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### Sweden:

## Permanent establishment update: During which circumstances can an employee's work at home result in a permanent establishment for a foreign enterprise?

### Overview

The Swedish Tax Agency has published a statement, which clarifies their view on when an employee's work from his or her home in Sweden can constitute a permanent establishment (hereinafter, "PE") for a foreign enterprise.

### Introduction

Foreign enterprises are considered to have a permanent establishment in Sweden if they carry on business wholly or partly from a fixed place of business in Sweden. A business is considered to be "fixed" if it has a certain degree of permanence.

A foreign enterprise may have a PE in Sweden even when there is no fixed place in Sweden that the business operations are carried on from. This may be the case when the business operations in Sweden are carried out through a dependent agent.

### Clarification from the Swedish Tax Agency

**Can an employee's home constitute a PE in Sweden?:** In the statement from the Swedish Tax Agency, they clarify their view that a foreign company can be considered to have a PE in Sweden if one of their employees performs work from his/her home in Sweden. The Swedish

Tax Agency underlines that an assessment must be made based on the facts of each individual case. The circumstances to consider are (nonexhaustive list):

- The actual circumstances in each case, i.e., not only what has been agreed upon in contracts.
- If the employee has an office/workplace in another country where he/she can perform work.
- If it has been agreed that the employee should perform work from home, or if there is an implied agreement that the employee should perform work at home.
- The amount of work performed from the employee's home.
- The permanency of the work performed from the employee's home.
- The type of work that is performed from the employee's home.

When an employee performs work at home in a very limited scale, this does not normally constitute a PE. If the work becomes ongoing for several days per week, for a longer period of time, a PE might be deemed to exist if the other conditions of a PE are met. However, if a foreign enterprise rents an office place or a room long term, in an employee's home, a PE might be at hand even if the employee does not work there every day.

### **Conclusions:**

- The fact that an employee is working from his/her home in Sweden for a foreign enterprise should not automatically imply that a PE in Sweden would be deemed to exist.
- If the employee normally works at the foreign enterprise's office in another country, but only occasionally works from home (i.e., one day a week or less), a PE should not arise in Sweden.
- If the employee works from home more than sporadically and there is an explicit or implicit condition that his/her work is to be performed in the employee's home, a PE might arise. However, in such case, it should be further determined whether the work performed by the employee in his home should be considered part of the core business of the foreign enterprise or if it should be considered to have a preparatory or auxiliary nature to that business.

### **Deloitte's view**

The Swedish definition of a PE, as included in the Swedish Income Tax Act, mainly conforms with the PE definition found in the OECD Model Tax Convention on Income and Capital, although some deviations exist. (e.g., the so-called PE exemptions are not included in the domestic definition of a PE.)

The statement issued by the Swedish Tax Agency is a clarification of their view on when work performed from a home in Sweden by an employee of a foreign enterprise can constitute a permanent establishment in Sweden. Each case should be assessed separately, why we recommend foreign enterprises (which currently do not have a PE in Sweden) to look into the implications of having an employee working from their home in Sweden, since this might create a PE risk for the foreign enterprise in Sweden.

The main consequence of a PE in Sweden is that the foreign entity would be subject to (corporate) income tax in Sweden in relation to profits, which should be allocated to the PE based on the arm's-length principle. It also has an impact on the employer reporting liabilities and may lead to increased employer social security charges.

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## **Global Rewards Updates: Belgium: Foreign asset reporting obligations**

### **Overview**

Belgian resident taxpayers have long been required to report foreign income and assets held overseas, including foreign shares acquired under employee share plans, to the Belgian authorities. Until recently, taxpayers were only required to indicate in their annual tax return that they held any type of foreign assets and there was very little scrutiny from the Belgian authorities.

However, on 13 April 2015, a Royal Decree was published detailing new requirements in relation to the reporting of foreign assets by individuals.

This latest development in Belgium reflects the increasing focus on foreign asset reporting globally. Belgium is not an isolated case and we are seeing more countries focus their attention on defining stricter and clearer foreign asset reporting requirements.

### **Changes in Belgium**

The new reporting obligation applies to all Belgian resident taxpayers with foreign income or assets, including any foreign shares acquired under an employee share plan and any savings held in foreign accounts.

The Belgian tax authorities will shortly start to issue letters of invitation to taxpayers who have previously indicated the existence of foreign assets on their Belgian income tax return. These letters will ask taxpayers to provide information to the Central Contact Point (CCP) of the National Bank of Belgium (NBB). Once such letter is received, the taxpayer will have two months to complete the reporting requirement.

For future tax years, individuals will be required to comply with the requirements on their own initiative.

These returns can be filed either electronically or on paper. More information can be found on the National Bank of Belgium website ([here](#)).

## Foreign asset reporting globally

As with Belgium, many other countries have introduced measures to obtain information on foreign assets held by individuals, and are enforcing stricter penalties on undisclosed foreign assets.

While certain countries require individuals to declare any foreign assets held on their annual tax returns (e.g. Italy and India), others have introduced separate reporting forms (e.g. Argentina, Brazil, Canada and the US) and some even require reporting of foreign assets both on the annual tax returns and on separate forms (e.g. Japan). Knowing what forms are due in each country and what assets need reporting is not always very straightforward.

This is an important space for employers to monitor as employees may not always be aware of their reporting responsibilities in relation to shares acquired under employee share plans or share plan related savings accounts. This is particularly the case for internationally mobile employees who may have foreign asset reporting requirements in more than one location.

## Action

As there was previously a reporting requirement in Belgium in respect of foreign assets (reporting was previously required on the tax return), employees may not be immediately aware that the reporting process has changed, that the reporting requirements are more onerous and that non-compliance could lead to penalties. Employers should ensure that employees are aware of the changes and that they take prompt action either in response to the letter of invitation or upon filing their 2014 Belgian annual tax return.

Additionally, employers may receive an increasing number of queries from employees once they have received the letters of invitation from the Belgian authorities. Employers may want to anticipate these situations and prepare employee communications in this respect.

Employers should also ensure their employees are aware of global foreign income and asset reporting requirements to avoid their employees running the risk of incurring penalties for failing to report shares acquired under an employee share plan.

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**Have a question?**

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