



Summary

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The State wage guarantee

– existence of abuse and agencies' controls

Summary

The State wage guarantee comes into play when the employer has gone bankrupt or when a company is undergoing company reorganisation. The aim is to compensate employees who do not receive their pay. In 2020, the wage guarantee expenditure was more than SEK 3 billion. In the audit, the Swedish National Audit Office (Swedish NAO) has seen indications of relatively widespread abuse of the wage guarantee scheme. The Swedish NAO considers that the agencies have essentially made adequate efforts based on their roles in the system. The shortcomings are mainly due to the Government's failure to properly design and manage the wage guarantee scheme.

Audit findings

New analysis shows clear indications of abuse of the wage guarantee scheme

The Swedish NAO is the first agency to have analysed the extent of abuse in the wage guarantee scheme using register data. The registers that have been cross-linked are the Swedish Tax Agency's register of wages and the county administrative boards' register of wage guarantee payments.

The Swedish NAO estimates that 6-9 per cent of the wage guarantee expenditure in bankruptcy can be linked to suspected abuse, which corresponds to SEK 100-150 million in an average year. Nearly 7 per cent of the wage guarantee recipients

have no registered wage from the employer who has gone bankrupt. However, the indications of abuse in company reorganisations are lower than in bankruptcies.

Many actors are involved in the scheme, which makes it difficult to detect abuse. Seven county administrative boards and the Swedish Enforcement Authority, as well as trustees in bankruptcy and administrators, are the most important actors. But the Tax Agency, the Legal, Financial and Administrative Services Agency and the district courts are also involved. Despite the large number of agencies involved, no one has overall responsibility for monitoring and evaluating the scheme.

Wide scope for choosing trustees in bankruptcy although it is a risk factor for fraud

A person whose company goes bankrupt may propose the trustee in bankruptcy to be appointed by the district court, and in most cases the proposal is approved. It is the trustee in bankruptcy who decides on the wage guarantee. Agencies have previously warned that those intending to misuse the wage guarantee scheme choose trustees who conduct less thorough investigations. In the audit, the Swedish NAO has seen that some trustees in bankruptcy are used more frequently than others in wage guarantee cases which show signs of misuse.

The legislation allows for the authorisation of payments in dubious cases

The wage guarantee must be paid promptly so that employees do not have to wait for their pay. In addition, according to case-law, the employee must not be required to provide comprehensive proof of entitlement to a wage guarantee. The promptness requirement and the low standard of proof may lead to a wage guarantee payment in cases where it is doubtful whether compensation should be paid.

As a result of the secrecy legislation, trustees in bankruptcy have limited access to information, for example from the Swedish Tax Agency concerning employees' wages and from the Swedish Public Employment Service concerning subsidised employment. The lack of information from public agencies means that trustees often need to rely on information provided by the employer and employees on who has been employed and how much they have worked.

Agencies lack tools to carry out effective controls and stop incorrect payments

Bankruptcy Supervision (part of the Swedish Enforcement Authority) has the main supervisory responsibility for the wage guarantee, but they do not have access to any register of wage guarantee payments that can be used to detect

misuse. Confidentiality rules also mean that they do not have access to information from other agencies.

The county administrative boards are responsible for wage guarantee payments, but they do not have a mandate to stop payments if they detect errors in the decisions. Instead, they may contact the trustee in bankruptcy. However, the trustee in bankruptcy has limited possibilities to rectify an incorrect decision to the detriment of the recipient. When compensation has been paid out incorrectly, it is difficult to recover the money, as the system for recovery is very complicated.

Recommendations

The State wage guarantee system needs to be reformed. The indications of misuse, the lack of overall responsibility and the lack of analysis and follow-up in combination make changes necessary. In the course of the audit, the Government has instructed the Swedish Tax Agency to review parts of the system.

The Swedish NAO considers that the need for reform is greater than stated in the terms of reference for the inquiry and therefore makes the following recommendations to the Government:

- Conduct a major review of the state wage guarantee scheme
- Instruct an agency to analyse the wage guarantee scheme
- Consider amendments to the Wage Guarantee Act or the Bankruptcy Act in order to clarify the situations in which wage guarantee claims should be rejected

The Swedish NAO makes the following recommendations to the Swedish National Courts Administration:

- Change the form for the application for own bankruptcy so that the debtor needs to justify any proposal for a trustee in bankruptcy