EMPLOYMENT & IMMIGRATION - SWEDEN

New rules on posting of workers in Sweden

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Introduction

The Posting of Workers Act (1999:678) was introduced in Sweden to meet the requirements of implementing the EU Posting of Workers Directive (96/71/EC). Recently, changes have been made to the Posting of Workers Act due to amendments in EU law, some of which are presented in this article. Due to the recent changes, foreign employers may need to follow Swedish employment conditions for posted employees to a greater extent than before.

Further, on 4 November 2020 Parliament approved a proposal to introduce a so-called 'economic employer' concept in Sweden. The new legislation will enter into force on 1 January 2021. In short, the new legislation will result in Swedish tax liability for many short-term workers and business travellers employed abroad, who have not previously been subject to tax in Sweden. Consequently, many foreign employers will also need to register with the Swedish Tax Agency (STA) in order to comply with Swedish tax reporting standards on a monthly basis.

Employment conditions for workers posted to Sweden

The Posting of Workers Act highlights certain special rights that are given to posted workers by Swedish employment law and that foreign employers must adhere to when posting workers to Sweden, including the right to:

- annual leave; and
- the same working environment and working time limits as would apply in a solely domestic relationship.

These rights directly cover every posted worker, without any trade union or other party demanding it. Trade unions can take measures aiming to ensure that employers apply rules granting posted workers certain minimum rights as set out in a central collective agreement.

Long-lasting posting of workers puts workers in another position – in such cases, posted workers must be treated as if there is a solely domestic relationship between the worker and employer.

There is no minimum wage under Swedish law. This may instead be agreed on between the trade unions and employer associations through collective agreements. The Posting of Workers Act allows Swedish trade unions to take industrial action against foreign employers in order to ensure, for example, the same minimum wage for foreign employees posted in Sweden as follows from central Swedish collective bargaining agreements. In practice, this means that Swedish trade unions can demand the same level of salary from foreign employers for posted employees, as in a strictly domestic employment relationship.

Industrial actions are allowed by law if they are taken in order to ensure that posted workers are given the minimum rights assigned to them by the Posting of Workers Act (as above). Industrial actions with this purpose are allowed even if the foreign company is bound by a collective agreement in another country. If the foreign company would turn out bound to two collective agreements, both in the company's country of origin but later also by a Swedish collective agreement, Swedish law states that the Swedish collective agreement will prevail if any inconsistencies arise between the agreements or their contents are incompatible.

Altogether, Swedish law contains a developed system in order to prevent foreign employees from performing work in Sweden on less advantageous terms than would have been applied for domestic workers. This also

applies even if the terms that are given to the worker were advantageous in comparison with what the worker would have benefited from in the foreign country.

The legislature has now also published extended requirements from a tax legal point of view.

New tax requirements for foreign employers

As the number of internationally mobile employees continues to increase, it is even more important for employers to review available tax treaty exemptions – and their obligations for meeting them – when structuring and adopting international assignments and contracts. Such review is often also dependent on how different countries apply the tax treaties in light of domestic law.

At present, Sweden applies the so-called 'formal employer' concept, which means that the assessment of who is considered the employer – from a tax perspective – is based on who is actually paying the employee's salary. According to Swedish tax law, employment income attributable to work performed in Sweden for a Swedish company is exempt from Swedish tax under the so-called '183-day rule'. The condition for this exemption is that the employee is still employed by the employer in their jurisdiction of dispatch and that this employer actually pays the salary. Consequently, the 183-day rule usually results in tax exemptions for foreign individuals for up to six months.

On the other hand, the economic employer concept means that the beneficiary of the employee's labour is to be considered the employer, which has led to changes in the 183-day rule. According to the new legislation, the 183-day rule will no longer apply if the employee's activities are considered as hiring of labour to a Swedish company. The definition of 'hiring of labour' for non-resident employers includes the fact that:

- the non-resident employer directly or indirectly makes an individual available to perform labour;
- the client's business is located in Sweden; and
- the labour is performed as an integrated part of the client's activities and under the client's control and management.

Thus, the new legislation will result in taxation from day one for foreign employees working temporarily in Sweden.

The new legislation on the hiring of labour in the 183-day rule will not apply if the work in Sweden does not exceed 15 consecutive days and is for a maximum of 45 days per calendar year. Further, if the 45-day limit is exceeded, the exceeding days only should be subject to determine whether the work carried out in Sweden can be seen as the hiring of labour.

Reporting standards and obligations

The new legislation will lead to foreign employers being obliged to comply with the Swedish rules on reporting standards. According to the new legislation, foreign employers without a permanent establishment in Sweden will now need to withhold preliminary tax for their employees (to the extent that the work has been carried out in Sweden). Consequently, foreign employers that pay salaries must register with the STA to fulfil their reporting obligations.

Comment

The recent changes to Swedish law as presented above mean further and more extensive requirements for foreign employers to comply with when making employees available for work in Sweden. Thus, foreign employers:

- must be aware of and act in accordance with Swedish tax legislation as presented above;
- must ensure that their employees at least receive some of the minimum employment conditions according to Swedish standards (in applicable cases); and
- could be subject to legally supported industrial action from Swedish trade unions.

Employers that send employees to carry out work in Sweden should analyse what legal requirements they may need to follow beforehand.

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