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Global Employer Services

GES NewsFlash

Sweden – Net Salary Contracts More Expensive After Court Ruling

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In this issue:

Summary

The Swedish Supreme Administrative Court passed a ruling on 23 February 2010 determining the method for net to gross calculations, which leads to higher tax and social security costs for companies using net remuneration packages than by applying the previously used methods. There is, therefore, a need to review the remuneration packages for assignees going to Sweden and in some cases also assignments from Sweden.

New ruling from Swedish Supreme Administrative Court

According to the ruling, deductions should not be regarded when making a net to gross calculation, which results in a higher taxable gross salary and accordingly a higher amount of tax. The taxable gross salary (including benefits and allowances) is also the basis for social security charges.

There have been ongoing discussions over the past few years on which method to use when calculating the gross salary that corresponds to a net salary when an employee is on a net salary contract. Deloitte and the other "Big four" firms' view on this have not been in agreement with the method presented by the Swedish Tax Agency.

Since 2006, the Swedish Tax Agency has stated that a net salary should be calculated to a reportable gross salary by using the Tax Agency's monthly withholding tax tables. This also applies if there is no withholding liability. The monthly withholding tables typically apply a slightly higher tax rate than an individual's final tax rate, in order to ensure that sufficient tax is withheld during the year. Further, the tables assume that a person will receive the same income every month for the full year. Basic deductions, such as the personal allowance are taken into account in the tables (the personal allowance for 2010 varies between SEK 12,500 and SEK 32,700 depending on the income level). However, other personal deductions, such as deductions for increased cost of living due to temporary work are not to be considered at the time of tax withholding (unless a request for tax adjustment has been filed and approved in this regard).

Deloitte, and the other firms, have argued for a method according to which the gross remuneration is determined by using the final tax, taking all standard and personal deductions into account. This method is consistent with the taxation of individuals with gross remuneration, as their net salary after the final tax assessment is the gross remuneration less the final tax due. Consequently, by using the method based on the final tax, there are no discrepancies in the treatments of gross and net salaries. If the method laid down by the Swedish Tax Agency is used, the final tax liability is not reflected and the calculation of the gross salary is standardized. The result is that the gross remuneration less the final tax does not equal the net salary the individual is entitled to according to the employment or assignment contract. Further, the individual is generally taxed on a higher gross salary using the Tax Agency's method. The difference in the tax payable is in particular significant if the Swedish Tax Agency's method is used for individuals working in Sweden for part of the year and for individuals who are entitled to personal deductions, as for example deductions for mandatory employee social security charges paid in another EU-country and deductions for increased cost of living due to temporary work.

In the relevant court case, where the individual was represented by Deloitte, it was claimed that the individual's taxable gross salary should be the net remuneration grossed up with his final tax, after deductions of his personal allowance and social security charges he had paid in his home country. The Swedish Tax Agency argued that the monthly withholding tax tables should be used in order to determine the gross remuneration. Accordingly, the Swedish Tax Agency had calculated and taxed a higher gross value than the individual had reported.

In the court case discussed here, the individual's net salary was approximately SEK 560 000 (undisputed). After taking the mentioned deductions into account the individual claimed that his gross salary should be calculated to approximately SEK 975 000 whereas the Swedish Tax Agency argued that the gross salary should be almost SEK 1 085 000, i.e. the Tax Agency increased the individual's gross salary by SEK 110 000 resulting in an additional tax of approximately 12 percent given that the top marginal tax rate in Sweden is around 56 percent.

The Supreme Administrative Court rejected the individual's claim, and hence in principle followed the view of the Swedish Tax Agency. According to the court the gross salary is to be determined without taking the personal allowance and the deduction for social security charges into account. It is noteworthy that the Supreme Administrative Court did not explicitly confirm that the gross up method claimed by the Swedish Tax Agency should be used. Instead the court merely rejected the individual's claim stating that the gross salary calculated by the Tax Agency was at least not too high.

This means that the court did not verify the method used by the Swedish Tax Agency since the personal allowance is taken into account in the withholding tax tables the Tax Agency use for gross up calculations. Therefore, there is still uncertainty around which method should be used for calculating the taxable gross salary and it is possible that the position taken by the Supreme Administrative Court will lead to even higher costs for tax and social security than according to the view represented by the Swedish Tax Agency. The actual increase in the cost will be different from employee to employee depending on the personal situation such as deductions why the above presented figures in this court case are for illustration purposes.

Deloitte's View

Even though the new ruling from the Swedish Supreme Administrative Court has shed some light on the method to be used for net to gross calculations, the court did neither approve the Swedish Tax Agency's method nor the one used by Deloitte and other firms. Therefore there is now a need for interpreting the ruling in order to establish a new method.

Given that the court determined that deductions are not to be included in the net to gross calculations, the ruling can result in significantly higher costs for employers using net remuneration packages.

A review of previously reported gross remuneration, tax and social security for international assignees may be required, in order to minimize the risk for additional costs relating to these years as the Swedish Tax Agency may perform tax audits of past periods.

For current and future assignments, employers should investigate the possibilities of alternative remuneration packages. It is at the same time recommended that present assignment policies are reviewed in light of the court ruling in order to avoid the potential risk of increased costs related to higher Swedish tax and social security charges.

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Back to Top

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