

GMS Flash Alert

2017-121 | July 26, 2017



Sweden - High Court Says Fees to Directors Taxable as Employment Income

The high court in Sweden has handed down a decision which provides that certain fees paid to company directors are taxable as income from employment, rather than business income.¹

WHY THIS MATTERS

This decision by the high court (*Högsta förvaltningsdomstolen*) will affect both issuers and receivers of directors' fees, whether domestic or based overseas, provided they are taxable under Swedish law. They should review their current arrangements and, where any fees are invoiced from the director's own company, consider whether these are in line with the high court's (hereinafter "SAC") decision.

Background

In a decision that went against the Swedish Tax Authority's ("STA") current public guidance (issued in 2008), on 21 December 2016, the Council for Advance Tax Rulings (*Skatterättsnämnden*), in a 4-3 split decision, upheld the earlier more restrictive precedent from 1993 as applicable in determining whether a company director's fees may be invoiced from a private limited company.

In order for the invoicing of a company director's activities to be considered appropriate from a tax perspective, the Council for Advance Tax Rulings concluded that the invoiced activity must be limited in time and pertain to a particular assignment, as was the case in the SAC decision RÅ 1993 ref.55.

The STA appealed this decision.

How the High Court Ruled

The SAC has confirmed the Council's ruling.

The SAC judgment reaffirmed the application of prior case law. In this regard, it was concluded that the assessment criteria applicable to the invoicing of directors' fees is not affected by the extended definition of business activities under the revised Income Tax Act of 2009.

This means that unless the invoices are related to temporary and specially defined assignments, the fee should be taxed as income from employment.

KPMG NOTE

Many companies were following the then-current STA public guidance in order to determine the basis on which fees for a director's activities may correctly be invoiced by a private limited company. In light of the decision from the Council for Advance Tax Rulings, some confusion and lack of clarity prevailed about the correctness of the STA guidance and it seemed unclear under what circumstances a director's fee may correctly be invoiced by and taxed within that director's own private limited company.

The SAC decision has set the matter straight and payors and directors receiving fees (and their tax service providers) should act accordingly in light of the SAC's ruling.

Concerned parties with questions regarding the handling of directors' fees and the potential impact of this decision, should consult with their qualified tax professionals.

FOOTNOTE:

1 For the decision of the Supreme Administrative Court No. 278-17 of 20 June 2017 (Mål nr 278-17, meddelad i Stockholm den 20 juni 2017) (in Swedish), see:
<http://www.hogstaforvaltningsdomstolen.se/Domstolar/regeringsratten/Avg%C3%B6randen/2017/Juni/278-17.pdf> .

Read this new article published in KPMG's *The Expatriate Administrator*.

"Budgeting for an Assignment? Look out for Those 'Goodbye' Taxes"

Departure taxes, sometimes known as "exit" taxes, are too frequently an "after-thought" for employees taking an international assignment, and for the global mobility managers who oversee their assignments. Failure to properly prepare an employee on international assignment for his tax obligations and potential liabilities when he leaves the host country, can expose that employee, and very likely his company, to a higher-than-expected tax bill.

To learn more, click [here](#).

Contact us

For additional information or assistance, please contact your local GMS professional or the following professional with the KPMG International member firm in Sweden:



Petter Frödeberg

Tel. + 46 707 562 431

Petter.frodeberg@kpmg.se

The information contained in this newsletter was submitted by the KPMG International member firm in Sweden.

© 2017 KPMG AB, a Swedish limited liability company and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

www.kpmg.com

kpmg.com/socialmedia



The KPMG name and logo are registered trademarks or trademarks of KPMG International.

The KPMG logo and name are trademarks of KPMG International. KPMG International is a Swiss cooperative that serves as a coordinating entity for a network of independent member firms. KPMG International provides no audit or other client services. Such services are provided solely by member firms in their respective geographic areas. KPMG International and its member firms are legally distinct and separate entities. They are not and nothing contained herein shall be construed to place these entities in the relationship of parents, subsidiaries, agents, partners, or joint venturers. No member firm has any authority (actual, apparent, implied or otherwise) to obligate or bind KPMG International or any member firm in any manner whatsoever. The information contained in herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

Flash Alert is a GMS publication of KPMG LLP's Washington National Tax practice. To view this publication or recent prior issues online, please click [here](#). To learn more about our GMS practice, please visit us on the Internet: click [here](#) or go to <http://www.kpmg.com>.

© 2017 KPMG LLP, a Delaware limited liability partnership and the U.S. member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved. Printed in the U.S.A. NDPPS 530159