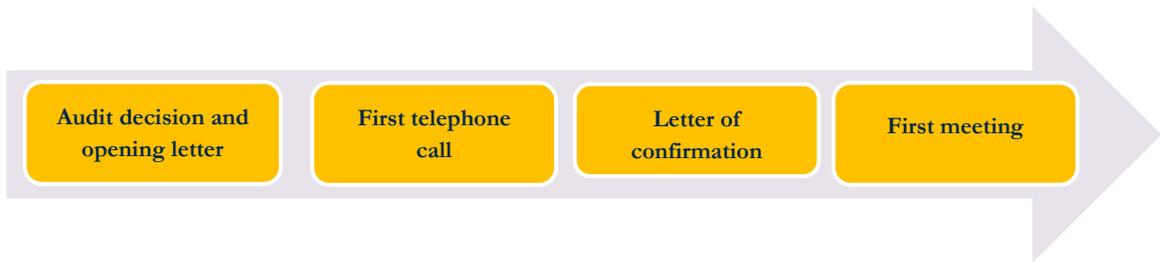
The company's tax manager, CFO or other qualified personal should attend the first meeting, as they are often able to describe the pricing policy and give detailed information about the company and the group. Furthermore, it is important that participating representatives of the company can describe the context of the business e.g. the industry, the group's strategy the value chain and how the company's business model affects its transactions and pricing model.

It is also valuable to talk to someone who has knowledge of the company's operations and financial performance (including tax position). This may be a business controller or someone with a similar function.

After the first meeting

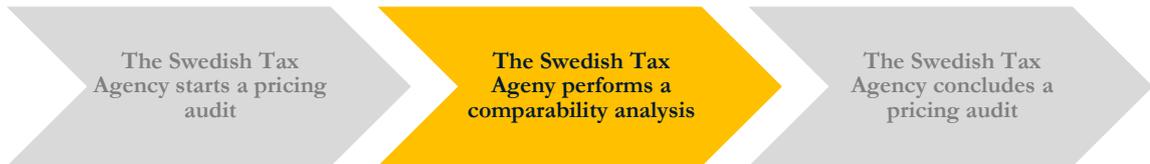
After the first meeting, the Swedish Tax Agency's auditors/investigators send their meeting notes and any outstanding questions to the company. The company is encouraged to review these notes to eliminate any possible errors or misunderstandings of facts and circumstances. The company's comments on the meeting notes, if any, are retained as part of the formal examination file.

After the meeting, the company also receives information about the next steps in the audit.



The Swedish Tax Agency performs a comparability analysis

The pricing audits of the Swedish Tax Agency include a comparability analysis. The comparability analysis, in brief, involves the gathering and analysis of facts relating to the intra-group transactions included in our review. We then try to identify comparable transactions between independent parties in similar circumstances forming the basis of an arm's length price. The application of the arm's length principle is based on a comparison of the conditions that would have been made had the parties been independent and undertaking a comparable transaction under comparable circumstances.



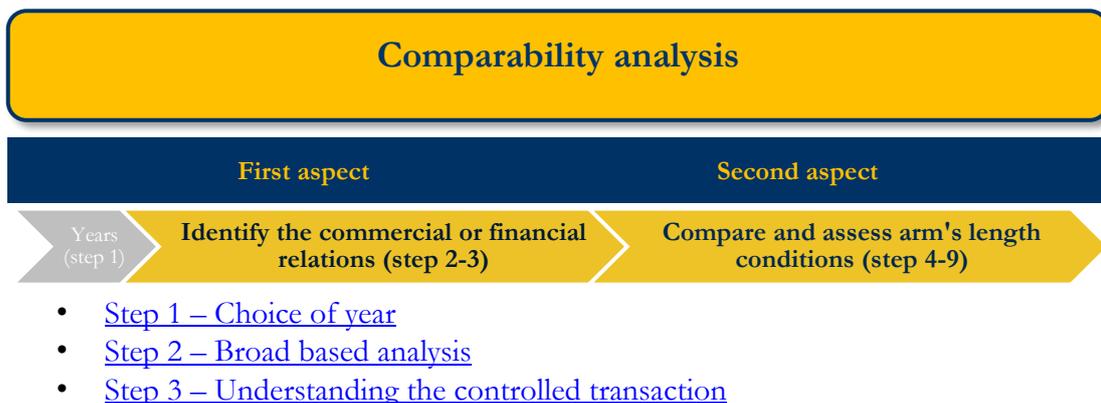
The Swedish Tax Agency approach is in line with OECD guidelines and the OECD report on the Attribution of Profits to Permanent Establishments

The Swedish Tax Agency applies the methodology in the OECD Guidelines on how to approach transfer pricing issues. The full name of OECD Guidelines is “OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations”, usually shorten as OECD Guidelines or the Transfer Pricing Guidelines. According to the OECD Guidelines, the application of the arm's length principle is based on a comparability analysis.

When it comes to attribution of profits to permanent establishments, The Swedish Tax Agency use the “Report on the Attribution of Profits to Permanent Establishments” for guidance. Note that the OECD profit allocation report also refers to the OECD Guidelines when pricing dealings with a permanent establishment.

The OECD Guidelines describes a typical process for a comparability analysis. The comparability analysis has two key aspects and nine steps. The Swedish Tax Agency has based its approach to pricing examinations on these steps. The scope and extent of the analysis always depends on the circumstances of each individual case.

In the guidelines, the concept of “comparability analysis” describes the entire pricing analysis **and** the second part of the pricing analysis – namely the part where we compare an intra-group transaction with independent comparable transactions.



- [Step 4 – Review internal comparables](#)
- [Step 5 – Review external comparables](#)
- [Step 6 – Selection of transfer pricing method](#)
- [Step 7 – Identification of potential comparables](#)
- [Step 8 – Comparability adjustments where appropriate](#)
- [Step 9 – Determination of the arm’s length price](#)

Note that the OECD Report on the Attribution of Profits to Permanent Establishments describes a two-part analysis which, in large, is consistent with the OECD Guidelines’ nine steps and the first and second aspects.

The first aspect of the comparability analysis (steps 1-3)

The first aspect of a comparability analysis is to identify the relevant commercial and financial relationships between the associated enterprises in order to accurately delineate the transactions. The first aspect of the comparability analysis consists of three steps.

The first aspect of the comparability analysis, steps 1-3, is described below in chronological order, but that does not mean that we always finalise one step before moving on to the next step. It is very likely that we need to move back and forth between the steps several times in order to identify the commercial or financial relationships in a sufficient manner. A large part of a pricing audit consists of putting pieces of information together in order to get the whole picture. The level of detail of the information needed depends on the nature of the audit.

Step 1 – Choice of year

The Swedish Tax Agency determines the years covered in the examination.

Step 2 – Broad based analysis

Step 2 focuses mainly on a broad-based analysis of:

- The industry, the market and economic/other external factors that affect the business
- The Group
- The company itself
- Intra-group transactions.

The purpose is to gain an overall understanding of the company and the factors that have an impact on the company’s pricing arrangements. This also includes a description of the company’s transfer pricing model from the company perspective. Step 2 often begins before the first meeting and continues during the course of the examination as new information is gathered.

Some of the areas considered in terms of the industry etc. may include:

- The geographic markets in which the company operate and differences between them.
- The key competitors in the market.
- The key value drivers of the business.

- The levels of supply and demand and the bargain powers of suppliers and customers.
- The competition and important competitive factors.
- External factors that do or may affect the industry.
- The most economically significant risks recognised within the industry.
- Intangibles used and their importance for value creation.
- Differences in geographical markets.
- The growth factor.

From a group perspective, it is relevant for the Swedish Tax Agency to understand:

- The structure, organization and value chain of the group.
- The group's markets, products, key functions, assets and significant risks.
- The value creation in the group.
- The operations of the group companies at an overall level.
- How different group companies contributing to value creation.
- The relative position of the group within the industry e.g. their competitive strengths and weaknesses.

From a company perspective, the Swedish Tax Agency needs information regarding:

- The history of the company and the products it offers.
- Typical customers of the company.
- The geographic location of the company and its customers.
- The legal and operational structure of the company.
- Financial results and key ratios.
- Factors that affect the success of the company.
- Stakeholders and associated challenges.
- Significant risks.
- Market position and competitors.

Our experience is that effective discussions regarding the company's functions, risks and assets come about if we have a good general knowledge of the group and the industry.

The business model is important in understanding the role of the company and how it contribute to value creation for the group. The transfer pricing model should correspond with the business model and not the opposite way around.

To get an overall view of the company's intra-group transactions the Swedish Tax Agency needs to get a picture of:

- The group's business model.
- How the business model links to the group's transfer pricing model.
- How the intra-group transactions affect each other, the existence of chains of transactions or parallel transactions, the counterparties combined transactions, if any .
- Transactions that the group or the company may not have priced.

Sources of information

The Swedish Tax Agency uses different types of information sources in Step 2. Some of the information come from, for example, the company's website, annual reports and transfer pricing documentation. We also access financial information from various databases. The information provided by the company at the first meeting is also an important part of the information gathering process.

Step 3 – Understanding the controlled transaction

The purpose of this step is to identify the commercial or financial relations between the associated enterprises. An important part of this step is to establish the economically relevant characteristics or comparability factors. In the OECD Guidelines there are five comparability factors described which are

1. contractual terms of the transaction
2. functional analysis (functions performed, assets used and risks assumed by each party)
3. characteristics of the property or services
4. economic circumstances
5. business strategies.

We have likely covered one or more of these factors during step 2. The information we collect at this stage may continue beyond the first meeting. The length of time we devote to this and the level of detail depends on the circumstances of each individual case.

Contractual terms

Contracts are vital in business relationships as they define the rights and obligations of the parties as well as stating the risk sharing and the pricing model applied. Contracts provide the starting point for the accurate delineation of the transactions. Where the transactions are inconsistent with the written contracts, the OECD Guidelines emphasizes the importance of the actual conduct of the parties. The terms of a transaction can also refer to framework agreements, guidelines and policies. Therefore, we usually request copies of these.

The Swedish Tax Agency usually requests agreements (or other written documents containing contract terms) that have been drawn up between the company and related parties. If the audit concerns a large company, we sometimes choose to scrutinise a certain business area in particular. In these cases, we may choose to review the agreements belonging to that business area. The aim is to gain an understanding of relevant contractual terms and the allocation of rights, obligations, risks and returns between the parties in that specific business area.

Functional analysis

In transactions between independent parties, the compensation model reflects the functions of each party, as well as the assets used and the risks assumed. Therefore, a functional analysis is vital in order to accurately delineate the transaction and to determine the comparability between transactions.

The starting point for the Swedish Tax Agency when identifying and mapping the actual transaction between two or more parties is the agreement/contractual terms between them. If

the contract terms differ from the parties' actual conduct, the parties' actual conduct is decisive for our analysis.

The analysis focuses on the parties' actual activities and the value of their contributions. This analysis includes information about the industry, the group and the value chain. Facts of this sort makes it easier to understand the conditions in the specific intragroup transaction. Therefore, we cannot draw our conclusions based only on the information set out in the agreement; we need to analyse and compare all contractual information with the parties' actual conduct.

More specifically, the functional analysis helps us understanding the contribution of each party, what risks each party carry and control, and what assets each party own and how each party creates value in the intra-group transaction under review. We need this information in order to accurately delineate the actual transaction. If we also have information about the business conditions specific for the industry and for the group, the value chain, and the market conditions etc. it will be easier for us to understand the specific intra-group conditions of the transaction under review.

The functional analysis is the core of the comparability analysis. Functions, assets and risks are each equally important and are inter-related.

Since the functions performed affect the level of risk each party carries and the use of assets needed to perform the functions (i.e. since the functions, assets and risks are interrelated) this review in the audit is not split up in different parts, but is instead made at the same time.

How does the Swedish Tax Agency perform a functional analysis in practice?

The Swedish Tax Agency usually carries out the functional analysis after the first meeting with the company. We meet with the company again or ask supplementary questions in writing. The analysis only covers only the intra-group transactions under review.

The first meeting provides us with a broad picture of the industry, group and the company while further meetings or questions help us to understand the relationship between the parties in the specific transactions under examination.

During a functional analysis, the Swedish Tax Agency poses three broad questions:

- Who carries out the functions and what is the value of these contributions?
- Who bears the economically significant risks?
- Who owns, uses and controls the assets?

The answers will likely lead to questions that are more specific and we may need to meet personnel from relevant operations for further detailed information.

The Swedish Tax Agency keeps notes of all discussions relating to the functional analysis and distributes copies of these to the company. The company is encouraged to review the notes to ensure that they do not contain any omissions or errors. We retain the comments and replies from the company in the examination file.

The level of detail of the functional analysis depends on the circumstances of each individual case. Where there is a high risk of mispricing the more likely it is that we need to perform a more detailed function analysis. The Swedish Tax Agency needs to clarify

- what the intra-group transactions contain
- how the written agreements correspond with the actual conduct of the parties
- the important activities performed by each party
- the economically significant risks involved in the transaction in question
- who controls the economically significant risks and who has the financial capacity to bear them
- which assets are used in the transaction in question and which party has the right to the returns from these.

Characteristics of the property or services, economic circumstances and business strategies

The economically relevant characteristics do not only include contractual terms and functional analysis. As described in the OECD guidelines, other factors also matter when identifying and delineating an intra-group transaction. The guidelines specifically mention the following factors: characteristics of the asset or service, market conditions and business strategies.

When we examine the characteristics of the property or services, we consider

- the characteristics of the company's product or service offering and associated intellectual property
- the profile and importance of the company's brand
- the importance of research and development for the property or services
- the reasons for the chosen level of pricing
- consumer behaviour and preferences.

Economic circumstances is a broad area but it can be valuable to understand how general market factors and other financial circumstances affect the behaviour and actions of the company and its counterparts, for example in terms of options realistically available, bargaining power and the importance of intangibles.

Other relevant factors are the significant risks associated with particularly important market factors. This is important since we need to assess which party that bears these risks.

Business strategies are also a factor when determining comparability for transfer pricing purposes. Among other things, the following information may be relevant:

- Details of specific plans and relevant timeframes.
- The long-term direction and business goals of the company.
- The future activities of the company.
- Innovation and new product development.
- Specific business initiatives e.g. market penetration.
- Timing of investments.
- Plausibility of outcome.

Sources of information

The Swedish Tax Agency's fact finding in Step 3 is made on a broad basis. Agreements that formalize the business relationship are an important starting point in our audits. The Swedish Tax Agency usually request relevant agreements when sending out our first letter to the company. The transfer pricing documentation usually provides a broader picture of the intragroup transactions at hand. The first meeting is a good opportunity to discuss the meaning of written and oral agreements.

In addition to agreements, the following information is relevant for the fact finding in Step 3. Financial statements and consolidated accounts, information from the company's website, information from different databases, and the company's transfer pricing documentation. Sometimes it may also be relevant to examine independent industry reports. Other external sources of information may include industry organisations' websites, reports or journals, and statistical organisations' reports on different countries' key figures on changes in price levels (inflation) and business cycles. The information we receive during the first meeting is usually valuable for Step 3 as well.

Sometimes we ask for job descriptions and information regarding the company's decision-making structure, i.e. information about the functions that have the decision-making power in different situations, and who delegate the company's processes for decision approval. Board minutes or other types of management minutes, strategy documents and forecasts are also relevant documents since they help us understand how and where important decisions are made within the group.

The functional analysis is an important part of Step 3. If the Swedish Tax Agency examines different types of intra-group transactions (e.g. research and development and distribution), we perform one functional analysis for each different kind of transaction.

Profit attribution

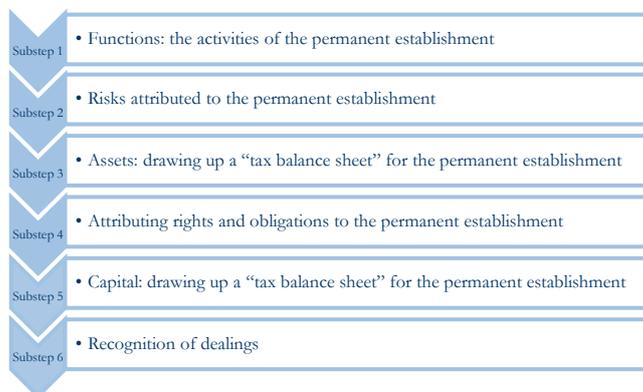
Profit attribution is the assessment of the arm's length result of a business operation run by a non-Swedish legal entity in Sweden. An equivalent approach is used to determine the results of Swedish legal entities that conduct business operations abroad.

For the purposes of profit attribution, a permanent establishment in Sweden is considered to be part of a non-Swedish legal entity. This is not the case in transfer pricing. Risks, assets, capital, rights and obligations linked to transactions made with other businesses cannot be allocated to the permanent establishment by agreement, since the company as a whole is responsible for this.

The profit-attribution report for permanent establishments outlines a two-part analysis method (the Authorised OECD Approach or AOA) used to assess the arm's length result. Both parts mostly follow the nine steps included in the OECD guidelines, and thus also follow the first and second parts of a comparability analysis according to the OECD approach. The Swedish Tax Agency's approach to profit attribution audits is therefore similar in many respects to our approach to transfer pricing audits.

AOA step 1: Carrying out a functional analysis

In its functional analysis, the Swedish Tax Agency creates a hypothetical model of the permanent establishment as a distinct and separate enterprise. The functional analysis we use in profit attribution audits comprises six substeps. These substeps are not linear, and some may need to be repeated depending on the outcome. This is also the case in the transfer pricing process.



The functional analysis is key in terms of viewing the permanent establishment as a hypothetical distinct and separate enterprise. The functional analysis must relate to the company as a whole, and must identify the respective functions performed by staff at the permanent establishment and staff in the rest of the company. The Swedish Tax Agency must also identify the significance of these functions for the company's profitability.

Staff can perform a wide range of functions within a business operation – from significant functions such as bearing risks and owning assets, to supporting functions for the rest of the company. There may also be functions that create value yet do not involve any economically significant risk-taking.

The attribution of assets and risks to a permanent establishment is linked to those individuals whose work, competence and remit enable them to take responsibility for the risks associated

with the business operation and to be regarded as the economic owners of the assets. It is therefore the important functions of the permanent establishment that determine:

- whether a risk should be attributed to the permanent establishment
- how assets should be attributed within the company
- which rights and obligations arising from transactions with third parties and related enterprises the permanent establishment is deemed to have entered into

The method chosen by OECD for the attribution of risk within a company is linked to the company's significant functions. A risk can therefore be attributed to a permanent establishment if the permanent establishment has staff who actively make decisions relating to the risk in question. Active decision-making corresponds to actual performance of decision-making, as referred to in connection with transfer pricing. If an individual at a permanent establishment has taken on a risk through active decision-making, this may be relevant to the Swedish Tax Agency's assessment.

A company's tangible and intangible assets belong to the company as a legal entity and cannot be owned by a specific part of the company. Instead, the assets are attributed to the part of the company that is considered to be their "economic owner". Assets may be attributed on the basis of their use, or according to the location of significant functions that help to determine their economic ownership. The type of asset in question determines the basis on which it is attributed by the Swedish Tax Agency.

The next substep involves investigating which rights and obligations arising from transactions with third parties and affiliated companies the permanent establishment is deemed to have entered into. A right or obligation must be attributed to the part of company whose functions would have given rise to the right or obligation if it had been a distinct and separate enterprise.

Just like a distinct and separate enterprise, a permanent establishment needs capital in order to run its operations. Sufficient capital must therefore be attributed to a permanent establishment to enable it to manage the risks, assets, rights and obligations arising from transactions with third parties and related enterprises that have been attributed to the permanent establishment. This may be either interest-bearing or non-interest-bearing capital. This is to ensure that the permanent establishment has a debt-to-equity ratio that is in accordance with the arm's length principle.

The final substep is to recognise the dealings that have taken place within the company. The term "dealing" corresponds to the term "transaction" referred to in connection with transfer pricing. Only an actual transaction with another part of the company can be considered a dealing – for example, the transfer of an asset, the provision of a service or the transfer of a risk, right or obligation to another part of the company.

AOA step 2: Pricing of dealings within a permanent establishment

Once the Swedish Tax Agency has completed AOA step 1 and created a hypothetical distinct and separate enterprise, the result attributable to the permanent establishment can be determined. To do this, we need to carry out a comparability analysis. This analysis corresponds to the Swedish Tax Agency's investigations in connection with transfer pricing. Transactions and business dealings must thus be compared with the transactions that an independent company would have entered into in comparable circumstances. This ensures that compensation for all functions and activities carried out by the permanent establishment is in accordance with the arm's length principle.

Second aspect of the Comparability Analysis (steps 4-9)

When we have accurately delineated the controlled transaction(s) in step 3, we proceed to the second aspect of the comparability analysis. This is where we use these characteristics to make comparisons between controlled transactions and transactions between independent parties in order to determine an arm's length price.

The OECD uses the same term, i.e. "comparability analysis" when describing the entire comparability analysis and when describing only the second part of the analysis, i.e. the part where we compare an intra-group transaction with an independent comparable transaction. The second part of the comparability analysis consists of steps 4-9.

The purpose of describing steps 4–9 is to highlight important principles underpinning the comparability analysis. The Swedish Tax Agency applies these principles when assessing the arm's length conditions in a controlled transaction.

Several of these steps are interconnected and in practice, it is sometimes necessary to work with several steps in parallel or to move back and forth between various steps. The scope and the depth of the analysis under every step depends on the circumstances in each individual case.

Step 4 - Internal comparables

The purpose of step 4 is to attempt to identify any internal comparable transactions. An internal transaction is a transaction between one of the related parties and an uncontrolled party. It can also be a comparable transaction between the counterparty of the audited company and an external party. This may involve, for example, the sale or purchase of comparable products. The definition of a controlled transaction is a transaction between two related companies.

Some relevant questions in this step are:

- Has the company presented any internal comparable transactions as part of their comparability analysis?
- Has the company actively searched for internal comparables?
- Have any of the parties to the controlled transaction entered into a similar transaction with an uncontrolled party?

When the company presents an internal comparable transaction, we begin by assessing whether we have sufficient information or if we need to ask supplementary questions about the relevant comparability factors e.g. characteristics of the property or service (see step 3).

Sources of information

It is usually stated in the company's financial statements to what extent the company has intra-group sales and purchases. External purchases and sales may be an indication that there are transactions suitable as internal comparable transactions.

We expect that the company have information about its potential internal comparable transactions and that the information is included in any transfer pricing analysis and documentation.

During our meetings with the company, or through written questions, we can also check if the company knows if any of the company's counterparties have similar transactions with external companies. Swedish authorities can only conduct their authority within the borders of Sweden. Similarly, a foreign authority cannot exercise its jurisdictional rights in Sweden. However, the authorities can help each other through so-called requests for information and automatic exchange of information.

For example, the Swedish Tax Agency can obtain relevant information from a tax agency in another country supported by the rules of information exchange.

Exchange of information with other countries

Step 5 – External comparables

If the Swedish Tax Agency or the company have not identified any internal comparable transactions, or if the identified internal comparables are not sufficiently comparable, we try to identify external comparable transactions in step 5.

External comparable transactions are transactions between independent enterprises. We can also analyse external comparison objects/companies, i.e. independent companies (also called comparables/comparable companies). Under this step, the following questions are relevant for the Swedish Tax Agency:

- Has the company presented external comparables in its comparability analysis?
- What sources of information has the company used when identifying external comparables, and what information is available regarding the involved parties and the transactions?

Sources of information

The transfer pricing documentation of the company is an important source of information when examining any potential external comparables. Often companies have performed a benchmark study to support their transfer pricing. We can also gather facts about the external comparable transactions/the comparables in our dialogue with the company.

The Swedish Tax Agency subscribes a number of external databases containing extensive financial information about companies or information about different types of agreements (mainly license agreements). If the Swedish Tax Agency uses external financial information in the audit, the company will be informed.

Step 6 – Selection of transfer pricing method

The purpose of this step is to identify which pricing method is the most appropriate when determining the arm's length price for the relevant controlled transaction. The OECD

presents five different pricing methods that may be relevant when reviewing the conditions in the controlled transactions and how they correspond to the arm's length principle.

When choosing the most appropriate method, the Swedish Tax Agency especially considers four criteria:

- The strengths and weaknesses of each pricing method.
- The appropriateness of the method considered in view of the nature of the transaction determined through the functional analysis (step 3 above).
- The availability of reliable information needed to apply the pricing method.
- The degree of comparability between the controlled transaction and the comparable transaction, including the reliability of any comparability adjustments needed to eliminate material differences between them.

It is important that the most appropriate pricing method for the controlled transaction is selected as different methods can lead to different results. Some of the questions we consider in this step are:

- Which pricing method has the company applied?
- Why has the company chosen a certain pricing method, in preference over other methods?
- Which pricing method is the most appropriate to apply given the conditions of the controlled transaction?

If the controlled transaction relates to the transfer of one or several intangible assets with no reference to comparables, it may be appropriate to use valuation techniques to estimate an arm's length price. In accordance with the OECD Guidelines, we use valuation techniques in combination with the five pricing methods or as a separate tool.

Sources of information

The choice of pricing method depends largely on the information obtained in the other steps of the comparability analysis:

Criteria	Guidance
Strengths and weaknesses of methods The nature of the transaction	OECD Guidelines, Chapter II Step 3 in the comparability analysis
Availability of reliable comparable information	Step 4, 5 and 7 in the comparability analysis
Degree of comparability between the controlled transaction and the comparable transaction	Step 7 and 8 in the comparability analysis

The steps in the comparability analysis are not, in practice, linear. Steps 4 to 8 are interdependent and the information we receive may lead us to revisit an earlier step.

During the audit, the Swedish Tax Agency typically see the following information as valuable:

- Intra-group agreements containing information about the pricing method applied for setting or testing the price.
- Transfer pricing documentation describing the pricing method that applied.
- Meetings notes or written correspondence.

- Valuation reports, if applicable.

Step 7 – Identification of potential comparables

The purpose of this step is to review the necessary requirements of an uncontrolled transaction when selecting a pricing method. A transaction is comparable if one of the following two criteria is met:

- There are no material differences between the compared transactions that could materially affect the price between unrelated parties in an open market.
- Alternatively, reasonably accurate adjustments eliminate the effect of any such differences.

The Swedish Tax Agency base its review on the relevant comparability factors identified in step 3. The information we received in step 2 is also important.

Sources of information

In addition to the company's transfer pricing documentation, we may also retrieve information from webpages and from databases.

The comparable companies' webpages often give a good picture of their business. On the companies' webpage, it also often stated if the comparable company is independent or part of a group. The databases can provide additional information about the size of the comparable companies, whether their business is newly started, if the business is dormant or active/in a mature phase, the occurrence of losses and if the comparables are part of a group – information about the group structure and size. How the company justifies the comparability and what criteria it considers most important is usually up for discussion in our dialogue with the audited company.

If a potential comparable transaction has been used involving a party other than the company under review, then the Swedish Tax Agency may either formally request information from that party directly or, if outside Sweden, by requesting information from the relevant tax administration.

Step 8 – Comparability adjustments where appropriate

In this step the Swedish Tax Agency assesses whether adjustments can be made with sufficient reliability to improve comparability. Sometimes there is a need to increase the comparability of the transactions by making certain adjustments.

If the company has made an adjustment or if the Swedish Tax Agency considers a comparability adjustment we take the following into account:

- The purpose of the adjustment - differences that have no impact on the comparability are not relevant
- The quality of the information - an adjustment is useful if it increases potential comparability. Adjustments to compensate for deficiencies in the selection process for comparables should also be set aside.

- Reliability and accuracy - adjustments should be based on objective and verifiable information
- Documentation - this should be available to support and evidence the comparability adjustment.

Sources of information

The company's transfer pricing documentation, in particular the comparability analysis, is an important source of information when analysing any adjustments made in the benchmark study.

In addition, our dialogue and correspondence with the company is also essential when analysing any adjustments made.

Step 9 – Determination of the arm's length price

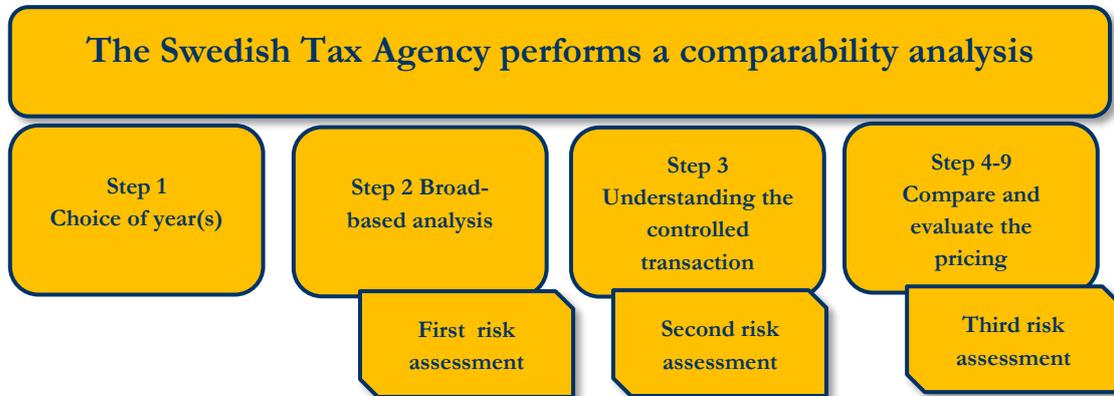
The purpose of this last step is to finally evaluate and assess whether the terms of the controlled transaction are at arm's length. The Swedish Tax Agency examines the price or the margin applied by the parties by analysing the information gathered in steps 4-8. The exercise also includes a close study of the relevant comparability factors (step 3).

Sources of information

The purpose of the last step, i.e. step 9 in the comparability analysis is to finally evaluate and assess whether the terms of the controlled transaction are at arm's length. In practice, the Swedish Tax Agency examines the price or margin applied by the parties. In this step, we analyse and use the information gathered in steps 4-8 about any potential comparable transactions. The comparability factors (step 3) are also important in the analysis made.

The Swedish Tax Agency's internal risk assessments

During the examination, the Swedish Tax Agency has a number of predetermined risk assessments. These take place after step 2, step 3 and step 9 in the comparability analysis.



The aim of an assessment is to summarise and analyse the facts up to that particular point and to use available information to update the risk assessment. Several indicators may affect the risk of mispricing at each stage. The indicators we scrutinise depend on how far we have come in the audit. At all times we need to take various facts and circumstances into consideration when analysing a potential mispricing.

Our first risk assessment after step 2

Some of the relevant indicators may be:

- The transactions are significant in sum and recurring (with regard to the type of transaction).
- The counterparty is a tax resident in a preferential tax jurisdiction. This risk may be high if a large or disproportionate share of the group's profit arises in that tax jurisdiction and/or the transaction involves intangible assets.
- A large and/or complex single transaction e.g. following a restructuring or other transactions relating to the use or transfer of intangible assets.
- The absence of transfer pricing documentation.
- Evidence of inadequate transfer pricing documentation e.g. description of the industry or market does not match with reality.
- Other companies performing similar activities within the group are more profitable or the level of profitability does not follow industry trends.
- The presence of cost contribution agreements (CCAs) involving the development of intangible assets.

Our second risk assessment after step 3

Before going forward to the second aspect of the comparability analysis, we need a clear understanding of the controlled transactions under examination.

In the OECD guidelines, the term “accurate delineation of the actual transaction” describes the process of identifying the commercial or financial relations between the associated companies and the conditions and economically relevant circumstances attached to those relations. The objective of step 3 is to use the comparability factors to ensure that the company has correctly delineated the transaction. Our assessment rely on information provided by the company in the transfer pricing documentation, during meetings or through other correspondence.

During our internal risk assessments, we try to ensure that the description of a specific transaction is consistent with our own assessment. On occasion, it may be difficult to determine the actual transaction between the parties.

In some cases, we may find that the relevant transaction has been

- incorrectly delineated
- not identified and delineated at all or
- delineated correctly but the economically relevant features have not been adequately taken into account, this may have affect our forthcoming assessment of the pricing in steps 4-9.

Our third risk assessment after step 9

Our third risk assessment takes place after step 9 and focuses on the facts gathered and interpreted in steps 4-9. We review the comparability analysis, the most appropriate pricing method, pieces of key information and consider how this affects the overall assessment of the conditions in the controlled transaction.

Feedback to the company

After each review, we provide feedback to the company. The purpose of the feedback is to

- describe the tax agency’s conclusions
- ask any additional questions to the company
- confirm the transactions under review
- discuss next steps and propose a reasonable time plan.

In addition, the company has the opportunity to give its view on the conclusions made by the Swedish Tax Agency. We normally provide the feedback by telephone or, where appropriate, at a face-to-face meeting.

Conclusions after the third risk assessment

After step 9, the Swedish Tax Agency provides its conclusions to the company at a face-to-face meeting or by means of a conference call. Typically, issues that are more complex could require a physical meeting while a phone call may be sufficient in other cases.

At this final stage, we describe our conclusions and set out the next steps, i.e. the way forward. For the company this is an opportunity to respond to our conclusions and to provide additional information where applicable. If the Swedish Tax Agency proposes an increase in taxable income, the company will have the opportunity to submit written comments later on. At this final stage, the Swedish Tax Agency and the company also have the opportunity to evaluate the examination process as a whole.

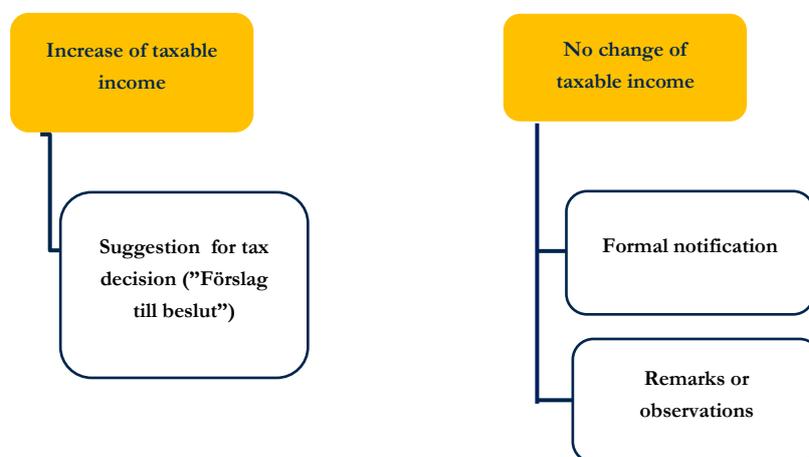
The Swedish Tax Agency concludes a pricing audit

The conclusion of a pricing audit follows the final feedback meeting when the Swedish Tax Agency has decided on the way forward.



Increase or no change of taxable income

The Swedish Tax Agency can propose changes to the company's taxable income but that is not always the case. The figure below summarises the most common outcomes.



If the Swedish Tax Agency proposes an increase of taxable income

If we propose an increase of the company's taxable income, it will be set out in detail in a **suggestion for tax decision** (in Swedish förslag till beslut) at the end of the audit. We present the central aspects of the suggestion during the final feedback meeting (see above).

If the Swedish Tax Agency proposes no change of taxable income

If no change of taxable income is proposed, the company will receive a **formal notification**. Even if there are no changes proposed, we may still provide concluding remarks or observations.

The Swedish Tax Agency may provide concluding remarks if we observe that there are certain errors or shortcomings in the transfer pricing documentation or in the comparability analysis of the company. We may present such comments at a meeting or in a written statement. The purpose of these remarks and observations is to remedy the issues in the future.

When a suggestion for tax decision has been issued

When the Swedish Tax Agency has issued and posted a suggestion for tax decision to the company, the tax auditors/investigators hand over the enquiry to the tax lawyer (FSKB) in the team. From this moment on, the tax lawyer is the company's primary point of contact at the Swedish Tax Agency.

The tax lawyer is responsible for ensuring that the Swedish Tax Agency responds to any comments made by the company before making a the final **tax decision** in writing. The original audit team will remain involved by supporting the tax lawyer.

If the company submits comments in response to the proposed tax decision these comments are considered by the team including the tax lawyer. As a result, there may be further contact with the company to clarify specific points.

As a main rule, the communication between the Swedish Tax Agency and the company (or its advisers) are in written form. In some cases, the company may also submit comments at a physical meeting.

If we receive a request for review or an appeal

If the company requests a review or submits an appeal against the final tax decision, another tax lawyer (in Swedish särskilt kvalificerad beslutsfattare or skatteombud) from the Swedish Tax Agency will manage it. When receiving a request for review or an appeal against a tax decision the Swedish Tax Agency is obliged, in the ongoing process, to take a position and to comment on the company's request or appeal. The Swedish Tax Agency considers and comments the company's request as part of the ongoing process.

[How to request a review of an income tax decision](#)

[How to appeal an income tax decision](#)

If the company requests a mutual agreement procedure (MAP)

To eliminate any double taxation arising from the tax decision, the company may request that the Swedish Tax Agency initiate a MAP procedure with the tax agency located in the other contracting state. The Competent Authority at the Swedish Tax Agency will manage this application.

[Mutual agreement procedure](#)