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GES NewsFlash

Sweden – Ruling by the Supreme Administrative Court; Benefit From Tax Exemption While Exercising Employment and Residing in Different Foreign Countries

May 31, 2011

Summary

On May 24, 2011, the Supreme Administrative Court confirmed the advance ruling published by the Swedish Taxation Board on January 28, 2011, 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.

The ruling of the Supreme Administrative Court allow greater possibilities for individuals to reside in a country other than the working 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 in the same employment 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 the 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.

New ruling by the Supreme Administrative Court

The Supreme Administrative Court has on May 24, 2011, confirmed the advance ruling published by the Swedish Taxation Board on January 28, 2011, on which we reported in our NewsFlash from February 11, 2011.

The ruling of the Supreme Administrative Court goes directly against the Swedish Tax Agency's view that an individual needs to reside in the same foreign country as the employment is exercised. Even though the Supreme Administrative Court 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, 2011, that an individual is not to spend more than 96 days outside of the working country, is affected by the ruling since the individual in this case in fact spends more than 96 days outside of the working country.

Deloitte's view

The ruling of the Supreme Administrative Court is precedential and confirms that Swedish tax residents assigned abroad are able to reside and exercise employment in different foreign countries and still benefit from the tax exemption according to the one-year rule.

Additionally, the ruling of the Supreme Administrative Court gives a strong indication that 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) could be questioned.

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