



GES NewsFlash

Sweden – Benefit From Tax Exemption While Exercising Employment and Residing in Different Foreign Countries

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Summary

On January 28, 2011, the Swedish Taxation Board published an advance ruling on how days spent outside of the working country by a Swedish tax resident working abroad should affect the applicability of the Swedish tax exemption rules on foreign-earned employment income.

This advance ruling may allow greater possibilities for individuals to reside in one country and work in another country and still be able to benefit from Swedish rules on tax exemption. The ruling may also limit the applicability of the Tax Agency's standpoint from October 25, 2010, on which we reported in our NewsFlash from November 9, 2010.

The Swedish tax exemption rule (the one-year rule)

A Swedish resident assigned abroad for at least one year is exempt from Swedish tax on employment income, provided that the whole year is spent at the same employer in the same foreign country. Under the one-year provision, there is no requirement that the foreign-earned income has been subject to tax in the country of assignment. However, a condition for the one-year provision is that income must be tax exempt in the working country as a consequence of that state's domestic legislation, or by means of a treaty (not a tax treaty) with that state, or by a special decision of an authority in the state, or as a consequence of no existing tax provisions in the state.

Shorter time periods spent outside the country where the employment is exercised will not break a qualifying period of absence from Sweden. However, the breaks in Sweden must not exceed 72 days during each one-year period starting from the first day of the assignment.

The Swedish Tax Agency's view on how the one-year rule should be interpreted has been expressed through two (nonbinding) statements during 2010. In the first statement from June 30, 2010, the Tax Agency stated that the one-year rule applies only if the Swedish resident assigned abroad resides in the same foreign country as the employment is exercised. In the second statement from October 25, 2010 (commented in our NewsFlash from November 9, 2010), the Tax Agency stated that the total number of days outside of the working country cannot exceed 96 days in total during one employment year in order to not constitute a break of the stay and thus disqualifying the individual from tax exemption according to the one-year rule.

New advance ruling from the Swedish Taxation Board

The Swedish Taxation Board has on January 28, 2011, published an advance ruling where an individual is working in Saudi Arabia but commutes from Bahrain on a daily basis due to security reasons. Since the individual spends in practice every night in the apartment in Bahrain, the Swedish Taxation Board considers that he resides in Bahrain in the meaning of the one-year rule. Furthermore, the Board states that it is not evident from the one-year rule that the individual needs to reside in the country of employment and that the one-year rule, therefore, should be applicable and that the income from the Saudi Arabian employment should be exempted from Swedish taxation.

The advance ruling goes directly against the Tax Agency's view that the individual needs to reside in the same foreign country as the employment is exercised. Even though the Swedish Taxation Board does not comment on what constitutes a break of the stay abroad, it is fair to assume that the Tax Agency's statement from October 25, 2010, is affected by the advance ruling since the individual in fact spends more than 96 days outside of the working country.

Deloitte's view

The advance ruling published by the Swedish Taxation Board is favorable to the taxpayer since it increases the possibilities for Swedish residents assigned abroad to residing and exercising employment in different foreign countries and still benefit from the tax exemption according to the one-year rule.

Additionally, the advance ruling may question the statement published by the Swedish Tax Agency on October 25, 2010, determining the maximum number of days that could be spent outside the employment country in order for the tax exemption rules to apply (please refer to Newsflash from November 9, 2010 for further information).

As this is a binding advance ruling from the Swedish Taxation Board that goes against the Swedish Tax Agency's view, it is likely to be appealed to the Supreme Administrative Court.

People to contact

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