

# GMS Flash Alert

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## 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.<sup>1</sup>

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### 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.

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### 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.

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### 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.

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### 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

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