Draft ICC Sweden Paper on Tax Policy and Sustainability

Amid an increasing number of global challenges, addressing the ongoing climate crisis remains one of the foremost long-term issues for the global community. The 2022 IPCC report on mitigation on climate change indicates that, should the current levels of emission continue for another decade, the goal set by the Paris Agreement to try to limit the global temperature increase to 1.5°C above pre-industrial levels would be out of reach.[[1]](#footnote-2) In order to keep the target alive, concrete actions need to be taken by all sectors of society. The global business community, as drivers of innovation, technological development, and the decarbonisation of global value chains, has a key role to play in this regard. Businesses increasingly see sustainability as a board-level priority and a lack of sustainability thinking can have negative consequences for companies' profits, stock prices and ability to recruit talents etc. However, to provide businesses with the opportunities and incentives to accelerate their efforts as well as to steer financial flows and investments towards sustainable solutions, it will require coherence from policymakers across a number of different policy areas. Tax policy is no exception. Carbon pricing instruments, such as carbon taxes, if well designed, can be an important tool to stimulate reduced emission activity and incentivising climate innovation. But tax systems and tax policy can also more broadly provide companies with incentives and, not least, remove disincentives to take concrete climate and sustainability actions.

This paper, which has been prepared by ICC Sweden’s Tax Committee, takes a closer look at how the current Swedish tax system impacts corporate climate actions and investments in sustainability. Via case studies pertaining to both legal cases and to business experiences from dealing with tax authorities, the paper identifies some challenges that businesses operating in Sweden are currently facing as they try to adhere to their sustainability agenda and accelerate their green transition and decarbonisation efforts and increase resource-efficiency. The purpose is to initiate a discussion on the role of tax policy when it comes to sustainability and, by sharing the Swedish experience, to serve as a discussion starter on this topic within the global ICC network.

Case Study: Tax Policy Disincentivising Research and Development of New Technology

The green transition will require major investments in new technology and innovations. A multinational Swedish company is collaborating with academia and researchers to develop carbon capture technology, which, in addition to their efforts to reduce their CO2 emissions, may enable them to capture emissions by using this technology in the future, provided that it is developed successfully. The project is important for the company to be able to meet their long-term climate goals. However, for the company to be able to deduct the cost for this research and development project, they need to prove that the investment will generate future taxable profits, which is not easily done given that it is first and foremost aimed at reaching sustainability goals.

In accordance with the Swedish Income Tax Act, companies who run a business must (only) deduct expenses for "acquiring and maintaining income" during income taxation[[2]](#footnote-3). This is further clarified by a regulation that "gifts" may not be deducted.[[3]](#footnote-4) Case law has taken a very restrictive view on the link between certain expenses and the acquisition and maintenance of income, whilst "gifts" have been given a broad interpretation - covering almost all kinds of initiatives that are only indirectly linked to the profit making of companies. Two notable examples of this[[4]](#footnote-5) are cases where the Supreme Administrative Court made it clear that costs concerning carbon offsetting are not to be considered deductible expenses for companies, unless substantially promoted in advertising. Only then are they seen as impacting revenue. This would of course require companies who are making climate investments to also spend additional funds on marketing these efforts. The additional expenses thus required is a disincentive to make the investment in the first place. We deem the cases to be applicable to investments to reduce and capture carbon as well.

The experiences of some multinational Swedish companies have suggested that this is steering climate investments away from Sweden, as they themselves, due to the lack of incentives, instead direct them to jurisdictions with a more incentivising tax policy.

Investments in climate-related research projects in collaboration with other actors such as companies, governments and academia should therefore be considered as deductible business expenses, regardless of whether such an investment can demonstrably yield future taxable profits or not. Cooperation in partnership (SDG 17, Partnership for the Goals) is an important part of the UN Agenda 2030 which is encouraged by governments.

Case Study: Tax Policy Disincentivising Carbon offsetting

A multinational group with an ambitious strategy to become carbon negative across the entire value chain by 2030, in addition to a wide range of efficiency and clean energy initiatives, will plant trees as a nature-based solution to address climate change. The Supreme Administrative Court's rulings mentioned in footnote 4 make it clear, however, that expenses for climate compensation are only deductible if they are marketed to such an extent that the measures can be expected to have tangible positive effects on the company's sales and results.

Case Study: Tax Policy Disincentivising Resource-Efficiency

In addition to corporate efforts to limit emissions, increased resource-efficiency is central to reaching both climate targets and sustainability targets in general. However, a recent legal case[[5]](#footnote-6) held that a Swedish construction company would not be granted a disposal deduction after reconstructing an office building. The company had decided to demolish a premise and rebuild it, as the current building was no longer deemed usable. In the process, the company decided to keep the load-bearing structural parts to make the reconstruction more resource-efficient in terms of both construction materials and financial resources. The company considered itself entitled to a scrapping deduction, alternatively a depreciation deduction, as the law claims that a “grant for the decommissioning of a building presupposes […] that the whole, or almost the whole, building is demolished.”[[6]](#footnote-7) The Supreme Administrative Court denied the claim with the motivation that when parts of the demolished building were used for the newly built one, the company in question was not entitled to any deduction due to the building not being scrapped in its entirety.

The case illustrates that the legislation disincentives resource-efficient circular approaches and instead encourages resource inefficiency. Construction companies who choose a more resource-efficient alternative when conducting their businesses should not be punished but on the contrary encouraged.

[*Additional case studies*]

Conclusion

In light of the above case studies, there is room for improvement of Swedish tax legislation in order to not disincentives corporate sustainability ambitions but rather provide incentives. As other policy areas adapt to facilitate the green transition and sustainable development, tax policy is lagging and seen as inconsequential. While this paper has focused on the Swedish example, the discussion about how tax policy can incentivise sustainable development is a discussion to be had globally as governments and the private sector alike ramp up their efforts to reach the goals of the Paris Agreement and the UN Agenda 2030. Investments in climate measures and sustainability goals should at least be considered as normal deductible business expenses, not least because such expenses are often business-critical in today's society.

1. IPCC Sixth Assessment Report – Working Group III Report on Mitigation of Climate Change (AR6 WGIII), <https://www.ipcc.ch/report/ar6/wg3/> [↑](#footnote-ref-2)
2. Ch. 9 Section 2, second paragraph of the Swedish Income Tax Act (1999:1229) [↑](#footnote-ref-3)
3. Ch. 9 Section 2, second paragraph, and Ch. 16 Section 1, first paragraph of the Swedish Income Tax Act (1999:1229) [↑](#footnote-ref-4)
4. HFD 201 ref62 (Saltå Kvarn) and HFD 2018 ref55 (Arla). [↑](#footnote-ref-5)
5. HFD 2021 ref14 (Skandia Fyrkanten). [↑](#footnote-ref-6)
6. Ch. 19 Section 7 of the Swedish Income Tax Act (1999:1229). [↑](#footnote-ref-7)