Sweden:
Proposal for new legislation concerning social security agreements

Summary

The Swedish government proposes changes in the legislation that governs social security agreements entered into between foreign employers and employees covered by Swedish social security. The highlights of the proposal are as follows:

- The employee is obliged to register with the Swedish Tax Agency as a receiver having entered into a social security agreement.
- The employee is required to report and pay employer contributions to the Swedish Tax Agency on a monthly basis.
- The employer’s underlying liability remains to report and pay employer contributions while the reporting and payment obligations are transferred to the employee.
- The basis for social security charges in Sweden is extended to include all chargeable income, not solely taxable income as according to current legislation.

The legislation is proposed to be effective as of January 1, 2013. The changes proposed will result in a greater administrative burden for the employee in Sweden. Further, it is proposed that the new legislation shall also be applicable on existing social security agreements, i.e., including those entered into before January 1, 2013, and will therefore affect all valid social security agreements should the proposal go into effect.

Current legislation

According to Swedish internal legislation, monthly employer contributions shall be paid and reported on taxable income in Sweden for employees who are covered by Swedish social security. According to the main rule, the employer who pays the compensation to the employee shall pay the contributions. In addition, foreign employers without a permanent establishment in Sweden are required to pay and report employer contributions in Sweden. Foreign employers without a permanent establishment in Sweden, liable of employer contributions in Sweden, can register in Sweden to fulfill monthly payment and reporting obligations. Alternatively, the foreign employer can enter into a social security agreement with the employee covered by Swedish social security, who shall assume the responsibility of payments and reporting. In such cases, the employee pays social security contributions as self-employed at a rate of 28.97% (2013). The contributions are then normally paid and reported on an annual basis on the employee’s Swedish tax return and the employer can compensate the employee for the contributions paid. The option of entering a social security agreement is also regulated by Community law in the EU/EEA, which states that employer contributions shall be paid, i.e., in difference to Swedish internal legislation, which states that contributions shall be paid as self-employed.

The contribution basis is the taxable income in Sweden, i.e., the basis for the contribution consists of the employee’s annual taxable income. Since the contribution basis is taxable income, situations may arise where the income is exempt from tax in Sweden according to, e.g., the applicable tax treaty. As a result, an employee can be covered by Swedish social security and entitled to social insurance benefits in Sweden without paying employer contributions in Sweden.

Proposed legislation

The Swedish government has now proposed changes of the legislation that govern social security agreements. In order for the Swedish internal legislation to comply with EU regulations, it is proposed that when entering a social security agreement, employees be required to pay employer contributions instead of contributions as self-employed. Further, it is proposed that the contribution basis shall consist of all chargeable income and not only income taxable in Sweden. Compensation that the employee receives to cover employer contributions shall not be included in the contribution basis.

The proposal entails the following practical consequences:

- The employee is obliged to register with the Swedish Tax Agency as a receiver having entered into a social security agreement.
- The employee is required to report the salary and benefits on a payroll tax return, which shall be filed on a monthly basis.
- The employee shall pay monthly employer contributions to the Swedish Tax Agency.
• For employers without a permanent establishment in Sweden, the employer contribution amounts to 21.54% (2013).
• The reporting and payment obligations are transferred to the employee by the employer’s underlying liability remains.
• Employer contributions can be claimed from the employer should the employee not fulfill the obligations.

As mentioned above, employees that have entered into a social security agreement shall register with the Swedish Tax Agency. Such notification must be received by the Swedish Tax Agency no later than two weeks from the date the social security agreement was entered. Should the social security agreement instead be entered before the proposed legislation goes into effect, the employee must register with the Swedish Tax Agency no later than 1 February 2013, i.e., the proposed legislation shall also apply in regards to any existing social security agreement. The proposal states that the legislation shall go into effect on January 1, 2013.

**Deloitte’s view**

According to current legislation, the contribution basis is taxable income and situations may arise when social charges are not paid, although the employee is covered by the Swedish social security system. In such situations, the proposed legislation would result in a significantly higher cost for employers, since the basis will be chargeable income, i.e., they will be liable for paying social security charges in Sweden, although the income is not taxable in Sweden.

Provided that the proposed legislation goes into effect, the employer contribution of 21.54% will be lower than the previously applied self-employed rate of 28.97%. The administrative burden of monthly reporting and payments to the Swedish Tax Agency for the employee should be considered before entering a social security agreement. The administrative burden inflicted on the employee will correspond with registration of foreign employers without permanent establishment in Sweden, whereas the previous administrative advantages with social security agreements, compared to registration, are no longer available.

It is Deloitte’s view that the proposed legislation most likely will go into effect as of January 1, 2013, since the government bill proposal was issued as of October 16, 2012.

— Olle Kinnman (Stockholm)
  Partner
  Deloitte Sweden
  +46 (75) 246 3230
  okinnman@deloitte.se

Ellen Winberg (Stockholm)
  Senior Manager
  Deloitte Sweden
  +46 (75) 246 3221
  ewinberg@deloitte.se

Evelina Kerr (Stockholm)
  Consultant
  Deloitte Sweden
  +46 (75) 246 2370
  ekerr@deloitte.se
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