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The Role of Whistleblowers at the Swedish Tax Agency
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1 Introduction
This paper discusses the role of whistleblowers within the Swedish tax administration. When discussing the role of whistleblowers in Sweden, it is important to emphasise that Sweden has a long tradition as one of the world’s most transparent public administrations. Hence, this paper starts with a section on the principle of public access to official documents. Thereafter, the history of provisions on whistleblowers is reviewed. This is followed by an analysis of the current statutory framework, whistleblower protection and confidentiality, and the role of the media. The paper ends with our concluding remarks.

2 The principle of the right to public access to official documents
In 1766, as the first country in the world, Sweden introduced its first Freedom of the Press Act (FPA). In this fundamental law, which is one of the four laws that together form the Constitution of Sweden, the principle of the right to public access to official documents, offentlighetsprincipen, was introduced. This principle gives the general public the right to look into all official documents, in order to encourage the free exchange of opinion and availability of comprehensive information.1 Already in 1766, the idea was that the general public should have the right to gain access to official documents and print them.2

A document is understood to mean any written or pictorial matter or recording which may be read, listened to, or otherwise understood only using technical aids.3 A document is official if it is held by a public authority, and if it has been received or drawn up by such an authority.4

The right of access to official documents may be restricted only if restriction is necessary and only with regard to:

1. the security of the realm or its relations with another state or an international organisation;
2. the central fiscal, monetary or currency policy of the Realm;
3. the inspection, control or other supervisory activities of a public authority;
4. the interests of preventing or prosecuting crime;
5. the economic interests of the public institutions;
6. the protection of the personal or economic circumstances of individuals; or
7. the preservation of animal or plant species.5

Any restriction of the right to access to official documents shall be scrupulously specified in a provision of a special act of law, or, if deemed more appropriate in a particular case, in another act of law to which the special act refers.6 Hence, all official documents that are not subject to secrecy by a special law, due to the fact that they are necessary for the protection of the above-mentioned

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1 Chap. 2 Sec. 1 Freedom of the Press Act (1949:105), FPA.
3 Chap. 2 Sec. 3 FPA.
4 Chap. 2 Sec. 3, 6 and 7 FPA.
5 Chap. 2 Sec. 2 FPA.
6 Chap. 2 Sec. 2 FPA.
interests, are accessible to the general public. This is an important control function of the public sector including the tax administration.

The Swedish Tax Agency possesses a huge amount of taxpayers’ data. Tax data concerning the personal and economic circumstances of both individuals and businesses are normally subject to secrecy. This includes all tax returns, and all information in particular cases that the Tax Agency receives before a decision is made. All tax decisions are, however, as a main rule, public and shall be disclosed to anybody who requests them. Not only the decisions as such but also the reasons for the decisions are excluded from confidentiality. The more extensively a decision is justified in relation to the facts of a particular case, the more information about the taxpayer may be disclosed. 7

1 The history of provisions on whistleblowers
In 2010, the first reprisal prohibition regarding officials and other employees in the public sector was introduced in the FPA. A public authority or other public body may not intervene against a person because he or she has in printed matter made use of his or her freedom of the press or assisted therein.8 In practice, this means that a tax officer may pass information on to the press, without risking reprisals from the employer, as long as the information is not subject to secrecy.

The history of specific provisions on whistleblowers in Sweden is even shorter. The first Whistleblowing Act was introduced in 2016, and it entered into force on 1 January 2017. People working in the public sector, such as employees at the Swedish Tax Agency, were already protected against reprisals from the employer when they passed information on to the media. This did not, however, include confidential information.

The reason that the Whistleblowing Act was considered necessary was that there was no explicit right to damages from the employer in the public sector in Swedish law, when a whistleblower was punished by the employer. The legal grounds for damages were based on the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). The right to damages from the employer was hence in practice limited.9

2 Current statutory framework
The Swedish Whistleblowing Act, Visselblåsarlagen (2016:749), SWA, applies to employees who report serious misconduct in an employer’s activities. Serious misconduct constitutes a suspicion of a criminal offence that would lead to a prison sentence, or similar circumstances.10 Similar circumstances are, for example, when a serious public interest is set aside, even in cases where this is not a criminal act.11 Any agreement which is in conflict with the SWA is void.12

There are several ways to report serious misconduct, which are all protected by the law. The employee may inform:

- The employer
- The union

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7 Government Bill, Prop. 2015/16:128 p. 53.
8 Chap. 3 Sec. 4 FPA.
10 Sec. 1 SWA.
12 Sec. 3 SWA.
• The media or an external public authority, but only if the employer in question has not taken the necessary action to deal with the misconduct, or if it is justified for some other reason.  

An employee who commits a crime by whistleblowing is not protected by the law.  

There is no pending legislation or guidelines regarding whistleblowers within the tax administration. The reason for this is that the SWA is new, and therefore so are the procedures at the Swedish Tax Agency.

3 Whistleblower protections

An employer who issues reprisals against an employee who has reported serious misconduct shall pay damages for any violation the reprisals cause. If it is reasonable, however, the liability to pay damages may be set aside or adjusted.  

A reprisal constitutes any interference from the part of the employer which involves unfavourable treatment or adverse consequences for the employee. As soon as the employee has put forward proof that gives reason to assume that the employer has acted in conflict with the SWA, the burden of proof is transferred to the employer.

The Swedish Tax Agency is a public authority. As mentioned above, all official documents in Sweden are accessible to the general public unless they are confidential. Since only tax data concerning individuals and companies is subject to secrecy, there is an obvious risk that whistleblower information is disclosed to anybody who asks for it.

In the preparatory works of the SWA, it is assumed that employers shall have a procedure in place for receiving reports of serious misconduct. The Swedish Tax Agency has introduced such a procedure. According to this procedure, misconduct or behaviour that is in conflict with the general values of the Swedish Tax Agency or the internal guidelines may be reported to a manager or leader or to the alarm function. Senior managers are obliged to report any suspected irregularities. A report to the internal alarm function can be made anonymously. The internal alarm function investigates infringements or violations against laws and regulations or internal guidelines, policies and other control documents. Consequently, the Swedish Tax Agency goes beyond the obligations of the SWA. According to the Swedish Tax Agency, it is important that misconduct is investigated and that necessary measures are taken.

The general values of the Swedish Tax Agency in its capacity as a public authority are:

- **Democracy:** All public power emanates from the people.
- **Objectivity:** All public authorities are obliged to treat everyone equally.
- **Legality:** All public power emanates from the laws.
- **Freedom of opinion:** Authorities may not restrict the freedom of opinion.
- **Respect:** Public power is based on the respect for freedom and human equality.

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13 Sec. 5-7 SWA.
14 Sec. 8 SWA.
15 Sec. 9 SWA.
• Efficiency and service: The Tax Agency shall use the resources provided in the most efficient way.

Senior staff at the Swedish Tax Agency are obliged to report irregularities. Other employees as well as the general public may report irregularities using a web-based form. The Swedish Tax Agency is of the opinion that everything reported in the web-based form constitutes an official document that may be disclosed to anybody. Thus, the Swedish Tax Agency recommends not to write any personal information in the web-based form.20

4 Confidentiality and the role of media
One of the fundamental rights in the FPA is to communicate information and intelligence on any subject whatsoever, for the purpose of publication in print, to an author or other person who may be deemed to be the originator of material contained in such printed matter, the editor or special editorial office, if any, of the printed matter, or an enterprise which professionally provides news or other information to periodical publications.21 This right was codified in the Freedom of Press Act in 1949.22 However, already in the 19th century, when daily newspapers became common in Sweden, both case law and administrative practice which expressed a right to pass on information for the purpose of publication or print started to appear.

When the Freedom of Speech Act (FSA) was introduced in 1991, a corresponding protection for oral media was introduced. Every Swedish citizen is guaranteed the right to communicate information on any subject whatsoever to authors and other originators, as well as to editors, editorial offices, news agencies and enterprises for the production of technical recordings for publication in radio programmes or such recordings. He or she has also the right to procure information on any subject whatsoever for such communication or publication. No restrictions of these rights are permitted other than what follows from the FSA.23 Just like the FPA, the FSA is one of the fundamental laws in Sweden.

A person who passes information on to the media has the right to be anonymous.24 It is also prohibited to seek the source of the information that is disclosed. This is, however, not the case for anyone who breaches secrecy, such as tax secrecy.25 Doing so is also a criminal offence.26

In relation to newspapers, you can always choose to send information without saying your name or providing any other contact information.27 In practice, it is hence easy to also pass on secret information to the press. However, if an editor publishes secret information, the editor is committing a crime.28

As mentioned above, officers and other employees at public authorities have an additional protection when they inform the media under the FPA and FSA. They are protected against reprisals.

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21 Chap. 1 Sec. 1 Para. 3 FPA.
23 Chap. 1 Sec. 2 FSA.
24 Chap. 3 FPA and Chap. 2 FSA.
25 Chap. 3 Sec. 4 FPA and Chap. 2 Sec. 4 FSA.
26 Chap. 7 Sec. 3 FPA and Chap. 5 Sec. 3 FSA.
27 See e.g., the newspaper Dagens nyheter (Daily news), https://dngranskar.dn.se/, downloaded 17 April 2019.
28 Chap. 7 Sec. 5 No. 3 FPA.
from the employer. Breaching the reprisal prohibition is a criminal offence. The sanction is imprisonment up to one year or a fine.

6 Final remarks
The high level of transparency in the Swedish tax administration makes it possible for the general public to gain access to a great deal of information on the activities of the Swedish Tax Agency. Tax information on businesses and individuals is normally subject to secrecy, but since tax decisions are not, it is easy for anybody to check the application of tax laws and equal treatment of different taxpayers. In addition, officers at the Tax Agency are generally not permitted to enter into an agreement regarding the taxation of an individual taxpayer, unless the officer in question is already working on an ongoing tax investigation. This means that the risk of secret favourable treatment of certain taxpayers is low.

The right to public access to official documents is stipulated in the Constitution of Sweden. There is no constitutional court in Sweden, but the ordinary courts monitor constitutional matters. This does not, however, necessarily mean that the Constitution is weak, since it is rarely challenged by the authorities.

Tax officers and other employees at the Swedish Tax Agency are not allowed to leak secret information to the media, but any other information about the activities of the Tax Agency may be passed on to the media anonymously. Informants are protected against anybody seeking the source of the information as well as against reprisals from the employer. Due to the SWA which entered into force in 2017, whistleblowers may be awarded damages if they are penalised by their employers. The SWA has forced Swedish authorities, such as the Swedish Tax Agency, to review their current systems and to create new procedures for whistleblowers.

Even though the legislation on whistleblowers in Sweden is relatively new, there is still room for improvement. There is, for example, still no Swedish organisation which can help and support whistleblowers, and Sweden is not represented in the Whistleblowing International Network.29 This is interesting as Sweden is a country with many NGOs. This probably has to do with the former lack of a legal framework on the subject.