New exchange of information versus tax solutions of equivalent effect from a Swedish point of view

Eleonor Kristoffersson and Börje Leidhammar, Sweden

I Introduction

International exchange of information is one way to contribute to an efficient tax system. An actual risk of being caught with tax fraud reduces the incentive not to declare income, wealth and turn-over. A high tax paying morale may however also be triggered by other factors, such as confidence in the tax authorities, a transparent not corrupt tax administration, a simple tax system making it easy for the tax payers to understand their obligations, pre-filed tax returns, great performance by the governments in giving the inhabitants high quality public services such as good public schools, public health care and a good social security system, high penalties for tax crime and the tax payers belief in that the risk of getting caught is high.

The scope of examining exchange of information in this study as it is given is to understand if and to which extent the optimal tax strategy of each single European Member State, in relation to each other and to non EU Countries being or not tax havens, is just a combined disposal of sticks and carrots. The sticks would be the enforcement of taxes as a consequence of exchange of information, mutual assistance in tax matters, money laundering activities, the FATCA and similar measures whereas the carrot – if one could at all talk of carrot – could be the voluntary disclosure.

This national report is structured as follows. First, the sources of the exchange of information system in Sweden are dealt with. Thereafter, the administrative cooperation in tax matters under EU Law and its domestic implementation in Sweden are discussed. There are some thematic overlaps in these two first parts of the national report, since the EU Law is an important part of the exchange of information system in Sweden. After that, the money laundering provisions are discussed. After these three sections mainly focusing at the national and international legal framework the following sections deal with practical aspects and alternatives to the exchange of information, such as the costs and benefits of automatic exchange of information, for example under FATCA, and joint audits. In the end of the report, legitimacy aspects are discussed. At last, some conclusions are drawn.

II.1. The sources of the exchange of information system in Sweden

The legal basis for exchange of information is found in double tax treaties, tax information exchange treaties (TIEAs), EU Law and conventions on mutual assistance in tax matters. Tax treaties between Sweden and other countries are normally bilateral. Between the Nordic countries however, there is a multilateral tax treaty. The tax treaties of which Sweden is a party are generally based on the OECD MTC.\footnote{The OECD Model Tax Convention on Income and on Capital.} There are no
specific provisions in the treaties or in national law on how a treaty should to be incorporated in Swedish law. The tax treaties are negotiated by the government and transformed into Swedish law by a decision by the parliament.

Sweden has entered into some more than 90 tax treaties. Under article 26 of the OECD MTC, the competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of the Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. In the commentary to article 26, three examples on methods for exchange of information are given. These are 1) exchange of information on request, 2) spontaneous exchange of information and 3) automatic exchange of information. Sweden has a long tradition of all three kinds of exchange of information.²

The general trend in Sweden has been to follow article 26 of the OECD MTC of its current version when negotiating the tax treaties.³ Sweden has never reserved against article 26.⁴ Until recently, many of Sweden’s contracting parties reserved against article 26. The political pressure of entering into exchange of information treaties has however changed the last few years. One reason for this is the global financial crisis. Sweden has renegotiated its tax treaties with regard to article 26 with Austria (2010), Luxemburg (2010) and Switzerland (2011).

Article 26 paragraph 5 of the OECD MTC appears in seven of the Swedish tax treaties.⁵ This provision states that the provisions of paragraph 3 of the same article shall in no case be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person. In treaties where it does not appear the procedure is still not forbidden and should be accepted as long as it does not go against ordre public. From a Swedish perspective, a reference to article 26 paragraph 5 of the OECD MTC is not necessary, since Swedish domestic law already allows for that the information in article 26 paragraph 3 is disclosed.⁶

Under Article 27 of the OECD MTC states that the Contracting States shall lend assistance to each other in the collection of revenue claims. Article 27 in the OECD MTC appears, similarly to Article 26 paragraph 5, only in some treaties, namely in 13 tax treaties.⁷ Where it does appear, request for help is to be made in reasonable time and be performed according to domestic law. Within 60 days the asked party should notify

² See Gustafsson Myslinski, Ulrika, Ifa Brach Report Sweden 2013 page 730.
⁴ See Gustafsson Myslinski, Ulrika, Ifa Brach Report Sweden 2013 page 722.
⁵ See Gustafsson Myslinski, Ulrika, Ifa Brach Report Sweden 2013 page 722. The treaties where article 26 paragraph 5 is present are Austria, Luxemburg, Mauritius, Barbados, Switzerland, Poland and the USA.
⁶ See Gustafsson Myslinski, Ulrika, Ifa Brach Report Sweden 2013 page 722.
asking party about shortages in the demand. Within 90 days the asking state should be notified if it is not possibly to perform what is asked.

Where there is no general tax treaty tax information may be exchanged under Tax Information Exchange Agreements (TIEA). As a potential tax haven, to qualify on the white list of OECD – as not being a tax haven – a state must enter into minimum 12 TIEA:s. The Nordic Countries, including Sweden, Denmark, Norway, Iceland, Finland, and the independent areas of the Faroe Islands and Greenland, has coordinated their negotiations with the potential tax havens regarding TIEAs. Therefore, when a potential tax haven successfully negotiates with the Nordic countries, the potential tax haven gets seven – out of its 12 necessary – TIEAs at one negotiation. Out of the approximately 500 TIEAs that have been entered into, the Nordic countries are parties of a good 200. Sweden has, between the years of 2007 and 2011, entered into 32 TIEA:s with the following states: Isle of Man (2007), Jersey (2008), Guernsey (2008), Bermuda (2009), British Virgin Islands (2009), Cayman Islands (2009), The Netherlands Antilles (2009), Aruba (2009), Anguilla (2009), Turks and Caicos Islands (2009), Samoa (2009), Cook Islands (2009), Gibraltar (2009), San Marino (2010), Andorra (2010), Bahamas (2010), St Kitts & Nevis (2010), St Vincent and Grenadines (2010), Antigua and Barbuda (2010), Grenada (2010), Dominica (2010), St Lucia (2010), Monaco (2010), Belize (2010), Marshall Islands (2010), Vanuatu (2010), Liberia (2010), Montserrat (2010), Liechtenstein (2010), Seychelles (2011), Macao (2011) and Costa Rica (2011). Examples on information shared under the TIEA:s is information on bank accounts, beneficial ownership and trustees. The TIEA generally only includes exchange of information upon request. The TIEA between Sweden and Aruba however also includes spontaneous exchange of information.

The OECD and the Nordic Council of Europe’s Convention on Mutual Assistance in Tax Matters is incorporated in Swedish law. The assistance includes exchange of information, domestic and foreign audits and the aid of collecting and informing of documents. This applies irrespective of if the relevant persons are residents or citizens in a contracting state or not.

The multilateral Nordic Tax Treaty has no provisions on exchange of information. Instead, the Nordic countries have a multilateral agreement on mutual administrative assistance. The agreement is similar to the OEC and Council of Europe’s Convention of Mutual Assistance in Tax Matters, of which Sweden is also a contracting party. Under article 22 of this convention any information obtained by a party under the convention shall be treated as secret in the same manner as information obtained under the domestic laws of that party, or under the conditions of secrecy applying on the supplying party, if such conditions are more restrictive. At the moment the Nordic countries’ convention is renegotiated in order to get it more in accordance with the internationally agreed standard for exchange of information.

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8 See Gustafsson Myslinski, Ulrika, Ifa Brach Report Sweden 2013 page 731.
9 See Gustafsson Myslinski, Ulrika, Den senaste utvecklingen på informationsutbytesområdet Svensk Skattetidning 2010 page 303.
10 The OECD and Council of Europe’s Convention on Mutual Administrative Assistance in Tax Matters.
11 Lagen (1990:313) om Europaråds- och OECD-konventionen om ömsesidig handräckning i skatteärenden.
12 SFS 1990:226.
13 See Gustafsson Myslinski, Ulrika, Ifa Brach Report Sweden 2013 page 723.
In general there are no explicit prohibitions against so called “fishing expeditions”, or general third party audits, in tax treaties signed by Sweden. In the tax treaty with Switzerland however the method is explicitly forbidden. In other cases “fishing expeditions” are prohibited by indirect provisions demanding specifications concerning for example identification of which person the procedure involves. It could be mentioned that under Swedish law general third party audits are under certain conditions accepted.14

II. 2. The administrative cooperation in tax matters under EU Law and its domestic implementation in Sweden: for good and evil
As a member of the European Union, previously Sweden exchanged information under Directive 77/799/EEC. The directive has been replaced by Directive 2011/16/EU.15 Information regarding interest payments on natural persons’ savings is exchanged under the Savings directive 2003/48/EC.16

The information received under Directive 2011/16/EU shall be covered by the obligation of official secrecy and enjoy the protection extended to similar information under the national law of the Member State which received it. Such information may be used for the administration and enforcement of the domestic laws of the Member States concerning the tax and duties matters. It may also be used in connection with judicial and administrative proceedings that may involve penalties, initiated as a result of infringements of tax law, without prejudice to the general rules and provisions governing the rights of defendants and witnesses in such proceedings. There are also some possibilities to use the information for other purposes, if the competent authority of the member state communicating the information permits it.17

Directive 2011/16/EU should have been implemented by the Member States at 1 January 2013,18 and was implemented in Swedish law in the implementing act SFS 2012:843.19 The Swedish implementing act regards all taxes that are to be paid within the area of the EU in accordance with section 2. Some fees are excluded in section 3. Under the implementing act competent authority shall, when requested from authority in other member state, exchange information, approve the presence and participation of foreign authority, perform communication, automatically exchange information and in some cases disclose information without prior demand.20 The rules concerning the automatic exchange of information enters into force 2015. The automatic exchange of information concerns under Swedish law, just as under the Directive 2011/16/EU income from employment, directors’ fees, life insurance products, pensions and

14 See the Swedish Supreme Administrative Court Judgment HFD 2012 ref. 12.

15 COUNCIL DIRECTIVE 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC.


17 Article 16 of Directive 2011/16/EU.

18 Article 29 of Directive 2011/16/EU.

19 Lagen (2012:843) om administrativt samarbete inom Europeiska unionen i fråga om beskattning.

20 § § lagen (2013:843) om administrativt samarbete inom Europeiska unionen i fråga om beskattning.
ownership of and income from immovable property.\textsuperscript{21} The information that should be automatically transferred is information in income tax returns or specifications of income tax returns.\textsuperscript{22}

The Swedish tax authority is supposed to, when a request is made, disclose all information that may be relevant and is available at the authority or is collected through investigation. The authority is supposed to execute an investigation that is necessary to get the relevant information.\textsuperscript{23}

The Swedish tax authority is on the other hand not obliged to disclose information unless the foreign authority haven’t exhausted their usual sources of information, if it would violate a Swedish purpose of taxation, if the requesting authority isn't themself allowed to leave the requested information or if it would mean that confidentiality regarding business, a company or a specific trade and so on would be breached.\textsuperscript{24}

The rules concerning the automatic exchange of information enters in to force 2015. This kind of automatic exchange of information is supposed to happen when the Swedish taxing authority has received information in the shape of control information, information from income declarations and information concerning people with residency in the other member state.

Section 14 of the implementing act deals with other situations where the Swedish tax authority is supposed to exchange information without prior notice. The authority is supposed to do so when the information can be expected to be relevant for the administration and enforcement of a Member State’s tax laws when the Swedish tax authority has reason to expect that tax is being evaded from another Member State, when a taxable person gets to pay less tax in Sweden which may lead to a higher tax in a member state, when business transactions between a taxable person in Sweden and another member state are made that may lead to tax losses in Sweden or the other member state, when the Swedish tax authority has reason to expect tax losses may follow from artificial transactions within a group of companies or when information has been given to Sweden by a member state that may regard relevant information for another member state.

When the Directive 2011/16/EU was implemented into Swedish law, the effects of the implementation were examined. The exchange of information under this directive is expected to result in a greater number of requests than previously. The increase is however not expected to be very large, since most of the information required under Directive 2011/16/EU is already exchanged under the Nordic multilateral agreement on mutual administrative assistance. The tax revenue is expected to increase to some extent.\textsuperscript{25}

Currently automatic exchange of information within the EU direct taxation area is based on the Savings Directive.\textsuperscript{26} The Savings Directive was adopted in June 2003 in order to ensure the proper operation of

\textsuperscript{21} 12 § lagen (2013:843) om administrativt samarbete inom Europeiska unionen i fråga om beskattning and article 8 of Directive 2011/16/EU.

\textsuperscript{22} 12 § lagen (2013:843) om administrativt samarbete inom Europeiska unionen i fråga om beskattning.

\textsuperscript{23} 8-9 §§ lagen (2013:843) om administrativt samarbete inom Europeiska unionen i fråga om beskattning.

\textsuperscript{24} 10 § § lagen (2013:843) om administrativt samarbete inom Europeiska unionen i fråga om beskattning.

\textsuperscript{25} Government’s proposal Prop. 2012/13:4 page 76.

\textsuperscript{26} COUNCIL DIRECTIVE 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments.
the internal market and tackle the problem of tax evasion. The Savings Directive only covers interest payments.

In EU VAT, the system with exchange of information is well developed. The main legal act is the Council Regulation (EU) No 904/2010.\textsuperscript{27} Under article 54 2 the regulation shall impose no obligation to have enquiries carried out or to provide information on a particular case, if the laws or administrative practices of the Member State which would have to supply the information do not authorize the Member State to carry out those enquiries or collect or use that information for that Member State’s own purposes. One Member State that is requested to provide another Member State with information may refuse to do so when it for legal reasons is unable to provide the information.\textsuperscript{28} Furthermore, the provision of information may be refused where it would lead to the disclosure of a commercial, industrial or professional secret or of a commercial process, or of information whose disclosure would be contrary to public policy.\textsuperscript{29} Information communicated or collected pursuant to the Regulation shall be covered by the obligation of official secrecy and enjoy the protection extended to similar information under both the national law of the member state which received it and the corresponding provisions applicable to union authorities.\textsuperscript{30} The information may only be used for purposes expressly stated in the Regulation.

In the government’s bill linked to Sweden’s implementation of the directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing there is a discussion concerning the introduction of a centralized financial information data bank. According to the bill a centralized databank should not be created. Several authorities were of the opinion that a centralized databank would be an efficient way to prevent money laundering and the financing of terrorism. In the government’s bill however it was questioned how efficient such a database would be and how it would affect the integrity of individuals. The introduction of the database, the administration of the database and the development of the same were thought to bring huge costs. In the future however such database might be put in to force.\textsuperscript{31}

II. 3. The collection and exchange of information under anti money laundering legislation: a real solution or lust a new threat?

Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing\textsuperscript{32} is implemented in Swedish law in SFS 2009:62, the money laundering act.\textsuperscript{33} The information collected under this act can be used for administrative and criminal tax

\begin{itemize}
\item \textsuperscript{27} COUNCIL REGULATION (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax.
\item \textsuperscript{28} Article 54 3 of the Regulation 904/2010.
\item \textsuperscript{29} Article 54 4 of the Regulation 904/2010.
\item \textsuperscript{30} Article 55 1 of the Regulation 904/2010.
\item \textsuperscript{31} Prop. 2008/09:70 p. 172f.
\item \textsuperscript{32} DIRECTIVE 2005/60/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.
\item \textsuperscript{33} \textit{Penningstvättslagen}.
\end{itemize}
assessments regarding natural persons defined as “beneficial owners”. In practice however, it is difficult to pass the information on to other authorities, such as the Swedish Tax Authority, since the information is not efficiently collected in an electronic database. Improved databases are however under development, under the names STUK and Cábra.

According to article 8 the European Convention on Human Rights (ECHR) everyone has the right to respect for his private and family life, his home and correspondence. This privilege can however be restricted by an authority if it's supported by law and is deemed necessary with regard to the state's security, public safety or the state's financial well-being. The exchange of information which involves the Finance Police, with the intent to control money laundry, is supported by law and is deemed necessary with respect to Sweden's financial well-being. Therefore the system is, under the general opinion, considered not to violate article 8 ECHR.

II.4. The exchange of information system in practice

The Swedish tax authority's way to deal with the exchange of information was investigated in 2009. The investigation resulted in that the tax authority showed several flaws in how it handled the exchange of information. Some automatically collected information were never registered or too old to be used, automatic identification of foreign information were missing and therefore took a great deal of manual work to correct, some information were never examined, the content of foreign information was uncharted, a system for efficient follow-up did not exist and the it-development was delayed.

Sweden has approximately 9 500 000 inhabitants. In the year of 2010, the Swedish tax authority passed approximately 1 100 spontaneous statements on to other states. Sweden received around 1 500 spontaneous statements. The corresponding numbers of automatic statements was 750 000 received and 2 000 000 sent abroad. Some of the automatic statements refer to the Savings Directive 2003/48/EG.

In 2011 information had been requested under the TIEAs in about 80 errands. The tax authority regards answers of good quality. The answers came swiftly. The time it takes to reply varies depending on jurisdiction. Some jurisdictions don't meet their obligations and other take a very long time to process a request. In most cases though, the obligations are met within a period of six to twelve months.

36 There is however a discussion in Sweden regarding this issue, see Schmauch, Magnus, Dom från Strasbourg: advokaters rapporteringsskyldighet vid misstänkt penningtvätt : vidare begränsning av Bosphorus-presumptionen, Europarättslig tidskrift 2013 page 98-110.
37 RiR Granskningsrapport, 2009:24, “Internationell skattekontroll”. (The National audits investigation on international control of taxes)
38 See Gustafsson Myslinski, Ulrika, Ifa Brach Report Sweden 2013 page 732.
39 Margareta Nyström at the Swedish tax authority.
40 Seminar on voluntary disclosure in Malmö den 12 October 2011.
The Swedish Tax Authority has the last three years answered 80 percent of the incoming requests in the field of direct taxation within three months. The requests regarding VAT have been answered within less time.\footnote{See Gustafsson Myslinski, Ulrika, Ifa Brach Report Sweden 2013 page 727.}

II.5. The new era of the automatic exchange of information: huge investments, but are we sure on the return?

FATCA is an American legal act which is supposed to give the USA better opportunities to find and tax American citizens and green card holders and so on. FATCA means that financial institutes like banks, all over the world, are supposed to disclose information about American assets to the IRS.

At the moment, Sweden is, as many other EU member states, in a negotiation with the USA about an FATCA agreement. Sweden’s position is that the FATCA agreements should be dealt with on EU level in order to achieve an efficient exchange of information. Sweden, together with many other EU Member States negotiating FATCA agreements, are of the opinion that the cooperation should lead to one single global standard for automatic exchange of information.\footnote{2012/13:FPM150 page 3.}

The Directive 95/46/EC on the protection of individuals with regards to the processing of person data and on the free movement on such data is implemented in Swedish law.\footnote{Prop. 2000/01:50 p 13. (Implemented in Personuppgiftslag 1998:204).} The purpose of the law is stated in section 1 and aims to protect people's integrity from being violated by the treatment of personal data. According to section 2 other legal acts that deviates from the implementing act of Directive 95/46/EC has priority.

The Swedish implementing act regards automatic treatment of personal data or if the treatment of the data is intended to be made in a structured manner that is available for a search or compilation. For the law to be applicable in the latter case, there must be data regarding more than one person. The data must also be permanent for some time.\footnote{Karnov Law commentary 5 § 19.} The person responsible for the personal data must secure that the data only is handled in a proper way. The treatment of data must also have a stated purpose, relevant for the purpose, and may not be collected in a more detailed way than necessary with regard to the purpose.\footnote{Personuppgiftslag (1998:204) 9 §.}

According to section 33 it is forbidden to hand out information to a third party, such as the USA, unless the country doesn't have a reasonable level of protection for the personal data. The level of protection is judged from all the circumstances relevant to the transferring of data between countries with specific regards to the nature of the information, the purpose of the treatment, how long it will continue, country of origin and the rules that exist in the other country concerning the treatment of personal data. Even though the transfer of personal data to the USA might be forbidden under sections 33 and 34 the transfer of data is accepted if the person who the data concerns gives his or her consent.
This kind of agreement might violate the Swedish bank confidentiality in *lagen (2004:297) om bank- och finansieringsrärelse*. In section 10 it is stated that an individual’s relationship with a financial institute may not be unauthorizedly disclosed. The provisions concerning bank confidentiality is to some extent restricted by explicit law regulations, meaning a bank sometimes is forced to disclose certain information. These regulations are intended to prevent the bank confidentiality to be used in a disloyal way. With this in mind, the confidentiality can be “violated” to meet the needs of information and/or control that the society has.\(^{46}\)

A bank that acts according to law is not considered disloyal. An interstate agreement does on the other hand not have the same legal status as law. It is therefore possible that the disclosure of information will be considered unauthorized, before a FATCA agreement is transformed into Swedish law. Whether a disclosure of information following a FATCA/IGA agreement between Sweden and the USA will violate the bank confidentiality law of Sweden will have to be determined when such an agreement is signed.

The government is generally in support of increasing the automatic exchange of information. It is considered important that the increased exchange of automatic information, as close as possible, follows the model for bilateral FATCA-agreements with the USA. Different standards for the exchange, depending on what country involved, would be unnecessarily complicated and bring unnecessarily large financial costs.

The main principles of taxing intermediaries are the following: received dividend is taxable but paid dividend is deductible, income interest is taxable and the cost of interest is deductible, group contribution is not possible to give or receive and there is no right to allocation fund depositions. These principles are meant to secure the same taxation between using intermediaries and owning assets directly.\(^{47}\)

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**II.6. Joint audits and multinational audits: two Tax Administrations are better than one?**

There is no legal basis in Swedish domestic law for the Swedish Tax Authorities to participate in a joint audit or to undertake its own tax examinations in another country’s territory.\(^{48}\) Simultaneous tax audits can be carried out under the Nordic multilateral agreement on mutual administrative assistance, the OEDC and Council of Europe’s Convention of Mutual Assistance in Tax Matters, Council Regulation 904/2010\(^ {49}\) as well as some tax treaties with certain countries. There is nothing in Swedish domestic law that hinders simultaneous tax audits. Provisions regarding simultaneous tax audits as well as he participations in tax examinations abroad are found in the legal acts SFS 1990:313 and SFS 1990:314.

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\(^{46}\) Prop. 2002/03:139 p. 476.


\(^{48}\) See Gustafsson Myslinski, Ulrika, Ett nytt EU-direktiv om administrativs samarbete på skatteområdet, Svensk Skattetidning 2011 page 512.

\(^{49}\) Article 29 and 30 of the COUNCIL REGULATION (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax.
II.7. The "realpolitik": tax solutions of equivalent effect alternative to exchange of information

Sweden enters into an increasing amount of tax agreements (TIEAs) with previous so called tax havens with the purpose of preventing the evasion of taxes. The consequence of being caught evading taxes by the Swedish tax authority is extensive and imprisonment is a possible outcome. If the taxable person on the other hand voluntarily corrects the failure to declare missing assets the possible criminal outcome disappear.

A voluntary disclosure of assets means that the taxable person, on his own initiative, demands a correction of his declared income concerning earlier years. The disclosure must be on the taxable person’s own initiative. If the Swedish tax authority has started, or made notice of starting, an investigation, the possibility of voluntary disclosure of hidden assets is removed.

The opportunity to voluntary disclosure for people taxable in Sweden is therefore an incentive to declare income even before the authority has started an investigation. Hidden assets abroad can thus be brought back to Sweden without an effort being made by Swedish authorities. In 2012 approximately 1100 voluntary disclosures were made.

The aim of the Savings Directive is to secure an automatic exchange of information regarding interest of individuals within the member states of the EU. The purpose is to tax the individual where he has his residence.\textsuperscript{50} A presumption for the directive to be applied was that several states outside of the EU would start using similar provisions. Because of this Switzerland and some other countries have introduced provisions in accordance with the Savings Directive. Another presumption for the introduction of the directive was that the Channel Islands, Isle of Man and some other low tax jurisdictions would apply rules regarding the exchange of information or a system of withholding taxes in accordance with the Directive. Following this the different countries have all signed bilateral treaties with Sweden and the other member states of the EU with regards to the provisions stated in the Savings Directive.\textsuperscript{51}

II.8. The legitimacy of tax solutions other than exchange of information: where do we stand?

In Sweden the use of illegally obtained data is governed by the principle of independent assessment of evidence according to Chapter 35 Section 1 of the Swedish procedural code.\textsuperscript{52} This provision states that the court must regard of everything that is revealed in trial. Swedish procedure applies the principle of the free gathering and evaluation of evidence. The fact that evidence may have been gathered unlawfully does not affect its procedural value. This means that all evidence, even though illegally obtained, must be regarded. A few prohibitions exists with regard to evidence for example those concerning confidentiality. Even though basically all evidence can be used, the value of the evidence can be affected if the court deems

\textsuperscript{50} Council directive 2003/48/EC, (8).


\textsuperscript{52} Rättegångsbalken (1942:740).
so. Accordingly the individual can affect how the evidence is valued, but not if it actually will be pleaded. If the case is decided on written documents the parties must have been given the material that is the basis for the outcome.

In our opinion, the use of stolen tax information may be a very efficient, however un-ethic, way to achieve an efficient tax administration. Given that a great confidence in the work of the tax administration makes the tax paying morale higher, there is a risk that the tax paying morale in general gets lower if the tax administration (indirectly) is involved in criminal acts. Even if it is in the short run tempting and efficient using illegal sources of information, we believe in the long run that it is important that the tax administration uses legal sources of information.

The ECHR sentence N.K.M. v. Hungary concerns the question about proportionality between the intrusion an authority’s decision can bring for an individual and the right to tax the same. In Sweden the principle of proportionality is stated in Chapter 2 Section 5 skatteförfarandelagen (the tax procedural act) (2011:1244). The principle states that a decision according to law may only be made if the reasoning behind the decision outweighs the intrusion it means for the individual. Every measurement the Swedish tax authority makes towards an individual must be proportionate compared to the intrusion it brings. The intrusion must not be greater than necessary to retrieve the wanted information. In accordance with the principle of independent assessment of evidence the principle of proportionality does not affect illegally obtained evidence.

Information concerning individuals’ voluntary disclosures should be allowed to be exchanged between tax authorities in Sweden and other countries in accordance with the tax treaties signed by Sweden and other countries. The information is allowed by the different tax treaties if it is considered relevant in the case of administration and enforcement of the domestic law by the signing parties. Generally the treaties states that the above mentioned information is supposed to be given when demanded by competent authority.

III. Conclusions
The economic globalization and the faster flow of capital between countries mean increasing possibilities for the taxpayers to be active in several countries. Since the tax administration on the whole acts within the national jurisdiction the tax authorities become increasingly more dependent on the exchange of information between each other. Without this exchange it would be nearly impossible to prevent the cross-border evasion of taxes. Countries around the world have of course made notice of the development and the importance of co-operation. More than 500 treaties on the exchange of information have been signed. A significant number of treaties have also been re-negotiated to involve the updated version of art. 26 of the OECD MTC.

53 Zeteo law commentary to 35:1 § RB.
54 Moëll, Christina, proportionalitetsprincipen i skatterätten, Juristförlaget, 2003, p. 192 f.
The OECD has been and is still the leading force, together with G20 and the Global Forum, behind getting specific countries to implement tax systems with a higher grade of transparency and exchange of information. Countries such as Germany and the USA have in recent years been in the front trying to prevent assets from moving to countries with a low grade of transparency and exchange of information. Because of this and the big efforts that have been made there is now an international standard of transparency and exchange of information.56

Sweden has a very transparent administration where a lot of tax information both arrives in and leaves the tax administration. Both bank secrecy in relation to the tax administration and secrecy of tax decisions are in Sweden nearly non-existent. Sweden's attitude towards the exchange of information is closely linked to the attitude of EU. EU advocates a constant increase of automatic exchange of information between tax authorities located within the union. The commission came with a suggestion 12th of June 2013 that dividend, capital gains, other type of financial income and account balances should be added to the list on categories which are subject to the automatic exchange of information within the EU. This means that EU would have the most comprehensive system for automatic exchange of information in the world. Consequently both EU and Sweden views the increased amount of information exchange as a necessary sequence following the increased globalization.

Because of this development there seems to be no stop to which extent both the exchange of information and other tax solutions, such as voluntary disclosure, can be taken. The personal integrity which can be violated from the exchange of information does not seem to weigh as high as Sweden's vital interest in stopping the evasion of taxes. Such a concern of integrity will therefore only be of small significance with regards to the development of stopping tax evasion.