Sweden: New economic employer concept implemented from 1 January 2021

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In brief

The Swedish government has implemented the concept of 'economic employer' into Swedish tax law.

Previously, Sweden applied a more formal employer concept. The new concept will particularly be applied when interpreting the so-called '183-days rule' in tax treaties where Sweden is a contracting state.

New rules will come into force on 1 January 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 of 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:

1. 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
2. The remuneration is paid by, or on behalf of, an employer that is not a resident of the other state; and
3. The remuneration is not borne by a permanent establishment that the employer has in the other state.

A similar article to the 183-days rule in the OECD MTC is found in most tax treaties where Sweden is a contracting party. A corresponding rule is also found in Swedish internal tax legislation – Special Income Tax for Non-residents Act (the 'SINK Act').

Who is the employer?

The commentary to the OECD MTC indicates that it is a matter of domestic law (in the country where the income arises) to define and determine the application of the 183-days rule. In the Swedish SINK Act, an employer is defined as anyone who pays compensation for work, normally the formal employer. This formal concept has been the decisive factor when determining how to apply the 183-days rule in the SINK Act and in tax treaties.

When applying the formal concept an employee who is paid by a foreign employer will not be taxed in Sweden even if the work is performed for, and under control of, a principal in Sweden (and assuming that the other criterias in the 183-days rule are met). For example, this has been the case in so-called ‘hiring-out of labour’ cases. Therefore, employees carrying out the same kind of work under the same conditions have been taxed differently depending on from which entity the salary has been paid.

New legislation

The new legislation introduces the economic employer concept both in domestic law, the SINK Act and in tax treaties where Sweden is a contracting state. The new rules will, for example, be applied in situations where an employee is hired out to a Swedish company (or a foreign company with a permanent establishment). In this context to “hire” an employee means that the employee is made available to perform work in Sweden for a Swedish company (or foreign company with a permanent establishment in Sweden) and that the employee is under the control and management of the Swedish company.

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 appears relevant.

PwC’s observations *– The introduction of the new concept will most likely have the effect that the use of the 183-days rule, preventing employment income from being taxed in Sweden, will decrease. As a result, Sweden's tax base will be larger as more income from employment will be taxed in Sweden.*

Are there any exemptions from taxation?

The new legislation includes a few exemptions from taxation in Sweden. Swedish tax will not be levied if an employee has less than 15 consecutive workdays and no more than 45 workdays in total in Sweden during a calendar year. This applies for all companies and not only for intra-group situations.

Payments of Swedish taxes

It will be the responsibility of the foreign employer to withhold, report, and pay the Swedish tax on the salary that will be taxable in Sweden. In many countries, this is more typical with a shadow payroll requirement for the host company, but this will not be the case in Sweden.

The new legislation also includes rules indicating that a Swedish company will have to withhold tax on invoices from foreign companies if the invoice or part of the invoice relates to services/work performed in Sweden and the foreign company does not provide an F-tax card. The F-tax card must be provided regardless if the foreign company is subject to Swedish tax or not.

Next steps

The new legislation will be effective from 1 January 2021. We are awaiting some practical guidelines from the Swedish Tax Agency.

The takeaway

Now is the time for companies to prepare. A larger administrative burden is expected both for companies that send employees to Sweden and for employees who work temporarily in Sweden. Companies will have to monitor foreign individuals performing work in Sweden in order to keep track of when tax liabilities arise and when the exception rule can be applied for the employees.

Within intra-groups, it is common to hire out employees between the group companies and important to create routines for reporting wages and taxes in Sweden. One question to consider is whether the Swedish group company or a third party should be registered as a payroll representative with the Swedish Tax Agency and assist with the reporting in Sweden.

From a strategic perspective, it may be advisable to review the management of international business travellers and analyse whether procedures are in place. Since focus on business travellers is increasing not only in Sweden but in many other countries, employers may wish to update management procedures.

Any foreign company which has employees working in Sweden and are sending invoices to a Swedish company should apply for a Swedish F-tax card to avoid tax withholding.

Let's talk

For a deeper discussion of how this impacts your business, please contact your Global Mobility Services engagement team or one of the following professionals:

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