

Sweden: Economic employer concept proposed to be effective in 2021

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In brief

The government proposed to introduce the term 'economic employer' into Swedish tax legislation in 2017. The goal was to help taxpayers distinguish an employment relationship when applying the Swedish so-called 183-days rule as well as when interpreting the 183-days rule in tax treaties where Sweden is a contracting state. The initial intention was to introduce the economic employer concept into law by January 1, 2019, however this did not occur. Recently, the government announced that it intends to review the proposal again and ensure that the new rules come into force January 1, 2021.

In detail

The 183-days rule

Article 15 in the OECD Model Tax Convention on Income and on Capital (OECD MTC) regulates which contracting state has the right to impose tax on income from employment. As a main principle, employment income is taxable only in the state where the person is a resident, unless the employment is exercised in the other state.

An exception from taxation in the state where the employment is exercised is provided in article 15.2 in the OECD MTC – the 183-days rule. Income from employment is taxable only in the state where the person is a resident if three criteria are met:

- the recipient is present in the other state for a period or

periods not exceeding in the aggregate 183 days in any 12-month period commencing or ending in the fiscal year concerned, and

- the remuneration is paid by, or on behalf of, an employer who is not a resident of the other state, and
- the remuneration is not borne by a permanent establishment that the employer has in the other state.

An article similar to the 183-days rule in the OECD MTC is found in most tax treaties where Sweden is a contracting state. A corresponding rule also is found in Swedish internal tax legislation – Special Income

Tax for Non-residents Act (the 'Act'.)

Who is the employer?

According to the commentary to the OECD MTC, it is a matter of domestic law of the state of source to determine the application of the 183-days rule and therefore the definition of the term *employer*. In the Swedish Act, *employer* is defined as the one who pays compensation for work (i.e., normally the formal employer.) The formal employment relationship thus is the current decisive factor when determining the application of the 183-days rule in the Act and in tax treaties where Sweden is a contracting state.

Assuming the rest of the criteria in the 183-days rule are met, an employee who is formally employed by a foreign employer and receives salary from this foreign employer, should not be taxable in Sweden even if the work is exercised for, and under control of a principal in Sweden. For example, this is the case in so-called 'hiring-out of labour' cases. On the other hand, an employee who receives salary directly from the same principal, exercising the same kind of work in Sweden, should be liable to tax in Sweden.

Swedish authorities regard the consequences of this legislation as distorted competition between workers employed and working in Sweden, as compared to workers employed by a foreign employer working in Sweden.

Proposed legislation

The Swedish Tax Agency (STA) proposed in 2017 that the economic employer concept should be introduced in regard to the 183-days rule in the Act and tax treaties where Sweden is a contracting state.

When determining if the work is performed for an economic employer in Sweden, paragraph 8.14 in the commentary to article 15 in the OECD MTC will most likely be relevant. The following factors should be considered:

- Who has the authority to instruct the individual regarding the

manner in which the work has to be performed?

- Who controls and has responsibility for the place at which the work is performed?
- Is the remuneration of the individual directly charged by the formal employer to the enterprise to which the services are provided?
- Who puts the tools and materials necessary for the work at the individual's disposal?
- Who determines the number and qualifications of the individuals performing the work?
- Who has the right to select the individual who will perform the work and to terminate the contractual agreements entered into with that individual for that purpose?
- Who has the right to impose disciplinary sanctions related to the work of that individual?
- Who determines the holidays and work schedule of that individual?

An introduction of the economic employer concept in the Swedish tax legislation should result in the non-application of the 183 days rule when there is an economic employer in Sweden. As a result, more income

from 'employment' likely will be taxable in Sweden.

The takeaway

Next steps

The Swedish government will review the original proposal from 2017, but no further information has been provided. However, we understand from the Swedish government's press release that the intention is that the concept of economic employer should be effective January 1, 2021 and that exceptions will be available for some intra-group situations.

The STA's 2017 proposal noted that it should be the foreign company (which pays the salary) that should be liable for reporting and payment of the Swedish tax and not the Swedish company. Since the new proposal is not yet finalized we do not know if this suggestion will remain in the new proposal.

Preparing for the change

Since the government announced that the intention is to introduce the economic employer concept into Swedish tax legislation by 2021, tax authorities and companies have time to make preparations. A larger administrative burden is to be expected for companies sending employees to Sweden, as well as for employees. PwC can assist your company with identifying appropriate measures.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact your PwC Global Mobility Services engagement team or one of the following professionals from PwC Sweden:

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