

GMS Flash Alert

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Sweden - Court Finds German Company Had PE from Recurring Short-Term Activities

A Swedish Administrative Court of Appeal has issued a decision in a case regarding permanent establishment involving a German company that was considered to have a fixed place of business in Sweden because a part of the company's core business was being carried out in Sweden.¹ The Court determined the company had created a permanent establishment ("PE").

WHY THIS MATTERS

While the income tax payable in Sweden in this case was very limited in relation to the company's size, the resultant tax liability which occurred because it was deemed to have a PE created an unexpected cost for the company, not to mention a reputational risk due to its non-compliance – however unpremeditated – with Sweden's tax rules regarding PE.

Furthermore, being deemed to have a PE and being liable for tax in Sweden also brings administrative burdens such as registration and filing requirements both for the company and its employees.

Background

The case concerns a German company that develops and sells software for tire inflation pressure systems. The company annually performs tests in winter conditions in the north of Sweden and brings all of the equipment (e.g., cars, etc.) from Germany. The test results are then used for software development in Germany. The testing period is around three to four months but the company is only on site for a few weeks at a time.

How Court Ruled

The findings of the Court were that the company regularly conducts business from the same place in Sweden. The Court also stated that the tests in Sweden cannot be considered to be of a preparatory or auxiliary nature, therefore the company had established a fixed place of business in Sweden through which a part of the company's core business was carried out.

KPMG NOTE

To foster proper tax compliance, we recommend that foreign companies with recurring activities in Sweden work with their qualified tax professionals to analyze whether these activities might give rise to a PE in Sweden.

FOOTNOTE:

1 Administrative Court of Appeal in Gothenburg (Kammarrätten i Göteborg) case number 2276-15.

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Contact us

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