



Global Rewards Update

Sweden – Changes to the taxation of share awards and stock options for EU citizens

Background

The Swedish Supreme Administrative Court (“the Court”) recently considered whether share awards and stock options should continue to be taxable in full for EU citizens resident in Sweden at the tax point (i.e. vesting for share awards or exercise for stock options), despite the benefits being earned partly or fully during a period when the individual was considered non-resident in Sweden.

The Court’s ruling

As mentioned, share awards and stock options have historically been taxable in full in Sweden if the individual was resident in Sweden at the time of vesting/exercise. In the event of double taxation, individuals could claim a foreign tax credit deduction in order to reduce their liabilities.

In its ruling, the Court established that Sweden has the right to tax the full benefit under Swedish law. However, the Court recognised that taxation in full of share awards which vested or stock options which were exercised at a time when an EU citizen is working and residing in Sweden, but earned partly or fully outside Sweden at a time when the taxpayer was non-resident, is contrary to EU legislation on the freedom of movement of workers (which prohibits discrimination on the grounds of nationality).

The Court held that the fact that an individual could claim a foreign tax credit does not ensure that the discrimination is eliminated as the credit would reduce the taxation in Sweden but would not completely eliminate it. This ruling applies regardless of where the EU citizen earned the income, i.e. in or outside of the EU borders.

The ruling only covers EU citizens; it does not cover how similar situations concerning non-EU citizens should be treated.

Deloitte's view

Deloitte agrees with the Court's assessment and welcomes the ruling.

The ruling should be seen as a clarification of existing legislation and may therefore be applied retroactively. If income tax or social security contributions have been imposed on a benefit earned abroad, there is a possibility to claim for reassessment by the end of the sixth year following the tax year in which the benefit was received, at the latest. Any claims for reassessment for share awards or stock options taxed in 2009 must therefore be made before 31 December 2015. Please note that it is sufficient for individuals to only make a formal request for reassessment before this deadline; the Swedish Tax Agency allows a short grace period for the individual to clarify the grounds and amounts involved.

It is unlikely that the Swedish Tax Agency will initiate reassessments on its own initiative; therefore it is important that employers and employees consider whether taxes have been charged contrary to this new ruling.

Going forward, employers should ensure that their payrolls are prepared to process share benefits on an apportioned basis according to workdays in Sweden over the grant to vest period, for EU citizens.

Contacts

For assistance with these issues, or any other issue related to the operation of your global equity plans, please contact your usual Deloitte adviser or email us at globalshareplans@deloitte.co.uk, and an adviser will contact you.

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