

National Approaches in Sweden

the tax system foreseen therein as long as both the respective federations and associations, as well as the entities therein, fulfil the legal requirements.

Foreign foundations

These may benefit from the legal system established by the Law of Foundations exclusively regarding the local branch's activity in Spain.

Foundations of religious entities

The provisions of the Law of Foundations apply notwithstanding whatever may be established by agreements with the Catholic Church, cooperation agreements and conventions entered into by the State with churches, confessions and religious communities, as well as regulations to be applied to foundations created or developed by the same. In addition to the Law on Foundations analyzed here, there are other provisions in Spain which complement and develop it in other spheres.

State Sphere

- Royal Decree 765/1995, of 5th May, which regulates certain matters relating to the system of tax incentives for private participation in activities of general interest in accordance with the Final Provision 5th LF.
- Royal Decree 316/1996, of 23rd February, which regulates the State Sphere Foundation Regulations.

Autonomous Region Sphere

Although all the autonomous regions have this faculty transferred to them, there are only three laws:

- Law regarding private Catalan foundations of 3rd March 1982 (modified by Law of 8th November 1985)
- Foral Law 7/1983, of 22nd June, regarding the system of foundations relating to Galician interests (revised by Law 11/1991 of 8th November).
- Law 1/1990, of 29th January, on Canary Island foundations.

Ecclesiastical Foundations

- Royal Decree 589/1984, of 8th February, regarding religious foundations of the Catholic Church.



An overwhelming proportion of Swedish cultural monuments – i.e. monuments taken in a broad meaning, comprising buildings, ancient remains and sites protected in some sense by law – are legally in private hands. (One group of monuments should be excepted from this broad statement: ecclesiastical monuments, which are if not always – in a strict legal sense – owned, so at least managed and controlled by the Church of Sweden, an established church with a certain constitutional standing.)

Indeed, it is a prerequisite that protection of cultural monuments must work under private management. Whatever tendencies there might have been in the past for the state or municipalities to acquire monuments have long since been abandoned. The general principles for protection of privately held monuments are laid down in the 1988 Act on Cultural Monuments etc. (SFS 1988:950). This act discerns between archaeological monuments and sites, listed historical buildings, ecclesiastical heritage, and movables (export/restitution).

Archaeological monuments and sites are protected directly by law. No administrative order is issued to single out even what is an archaeological monument. Property holders have to find that out for themselves by recourse to a list in the act of protected categories of archaeological remains, a register kept by the authorities, and official maps where most monuments have been entered. They could and should, of course, consult the responsible authorities as to the extent and importance of protected remains. All physical interference with protected remains needs official permission, and if permission is given, it is generally on condition that the applicant pay for archaeological investigations and documentation.

Historic buildings (the concept includes structures other than buildings, and parks and gardens) are protected by individual listing. Administrative orders will specify permitted and non-permitted measures to such buildings with regard to demolition, alteration and upkeep. Non-consenting property holders may claim compensation, but there is a threshold of economic damage that must be passed before owners become eligible for indemnification. Protection may be effected either by state or by local governments; in the latter case under the 1987 Planning and Building Act (SFS 1987:10).

No more of the protective rules for cultural monuments in Sweden will be described here. Nor will the fact that there is a grant system to cover owners' extra costs for care and protection of monuments be subject to much attention here. Owners' efforts in maintaining monuments on their land can be seen as a part of their given interest in good management and a certain income of properties. I take the meaning of this seminar to be not a general discussion on how protection of privately held cultural property should and could be enacted and administered in our respective countries. The focus

should rather be on how private individuals and organisations voluntarily contribute to the maintenance of monuments. 'Voluntary' should be understood not just as efforts sparked by genuine idealism, but also as those that are prompted by interests of a commercial kind. In this respect, I am thinking, of course, of sponsorship.

There is very little legislation in Sweden on voluntary work. The predominant organisational form used is that of *non-profit associations* and – often when a lump sum is available – foundations. Companies, be they incorporated, limited, public or private, are used more seldom. The same is true also for partnership.

Non-profit associations

Non-profit associations play a very important role for the protection – and sometimes also for the management – of monuments. There is a popular movement organised in this form, which may be uniquely Scandinavian: the '*Hembygdsrörelsen*'. Native District Movement might serve as a crude English translation of this concept.

This movement is organised in small associations of people from the same parish, or perhaps a group of parishes, but usually a district much smaller than the local government district. The Native District associations are predominantly rural, but may exist also in towns and villages. Their activities are often confined to arranging the odd lecture on local buildings, old customs or other items of local history. In that capacity they serve the important function of deepening knowledge and understanding of cultural history. Their role, however, is not always quiescent. Whenever there is a threat to the existing environment, these associations usually provide the vigilantes. Often allied with local political forces, their opposition may be very effective. Seldom rich in financial resources, the associations do not usually take on the task of actually running monuments, at least not the ones of greater scale. A common occurrence, however, is the local '*Hembygdsgård*': a cottage, a former schoolhouse or a homestead, which has been donated or else saved from dereliction, and is now being kept by voluntary efforts. These small establishments may house collections of various kinds: rural gear and equipment, tools and machinery from a defunct craft or industry and other "leftovers" from the world of yesterday. In southern and central Sweden, where the runic stones are plentiful, you might often find that the local association has 'adopted' one or several such stones to care for them, clear vegetation around them, and – under antiquarian supervision – clean moss and debris from the stone surface.

For vigilante purposes, especially, non-profit associations are often quickly established, and they may also vanish almost as rapidly. The ad hoc character of these associations is in no way hampered by statutory regulation. There is no legislation in Sweden with regard to non-profit associations, nor is there an official register of them. In civil law, however, they are accepted as legal persons, responsible for their own assets and debts, and excluding boards and members from the same responsibility, provided they meet the following conditions. An association must have a *written constitution* adopted by the *members*. It must be represented by a *board*, appointed under provisions of the constitution.

Foundations

The other predominant form of organising private and voluntary contributions to the upkeep of cultural monuments is

the foundation. Until recently, the concept of a foundation was not defined by statutory regulation. Since 1929 there had been legislation providing for a degree of public monitoring of foundations, but founders could waive the applicability of this act, and the fundamental concepts were not developed in it.

A number of very different juridical constructions have evolved. Foundations have been used for holding fortunes invested in industry. State and local governments have often run common projects – especially in the cultural sphere – under the guise of foundations, but quite dependent financially and often personally on their public body masters. Of old, foundations have also served as holders of donations and bequests, often dedicated to the promotion of higher education and research. Today many foundations have also come to perform important duties in the management of cultural monuments. An example is Skansen, the well-known out-of-door museum in Stockholm.

Since there has been very little monitoring of foundations, there is no certain knowledge as to how many exist. A count in 1976 revealed a number of 50000, managing SEK 25 milliard (USD 7 billion). Tax authorities six years ago had some 16000 foundations registered.

As of 1994 Sweden has a Foundations' Act (SFS 1994:1220). This act lays down three fundamental requirements for a foundation, which, if met, makes it a legal person. It must consist of *separated assets*, which have been *endowed permanently* for a *defined purpose*, formulated in writing (deed, will). Assets must suffice to serve the purpose for its duration (at least five years). Assets cannot be on paper only; hence a mere promissory note issued by the founder is not acceptable.

There are foundations which are partly excepted from the fundamental requirements. For one thing foundations accepted in older law may continue as legal persons, provided certain minimum standards are met. Secondly, the new act allows *fund-raising foundations*, for which the asset requirement is relaxed in the sense that the foundation is valid even before such time as sufficient assets have been accumulated to serve the defined purpose. This latter form of foundation is, of course, of great importance for various rescue operations.

There are two different forms of entrustment of foundations. The trustees could be either natural persons or legal persons. In the former case the trustees are the *board* of the foundation, with powers specified in the Act. In the latter case the legal person entrusted is empowered according to rules governing the respective kind of legal person, for instance rules of the Limited Companies' Act (SFS 1975:1385), regulations for state or municipal bodies etc.

Foundations have to keep audited accounts. The Book-keeping Act (SFS 1976:125) is applicable to foundations of a certain magnitude. Foundations of that size also have to register with the authorities and provide them with an annual financial report. Fund-raising foundations are under the stricter rules regardless of size. The authorities are empowered to intervene in foundations which do not meet standards.

Because of the asset requirements of the Foundations' Act, the kind of foundations which traditionally have been operating as co-ordinators for various state and local government undertakings and which have been financially dependent on

their principals, are not accepted any more. Official state policy is to transform them into companies or non-profit associations. Similar conclusions have been drawn also by local governments. Regional museums, in general organised as foundations, are now – in certain cases – being transformed into limited companies.

Sponsorship

There is not even a good Swedish word for this occurrence which, starting in the world of sports, now provides a major source of income for cultural life in Sweden. The development of sponsorship for cultural purposes has to a degree gone hand in hand with state and local government efforts to cut spending. There is no legislation in place to deal with various (mainly tax related) questions arising in sponsorship relations, although several initiatives have been taken over the years to introduce an element of regulation. Sponsorship questions have been taken care of by the Association for Culture and Industry, a non-profit organisation set up in 1988. This association is open to enterprises, trade organisations and cultural institutions with experience of and an interest in sponsorship within the fields of culture, environmental and nature protection, education and research. There are some 150 members. The association is also a member of CEREC (Comité Européen pour le Rapprochement de l'Économie et de la Culture). Among other services the Association has produced a model contract for sponsorship relations. It regularly issues a news bulletin and other publications.

Inquiries reveal that the total number of cultural sponsorship projects has increased from 113 in 1987 to 283 in 1995. A particularly rapid increase can be noted with regard to projects for cultural monuments: from 15 to 71. No financial figures are available as sponsors do not always contribute actual money but also goods and services.

One of the most important cultural monuments at the receiving end of sponsorship is the 3 kms long 13th century city wall of Visby (on the World Heritage List), managed by the Central Board of National Antiquities. In 1988 concrete producer Cementa Ltd. was made head sponsor of a five year programme of restoration, consisting mainly in replacing harmful modern concrete fillings with mortar produced according to traditional methods. Other sponsors joined in the campaign. One of the ingredients of the campaign was a fund-raising drive among the general public. A yearly event in Visby is the medieval week, with festivities and various cultural events, attracting a considerable number of visitors. The head sponsor was remunerated by having special access to events and a special place in the advertising of the maintenance programme. Souvenirs and publications were also produced to enhance the general public's awareness of both monument and sponsors.

Incentives

The general grant system is open primarily to owners, but also to voluntary organisations, particularly such organisations which are themselves also owners and managers of monuments.

Sweden is noted for a high proportion of the GNP going into public expenditure (a fraction of which goes to grants for cultural monuments). Consequently, taxes are comparatively stern. Very little incentive is provided by tax rules with

regard to owners in general, even though they may have extra expenses for the upkeep of monuments. Non-profit organisations, however, have a more favoured position.

Income tax

Income tax for *natural persons* (including estates of deceased persons) is divided into municipal tax, ranging from 28 – 33 percent, plus state tax, which is levied at 25 percent above a certain level of income from employment or business. Income from interests, dividends and capital gains are taxed only by the state and at a flat rate of 30 percent.

Capital gains are taxed also in as far as they emanate from the sale of movables. Cultural value is not considered. However, sale of movables for personal use, e. g. art, furniture and jewellery, under a certain threshold is exempt.

Costs for repair and maintenance of private houses – be they of cultural value or not – is in general not deductible from taxable income. There is an exception, however, for large houses (area in excess of 400 sqm), built before 1930. Owners may opt for taxation under rules applicable to commercial properties, which allow deduction of all commercially related expenses, including repair and maintenance. A taxable value for the right of use of the dwelling will then be appraised and added to taxable income.

Legal persons (except estates of deceased persons) pay a state tax of 28 percent.

Non-profit associations are exempt from income tax, provided they serve certain broadly defined charitable purposes. Only earnings from real property or business not related to the purpose are taxable. As there is no registration of nonprofit associations or their charitable activities, tax questions will be dealt with according to the circumstances of each case.

Foundations – an organisational form sometimes used for conducting business – are under stricter rules with regard to taxation. There are tax-reliefs in two tiers. Certain foundations – like the Nobel foundation and a number of others – are specified by statute to be excluded from taxation of all income except income of real property. Foundations which have been established to serve certain purposes pay income tax also on other business income. This applies i. e. to foundations with a purpose of serving scientific education and research. Foundations in both tiers of tax-relief are exempt from tax on interests, dividends and capital gains, provided that the foundation in question regularly uses at least 80 percent of said income for the tax-exempt purpose designated in the foundation memorandum. The remaining 20 percent may then be used e.g. for maintaining cultural property. There are some foundations which are able to combine the scientific requirement with such maintenance work.

Sponsorship gives rise to tax considerations for both parties involved. There are, however, no provisions in the tax statutes that apply specifically to sponsorship (initiatives to that effect have been rebutted). The basic issue for the sponsor is to be able to claim deductibility for his costs. He must show a commercial viability in expenses incurred, i.e. that costs are beneficial to his business, even though they may not be as directly gauged as costs for advertising normally are. Advertising is often for a special product or brand, whereas in sponsorship the intention typically is to enhance the image and the goodwill of the sponsor's business or the name of the sponsoring company. Another requirement for

deductibility would be that costs appear reasonable in relation to benefits, real or expected, to the sponsor. If a sponsored party is less successful in producing the results sought by the sponsor, this should not automatically disqualify from deduction of costs. The sponsor's intention of furthering commercial interests should be reasonable seen in a business perspective.

If, however, tax authorities refuse deduction, the motives could be that costs appear to be either an outright gift, or an excessive form of business entertainment. Whether it is a gift or not should be determined with regard to the agreement between the parties. If the sponsored party has agreed to obligations of his own, then it seems hard to judge the sponsor's obligations as a gift or a donation. A sponsorship agreement is a mutual concept, whereas donation is unilateral. The sponsored party in return often offers services such as rights for the sponsor's staff or clients to visit or use premises free of charge, to have special favours or discounts, to take part in festive arrangements etc. The more of this, and less of other services, the more likely that tax authorities will clamp down on deductibility. However, as long as services of this kind can be seen as in line with the sponsor's general marketing, they should be in order from a tax perspective.

Wealth tax

Wealth tax for natural persons is levied at a flat rate of 1.5 percent of wealth exceeding a value of SEK 900000 (= USD 120,000). Apart from commercial real property, assets used in business are not included in taxable wealth. Commercial real property will soon be excluded too.

Wealth consisting of culturally significant property or objects is not excluded *per se*. Personal movables, such as furniture, gold- and silverware, paintings and pictures and jewellery, however, do not constitute taxable wealth (but attempts to that effect have been made, and have grounded mainly because compliance would not be possible to monitor). Most *legal persons* do not pay wealth tax.

Real property tax

Real property tax is levied on owners and holders of long-term rights to real property at different rates subject to type of property. The present rate for dwellings is at 1.7 percent of the value determined in land taxation appraisals. Industrial and commercial properties are taxed at 1 percent, whereas so far proposals to have farm and forestry land taxed have not been implemented.

In land taxation appraisals certain kinds of buildings are tax-exempt, e.g. buildings for cultural or educational purposes, such as museums, theatres, schoolbuildings and buildings for public administration. Many of these may have a cultural value, but there is no general exemption for buildings possessing such value. If extra costs for the maintenance of such buildings can be considered to affect the market value of the property, this may decrease the appraised value, which in turn lowers the amount of property tax (and wealth, inheritance and gift tax).

Inheritance and gift tax

Transfer of property rights through inheritance or gift induces taxation regardless of whether the recipient is a natu-

ral or a legal person. The rules are complicated and taxes are levied at various levels and with different basic allowances, depending on the degree of relationship between the deceased or donor on the one hand and on the other the heir or recipient. Certain beneficiaries, however, are exempt. With regard to inheritance this is the case e.g. for the State and associations and foundations with certain charitable purposes (one of which is scientific education and research). Maintenance of cultural monuments is not among the favoured purposes. With regard to gift tax, however, the exemption is much broader. In addition to recipients who are already exempt from inheritance tax, municipalities and associations and foundations with a main purpose of furthering religious, charitable, social, political, artistic, athletic or comparable cultural or *pro bono* ends have also been exempted. A foundation or an association managing a cultural monument may thus receive donations free of gift tax. It should be noted that this exemption applies only to recipients which are legal persons.

It is possible for the Government to remit inheritance or gift tax in certain instances, e.g. if according to conditions in a will or a deed a collection of historic, scientific or artistic value must be kept together. The same applies also to real property with provisions that it is to be passed on in its entirety to future successors and the levying of tax is deemed to jeopardize interests of a cultural historical nature. This possibility has been used very sparingly. There are, however, still in Sweden a few entailed estates, possessing in their buildings and movables very important cultural values, to which these provisions may be applied.

It could be noted also that the State Inheritance Fund, which is the automatic beneficiary in cases where a deceased leaves neither heirs nor a will, may pass on property of essential significance from a cultural or nature conservation viewpoint to a legal person, which is particularly qualified to care for and maintain that property. The acquisition in these cases is not tax-exempt, but the recipient may, of course, be exempt, or tax remitted by the Government.

Value added tax (VAT)

Value added tax is levied in Sweden under EC rules, thus not very differently from other member states of the European Union. There are three rates: 25, 12 and 6 percent. The lowest rate is used to further certain cultural purposes, but there is no comparison in Sweden to a low or zero rate for services to monuments, used in some other countries.

Archaeological investigations conducted by the Central Board of National Antiquities subject to conditions in a permission to remove archaeological remains are exempt from VAT. The reason is that the service in question should be seen not as an ordinary service but as an exercise of public authority under the Act on Cultural Monuments etc. As entities holding permissions of this kind – often building contractors and similar businesses – have possibilities to deduct input VAT, this provision has arguable effects in lowering costs.

VAT issues are, of course, complex with regard to effects of input and output tax. Museums may or may not deduct input tax on acquisitions depending on what kind of VAT taxable goods and services they themselves produce. Income

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from gift shops, restaurants etc. are subject to VAT, and therefore pertaining VAT-costs should be credited. Exhibitions and the production of objects for exhibitions are still VAT-exempt, if performed or supported by public bodies; hence no credit of VAT either. State museums, however, have an arrangement to nullify VAT effects. Recently, VAT was introduced on entrance fees to concerts and performances of circus, theatre, ballet and opera, which entails deductibility for pertaining VAT-costs. Deduction will be reduced in proportion to subsidies received from public bodies.

Non-profit associations are exempt from VAT with regard to goods and services related to activities exempt from income tax (see above). Athletic associations have introduced a practice in order to redress the lack of deductibility for input VAT. By establishing a daughter company, recipient of income from sponsors, and producing advertising services, it has become possible to claim deduction for VAT-costs pertaining to the advertising. (In a verdict of the Supreme Administrative Court it was, however, established that the company's costs for purchase of sports dresses would be deductible only to the extent advertisements were in actual fact applied to the garments in question!)

Summary

The following should be noted with regard to the present conditions in Sweden for promoting private initiatives in protecting and caring for cultural monuments.

1. Most monuments are privately held. Conditions for encouraging private owners to care for their monuments are therefore very important. There is no tendency to have public bodies acquire monuments. Privatization of property with publicly held monuments has on the other hand now come to a halt.
2. Civil law contains few rules for non-profit associations. A new act on foundations provides basic rules which do not impede the the continued use of foundations for holding or managing cultural property.
3. Sponsorship is here to stay. Its importance is growing. No special rules apply.
4. There is a grant system, which however in Sweden as in most other countries is not sufficiently large.
5. Tax incentives are few, and – with the odd exception – not open to private individuals. With regard to income tax there is, however, favourable treatment of non-profit associations for their charitable activities. In a lesser degree, favourable rules also apply to certain foundations. Inheritance tax is levied approximately on the same subjects as pay income tax. Really favourable rules apply only to donations with regard to subjects that would otherwise have to pay gift tax. Donors may not deduct gifts from taxable income.



Facts and figures as of 1996:

a – Protected areas designated as sites: 3,857; b – Registered buildings and other structures: 46,849.

The legal infrastructure today

1. – The Constitution of 1981, article 63; 2. – The Construction Law of 1985, no: 3194; 3. – The Conservation Law of 1983, no: 2863, and its Amendment of 1987, no: 3386.

The state institutions in charge

1. The Ministry of Culture:
 - Directorate of Monuments and Museums acting via the network of museums since 1881, and regional offices for survey, implementation, supervision and restoration of state-owned buildings.
 - Directorate for the Conservation of Cultural and Natural Heritage acting via the network of autonomous Regional Preservation Councils (17 for Turkey) for the conservation approval of privately owned buildings.
2. The Ministry of State in charge of foundations deals with the monuments belonging to Pious Foundation (VAQF) of Muslim, Christian and Jewish origins, acting via the network of regional offices for survey, implementation and supervision, maintenance of VAQF buildings in Turkey.
3. Different state institutions: Autonomous or dependent users of the state-owned cultural property are responsible for their care, maintenance and restoration (universities, state offices, hospitals, municipalities, high schools, etc.)
4. Local governments, metropolitan and local municipalities are responsible in their area of public service for the monuments and sites owned by the State Treasury and National Properties Office.

The main private organizations of sponsorship

Foundations and associations (NGOs) are established according to the Law of Foundations and the Law of Associations and are granted public benefit status by the decree of the Council of Ministers, based upon the proposal of the Ministry of Interior. They are exempt from income tax and institutional tax and the grants they receive are tax deductible. Public benefit institutes, incorporations and the German GmbH models are not yet legal in Turkey. To be allowed to make “international relations” and to be granted “public benefit status” is very difficult not to say almost impossible for the associations. These difficulties are leading the people to the establishment of foundations if they can afford it. Bas-