



GES NewsFlash

Sweden — Interpretation of Article 15 of the Nordic tax treaty

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Summary

A new ruling from the Supreme Administrative Court (SAC) confirms that Article 15.1 of the Nordic tax treaty is to be interpreted in line with the OECD model convention when looking at “where the employment is exercised,” i.e., it is the physical presence of the individual that is decisive rather than where the employment is located.

The case

The case refers to a person who was resident in Sweden according to Article 4 of the Nordic tax treaty and who had received income from an employer in Finland. The work for the Finnish employer had been carried out in Finland and on business trips in other countries. The individual claimed that all work performed for the Finnish employer, including the work in other countries, should be exempt in Sweden according to Articles 15 and 22 of the Nordic tax treaty.

The SAC, however, ruled in favor of the Swedish Tax Agency, which argued that Sweden, as the residency state, had the right to tax the part of the Finnish income which did not relate to time that the individual had physically spent working in Finland, i.e., work performed in Sweden and other countries. Only the income that the individual had in fact earned while physically present in Finland was exempted from tax in Sweden.

The SAC based its ruling by making reference to the commentaries of the OECD model convention, on which the Nordic tax treaty is based. The commentaries state that physical presence is required for work to be deemed to be exercised in the working state.

Deloitte's view

The ruling of the SAC is by no means radical. However, as there have been different views in Sweden on the interpretation of Article 15 with regards to where the work should be deemed to be exercised, there is now a precedent confirming that OECD commentaries to the model convention are to be followed.

The ruling underpins the importance of keeping track of an individual's whereabouts, as this information is of great importance when determining how the individual's employment income should be reported for tax purposes. Further, individuals who are residents of Sweden (for Nordic tax treaty purposes) and who work in other Nordic states should be aware of the fact that income that they earn during physical presence outside of the working country will be taxed in Sweden.

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