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## GES NewsFlash

# Sweden – New Swedish Case Law Regarding Certain Allowances and Per Diems Paid to Nontax Residents Taxed Under SINK

February 22, 2011

### Summary

No payroll taxes or Social Security contributions shall be withheld/paid on certain allowances and per diems to employees who are considered nontax residents in Sweden, to the extent that they correspond with the tax-free amounts set by the Swedish Tax Agency.

### Background

The Swedish Tax Agency has claimed that Swedish employers were obliged to withhold tax and pay Social Security contributions on mileage allowances and per diems paid to employees who are taxed according to the Special Income Tax Act for nonresidents (SINK). However, for employees who are considered tax residents in Sweden, there were no such obligations to withhold tax and pay Social Security contributions to the extent that the allowances/per diems correspond with the tax-free amounts.

### Prohibits free movement with the EU

The Supreme Administrative Court has, in two recent decisions, stated that different treatment of tax residents and nontax residents in Sweden constitutes an infringement of the principle of free movement of workers within the European Union (EU).

The Supreme Administrative Court concludes that there are no reasons that can justify these barriers that prevent the free movement within the EU, and therefore, the employers are not obligated to withhold tax or pay payroll taxes on mileage allowances and per diems to employees who are taxed according to SINK in Sweden, to the extent that the allowances/per diems correspond to the tax-free amounts.

**Deloitte's View**

No payroll taxes or social security contributions shall be withheld/paid on mileage allowances and per diems paid to employees who are taxed according to SINK in Sweden, to the extent that the allowances/per diems correspond with the tax-free amounts set annually by the Swedish Tax Agency.

*In the case that employers have withheld taxes and paid payroll taxes on mileage allowances and per diems paid to a nontax resident of Sweden for the income year 2005 and onward, reconsideration should be filed with the Swedish Tax Agency.*

**People to contact**

If you have any questions concerning the issues in this GES NewsFlash, please contact one of the tax professionals as follows:

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