

# Human Resource Services\*

## News from the Nordic countries



Issue 2, March 2009

### Introduction

We are pleased to introduce you to the second Nordic Newsletter of 2009, which includes updates from the Nordic countries in respect of immigration, tax and social security. In the current market, we see that companies may choose not to initiate a long term assignment including high costs for an employee and his family. However, in order to still be able to meet the business needs, employees may start commuting cross-border or foreign employees may be hired in to fill a specific role on a project. To assess the tax consequences of this type of cross border employment, it is important to know how the different countries look at this situation. We provide you with more information in this issue's theme: article 15 of the Double Tax Treaty.

Erland Nørstebø – Partner HRS Norway

### News

#### Sweden

According to the Swedish tax system, employers withhold preliminary taxes on employment income and pay social security contributions to the Tax Agency on a monthly basis. During February to December 2009, the Tax Agency has the possibility to grant an extension for the payment of preliminary taxes and social security contributions up to one year. The extension can be granted for two monthly payments. Employers need to file an application in order to be granted the extension. When the extension is granted, a fee will be levied on the amount in addition to the ordinary interest expense.

#### Norway

##### Pension reform

From 2011, a new pension reform will be implemented in Norway. The reform aims at meeting the expected increase in pension expenses due to a much higher old-age dependency ratio, together with more generous pension benefits.

A pension guarantee scheme is introduced applicable to all employees. Annual pension will be calculated as 1.35% of the annual income from employment (a ceiling applies). An early retirement scheme will be introduced, applicable to all employees from the age of 62 years. Taking early retirement will result in considerably lower pension payments than if the employee decides to stay in employment until the standard pension age (67 years). According to present information, only employees born in or after 1963 will have their pensions fully calculated according to the new legislation. The new legislation is yet to be confirmed.









##### Health reimbursement

As from 1 January 2009, the Labour and Welfare Service (NAV) is no longer responsible for administering the health reimbursement system in Norway. The administration of reimbursements will be carried out by HELFO (helseøkonomiforvaltningen) subject to the Health Directorate. During 2009, HELFO will establish a new website: [www.helfo.no](http://www.helfo.no).

### CLIENT EVENTS

April and May 2009	Seminar "HR Mobility Effectiveness Reviews"	Gothenburg, Stockholm
	Seminar "International Employers - Rules on Tax, Social Security and Migration Matters"	Malmö
	Please visit Sweden's website <a href="http://www.pwc.com/se">www.pwc.com/se</a> to find out more about the seminars.	
6-8 May 2009	Conference "Managing People through the downturn" (please visit Infostore for more information)	Lisbon, Portugal

### Contact persons

<b>Denmark:</b>	Mona Lorentsen	 + 45 3945 3398	 <a href="mailto:mona.lorentsen@dk.pwc.com">mona.lorentsen@dk.pwc.com</a>
<b>Finland:</b>	Risto Löf	 + 358 9 2280 1811	 <a href="mailto:risto.lof@fi.pwc.com">risto.lof@fi.pwc.com</a>
<b>Norway:</b>	Erland Nørstebø	 + 47 95 26 06 69	 <a href="mailto:erland.norstebo@no.pwc.com">erland.norstebo@no.pwc.com</a>
<b>Sweden:</b>	Anders Assarson	 + 46 31 793 14 23	 <a href="mailto:anders.assarson@se.pwc.com">anders.assarson@se.pwc.com</a>

The information contained in this publication should not be relied on as professional advice and should not be regarded as a substitute for advice in individual cases. No responsibility for any loss occasioned to any person acting or refraining from action as a result of material in this publication is accepted by the author or the publisher.

© 2009 PricewaterhouseCoopers. All rights reserved. PricewaterhouseCoopers refers to the network of member firms of PricewaterhouseCoopers International Limited, each of which is a separate and independent legal entity. \*connectedthinking is a trademark of PricewaterhouseCoopers LLP.

# Theme: Interpretation of article 15 DTT

## The “183 days rule”

Many countries have concluded bilateral "Double Tax Treaties" (DTT), aiming to avoid double taxation and providing rules on which country has the right to tax income in different situations. The standard article applicable to employees working cross-border is **article 15 – Income from employment** (may be different per DTT).

Based on the standard text of the OECD Model Tax Treaty, employment income is taxable in the country where the employment activities are (physically) carried out, unless all of the following three conditions are fulfilled (in practice known as “the 183 days rule”).

1. the employee is present in the country of work for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned, and
2. the remuneration is paid by, or on behalf of, an **employer** who is not a resident of the country of work, and
3. the remuneration is not borne by a permanent establishment which the employer has in the country of work.

Depending on their internal legislation, countries have different ways to interpret this second condition of the 183 days rule. Considering the importance of this article for cross-border mobility, in this issue we provide you with an overview of how the various Nordic countries interpret this article.

### Norway

For the purpose of interpreting article 15 of the DTT, Norway has adopted the concept of "economic employer". This means that the term "employer" should not be interpreted in a formal way, i.e. not as the company holding the employment contract and paying the salary. To determine who qualifies as the employer in a cross border employment situation, the Norwegian authorities look at the criteria set out in the official commentaries on Article 15 (2) of the OECD Model Tax Convention, i.e.:

- which company has rights on the work produced
- which company bears the relative responsibility and risks
- which company has the authority to instruct the employee,
- which entity puts essential tools and materials at the employee's disposal
- in whose premises the work is performed

In some of the DTTs that Norway has entered into more recently, e.g. the DTTs with the Nordic countries and the UK, Article 15 clearly states that the tax exemption in Article 15 (2) does not apply in case of hiring out of labour. In practice, this means that foreign employees hired out by their foreign employers to perform activities in Norway, even on short term, are likely to trigger a Norwegian tax obligation.

### Denmark

Denmark recognises the OECD model article 15 interpretation of the term employer. The term employer thus is understood as the “economic employer”, i.e. the person having rights on the work produced and bearing the relative responsibility and risks. Substance prevails over form, and it is no condition that a written employment contract is in place. In case the individual is tax liable in Denmark according to Danish regulations and performs work for the benefit of a Danish company, the Danish tax authorities will apply article 15.

The concept of hiring-out of labour is further used in Denmark. A flat rate tax of 30% applies if the case falls under the hiring-out of labour regulations.

### Sweden

The Swedish Tax Agency has so far followed the wording of the article, i.e. the more formal approach, and considered the company that pays out the salary as the employer. This means that a person working in Sweden for a foreign employer can avoid Swedish tax on employment income if the salary is paid out by an employer not resident in Sweden, the presence in Sweden is limited to 183-days during a twelve month period and the salary costs are borne by the foreign employer.

It is our experience that the Swedish Tax Agency has focused on the formal employment and the actual payment of salary. The Tax Agency's position can be changed in the future as several countries disregard the formal employment and consider the company for which the work is performed as the employer in the sense of the tax treaty. Also, comments to the OECD Model Tax Convention imply that substance over form should be the general principle when the term “employer” is interpreted.

### Finland

The concept of the “economic employer” is open to interpretations in Finland and is of current interest of tax inspectors. The term economic employer does not yet however exist and there are no clear provisions in the Finnish tax legislation. The National Board of Taxes has not given instructions or guidance on the issue and this theme has not been handled in the prevailing tax practise or in the legal literature either.

In the absence of explicit regulation, we can ascertain that Finland has not adopted the term economic employer into practise. Therefore, even if a foreign company pays salaries to an employee working in Finland and later cross-charges the salary costs to the Finnish company, the Finnish employer is not treated as economic employer. The Finnish company would therefore not have employer's liabilities, nor would the salaries derived from working in Finland be immediately taxable in Finland.

