

Bure rejects the tax authority's ruling regarding Bure's investment company status

On 20 December 2000, the tax authority in Gothenburg ruled that Bure should not be regarded as an investment company in the assessment tax for 1999. The tax authority is of the opinion that Bure's share trading is too extensive for the company be regarded as an investment company. According to the tax authority's ruling, Bure will be charged additional income tax of approximately SEK 680M for the 1998 income year. The amount includes tax revenues. "This is an absurd ruling which we resolutely reject," says Roger Holtback, President and CEO of Bure.

In its decision the tax authority notes that Bure has not given any incorrect information in its tax return which means that Bure will not be charged any tax surcharge. Since its establishment in 1992, Bure has openly reported its portfolio management with no remarks from the authority. It is only now, after eight years' operations, that the tax authority chooses not to regard Bure as an investment company.

The tax authority's decision is based on an analysis of Bure's portfolio management operation. It considers that the company's share trading activities have been too extensive for it to be regarded as an investment company. The matter refers to one of the criteria for being an investment company, namely the meaning of the term "to manage exclusively, or practically exclusively, securities". The tax authority focuses on the term "manage" and is of the opinion that Bure does not manage but trade with securities.

Bure's opinion in the point at issue is that Bure exclusively manages securities. In principle, Bure has no assets other than shares which, as everyone knows, are securities. Bure manages its securities in accordance with the market criteria and demands that the shareholders have the right to place. A modern portfolio management operation requires a day-to-day presence and active involvement in the market. That this operation should not be accommodated within the framework of an investment company appears completely absurd to Bure.

Bure resolutely rejects the tax authority's view and notes that investment companies as well as unit trusts must, of course, be able to buy and sell shares in such a way that the company's portfolio management is adapted to the fluctuations in the market. In view of the tax authority's ruling, Bure's President, Roger Holtback, has put forward the following views.

"To begin with I would like to emphasise that Bure has openly reported its portfolio management and thus given complete information in its Tax return. This means that there is no question of any tax surcharge. This alone shows that we have a strong case."

Equality for the law is one of the cornerstones in the application of Swedish law. Other investment companies with similar conditions have already received information in advance which means that they are investment companies for the period in question. Bure should therefore be treated in the same way.

”According to the legislator’s intentions, equal treatment also means that unit trusts and investment companies should be treated in the same way.”

”As an example of the absurdity in the tax authority’s point of view, I would like to call attention to our Framfab transaction. At the beginning of the current year, Bure divested the majority of its shares in Framfab which generated a gain of more than SEK 1,000M. According to the tax authority’s interpretation of the law, the extent of the Framfab transaction would be so large in relation to Bure’s total shareholdings that the investment company status would be endangered. If the executive management in Bure had acted in accordance with the opinion of the tax authority, the Framfab transaction would never have been implemented, with the consequence that the capital gain of SEK 1,100M would not have occurred. Instead, Bure would currently have had an under value of approximately SEK 50M in shares in Framfab. This shows, in my opinion, the total absurdity in the tax authority’s viewpoint.”

“The investment companies must obviously have the opportunity, through acquisition and sale of shares, to adapt to market fluctuations without it affecting the companies’ tax status,” says Roger Holtback.

”To have fixed rules of play relating to tax legislation is a fundamental operational prerequisite for all companies, funds and foundations. It is simply a matter of law and order. Any interpretation of the tax regulations to our disadvantage is not in any reasonable proportion to the financial consequences the sanction brings about.”

“Should the tax authority, contrary to expectation, be proved right it would have devastating consequences not only for the majority of all investment companies but, in all likelihood, for the country’s unit trusts and for the large foundations in Sweden.”

”We will, of course, take this matter to the highest court unless our politicians take action before that. The direct consequence of the Tax authority’s action will obviously be that Swedish venture capital will immediately leave the country unless the Government reacts rapidly through clarification of the legislation,” says Gösta Wiking, Chairman Board of Directors in Bure Equity.

The general importance of the problem is made clear by the fact that the National Tax Board in a news release dated 20 September 2000 stated that all Swedish investment companies would be examined with regard to the issue in question. In addition, the National Tax Board tax director stated in an article in Svensk Skattetidning 8/2000 that the question at issue may also apply to the country’s large foundations.

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