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Subject: State aid SA.36489 (2013/N) – Sweden
Tax deduction for investments by natural persons in small enterprises

Dear Sir,

The Commission wishes to inform you that it has decided to raise no objections to the above-mentioned measure for the reasons set out below.

1. PROCEDURE

(1) On 4 April 2013, the Swedish authorities notified the above-mentioned measure in accordance with Article 108(3) of the Treaty on the Functioning of the European Union[1] ("TFEU") for an assessment on the basis of the Community guidelines on State aid to promote risk capital investments in small and medium-sized enterprises[2] ("RCG"). The notification was registered under number SA.36489 (2013/N).

(2) On 8 May 2013, the Commission asked for additional information from the Swedish authorities, which was provided on 3 June 2013 and on 17 June 2013.

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1 OJ L 115, 9.5.2008, p. 92.
2 OJ C 194, 18.8.2006, p. 2-21.

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2. DESCRIPTION OF THE MEASURE

2.1. Background and objective of the measure

(3) Small companies are very important for the creation of innovation and jobs in Sweden. However, due to *inter alia* high transaction costs in relation to the investment, start-ups and growth companies often experience difficulties in accessing external funding for their operations. Therefore, such companies experience a shortage of funding, the so-called "equity gap". In order to address this equity gap, the Swedish authorities plan to introduce a tax incentive for private individuals (natural persons) investing directly into equity of small companies ("target enterprises") established in Sweden.

2.2. Current rules on taxation of capital gains in Sweden

(4) In accordance with the current legal framework in Sweden, capital gains derived from shares are regarded as investment income in all cases. The profit or loss resulting from each investment is calculated by deducting the acquisition costs from the net sales price of the shares. Capital gains are normally fully taxable, while capital losses only are deductible to 70 %. The capital gains tax rate is 30 %. If a loss occurs, a tax credit of 30 % is provided to be deducted from the income tax from employment and business. To the extent that the loss exceeds SEK 100 000, the tax credit is however limited to 21 % of the exceeding amount.

2.3. The notified tax incentive

(5) Under the measure, private individuals investing in certain small enterprises may deduct 50 % of the investment from their net capital income from other sources (rental income, dividends, interest, capital gains, etc.). The deduction shall be made for the fiscal year during which full payment for the shares was made and the eligible investment is limited to a maximum of SEK 1 300 000 (ca. EUR 151 000), i.e. the deduction cannot exceed SEK 650 000 per taxation year. As the capital income would otherwise be taxed up to 30 %, the tax relief corresponds to maximum 15 % of the investment, i.e. SEK 195 000 (ca. EUR 22 700) per year. If a private individual has no capital income against which the deduction can be made, it can be applied against other income subject to municipal or state tax.

2.3.1. Eligible investments

(6) In order to be eligible for the tax incentive, investments must provide seed, start-up or expansion capital to the target enterprises and be made exclusively in the form of equity. The shares must be paid in cash and must be acquired at the time when new shares are issued in the target enterprise, or be acquired from a legal person and consist of shares in a company which has not conducted any activity (a dormant company). The investments must be made directly into a target company (i.e. not via a financial intermediary), up to its expansion phase, and must exclude replacement capital and buy-outs.

(7) The eligible investments are limited to SEK 20 million per target enterprise over a period of 12 months and must fulfil all requirements set out in the present decision.

2.3.2. *Eligible investors*

(8) All private individuals who are liable for taxation of capital gains on shares in Sweden are eligible for the tax deduction under the measure, unless their tax on capital income is excluded due to a double taxation convention.

(9) The eligible investors or persons related to the investor ("related person") must not have received value transfers (such as re-purchase of issued shares or dividend) from the target enterprise[3], or from a company within the same company group as the target enterprise, during the fiscal year for which the deduction is claimed or during the previous two fiscal years.

2.3.3. *Target enterprises*

(10) The measure is exclusively targeted at investments in small enterprises[4], falling within the Community SME-definition[5] by the end of the year of the investment.

(11) Target enterprises must be limited liability companies and economic associations in Sweden. The definition of a company does not include investment companies, cooperatives or economic associations which are central coordinators for cooperatives. Nor does it include companies listed on a stock exchange[6]. Companies which are legally equivalent to limited liability companies or economic associations are also considered as target enterprises to the extent that they have their domicile within the EEA or in a country with which Sweden has concluded a double tax convention containing a clause on exchange of information and they have a permanent establishment in Sweden.

(12) Investments in enterprises in the shipbuilding[7], coal[8] and steel industry[9] are excluded. The Swedish authorities confirmed that investments under the measure will not support export-related activities and will not be contingent upon the use of domestic in preference to imported goods.

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[3] Related persons to the investor that have shares in the target enterprise are only considered to receive a value transfer if the value of the transfer exceeds a comparison amount. The comparison amount equals: (the proportion of the related person's shares in the target enterprise) * (the company's reported results for the fiscal year immediately preceding the calendar year).

[4] "Small enterprise" refers to an enterprise which employs at most 50 people and which has a maximum turnover of EUR 10 million or a maximum balance sheet of EUR 10 million.

[5] The beneficiaries of the measure qualify as small enterprises within the meaning of Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General block exemption Regulation); OJ L 214, 9.8.2008, p.3 and the applicable Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises; OJ L 124, 20.5.2003, p. 36-41.

[6] The Swedish authorities have undertaken to update the draft bill which is the basis for the aid measure in order to include this exclusion. The definition of target enterprises however includes companies whose shares are listed on a multilateral trading facility within the meaning of Directive 2004/39/EC, OJ L 145, 30.4.2004, p. 1.

[7] As defined in the Framework on State aid to Shipbuilding, OJ C 317, 30.12.2003, p. 11-14.

[8] High, medium and low grade category A and B within the meaning of the internal codification system for coal laid down by the UN Economic Commission for Europe.

[9] As defined in Annex I of the Guidelines on National Regional Aid for 2007-2013, OJ C 54, 4.3.2006, p. 13.

(13) Enterprises which find themselves in financial difficulties within the meaning of the Community guidelines on State aid for rescuing and restructuring firms in difficulty[10] are also not eligible for investments under the measure.

(14) The Swedish authorities confirmed that the definition of seed, start-up and expansion capital for the purposes of the measure will be in accordance with the Commission's definition of these terms, as set out in sections 2.2 (e), (f) and (h) of the RCG, namely:

- § Seed stage financing refers to financing provided to study, assess and develop an initial concept, preceding the start-up phase.

- § Start-up capital refers to financing provided to companies, which have not sold their product or service commercially and are not yet generating a profit, for product development and initial marketing.

- § Expansion capital refers to financing provided for the growth and expansion of a company, which may or may not break even or trade profitably, for the purposes of increasing production capacity, market or product development, or the provision of additional working capital.

(15) Target enterprises are legally required to exclusively, or almost exclusively[11] carry out an operative business with a view to making a profit.

(16) Moreover, the target enterprise must have a salary base of at least SEK 300 000 (ca. EUR 34 900) during the year when the investment is made or during the fiscal year subsequent to the investment.

(17) In order to prevent abuse of the tax system, the tax will be recalculated without the deduction (i.e. recaptured) if:

(a) the shares are sold[12] before the end of the fifth tax year after the acquisition[13];

(b) before the end of the fifth tax year after the acquisition of shares a related person receives a value transfer (such as a dividend);

(c) within the two fiscal years subsequent to the year of the investment the target enterprise acquires shares of companies related to the investor; or

(d) by the end of the fifth tax year the investor is no longer subject to taxation in Sweden or if the taxation of the capital income becomes non-effective due to a double taxation convention. The recapture will, however, only be final in situations where the conditions for recapture would have been fulfilled if the investor had remained resident in Sweden for tax purposes[14].

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10 OJ C 244 of 1.10.2004, p. 2, prolonged by the Commission's Communication of 2.10.2012 (OJ C 296, 2.10.2012, p. 3).

11 At least 90 % of the target enterprise's business shall consist of operative business, i.e. other assets than cash, securities or similar assets.

12 The term sale also includes gifts and partition of joint property (except if a cohabitation ends, in case of divorce or the death of the spouse or cohabitant).

13 If only a part of the shares is sold, a percentage corresponding to the sold shares shall be recaptured.

14 See point (a) to (c) above. Deferral of the reversion is granted by the Swedish Tax Agency upon request.

2.4. Legal basis, granting authority, duration and budget

(18) The legal basis of the measure is the Law on changes in the Swedish Income Tax Law (*lag 2013:xxxx om ändring i inkomstskattelagen (1999:1229)*).[15] The draft bill 2012/13:134 was included in the notification to the Commission.

(19) The aid granting authority is the Swedish Tax Agency (*Skatteverket*). Aid is awarded automatically once the objective criteria are fulfilled. There is no discretion available to the awarding authority in the granting of aid.

(20) The Swedish authorities have notified the measure for the period 1 September 2013 until 31 December 2019. They have undertaken not to put the measure into effect prior to the Commission's authorisation thereof.

(21) The total budget, in the form of tax revenues forgone, is estimated at SEK 5 500 million (ca. EUR 658 million) with annual budget amounts of approx. 800 million (ca. EUR 92.9 million) for the duration of the measure.

2.5. Cumulation with other aid

(22) The Swedish authorities undertake to reduce the relevant aid ceilings or maximum eligible amounts by 50 % in general and by 20 % for target enterprises located in assisted areas during the first three years of the first risk capital investment and up to the total amount received, where the capital provided to a target enterprise under this measure is used to finance initial investment or other costs eligible for aid under other block exemption regulations, guidelines, frameworks, or other State aid documents.

(23) This reduction does not apply to aid provided for in the Community Framework for State aid for Research and Development[16] ("the R&D&I Framework") or any successor framework or block exemption regulation in this field.

2.6. Monitoring and reporting

(24) The Swedish authorities undertake to comply with the reporting and monitoring requirements set out in section 7.1 of the RCG and, in particular, to submit to the Commission annual reports containing a summary table with a breakdown of the investments made under the measure, including a list of all the beneficiaries.

(25) The measure will not be applied before its full text has been published on the internet. The Swedish authorities communicated an internet address where the measure will be published:

(http://www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattnignssamling).

(26) The Swedish authorities undertake to maintain for at least ten years detailed records regarding the granting of aid for the risk capital measure, containing all information necessary to establish that the conditions laid down in the RCG have been observed, notably as regards the size of the tranche, the size of the company, the development stage of the company (seed, start-up or expansion), its sector of activity (preferably at

[15] The Act will be promulgated by a separate statute after the Commission has approved the measure.

[16] OJ C 323, 30.12.2006, p. 1.

four digit level of the NACE classification), as well as information on the other criteria mentioned in the RCG.

3. ASSESSMENT

3.1. Existence of State aid

(27) The Commission has assessed the notified measure under Article 107(1) TFEU and, in particular, in light of the RCG, which provide for the specific requirements in the area of State aid to promote risk capital investments in SME's.

(28) In order for a measure to fall within the scope of Article 107(1) TFEU, four cumulative criteria must be met:

- the measure must involve the use of State resources;
- the measure must confer an advantage on its recipients;
- that advantage must be selective in that it is limited to certain undertakings;
- the measure must distort or threaten to distort competition and be likely to affect trade between Member States.

(29) In accordance with section 3.2 of the RGC, risk capital aid can typically be present on at least three different levels, namely (i) aid to investors, (ii) aid to an investment fund, investment vehicle and/or its manager; and (iii) aid to target enterprises. Since the notified measure provides for direct investments by investors into eligible companies to the exclusion of investment funds or other intermediaries, the Commission will in its assessment of the measure only consider the possibility that the measure may confer aid to the investors and/or to the target enterprises.

3.1.1. State aid to investors

(30) Article 107(1) TFEU only applies where an advantage is conferred on an undertaking. Therefore, the Commission finds that, insofar as the tax deduction is provided to natural persons without any registered business activities, it does not constitute State aid within the meaning of Article 107(1) TFEU[17].

(31) On the contrary, a natural person with a registered business activity is an undertaking, and the Commission consequently has to assess the presence of State aid where the tax deduction is provided to such a person.

(32) First, the tax deduction provided under this measure will result in foregone State revenue and will thus be financed from State resources. Second, under the measure private investors obtain an advantage in form of a tax deduction for a part of the undertaken investment, which they would not have obtained in the absence of this measure. Third, the tax deduction is only provided to certain private investors (natural persons), insofar as they invest risk capital into specified target enterprises; hence the aid at the level of private investors is selective. Fourth, a natural person with a registered business can be active in any sector and market. Therefore it cannot be

[17] See e.g. recitals 39 and 40 of the Commission's decision in case SA.35401 (2013/N) – FI – Tax deferral of taxable income for Business Angel Scheme, OJ C 83, 22.3.2013, p. 3.

excluded that the measure distorts or has the potential to distort competition in the internal market and affect trade between Member States. In this respect, the Commission notes however that any distortion of competition would be very limited since the advantage is limited to maximum SEK 195 000 (ca. EUR 22 700) per investor and year.

(33) In light of the above, the Commission concludes that, to the extent the tax deduction is provided to natural persons with a registered business, it constitutes State aid within the meaning of Article 107(1) TFEU at the level of the investors.

3.1.2. State aid to target enterprises

(34) By granting a tax deduction to private individuals on the condition that they invest directly into target enterprises, those enterprises receive investments in amounts and on conditions different from what they would have been able to obtain under normal market conditions. The tax deduction therefore facilitates the provision of risk capital to the target enterprises which would otherwise not be available, or at least not to the same extent, in the absence of the measure[18]. The measure thus confers an advantage on the target enterprises.

(35) Moreover, since the measure results in foregone tax revenues for the State, it is financed from State resources. The measure should also be considered selective as only investments in certain qualifying SMEs are eligible for the deduction (see recitals (10) – (13) above). Finally, since it cannot be excluded that the target enterprises are active in intra-EU trade, the measure should be considered likely to distort or threaten to distort competition and likely to affect trade between Member States.

(36) Since all criteria of Article 107(1) TFEU are fulfilled, the Commission concludes that there is State aid within the meaning of that provision at the level of the target enterprises in which the eligible investments are made.

3.2. Lawfulness of the aid

(37) By notifying the measure prior to its implementation, the Swedish authorities have respected Article 108(3) TFEU.

3.3. Compatibility of the aid with the TFEU

(38) The Commission has examined whether the State aid provided to the target enterprises is compatible with the internal market. Article 107(3)(c) TFEU provides that aid to facilitate the development of certain economic activities may be considered to be compatible with the internal market where such aid does not adversely affect trading conditions to an extent contrary to the common interest.

(39) Since the measure concerns the provision of risk capital to small enterprises, the Commission has examined whether the State aid provided to the target enterprises is in line with the RCG.

(40) Section 2.1 of the RCG requires the exclusion of aid to enterprises in difficulty, and to enterprises in the shipbuilding, coal and steel industry. Furthermore, the RCG do not

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[18] Case C-156/98 *Germany v Commission* [2000] ECR I-6857, paragraph 34.

apply to aid to export-related activities, namely aid directly linked to the quantities exported, to the establishment and operation of a distribution network or to other current expenditure linked to the export activity, as well as aid contingent upon the use of domestic in preference to imported goods. The notified measure complies with section 2.1 of the RCG in this respect (see recitals (12) and (13) above).

(41) Pursuant to point 2.2(b) of the RCG "private equity" means private equity investment in companies that are not listed on a stock market, including venture capital, replacement capital and buy-outs. Under the measure, investments in companies that are listed on a stock market are not eligible for the tax deduction (see recital (11) above). The investments made under the measure concern newly issued shares or shares in dormant companies exclusively, which excludes replacement capital and buy-outs (see recital (6) above). The measure is thus in line with the definition in point 2.2(b) of the RCG.

3.3.3. Assessment under section 4 of the RCG (standard assessment)

(42) Section 4.2 of the RCG lists the types of risk capital measures which the Commission believes are capable of encouraging market investors to provide risk capital to target enterprises and are likely to result in investment decisions being taken on a commercial (profit-driven) basis. In accordance with point 4.2(d), fiscal incentives to investors to undertake risk capital investment, such as the one at hand, have the capability of promoting such decisions.

(43) The Commission will declare a risk capital measure compatible under Article 107(3)(c) TFEU only if it concludes that the aid leads to an increased provision of risk capital without adversely affecting trading conditions to an extent contrary to the common interest. To determine this, the Commission applies a balancing test, set out in point 1.3 of the RCG, which examines the potential positive effects of the measure in reaching an objective of common interest against its potential negative effects in terms of distortion of competition and trade. The Commission will consider that the incentive effect, the necessity and proportionality of aid, required as part of this balancing test, are present in a risk capital measure and that the overall balance of the measure is positive where all the conditions of section 4.3 of the RCG are met.

3.3.3.1. Maximum level of investment tranches

(44) Point 4.3.1 of the RCG stipulates that tranches of finance, whether wholly or partially financed through State aid, must not exceed EUR 2.5 million per SME over each period of 12 months. As pointed out in recital (7) above, the maximum annual investment tranche per target SME will be SEK 20 million (approx. EUR 2.3 million)[19]. Therefore, the condition of point 4.3.1 of the RCG is met.

3.3.3.2. Restriction to seed, start-up and expansion financing

(45) According to point 4.3.2 of the RCG, the risk capital measure must be restricted to provide financing up to the expansion stage for small enterprises, or for medium-sized enterprises located in assisted areas. It must be restricted to provide financing up to the start-up stage for medium-sized enterprises located in non-assisted areas.

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[19] In order to ensure that the criteria under Chapter 4.3.1 of the RCG are respected, the Swedish authorities have set the ceiling at a level which would correspond to EUR 2.5 million if the exchange rate (EUR/SEK) would reach SEK 8 for EUR 1, which is lower than the rate has ever been in the past.

(46) As pointed out in recital (10) above, the measure is targeted exclusively at small enterprises within the meaning of the Community's SME definition, up to their expansion stage. The definition of seed, start-up and expansion capital for the purposes of the measure, as set out in recital (14), complies with point 2.2 of the RCG. Therefore, the conditions of point 4.3.2 of the RCG are met.

3.3.3.3. Prevalence of equity and quasi-equity investment instruments

(47) Point 4.3.3 of the RCG requires that the risk capital measure must provide at least 70 % of its total budget in the form of equity and quasi-equity investment instruments into target SMEs. As pointed out in recital (6), considering that 100 % of the investments made by investors into the target enterprises will be made in the form of equity, the measure complies with point 4.3.3 of the RCG.

3.3.3.4. Participation by private investors

(48) Point 4.3.4 of the RCG stipulates that at least 30 % of the funding of the investments made inside assisted areas, and respectively 50 % in other areas, must be provided by private investors. Under the measure, a tax relief corresponding to a maximum of 15 % of the investment will be granted. Nevertheless, although the investment is triggered by this relief, the entire amount of funding of the investments in the target enterprises is provided by private investors. Therefore, the conditions of point 4.3.4 of the RCG are met.

3.3.3.5. Profit-driven character of the investment decisions

(49) In order to ensure that the aid is limited to the minimum necessary, point 4.3.5 of the RCG requires that decisions to invest into target companies are profit-driven. This is the case where the motivation to effect the investment is based on the prospects of a significant profit potential and in particular in a situation where (i) there is a significant involvement of private investors providing investments on a commercial basis into the equity of the target enterprises, (ii) there is a detailed business plan for each investment establishing a project's ex ante viability and (iii) there is a clear and realistic exit strategy this criterion is fulfilled.

(50) Under the notified measure, the entire capital will be provided by the private investors investing directly into the target enterprises. Except for the tax deduction, there will be no involvement by the authorities in the decision-making procedure. It is a legal requirement that the target enterprise is a business with the aim of making a profit. Since a private investor must be satisfied with the viability and profitability of the investment in order to invest, it can be assumed that each investment will be based on an adequate business plan and an exit mechanism that allows the investors to realise a profit or make a timely exit from loss making venture, i.e. the design of the measure involves only private entities acting within a purely profit-oriented logic.

(51) Therefore, the Commission considers the conditions of point 4.3.5 of the RCG to be met and the aid is consequently limited to the minimum necessary.

3.3.3.6. Commercial management

(52) In line with point 4.3.6 of the RCG, the management of a risk capital measure or fund must be effected on a commercial basis. The management team must behave as managers in the private sector, seeking to optimise the return for their investors. Since

the notified measure concerns exclusively direct investments into the target enterprises by natural persons, i.e. no fund or fund manager is involved, point 4.3.6 of the RCG is not relevant to the measure. In this respect, the Commission takes note that there will be no involvement by the public authorities in the decision-making and the investors, which are private, will be responsible for seeking to optimise investment returns (see also recitals (48) and (50) above). Therefore, the Commission finds that the measure will be operated on a commercial basis.

3.3.3.7. Sectoral focus

(53) According to point 4.3.7 of the RCG, the Commission may accept a sectoral focus for risk capital measures. This provision is not applicable, since the measure does not have a sectoral focus.

3.3.3.8. Conclusion

(54) In light of the above, the Commission concludes that the measure complies with the criteria set out in section 4 of the RCG.

3.4. Cumulation

(55) The measure also complies with the cumulation rules of section 6 of the RCG (see recitals (22) and (23) above). Where capital provided to the target enterprises under the measure is used to finance initial investment or other costs eligible for aid under other block exemption regulations, guidelines, frameworks, or other State aid documents, the relevant aid ceilings or maximum eligible amounts will be reduced by 50 % in general and by 20 % for target enterprises located in assisted areas during the first three years of the first risk capital investment and up to the total amount received. This reduction does not apply to aid intensities provided for in the R&D&I Framework or any successor framework or block exemption regulation in this field.

(56) Therefore, the conditions of section 6 of the RCG are met.

3.5. Reporting and monitoring

(57) Section 7 of the RCG lays down the conditions for the provision of annual reports on risk capital measures and for the publication and recording obligations of the Member States. The Swedish authorities have undertaken to comply with the reporting and monitoring obligations (see recitals (24)-(26) above). The conditions of section 7.1 of the RCG are thus met.

3.6. Conclusion

(58) The Commission concludes that the notified measure fulfils the conditions set out in the RCG. Therefore, the Commission considers that the positive effects of the measure outweigh its negative effects on the internal market. The Commission therefore finds the measure to be compatible with the internal market pursuant to Article 107(3)(c) TFEU.

4. DECISION

(59) The Commission considers the notified State aid measure SA.36489 (2013/N) to be compatible with the internal market, pursuant to Article 107(3)(c) TFEU. Accordingly, it decides not to raise objections to the aid measure.

(60) The Commission reminds the Swedish authorities that, in accordance with Article 108(3) TFEU, all plans to refinance, or change this aid measure must be notified to the Commission. In light of the revision of the RCG, which are due to expire by 31.12.2013, the Commission notes that the Swedish Government undertakes to introduce appropriate measures to the aid, if necessary to bring the aid measure in line with any rules succeeding the current RCG.

(61) The Commission reminds the Swedish Government to provide an annual report on the implementation of the measure.

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Yours faithfully,
For the Commission

Joaquín ALMUNIA
Vice-President