

WORKING ACROSS THE NORDIC COUNTRIES

Proposal to simplify Nordic tax rules with
a focus on increased mobility

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INTRODUCTION



Background

The Nordic countries want the Nordic Region to be the most sustainable and integrated region in the world by 2030. A natural part of this ambitious vision is an integrated Nordic labour market for companies and citizens. The Nordic Tax Treaty and its administration play a crucial role in this respect.

However, the COVID-19 pandemic showed that there are obvious challenges with the application of the Nordic Tax Treaty as well as other bilateral agreements and national legislation. During the pandemic, employees working across a Nordic border risked incurring tax problems if they followed the recommendations to work from home. The challenges were highlighted by the Freedom of Movement Council, which urged the Nordic governments on several occasions to introduce exemptions for those who involuntarily worked from home during the pandemic^[1].

While the pandemic is over, the desire for hybrid or remote work is here to stay. According to a survey by KPMG, nearly 90% of 530 companies have implemented, or are considering implementing, a policy that allows remote working^[2]. The opportunity is a request from existing employees and a prerequisite for competing for the global – and in this case Nordic – talent pool.

However, the problems that companies and employees experience are not limited to taxation of salary payments in conjunction with remote work. For example, studies show that uncertainty, higher taxation and extra administration can arise in connection with contributions to and payment of pensions, as well as in cases where the same employer has to register and deal with tax rules, taxation dates and payroll administration in multiple countries.

If the Nordic Region is to develop into a growth region with an integrated labour market with mobility for citizens and businesses, it is essential to have increased focus on citizens and companies, so that legislation and administration support their opportunities. This is also highlighted in one of the 11 recommendations presented by former minister Jan-Erik Enestam in his strategic analysis of Nordic crisis preparedness – commissioned by the Ministers for Nordic Co-operation in 2021^[3].

The Nordic countries currently have several agreements that regulate cross-border and remote work. What these have in common is that they are based on the need of the

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1. See news on norden.org: <https://www.norden.org/sv/news/granshinderradet-bevilja-undantag-fran-skatteregler-granspendlare>
 2. Current trends in remote working - Work from Anywhere, KPMG, 2022: <https://home.kpmg/xx/en/home/insights/2022/03/insights-on-current-trends-in-remote-working.html>
 3. Strategisk analyse - Nordisk civil krisberedskap (Strategic Analysis – Nordic Civil Crisis Preparedness), Jan-Erik Enestam. Nov 2021. See recommendation #9 <https://pub.norden.org/nord2021-063/>

countries to secure the basis for taxation. From this perspective, the collective agreements function well, but in practice it is clear that they do not promote the Nordic Region as an integrated labour market. Mobility in the Nordic Region is threatened if we do not adjust existing agreements on taxation when living in one Nordic country and working in another. However, there has been a lack of a common and verified knowledge base to discuss and act politically on tax issues.

Therefore, in 2022, the Nordic Council of Ministers and the Freedom of Movement Council – in co-operation with the Nordic Council – have launched a project to identify the key issues and recommend possible solutions. The purpose of this report is thus to provide the best possible basis for further political work to eliminate the current Nordic tax problems related to hybrid and remote work.

Initially, KPMG and Resonans Nordic analysed the area and made recommendations for solutions to the key issues identified in the analysis, primarily based on desktop analysis and the existing knowledge and expertise of KPMG's experts.

Subsequently, the project group's draft report was presented at dialogue meetings and consultations in all the Nordic countries. The purpose was to verify issues and proposed solutions, at the very least by employer and employee associations.

We can confirm that the report is widely supported by employers' associations and trade unions across the Nordic Region. The description of the problems is accurate, and it is believed that the proposed solutions will lead to improvements. It was important for us that the report would bring certainty to the final decision makers for change that the solutions are widely in demand among trade unions and employers' associations in the Nordic Region.

Following the dialogue and consultation process (December 2022 - April 2023), the project team has revised its draft report to include input from dialogue meetings and consultations in the appendix of the final report. The report is therefore a verified basis for further political discussion on updating the Nordic Tax Treaty, with a focus on issues related to hybrid and remote work in the Nordic Region.

In this report, we have worked with a cut-off date for updates in relation to ongoing changes to tax legislation in the Nordic countries. The cut-off date is 1 December 2022, as we started our dialogue meetings in December and therefore "locked" the content so that all meetings and consultations could take place in connection with the same report.

Method and process

Desktop analysis

With a focus on identifying key issues that constitute barriers to mobility in the Nordic labour market, KPMG and Resonans Nordic have selected the most important analyses and surveys in the field and conducted a comprehensive desktop analysis thereof:

- Compilation of border obstacles related to the Nordic Double Taxation Agreement, NMRS, 18 August 2016
- Business over Borders (BoB) - Tax, which was developed by the tax authorities in the Øresund Region, 2012^[4]
- Analysis of barriers for small and medium-sized enterprises in the Nordic Region, conducted by KPMG in 2015 on behalf of the Nordic Council of Ministers
- Perceived consequences of the Nordic tax agreement, Øresundsinstituttet, 30 November 2018^[5]
- Strategic Review - Nordic Civil Emergency Preparedness, Jan-Erik Enestam, November 2021^[6]

The desktop analysis was conducted with a focus on identifying the key areas where barriers to mobility currently exist. In describing the individual areas, KPMG and Resonans Nordic have used the aforementioned reports and included additional literature as needed. All literature is listed in the notes section of the report.

Draft report

The issues and recommendations are formulated by KPMG Acor Tax partner Fredrik Lundgren, who has worked with the Nordic Tax Treaty for 20 years and can draw on the knowledge and experience of KPMG's national tax experts in all the Nordic countries. The draft has been used in the dialogue and consultation process below.

4. <https://keep.eu/projects/4792/Oresund-Business-Over-Border-EN/>

5. <https://www.oresundsinstituttet.org/ny-analys-nordiska-skatteregler-lagger-stort-ansvar-pa-enskilda-granspendlare-och-riskerar-att-begransa-den-nordiska-arbetsmarknaden/>

6. Strategisk analyse - Nordisk civil krisberedskap (Strategic Analysis – Nordic Civil Crisis Preparedness), Jan-Erik Enestam. Nov 2021. See recommendation #9 <https://pub.norden.org/nord2021-063/>

Dialogue and consultation process

The draft report has been discussed at four dialogue meetings in Norway, Finland, Sweden and Denmark and has been subject to written consultation in Iceland, Åland and Greenland (it has not been possible to carry out consultations in the Faroe Islands). The focus has been to confirm that the issues raised in this report are valid and that the solutions proposed will ease the administrative burden and create more tax transparency when citizens or companies engage in hybrid or remote work in the Nordic Region.

The national members of the Freedom of Movement Council have decided who should be invited to the national meetings or consultation processes in their respective countries. The only requirement from the project group has been that trade unions and employers' organisations have been broadly represented. You can find more information in the appendix about the national dialogue meetings and consultations.

Final report

After dialogue meetings and consultations, the report has been adjusted based on the constructive input from meeting participants and the consultations.

Organisation

The report is authored by Fredrik Lundgren, KPMG, and Jakob Rasborg and Emil Kragh-Schwarz, Resonans Nordic.

The report has been verified by the following national KPMG specialists:

- Partner Fredrik Lundgren (Denmark)
- Director Johan Rova (Sweden)
- Director Håkon Rakkenes (Norway)
- Partner Paula Holmström (Finland)

The above project group has had a reference group, which has consisted of:

- Nordic Council of Ministers, Secretariat of the Freedom of Movement Council: Senior Advisor Sandra Forsén
- Nordic Council of Ministers, Secretariat of the Freedom of Movement Council: Senior Advisor Petri Suopanki
- Nordic Council of Ministers, Labour Market Sector: Senior Advisor Jens Oldgard and Senior Advisor Andreas Bojsen
- Nordic Council of Ministers, Financial Sector: Senior Advisor Michael Sterner
- Nordic Council, Committee for Growth and Development in the Nordic Region/Freedom of Movement Group: Senior Advisor Claes Håkansson

Limitations and points of attention

1. The focus of this report is solely on tax issues related to hybrid and remote working and other legislation that we have identified as barriers to mobility. We do not deal with related issues, such as health and safety regulations for home offices or issues regarding social benefits, capital gains tax, etc.
2. In connection with the dialogue and consultation process, several parties have requested specific calculations of how the distribution of tax would be before and after the solutions are implemented. KPMG estimates that, with a fair equalisation scheme between countries, there would be a minor redistribution. In particular, the assessment is that the scale of the redistribution will be small compared to the gains for employers and employees across the Nordic Region.
3. Some, including ministries, have requested the participation of national tax administrations and ministries. They could verify the solutions and point out any issues when implementing the solutions. However, the aim has been to set the ambitions for the solutions as high as possible in order to maximise the Nordic benefit in the discussion that the ministers will subsequently have. In our view, the implementation horizon only emerges later in the process, when the ministers have discussed the options and can consult with relevant departments.

Reading guide

The analysis identified four key areas where the current tax treaty and bilateral agreements and their administration have proven to hamper integration and mobility in the Nordic labour market:

- Permanent establishment when working from home
- Employer registration requirements in multiple countries
- Taxation of salary income from work in another Nordic country
- Taxation of pensions etc. when working in another Nordic country

The analysis can be found on the following pages. The analysis chapter begins with a section on the main conclusions and general recommendations of the analysis. This is done to create an overview and visualise the connection between different problem areas and solutions.

After the introductory section, each problem area is analysed. Here we dive deeper into the substance and elaborate on the various challenges and solutions. For each problem area, it describes how and to what extent the current rules in that area impede mobility today. A solution is then recommended. For each solution, the potential benefits for citizens/companies and the impact of the solution on countries (in terms of tax revenue and administrative impact) are described. In our recommendations, we have focused on ensuring the greatest possible mobility in the Nordic labour market. Ultimately, whether the benefits outweigh the possible consequences for the countries is a political assessment.

The tax system is complex. The report endeavours to make the introduction to the analysis – including main conclusions and general recommendations – as simple and understandable as possible. The descriptions of the individual problem areas may require technical descriptions that can be difficult to understand without prior knowledge of technical side of taxation.

ANALYSIS



Analysis

The analysis has shown that the barriers to mobility and integration in the Nordic labour market exist in a wide range of forms for both citizens and companies. Basically, the problems arise in four general problem areas:

- Permanent establishment when working from home
- Employer registration requirements in multiple countries
- Taxation of salary income from work in another Nordic country
- Taxation of pensions etc. when working in another Nordic country

To sum up, the analysis shows that the current tax treaty and other tax legislation pose a number of different challenges to labour mobility. Complex legislation, with many crisscrossing national and bilateral special rules, poses difficulties for companies and citizens and puts certain groups at a tax disadvantage.

All in all, the above means that Nordic residents are reluctant to take a job in another Nordic country, while companies are reluctant to hire employees who live in another Nordic country. In other words, the conditions for creating an integrated labour market with maximum mobility are poor.

Citizens may face challenges in relation to taxation of salary, pension and social security payments, depending on the individual's situation. At best, these are just administrative burdens. In the worst-case scenario, the tax burden is (often unpredictably) higher than if you had lived and worked in the same Nordic country.

Companies primarily experience the challenges associated with multi-country tax liability requirements and/or registering and managing payroll in multiple countries for a single employee. This can have major administrative and financial consequences for individual companies, making it less attractive to employ a citizen from another Nordic country and/or less attractive to allow hybrid and remote work. The challenges faced by companies also have consequences for the mobility and opportunities of citizens.

The following presents the report's main conclusions and general recommendations. Next, we detail the four key problem areas and our recommendations.

Key findings

The tax area is complex, and the different issues contain important nuances, which are described under the key issues later in the report. Basically, however, the existing barriers can be summarised in two main conclusions:

Uncertainty about consequences for citizens and businesses

When working in another Nordic country, it can be hard to determine your registration and reporting obligations, where to pay tax and what your final tax will be.

Inter alia, relief for double taxation varies depending on the type of income. See explanation of the different relief methods at the end of this section.

The legislation is complex, with many special rules that make it difficult to navigate and lead to inappropriate tax treatment of certain groups.

Unnecessary administration for employers

Companies risk major administrative burdens if employees from another Nordic country work at home. This is despite the fact that registration is not crucial for the countries to receive a share of the tax revenue, as this is done via the citizen's tax return and the Nordic Tax Withholding Agreement.

For the employee, this can mean that an excessive portion of their salary is withheld for tax during the course of the year. This is reimbursed with the tax return, but delays can pose a liquidity challenge during the year, and changes in exchange rates can create significant uncertainty.

Relief methods

In cases where a citizen becomes taxable in both the employer country and the country of residence, the country of residence can tax the citizen's entire global income. However, the country of residence must compensate for the tax already paid in connection with salary payments in the country of employment via a so-called tax relief.

Depending on the individual's situation, the relief method used by the country of residence varies. Some are granted relief according to the so-called exemption method, whereby no tax is payable in the country of residence on income taxed in the country of work. Others receive relief according to the so-called credit method, where the country of residence taxes the entire income, but grants a reduction by the lesser of the following two amounts: 1) The tax paid in the country of work or 2) the tax calculated in the country of residence on the income in the country of work.

For the individual, the credit method has negative financial consequences if the country of residence has a higher tax rate than the country of employment. In other words, some citizens are taxed more heavily than others, negatively impacting the mobility of these groups.

General recommendations

As described, the above conclusions contain a number of important nuances within the key problem areas. The sections on the key problem areas below therefore provide recommendations for solutions for the specific problem areas. The consequences of the individual recommendations for the Nordic countries are also assessed, for example in the form of changes in tax revenue. Overall, however, the recommendations can be summarised with two general recommendations:

Simplifying the rules

The simplification will make it possible to determine where income is taxed and what the total tax will be for citizens. It should also ensure that no group is treated unfairly with respect to taxation, compared to others working and/or living in the same country.

- It is recommended that all income is generally taxed in the employer's country. Even if part of the work is done from a home office, for example. This will reduce uncertainty and protect the employee from tax issues if they suddenly have to work from home more often, as was the case during the COVID-19 pandemic.
- The responsibility for tax equalisation should be shifted from the individual to being handled between countries under a revised Nordic Tax Withholding Agreement^[7] based on where the work is done.

Remove unnecessary administration

Companies should only deal with the rules in one country, i.e. their own country. A simplification of the rules is recommended, so that tax only needs to be reported and withheld in the employer's country. This will minimise the administrative burden on employers. At the same time, countries will still receive the tax they are due via tax equalisation between countries.

- The purpose of the Nordic Tax Withholding Agreement, which came into force on 1 January 1998, was to ensure that provisional tax would only be withheld in one country. So-called NT forms have been issued for this purpose. The forms allow an employee and an employer who reside in different countries to request that all tax is withheld either in the country of residence or in the country of work (when

7. The Nordic Tax Withholding Agreement:

<https://info.skat.dk/data.aspx?oid=2296786>

working in another Nordic country). In this part of the agreement, an NT3 form could be added for situations where the employer is based in a Nordic country other than the employee's country of residence and to also cover reporting so that it only takes place in the employer's country.

- A Nordic employer with an employee resident in another Nordic country can use the form to request that all tax be withheld and reported in the employer's country. At the end of the year, any tax due from the employer's country to the employee's country of residence is settled. This would simplify administration for employers and prevent ongoing double tax withholding. At the same time, it will ensure that the employer country and the country of residence receive the correct tax.
- The above calls for a revitalisation of the current administration of the Nordic Tax Withholding Agreement, as in many cases it takes far too long for tax returns to be assessed and taxes transferred. For this purpose, it could be considered that the tax authorities in the Nordic region should implement a common electronic calendar that the employee can use to register the countries in which the work has been performed. Through employer reporting, the tax authorities in principle have the data – income information, etc. – necessary for the assessment.

A typical example

The current situation

1. A company is considering hiring an employee from another Nordic country and allowing them to work from home.
2. The company has to spend a lot of resources researching the rules for when working from home constitutes a permanent establishment in the employee's country of residence. Alternatively, the company may decide not to hire the employee with the option to work from home. Or register a permanent establishment, with major administrative and financial consequences.
3. Regardless of whether the remote work constitutes a permanent establishment, the company risks being obliged to withhold tax and report salary payments in both the employer's country and the employee's country of residence. This creates major administrative challenges for the company – even though the registration is not crucial for the countries to receive their taxes, as this is done via the citizen's tax return and the Nordic Tax Withholding Agreement.
4. At the end of the year, the citizen must report the amount of work performed in each country on their tax return(s). This creates a heavy administrative burden that can cause cash flow challenges for citizens, either because too much tax has been withheld during the year, when the employer is obliged to withhold tax in multiple countries, or because of unexpected back taxes.

How it should be going forward

1. A company is considering hiring an employee from another Nordic country and allowing them to work from home.
2. The company requests prior authorisation that this can take place without the home office constituting a permanent establishment.
3. The employer submits an NT3 form to the tax authority in the employer's country, which communicates to the tax authority in the country of residence, informing them that tax is being reported and withheld in the employer's country.
4. Via the shared digital calendar solution, employees report when they have worked in Nordic countries other than their country of work. This, together with the reported information, forms the basis for the assessment of the employee's tax in the different countries and thus a possible revenue exchange between the countries.



PROBLEM AREA 1

Permanent establishment when working from home

When a Nordic company is deemed to have a permanent establishment in another Nordic country, there are financial and administrative consequences. This can happen, for example, because the employee works from their home in another Nordic country.

Assessment practices are complicated and vary from country to country. This creates uncertainty and makes it less attractive to hire employees from other Nordic countries and/or to allow these employees to work from home. In other words, it limits mobility and opportunities for Nordic citizens.

The recommendation for removing this barrier is to agree on clear conditions for when work in the country of residence should be considered a permanent establishment for tax purposes. The criteria should be as objective as possible. If you want to maximise mobility, they should also be as lenient as possible. To provide additional security for businesses, it should be possible to obtain a fast, simplified and binding pre-authorisation.

Example

An employee residing in Denmark is employed by an employer in Norway but works part of the time from his or her residence in Denmark.

If the Norwegian employer is deemed as having a permanent establishment in Denmark because the employee works from home, the implications include:

- The Norwegian company becomes subject to limited tax liability in Denmark and must prepare a Danish corporate tax return.
- An employer must be registered in Denmark for payroll reporting and withholding tax on the employee's Norwegian salary income.
- The principles for allocating income to the permanent establishment must be determined.

The barrier to mobility

The concept of permanent establishment is generally interpreted in accordance with Article 5 of the OECD Model Tax Convention^[8]. A permanent establishment exists in this context when a company carries on business wholly or partly through a permanent establishment in another country.

Legislation and practice concerning permanent establishment is extensive and complex. The focus below is therefore limited to the significance of the home office in a Nordic context.

There is a significant variation in the practices of individual countries, which can easily create uncertainty and doubt for businesses. As seen in the example above, a permanent establishment can also have significant consequences for the company.

The issue is thus a barrier to hybrid and remote working in the Nordic region, and the same issue has been identified at the EU level^[9]. However, the EU has limited competence in the tax area. The high level of uncertainty, combined with the potential consequences, may mean that employers choose to restrict the possibility of remote work for employees residing in another Nordic country, and potential employees may turn down the work.

8. The *OECD Model Tax Convention*, a model for countries concluding bilateral tax conventions, plays a crucial role in removing tax related barriers to cross border trade and investment. It is the basis for negotiation and application of bilateral tax treaties between countries, designed to assist business while helping to prevent tax evasion and avoidance. The OECD Model also provides a means for settling on a uniform basis the most common problems that arise in the field of international double taxation. Jf [OECD](#).

9. The issue of permanent establishment has also been identified as a barrier at EU level, cf. the European Economic and Social Committee's encouragement to the Commission of 18 July 2022.

Alternatively the company may incur significant costs by investigating the practice and/or registering a permanent establishment.

Overall, Norway is the strictest country when it comes to having a home office constitute a permanent establishment for tax purposes. Denmark and Sweden are moving in a more lenient direction, where working from home constitutes a permanent establishment for tax purposes to a lesser extent than previously. In Finland, practice is not yet as clear on the boundaries of when a home office results in a permanent establishment for tax purposes. The differences between countries are detailed at the end of this section.

The scope of the barrier

Any company that hires an employee who resides in another Nordic country and performs all or part of his or her work in the country of residence should consider whether or not to establish a permanent establishment in the employee's country of residence. The issue is thus a significant barrier for businesses and remote working across borders in the Nordic region^[10].

Solution

It is recommended that the Nordic countries establish common conditions to determine when work in the country of residence, including from a home office, should be considered a permanent establishment for tax purposes. As far as possible, this should be done in the form of relatively objective criteria.

The rules should be as lenient as possible when the remote work is driven by the employee's own wishes and not driven by the employer's business interest in the employee's country of residence.

To give the employer added security, it would be beneficial to provide the option to quickly obtain a simplified and binding pre-authorisation. To ensure that circumstances do not change over time, including the foreign employer's business interests in the employee's country of residence, an annual renewal of the prior authorisation may be required.

Benefits for citizens/businesses

For Nordic companies, it will be easier to assess when they can allow employees from

10. The issue of permanent establishment has also been identified as a barrier at EU level, cf. the European Economic and Social Committee's encouragement to the Commission of 18 July 2022.

other Nordic countries to work remotely. This reduces the risk of unexpected costs and more administration. It also makes it more attractive to hire citizens from other Nordic countries while allowing them to work from home.

The recommended solution will also increase the mobility of Nordic workers, who will have greater opportunities to take jobs in other Nordic countries – even if they want to do part of their work from a home office, for example.

Implications for the Nordic countries

The tax revenue derived from working days performed by a single employee in another country is extremely limited. If the recommended solution is implemented, it will not have a significant impact on an individual country's tax revenues.

The Nordic tax authorities will experience a reduced administrative burden in relation to enquiries about permanent establishment assessments for employees working from home. It also provides an overview of the number of people who work from home.

Practices for the home office and permanent establishment

Below is a description of the different Nordic countries' practices in relation to the significance of a home office in the assessment of whether foreign companies must establish a permanent establishment in the country in question.

Denmark

In Denmark, the tax law practice for when a home office constitutes a permanent establishment for tax purposes for a foreign employer company has primarily been created through binding answers. It is thus the foreign companies' doubts about when a permanent establishment (for tax purposes) will be established that have given rise to most of the published practice on the home office and permanent establishment. A review of all permanent establishment decisions from 2019 - 2021 shows that 75% of the binding responses were related to home offices, illustrating the uncertainty in this area.

When looking at the latest Danish practice on permanent establishment as a home office, including SKM 2020.298.SKTST, it is a condition that the employee's work for the company is ongoing and long-term. In addition, the following factors favour a home office as a permanent place of business for the company:

- The employee has no other permanent workplace available where the work is usually performed.
- The company agrees that the employee performs part of their work from home. This can be stated directly in the employment contract or implied.
- The employee's work from home does not occur randomly and sporadically, but is

planned or can be planned.

- It is beneficial for the business activity performed from the home office to be performed from Denmark, whereby the employer has an interest in the work being performed from Denmark.

To summarise, Danish practice is moving in a more lenient direction. This means that, to a greater extent, it is accepted that working from home does not constitute a permanent establishment in cases where the employee wishes to work from home for personal reasons and employers do not have a commercial interest in the employee working in his or her country of residence.

Sweden

In Sweden, the Swedish tax authority issued a statement on 13 May 2022 (Dno.: 81677220), in which the Swedish Tax Agency explains its position on the question of when an employee working from home risks creating a permanent establishment for the foreign employer.

This statement supersedes a previous statement from 2015. In the newer version, the Swedish Tax Agency places greater emphasis on whether there is a requirement from the company that the employee works from home or whether working from home is due to other reasons (e.g. personal reasons). This is expected to result in a permanent establishment being set up in fewer situations. Below are two examples from the statement that show situations where working from home either does not or does create a permanent establishment status:

Alice lives in Lund and works in Copenhagen for a Danish employer (Company A). Company A only operates in the Danish market. When it comes to the ability to work from home, Company A has a policy under which employees must meet the deadlines set out in the Øresund Agreement. According to the Øresund Agreement, a Swedish Øresund commuter can work a maximum of half of their working hours from home in any three-month period and still only be taxed in Denmark for the entire salary. However, this only applies if the salary is not charged to a permanent establishment that the company has in Sweden. Alice wants to reduce her commute and will work from home two days every two weeks and three days every two weeks.

The Swedish Tax Agency considers that working from home does not result in company A establishing a permanent establishment in Sweden. Alice's home is not considered to be at the company's disposal. The company has not required Alice to work from home, nor does the company have any interest or benefit from the work being done in Sweden.

Even if Alice were to end up working from home up to five days a week, the Swedish Tax Agency does not consider that this would result in Company A establishing a permanent establishment in Sweden. This applies as long as there is no requirement from Company A for Alice to work from home. However, this means that the Øresund Agreement no longer applies.

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Frank works for the Danish company F. Company F is a travel agency that sells ski holidays and beach holidays, primarily to Danish customers. During the COVID pandemic, the company was forced to reduce their space in Copenhagen. Company F has decided to keep the smaller premises size even after the pandemic and has arranged for employees to work

from home two days a week on a set schedule to adjust staffing to the new location. Frank therefore works from home two days a week at his residence in Malmö. Frank sells trips to the company's customers, both as package holidays and individual solutions.

The Swedish Tax Agency considers that company F is establishing a permanent establishment in Sweden. Frank's work at his residence is due to an explicit requirement from the company, and the home must therefore be considered to be at the company's disposal. Frank is performing the core business of the company, not a preparatory or supporting activity.

Finland

As of December 2022, there is no published case law on the influence of remote work on the assessment of the existence of a permanent establishment. There is no clear published practice on when working from home may or may not result in a permanent establishment for tax purposes in Finland. Since the report's cut-off point, Finland has published a guide.

Norway

In an opinion from April 2022, the Norwegian tax authorities have stated that the use of a home office can result in a permanent establishment in Norway for the foreign company. This is especially true if the company does not provide the employee with another office and the use of a home office is a fixed arrangement that the company has accepted. In the opinion of the tax authorities, it is irrelevant whether the use of a home office is at the employee's request.



PROBLEM AREA 2

Employers' registration obligations in multiple countries

In many cases, employers in another Nordic country risk having to withhold tax and report salary payments in several countries for the same employee salary. This means that companies run the risk of having to register as an employer in that country, resulting in a large additional administrative burden. The extra administrative burden can make it less attractive to hire an employee from another Nordic country and allow them to work remotely. The barrier thus limits the mobility and opportunities of Nordic citizens and the supply of skills to businesses.

Example

An employee living in Sweden works partly in Sweden from his/her residence, but also in Denmark for his/her Danish (formal) employer. As Norway is also part of the employee's area of responsibility, the job requires him to partly work at the group company in Oslo. The group companies are considered to be economic employers under Norwegian law.

Conclusion: Danish formal employers must, in addition to the employer obligations in Denmark, register as an employer in Norway and Sweden, withhold tax and report salary income in relation to the part of the income that relates to work physically performed in Norway and Sweden respectively.

The barrier to mobility

In many cases, employers in another Nordic country risk having to withhold tax and report salary payments in several countries for the same employee. The company can only do this if it registers as an employer in the employee's country of residence, which results in a large additional administrative burden.

In Denmark, employer obligations arise for a company from another Nordic country if the company is deemed to have a permanent establishment in Denmark, cf. the section on permanent establishment above.

However, Sweden and Norway have more far-reaching legislation. Here, foreign companies are required to register as soon as they hire an employee who is resident in Sweden/Norway and the employee performs part of their work from a home office. In Finland, a foreign employer must report wages to the Finnish Incomes Register on a monthly basis.

At the end of the section, you will find more detailed descriptions of legislation and practices in each Nordic country.

The registration obligation is a barrier to a flexible virtual workplace where physical presence in an office is not essential. The legislation is also a serious obstacle to an integrated labour market, as Nordic employers can opt out of hiring people living in another Nordic country. This is especially true for smaller organisations that do not have a finance/payroll function or the resources to manage the additional obligations of accounting for payroll and benefits under foreign laws.

The scope of the barrier

Since there are no figures on how many employees work across borders, e.g. from home or are also affiliated with a group company in another Nordic country, it is difficult to assess the extent of the barrier.

Solution

It is recommended that, in the future, withholding tax should only be reported and withheld in the employer's country, so that employers no longer risk having to administer several countries' legislation for the same salary – including in relation to different taxation dates, taxable values of goods, reporting obligations, withholding tax, etc.

The purpose of the Nordic Tax Withholding Agreement, which came into force on 1

January 1998, was precisely that tax should only be withheld in one country. Two forms have been issued for this purpose, NT1 and NT2. The forms allow an employee and an employer who reside in different countries to request that all tax is withheld either in the country of residence or in the country of work (when working in another Nordic country).

Supplementing the Nordic Tax Withholding Agreement with the implementation of an extended NT3 form is proposed, for the situation where the employer is domiciled in another Nordic country than where the employee resides. Via an NT3 form, a Nordic employer with an employee residing in another Nordic country can request that all salary be reported and all tax withheld in the employer's country. At the end of the year, any tax is settled with the employee's country of residence. This would simplify administration for employers and ensure that there is no ongoing double withholding of tax. At the same time, it will ensure that the employer country and the country of residence receive the correct tax. With an approved NT3 form, the employer also avoids registration and reporting obligations in the employee's country of residence.

The above, however, requires a revitalisation of the current administration of the Nordic Tax Withholding Agreement, as in many cases it takes far too long before the tax returns are reconciled, the tax is distributed between the countries, and any excess tax or residual tax for the employee is calculated. For this purpose, it could be considered that the tax authorities in the Nordic region implement a common electronic calendar that the employee can use to register the countries in which the work has been performed. This provides the tax authorities with the data they need for the tax assessment.

It is proposed that the same process be applied in cases where an employee is liable to pay tax on their salary in more than two Nordic countries. Tax liability in more than two countries is not uncommon when a person works in a Nordic function or, for example, lives in Sweden employed by a Danish employer (formal employer) but performs part of their work in Norway for a group company (economic employer). When the employer submits the proposed NT3 form, the authorities in Norway and Sweden are notified that salary is reported and tax is withheld on all salary income in Denmark. The salary is subsequently allocated for taxation based on the reported information about the employee's work pattern via the electronic calendar.

In addition to private sector employees, the proposed solution should also cover employed artists and sportspeople^[11] as well as public employees.

Benefits for citizens/businesses

For Nordic companies, it will be easier and more attractive to hire across the Nordic region because there is no longer a risk of having to administer two or more countries' legislation for the same salary, including in relation to different taxation dates, taxable values of

11. The proposal does not take into account cases where the payment goes to a company set up by the artist or if payment goes to an agent. The focus is on artists and sportspeople who are affiliated with a private organisation in another Nordic country, such as an opera or football club.

goods, reporting obligations, tax withholding, etc.

The recommended solution will also increase the mobility of Nordic workers, who will have greater opportunities to take jobs in other Nordic countries (even if they want to do part of their work from a home office, for example).

Implications for the Nordic countries

From a Nordic perspective, the current registration obligations cannot be justified by tax revenue in relation to employees working from home or in other Nordic countries. This is because the countries receive the tax they are due, in accordance with the Nordic Tax Treaty, via the employee's tax return and the Nordic Tax Withholding Agreement. As long as excess tax in the employer's country is not paid out before any tax due is reconciled with the country of residence, tax evasion is prevented. In other words, the recommended solution will not affect the tax revenue of individual countries.

If the Nordic Tax Withholding Agreement is updated as described above, it will facilitate administratively the authorities' work in relation to employees working across the Nordic region.

Legislation and practice in relation to registration requirements

Below is a description of the individual Nordic countries' legislation and practices in relation to the requirement to register salary payments to employees residing in the country in question.

Sweden

Sweden implemented the concept of "economic employer" in Swedish legislation as of 1 January 2021. The legislation is not problematic in itself. In one area, however, the new legislation has had far-reaching consequences for Nordic employers.

The problematic part of the new legislation means that foreign – including Nordic employers – who pay salary to an employee residing in Sweden on a monthly basis must report and withhold tax in Sweden on salary income for work performed in Sweden, including from a home office. In order to enforce this, the Danish, Norwegian or Finnish company must register as an employer with the Swedish Tax Agency in Sweden. Salary and benefits must be calculated according to Swedish law, based on how many days the individual works in Sweden during the month in question.

Norway

Norway has similar provisions to Sweden. This means that a foreign company with an employee who works partly from his or her home office in Norway is obliged to register in Norway and to report salary and pay withholding tax to the tax authorities in Norway.

Finland

Today, the foreign employer has a reporting obligation in Finland if there are employees with a home office in Finland.

Denmark

In Denmark, employer obligations depend on whether the foreign employer has a permanent establishment in Denmark for tax purposes – e.g. due to a home office. If no permanent establishment for tax purposes is established in Denmark, the foreign employer has no obligation to report or withhold tax on the salary income. However, the employee must still declare the part of the salary income that is taxable in Denmark via their tax return.



PROBLEM AREA 3

Taxation of salary income from work in another Nordic country

The relief method used for double taxation when a Nordic citizen takes employment in another Nordic country varies. At the same time, the complicated set of rules makes it difficult to assess where the citizen should pay tax.

The barrier can be removed by simplifying the rules so that, with very few exceptions, taxation of salary takes place in the employer's country, and the country of residence always provides relief with the exemption method.

The barrier to mobility

If a Nordic citizen takes a job in another Nordic country, income from work performed in the country of employment is generally taxed in the country of employment. Salary for work performed in the country of residence or in a third country is generally taxed in the country of residence. However, there are a number of exceptions, depending on, inter alia, whether you are a:

- Private sector employee
- Artist or sportsperson
- Public sector employee

Depending on which group you belong to, you may be subject to different bilateral agreements on exceptions to the general rule. At the same time, the method of relief depends on which group you belong to.

Below are separate issues for private sector employees, artists and sportspeople, and public employees.

FACTS

What relief means

Relief occurs when a citizen becomes taxable in both the employer's country and the country of residence. Here, the country of residence can tax the citizen's entire global income. However, the country of residence must compensate for the tax already paid on earned income in the employer's country.

Depending on the individual's situation, the relief method used by the country of residence varies.

For some, the so-called exemption method is used. Here, no tax is payable in the country of residence on income taxed in the country of work.

For others, relief is given according to the so-called credit method, where the country of residence taxes the entire income, but provides a reduction of the lesser of the following two amounts: 1) The tax paid in the country of work or 2) the tax calculated in the country of residence on the income in the country of work. For the individual, the credit method has negative financial consequences if the country of residence has a higher tax rate than the country of employment.

Private sector employees

Private sector employees are taxed according to Article 15 on personal services in the Nordic Tax Treaty. Here, the main rule is in line with the OECD Model Tax Convention – i.e. income from work performed in the employer's country is generally taxed in the employer's country, while income from work performed in the country of residence or in a third country is generally taxed in the country of residence.

This means that a person living in Norway but employed by a Swedish employer in Sweden will generally pay their tax in Sweden. If the person works partly from home in Norway, a corresponding part of the salary income is taxed in Norway. Income from work performed in third countries – e.g. in connection with business trips – is taxed in the country of residence, Norway.

There are several exceptions to the general rule, including cross-border rules between Norway and Sweden, Norway and Finland, and Finland and Sweden. In addition, there is the former cross-border rule between Denmark and Sweden^[12]. Common to all these cross-border rules is that, contrary to the main rule in Article 15, all earned income is taxable in the country of residence and not in the country of

12. The border crossing rule between Denmark and Sweden was abolished with effect from 1 January 1997. However, certain individuals covered by the rule can continue to use it as long as the conditions are met. However, this does not apply to residents of Denmark.

work^[13].

Another significant exception is the Danish-Swedish cross-border agreement, the Øresund Agreement. According to the Øresund Agreement, under certain conditions, salaries must be taxed in the country of work, even if it is partly performed in the country of residence or a third country. The agreement means that if the conditions are met, the entire salary income is taxed regardless of where the work is performed in the country of employment^[14].

Unfortunately, today there are challenges associated with the various bilateral agreements:

- **Border crossing rules between Norway and Sweden, Norway and Finland and Finland and Sweden**

Taxation of earned income in the country of residence instead of the employer's country can have disadvantages for some groups. The cross-border commuter rule from Sweden to Norway applies to job commuters who are covered by Norwegian social security, which means that a social security tax of 8% of the salary is deducted in Norway. The commuter does not receive a deduction directly in the Swedish tax with the social security tax, but instead a deduction for the social security tax in their Swedish tax return with a lower tax value. This means that cross-border commuters are worse off from a tax perspective than a Swedish employee who also resides in Sweden but not in a municipality where the cross-border commuter rule applies.

According to reports to the Secretariat of the Nordic Council of Ministers, the cross-border commuter agreements with the country of residence taxation also entail some administration that is perceived as cumbersome for the individual citizen covered by the rules^[15].

In the Øresund Institute's analysis "Upplevda konsekvenser av det Nordiska skatteavtalet" (Perceived Consequences of the Nordic Tax Agreement), commissioned by Grensetjänsten Norge-Sverige, Granstjänsten Sverige-Finland-Norway and Øresunddirekt, the general perception among cross-border commuters and employers is that the exemption of taxation in the country of residence leads to a worse and less predictable tax situation with unclear rules, where it is difficult to get a correct answer. The rules also entail a significant increase in administration^[16].

In the Øresund Institute's analysis from 30 November 2018, the border crossing rule

13. To be thorough, it should be mentioned that there are special provisions for the taxation of salaries for work performed on board a ship in international traffic or on board an aircraft. These two categories are not discussed further in the report.

14. Read more about the Øresund Agreement at: <https://skat.dk/borger/aarsopgogelse-forskudsopgogelse-og-indkomst/udlandsforhold/graensependler/privatansat-og-pendler-over-oresund/oresundsavtaalen-bor-i-sverige-og-arbejder-i-dk>

15. "Sammanställning av gränshinder med anknytning till det nordiska dubbelbeskattningsavtalet" (Summary of border obstacles related to the Nordic double taxation treaty), NMRS, 18 August 2016.

16. Perceived consequences of the Nordic Tax Agreement, Øresundsinstituttet, 2018.

between Norway and Sweden states that some people who live in a border municipality in Sweden choose not to work in a border municipality in Norway because they are subject to the border rule, which is both difficult to understand and financially unfavourable.

An example is further cited that people who live in a border municipality in Sweden and want to work in a border municipality in Norway pro forma register in a "non-border municipality" in order to avoid the cross-border commuter rule.

- **The Øresund Agreement**

Before COVID-19, the Øresund Agreement has generally functioned as intended. In other words, it has ensured easy administration and a predictable tax burden for most private sector employees. However, the pandemic meant that many people who normally work across Øresund did not fulfil the requirements for taxation solely in the country of employment due to lockdowns, repatriations and encouragement to work from home. This is because it is a requirement that at least half of the working hours in a continuous three-month period must be performed in the employer's country.

The category that was hit hardest was employees living in Denmark who normally worked and paid tax on their salary income exclusively in Sweden. Due to the pandemic, many of these employees have been working from home in Denmark and therefore have to pay tax on their salary in Denmark instead of Sweden. In terms of taxation, this was a hard blow to their personal finances – among other things, the marginal tax rate increased by up to 30 per cent. Due to lockdowns and repatriations, Swedish employers' contributions to a Danish cross-border commuter's Swedish pension scheme also risked being taxable as earned income in Denmark at the time of contribution and again in Sweden at the time of payment in connection with retirement.

Danish cross-border commuters, who had organised their private finances based on Swedish taxation in accordance with the Øresund Agreement, received a tax penalty unless they disobeyed the authorities' recommendations and continued to commute. For cross-border commuters living in Sweden and working in Denmark, it was often a tax advantage that not all income was taxed in Denmark.

Artists and sportspeople

Employed artists and sportspeople are generally taxed according to Article 17 of the Nordic Tax Treaty^[17]. Here, the main rule for the right of taxation is the same as for private sector employees described above. The problem for this category of commuters arises because of the relief method used in Article 17.

As the country of residence can tax the employee's global income, i.e. also salary for work

17. Note that remuneration for publicly employed artists and sportspeople is covered by Article 19, except in the case of public professional activities.

performed in the employer's country, the country of residence has an obligation under the Nordic Tax Treaty to provide relief for the double taxation situation that arises.

The relief method used by the country of residence to eliminate double taxation of earned income differs depending on which article of the Nordic Tax Treaty applies. The exemption method is generally used for personal services (Article 15) and income from public sector employment (Article 19).

Exemption relief means that no tax is payable in the country of residence on income taxed in the country of work.

On the other hand, the relief method for Article 17 income is the so-called credit method. The credit method means that double taxation is eliminated by reducing the tax calculated in the country of residence by the smaller of the following two amounts:

- Tax paid in the country of work
- The tax calculated in the country of residence on the income in the country of work

The method results in a credit/deduction being given for the entire tax paid in the country of work when the tax in the country of work is lower than the tax in the country of residence. And then the country of residence charges tax on the difference between the tax in the country of work and the country of residence.

However, the maximum credit is an amount equal to the country of residence's calculated tax on the income in the country of work, i.e. if the tax in the country of work is higher than the tax in the country of residence, no deduction is granted in the country of residence.

The fact that the credit method is used for commuting artists and sportspeople leads to tax discrimination. It can also be added that there is discrimination depending on whether the cultural worker is employed by a public or private institution. A public sector employee typically has the more favourable exemption relief, whereas the private sector employee has the credit relief described above.

Example

A soprano who is permanently employed by Malmö Opera and lives in Denmark pays A-SINK tax on 15% of her salary in Sweden. Danish authorities also calculate ordinary Danish income tax on the salary, with deductions for the tax paid in Sweden.

An employee at the Malmö Opera box office, who is also resident in Denmark, pays regular SINK tax in Sweden at 25% and pays no tax in Denmark. If they both have a gross salary of SEK 600,000 per year, the cultural worker's net salary per year will be approximately SEK 56,000 lower than the net salary of the regular employee, despite the fact that they both have the same salary and the same workplace^[18].

18. This is an example from the NMRS "Sammanställning av gränshinder med anknytning till det nordiska dubbelbeskattningsavtalet" [Compilation of border obstacles related to the Nordic Double Taxation Agreement] from 2016.

Public-sector employees

According to the general rule, income paid by a contracting state, a political subdivision, a local authority or a public law institution of a contracting state to an individual for the performance of duties for that state, subdivision, authority or institution shall be taxable only in that state. This means that if an employee lives in Sweden and works for a public Danish employer, the salary is taxed in Denmark and vice versa.

However, the general rule does not apply to salary income for work performed in the country of residence if the person is a citizen of the country of residence (or did not become a resident of the country of residence for the sole purpose of performing the profession). This means that most public sector employees are not covered by the general rule.

If the main rule does not apply, the part of the salary that relates to work performed in Denmark is taxed in Denmark, and salary income for work performed in Sweden is taxed in Sweden.

The scope of the barrier

The area is considered a problem of great magnitude, as it is assumed that many citizens at some point in their working life live in one country and work in another. In addition, the administrative burden is expected to be high – for citizens, businesses and authorities alike.

Solution

Considerable simplification of the rules is recommended to avoid favouring certain groups and to make it much easier to navigate. Specifically, it is proposed that taxation of salary take place in the employer country, and the country of residence provides relief with the exemption method. This is regardless of whether they are private employees, cultural workers or public employees. Working from home in the country of residence must be equated with working in the country of employment. The same applies to business trips and other temporary work in the country of residence and third countries.

The above assumes that the employee's work from home does not constitute a permanent establishment in the country of residence – see more on this in the section on the permanent establishment issue above.

If the above is considered too far-reaching a proposal, it may also be considered whether the provision should only come into play when a predominant part, e.g. 50% of the work is performed in the employer's

country^[19].

Similarly, it can be considered that the employer country's right to tax the entire income depends on whether the employee is also covered by the employer country's social security system according to the choice of law provisions in EU Regulation 883/2004. This is to avoid speculation in combining low taxes in one country with low social security contributions for the employer in another country^[20].

Benefits for citizens/businesses

The recommended solution will give Nordic citizens more predictable rules when working for an employer in another Nordic country. The proposed solution also shifts the administration from employers and employees to the tax authorities. Furthermore, it shifts the responsibility for the distribution of tax revenue away from the individual taxpayer to the competent authorities.

This allows for greater flexibility for remote working and reduces the risk of employees running into tax issues in the event of closed borders like during COVID-19.

Implications for the Nordic countries

As the proposed solution implies that taxation takes place exclusively in the employer's country, a fair equalisation scheme must be implemented. It is proposed that the equalisation scheme be based on the same principle as the general rule. This means that it follows Article 15 of the Nordic Tax Treaty and is in line with the internationally recognised distribution regarding the number of working days outside the country of work – see the implementation of the common electronic calendar.

It is likely that it will primarily be Swedish municipalities with many cross-border commuters to Norway, who are currently covered by the cross-border commuter rules, that will lose some of the revenue they currently have. The proposed equalisation scheme may be designed with special consideration thereto.

The shift from credit to exemption for Article 17 income for artists and sportspeople will reduce tax revenue in the country of residence, but this category of employees is

19. If deviating from the internationally-recognised distribution reflected in Article 15 of the Nordic Tax Treaty is considered too big a step, the employer country's right to tax the entire income may be limited. For example, it may be a prerequisite that at least 50% of the work should be performed in the employer's country in order for the employer's country to be entitled to tax the entire salary income. However, such a provision should not be modelled on the Øresund Agreement, where there is a requirement that at least half of the working time in a continuous three-month period should be performed in the employer's country. If the employer country's right to tax all earned income is to be limited with a requirement that, for example, at least 50% of the work must be performed in the employer country, it should be measured over a full tax year. To prevent commuters from having issues, one possibility when dealing with external causes, e.g. closed borders due to COVID-19, is to equate working from home in the country of residence with working in the country of work.

20. In this part, inspiration can be drawn from an agreement between Försäkringskassan and Udbetaling Danmark (formerly Den Sociale Sikringsstyrelse). Here, it has been agreed on the basis of the EU regulation that, under certain conditions, up to 50 per cent work from the country of residence is permitted without the applicable social security legislation shifting from the country of work to the country of residence.

estimated to be so small that it will not have a significant effect.

With an updated Nordic Tax Withholding Agreement combined with a common digital calendar, the authorities – see recommendation in the section on unnecessary registration for companies – will also experience a reduced administrative burden compared to the challenges the authorities face today.



PROBLEM AREA 4

Taxation of pensions etc. when working in another Nordic country

The tax processing of pensions and payments pursuant to the social security legislation are among the most frequently mentioned barriers in the reports analysed. For example, the current practice means that citizens who save their pension in another Nordic country risk paying a higher tax rate than colleagues who live and save their pension in the same country. This can lead to increased administration for many employees who work across a national border, as they have to settle any tax on returns on their pension scheme in their country of residence themselves

It is recommended that the barrier be solved with an agreement on mutual recognition of all pension schemes established in a Nordic country, and that current returns and payouts are only taxed in the country where the pension is established. Similarly, payments under social security legislation are only taxable in the country of payment. In short, the recommendation is to return to the system that was in place before 2009.

The barrier to mobility

Each country in the Nordic region has different rules and practices for taxation of pensions and payouts under social security legislation. This means, for example, that Nordic citizens who save for their pension in another Nordic country risk paying more tax than others with similar pension schemes. Barriers can arise in a number of contexts – especially in the context of:

- Pension payments

- Pension contributions
- Tax on returns for pension schemes
- Payments according to social legislation

The above key challenges are elaborated on below. However, it should be mentioned that minor barriers may also arise in relation to labour market contributions in Denmark. Read more about this issue in the notes^[21].

Pension payments

The focus in previous barrier reports is initially on pension payments – i.e. when a person who has worked in another Nordic country receives a pension that is taxed higher overall than if the pension had been taxed solely in the source country (the country from which the pension is paid), as there is an additional tax on the payment in the person's country of residence.

Often the problem leads to an asymmetry, as the deductibility (exemption right) on the deposit is lower than the tax at the time of payment.

If an employee living in Denmark has a Swedish employer who pays into a Swedish ITP occupational pension insurance scheme, the payment will be exempt from tax at the time of payment. The tax value of the tax exemption corresponds to the SINK tax, i.e. 25%, whereas the tax rate at the time of payment is at least around 44%. Few people would voluntarily choose to save for retirement on those terms. The basic idea is that there should be an incentive to save for a pension compared to receiving it all as salary income.

The above was not an issue prior to the change in the relief method for pensions etc. in Article 18 of the Nordic Tax Treaty. You can find more information about the protocol change and the reasoning behind it below.

21. With effect from the 2008 income year, the 8% labour market contribution (AM contribution) changed from an employee contribution to social security to an income tax in line with other income taxes. When paying into a Danish pension scheme, the pension company deducts 8% AM contribution from the payment. As a result, the pension payment is exempt from AM contribution. So far so good as long as you are a resident of Denmark. However, if you live in another Nordic country, you will receive a credit for the tax paid in Denmark at the time of payment. Since the AM contribution is paid upon deposit and not withdrawal, the AM contribution is not included in the credit at the time of withdrawal. This can lead to a higher tax corresponding to the AM contribution over time for employees working across the Nordic region, compared to Danish resident pensioners.

Protocol change on 4 April. 2008 etc. Article 18 of the Nordic Tax Treaty

Pension contributions

According to a protocol amendment on 4 April 2008, the relief principle for pensions etc. in Article 18 of the Nordic Tax Treaty changed from exemption to credit relief. This means that prior to the change, only the country from which the pension was paid could tax the pension payment (exemption relief). According to the amendment, the country of residence can also tax a person on a pension from another Nordic country; however, the country of residence's tax on the pension must be reduced by the other country's tax on the pension payment.

The change was made following a Danish initiative, and the commentary to the bill justifies the change on the grounds that the former provision allowed for "the possibility of unfavourable effects if the other country taxes pensions, but at a low tax rate".

It was probably the Swedish SINK tax of 25% on pension payments from Sweden that the Danish legislator had in mind when pointing to the "possibility of unfavourable effects".

In this context, the unfavourable effects for the individual cross-border worker are disregarded, where the deduction/right of exemption at the time of the pension contribution had a tax value of 25% (Swedish SINK tax), whereas the total tax at the time of payment can be as high as 50%.

This means, for example, that hospital staff who reside in Denmark, commute to work in Sweden and are covered by a pension scheme similar to a collective agreement will be exposed to the above-mentioned asymmetry with a low right of deduction (right of exemption) at the time of contribution in combination with a potentially significantly higher taxation at the time of payment.

Pension contributions

However, it is not only the taxation of pension payments that is problematic in a Nordic context, but also the contributions to a pension scheme.

A pension scheme that is tax exempt/deductible at the time of contribution under the legislation of the country of work may become taxable as salary income at the time of contribution in the employee's country of residence. This means that over time, the pension will de facto be taxed twice – in the country of residence at the time of contribution and again in the former country of employment when the pension is paid out.

Example

An employee lives in Sweden and works 45% of their working hours in Denmark for their Danish employer. The remaining 55% is carried out from their home office in Sweden. The employee has a Danish pension scheme through their employer (in the example, a so-called instalment savings scheme for pension purposes).

The Swedish Tax Agency's position statement of 07-07-2011 states that:

"The employer's payment into the employee's savings account is, according to Swedish law, to be equated with a salary payment".

The consequence of the Swedish Tax Agency's assessment is that 55% of the pension contribution is taxed as earned income in Sweden.

When the pension savings are eventually paid out, the payout is taxed fully in Denmark.

The result of the current provision in Article 18 of the Nordic Tax Treaty is – as the example above shows – that cross-border commuters can incur double taxation over time.

In the example, even if a Swedish pension insurance policy is taken out for the Swedish employee instead, this would result in double taxation over time in the opposite order, as Denmark does not recognise Swedish pension schemes as deductible for tax purposes (right of exemption). In this case, 45% of the pension contribution would be taxed in Denmark at the time of contribution, after which the pension payout will eventually be taxed in Sweden at the time of payout. A similar issue may also arise in situations where a citizen lives in Finland or Norway and has pension savings in another Nordic country, or situations where the citizen has pension savings in Finland or Norway but lives in another Nordic country.

Tax on returns for pension schemes

Sweden and Denmark have a tax on returns for pension schemes, which is typically settled via the pension company. In Norway and Finland, there is generally no current tax on returns for pension schemes.

A problem can arise when you live in Sweden and commute to work in Denmark (as a limited taxpayer in Denmark). Here, you are not liable to pay tax in Denmark on the return on the Danish pension scheme. On the other hand, tax must be paid on the return on the Danish pension scheme in Sweden.

Overall, this does not result in a higher tax. On the other hand, it is administratively more complicated for a cross-border commuter, as this is not managed by the Danish pension

company. Instead, the employee must declare the return on their Swedish tax return.

This also leads to a liquidity burden since the tax is not paid out of pension savings, as it is nationally in Denmark and Sweden, but must be financed by cross-border commuters with free funds.

Payments according to social legislation

When a citizen receives payments under social legislation – e.g. sickness benefits – the amount is typically adapted to the tax regulations of the country of payment.

The challenge for this group arises when, for example, the citizen receives a payment from their country of work in connection with illness or similar.

While earned income is generally only taxed in the country of employment, social security payments are also taxed in the country of residence, where they are taxed according to the credit method. This means that a higher tax is paid if the country of residence has a higher tax rate than the country of payment.

Example calculated via the Tax Calculator on Øresunddirekt's website^[22]

Gunnar lives in Denmark and normally works in Sweden and is on full-time sick leave. He pays taxes on his work in Sweden and is socially insured there. He pays tax on the Swedish sickness benefit of SEK 26,000 per month in both Sweden and Denmark. The Swedish SINK tax of 20% (since increased to 25%) is deducted from the Danish tax of 44%. As Danish tax is higher than Swedish tax, the net amount he receives per month is SEK 5,300 lower than if the sickness benefit had only been taxed in Sweden.

The scope of the barrier

The above poses a major problem for many citizens who work in another Nordic country, as the challenges can have major consequences for the individual's personal finances. This is especially true for groups that primarily live off public pensions, sickness benefits and the like.

22. <https://www.oresunddirekt.dk/dk/jeg-har-faaet-arbejde-i-sverige/skat-og-fradrag/skatteberegner>

In particular, many have been in a bad situation since 2009, when the relief method for pensions etc. was changed in Article 18 of the Nordic Tax Treaty.

Solution

National pension legislation is extensive and often quite complex. This makes it difficult for Nordic citizens to navigate. In this context, deciding on a simple solution to a complex problem area is recommended, so as to ensure that employees working in the Nordic countries do not end up in a bad situation. Specifically, it is recommended that:

- Pension contributions to pensions established in another Nordic country are mutually recognised as deductible.
- Current returns are only taxed according to the legislation in the country where the pension scheme is established.
- The source country taxes the pension payments at the same time as the country of residence exempts the pension payment from taxation (relieved by the exemption method). This is even if another Nordic country has granted a deduction. Since taxation always takes place in the source country, there is no risk of "double non-taxation".
- The same principle as above should apply to payments under social legislation. This means that payments should only be taxed in the country that pays the benefit.

Benefits for citizens/businesses

The benefits for Nordic citizens are that they no longer have to risk paying higher taxes than colleagues who live and work in the same country. This would mean that the differing legislation of the countries would no longer risk removing the incentive to contribute to a pension rather than having the funds paid out as salary. It will also make it easier for citizens living and working in different Nordic countries to navigate the legislation and gain security about their financial situation.

If the country in which pension schemes are established is entitled to tax on returns, this will mean higher taxation on returns for citizens who have Danish schemes and reside outside Denmark, as Denmark is not currently authorised to levy tax on returns on persons residing in another Nordic country. On the other hand, taxation will be the same as people living in Denmark.

In addition to the above benefits in relation to pension schemes, the proposed solution will also eliminate the challenge of higher taxation of payments under social security legislation in cases where the taxpayer lives in another Nordic country than the country of payment.

The proposed solution also removes the disadvantage of pension schemes set up in Denmark, where at the time of payment, tax is withheld on AM contributions that are not

settled as tax at the time of payment in the employee's country of residence.

Implications for the Nordic countries

The commentary to the bill on the protocol amendment of 4 April 2008, which was created on Danish initiative, states that the amendment that pensions etc. can also be taxed in the country in which the recipient resides would, in the long term, lead to revenue gain. This would depend on the number of people who become residents of Denmark or start receiving pensions from another Nordic country, and the difference between taxation in Denmark and taxation in the other Nordic country. However, it is estimated that the revenue gain will be modest. If, according to the proposed solution, we see a return exclusively to source-country taxation, this would likewise entail a modest loss of revenue.

When it comes to the outlined double taxation over time, i.e. situations where pension savings are taxed both at the time of deposit and at the time of withdrawal, it should not be relevant to discuss tax revenue, as it is hardly the intention to finance welfare systems with the double taxation of the pension savings of cross-border commuters.

Nor can tax revenue be the reason why payments under social security legislation in one Nordic country should be taxed more heavily because you live in another Nordic country.

In short, the change in 2009 has led to inappropriate taxation – to the disadvantage and increased administration for taxpayers and authorities.

A mutual recognition of pensions etc. and a system with only source-country taxation would result in significant administrative relief for the tax authorities, as it would no longer be necessary to qualify the foreign scheme under national law, assess whether the conditions for exemption are met, etc.

APPENDIX



National meetings and consultations

This appendix describes the process that took place in each country in connection with the meeting or consultation process for the tax report. Four countries have had physical meetings organised by the respective country's representative in the Freedom of Movement Council (Norway, Finland, Sweden and Denmark). Iceland, Åland and Greenland have had written consultations. In the Faroe Islands, it has not been possible to carry out a consultation process.

The project group wanted to ensure that each country was broadly represented on both the employer and employee sides, so that it was possible to confirm whether the issues raised in the report are accurate and also to confirm that the proposed solutions will make it easier to work remotely in the Nordic Region.

The written consultations have been carried out by the national representative of the Freedom of Movement Council, who circulated the report to relevant stakeholders and received feedback, which has been passed on to the project team.

The national members of the Freedom of Movement Council have identified relevant meeting participants and invited them to the meetings. The member also facilitated the meeting with the help of the project team, which presented issues and solutions in a draft report, which were then discussed.

Below, you can see who has participated in meetings and consultations, as well as in any subsequent written dialogue in each country.

Pan-Nordic issues

Following the national dialogues, YS (Confederation of Vocational Unions) and NFS (Council of Nordic Trade Unions) have raised some issues (via letter and email) that are pan-Nordic and are therefore dealt with on behalf of all the Nordic countries. Some of these issues centre around the risk that citizens and companies may avoid paying taxes when implementing the new solutions. Others include concerns concerning social security and working conditions for hybrid and remote work. Both questions and answers for the pan-Nordic questions can be read in detail in this appendix.

Overall, the project team's response denies that there is more opportunity to avoid paying tax if the new simplifications are implemented than there is with the current rules.

Regarding the social security area and working conditions for hybrid and remote work, the project group's mission is only to analyse tax problems and solutions. Therefore, these issues are outside the scope of the project group.

NORWAY

The dialogue meeting was held at NHO in Oslo on 19 December 2022. The Norwegian representative of the Freedom of Movement Council, Vibeke Hammer Madsen, chaired the dialogue meeting. Good and constructive dialogue took place at the meeting. The issues in the report were found to be accurate and the proposed solutions were found to be a good way to simplify the area.

The project team subsequently received pan-Nordic comments from YS and NFS. You can read more about this at the end of this appendix.

Meeting participants

- Ellen Mulstad, NHO (The Norwegian Confederation of Business)
- Anne-Lise Rolland, LO (LO Norway)
- Kjetil Staalesen, LO (LO Norway)
- Bengt Holmen, The Federation of Norwegian Professional Associations
- Jon Olav Bjergene, Unio (The Confederation of Unions for Professionals)
- Morten Skauge, Virke (The Federation of Norwegian Enterprise)
- Tore Eugen Kvalheim, Spekter (Norway's leading employers' organisation for private and publicly owned companies)
- Jakob Rasborg, Resonans Nordic
- Fredrik Lundgren, KPMG Denmark
- Håkon Rakkenes, KPMG Norway

- Sandra Forsén, Nordic Council of Ministers

Written feedback from LO

Thanks for a great meeting before Christmas! And it's true that we agreed on the areas that are perceived as obstacles and the suggestions for simplifying the rules. However, with one exception: we have not commented on where the tax liability should fall when you have a home office in one country and your employer in another country.

Obviously, the rules should be clear and there should be as little administration as possible. The examples given in the report and at the meeting clearly showed that there is a lot of unnecessary duplication and uncertainty associated with working and living in different countries.

However, neither Kjetil nor I had the necessary background to be able to speak on behalf of LO about the proposed solution: taxation in the employer's country.

Kind regards,

Anne-Lise H. Rolland

LO Norway legal department

LO Norway

Torggata 12, 0181 Oslo, Norway

[The LO lawyers' Facebook group](#)

Feedback from VIRKE



Telefon: +47 22 54 17 00
E-post: info@virke.no
Henrik Ibsens gate 90 0255 Oslo

Nordisk grenschinderråd
v/ leder Leder Vibeke H. Madsen
vibeke.madsen@outlook.com

Vår ref.: Morten Skjelge
Saksnr.: 23.3936
Sted: Oslo
Dato: 08.02.2023

Virkes innspill til Nordisk grensehinderråd vedr den nordiske skatteavtalen

Det vises til dialogmøte 19. desember 2022 mellom Nordisk grenschinderråd og partene i arbeidslivet om arbeidsmarkedet post-korona knyttet til den nordiske skatteavtalen.

Virke takker for muligheten til å komme med innspill til rapporten «Analyse: Behov og muligheter for oppdatering af den nordiske skatteaftale med fokus på arbeidskraftens mobilitet» gjennomført av Resonans Nordic og KPMG på oppdrag fra grenschinderrådet og rådets anbefalinger for videre arbeid med utfordringer knyttet til dagens nordiske skatteavtale.

Virke har følgende vurderinger av de fire problemområdene som grensehinderrådet peker på i sin rapport:

1) Fast driftssted ved hjemmearbeid

Virke har medlemmer som påvirkes av dagens regelverk og støtter grenschandelsrådets anbefaling om å innføre felles nordiske regler for fortolkning av skattemessig fast driftssted ved hjemmearbeid.

Virke anser at en regelendring i tråd med anbefalingen vil innebære en forenkling både for arbeidsgiver og arbeidstager, gi bedre mobilitet i arbeidsmarkedet og styrke virksomheters rekrutteringsgrunnlag. Virke støtter at regelverket utformes så lempelig som mulig med tanke på å unngå unødvendige administrative byrder. Virke støtter også anbefalingen om å åpne for en forenklet og bindende forhåndsgodkjennelse, og at det eventuelt stilles krav om årlig fornyelse av dette.

2) Arbeidsgivers registreringsplikt i flere land

Virke har medlemmer som påvirkes av dagens regelverk og støtter grenschandelsrådets anbefaling om at innberetning av forskuddsskatt kun skal skje i arbeidsgiverlandet.

En endring i tråd med rådets anbefaling vil bidra til at arbeidsgivere slipper å administrere flere ulike lands lovgivning for samme lønnsutbetaling, for eksempel ulike tidspunkter for beskatning, ulike skattemessige beregningsverdier av goder og ulike forpliktelser for innberetning.

Virke er positiv til forslaget om å utvide avtalen med løsninger tilpasset situasjoner der arbeidstager er bosatt i et annet nordisk land enn der arbeidsgiver har forretningsadresse dersom dette kan bidra til å forenkle administrasjonen for arbeidsgiver, gjøre det enklere å unngå dobbeltbeskatning og bidra til at både arbeidsgivers og arbeidstagers land får beregnet korrekt skatt. Virkes vurdering er at dette er forhold som bør utredes nærmere i det videre arbeidet.

3) Beskatning av lønnsinntekt ved arbeid i et annet nordisk land

Virke støtter at det foretas en nærmere utredning av regelverket i tråd med rådets anbefalinger med sikte på forenklinger, mer forutsigbarhet og større fleksibilitet både for arbeidsgiver og arbeidstager når det gjelder mulighetene for å benytte hjemmekontor.

4) Beskatning av pensjon m.m. ved arbeid i et annet nordisk land

Virke deler rådets vurdering av at ulikt regelverk for sosialytelser og pensjon mellom de nordiske landene kan være en barriere mot mobilitet i arbeidsmarkedet.

Virke mener at rådets anbefalinger som gjelder endringer i regelverket knyttet til beskatning av pensjon m.m. på tvers av de nordiske landene bør utredes nærmere.

Med vennlig hilsen

Stian Sigurdson
Direktør Samfunnspåvirkning
Hovedorganisasjonen Virke

Morten Skauge
Fagsjef Bransjepolitikk
Hovedorganisasjonen Virke

SWEDEN

The dialogue meeting was held at the Ministry for Foreign Affairs in Stockholm on 14 February 2023. The Swedish representative of the Freedom of Movement Council, Sven-Erik Bucht, chaired the dialogue meeting. Good and constructive dialogue took place at the meeting. The issues in the report were found to be accurate and the proposed solutions were found to be a good way to simplify the area.

The project team subsequently received pan-Nordic comments from YS and NFS. You can read more about this at the end of this appendix.

Meeting attendees:

- Sven-Erik Bucht, Freedom of Movement Council
- Carina Mårtensson, Ministry of Foreign Affairs Sweden
- Ellen Dahl, Chamber of Commerce and Industry of Southern Sweden
- Pål M. Jebsen, Norwegian-Swedish Chamber of Commerce Stockholm
- Claes Hammarstedt, Confederation of Swedish Enterprise
- Sabrina Suikki, Norrbotten Chamber of Commerce
- Jenny Rydstedt, Saco (Swedish Academics)
- Fredrik Lundgren, KPMG Denmark
- Johan Rova, KPMG Sweden
- Petri Suopanki, Nordic Council of Ministers

DENMARK

The dialogue meeting was held in the Danish Parliament in Copenhagen on 2 March 2023. The Danish representative of the Freedom of Movement Council, Annette Lind, chaired the dialogue meeting. Good and constructive dialogue took place at the meeting. The issues in the report were found to be accurate and the proposed solutions were found to be a good way to simplify the area.

DI wanted to consult their membership for comments on the report, which were subsequently sent to the project team by email.

The comments relate to labour mobility being hampered, problems with short-term assignments in another Nordic country (hybrid work), shadow payroll being resource-intensive, ambiguities in the interpretation of permanent establishment, and problems with lending employees for short stays within a company's own Group. The comments can

be read in detail below.

Meeting attendees:

- Annette Lind, Freedom of Movement Council and Member of Parliament
- Søren Kjærsgaard Høfler, Confederation of Danish Industry
- Lene Nielsen, Confederation of Danish Industry
- Jens Heinrich, Freedom of Movement Council and Greenland's Representation in Copenhagen
- Stina Saxbøl, Dansk Metal
- Jacob Ravn, Danish Chamber of Commerce
- Birgitte Nymark, Confederation of Danish Employers
- Tobias Vestergaard Christensen, The Danish Trade Union Confederation
- Jakob Rasborg, Resonans Nordic
- Fredrik Lundgren, KPMG Denmark
- Petri Suopanki, Nordic Council of Ministers

Feedback from the Confederation of Danish Industry

Thank you for a great meeting on the second of this month. On the post-Covid labour market linked to the Nordic Tax Treaty. Your efforts to address, inter alia, the tax obstacles to working across borders in the Nordic Region are greatly appreciated.

As promised at the meeting, DI has asked its members if they have any comments on the excellent draft report.

The feedback on the report has been positive. Two companies have made specific comments based on their current situation. These comments are listed below:

One company states that the report on "Needs and opportunities for updating the Nordic tax treaty with a focus on labour mobility" seems to focus mostly on commuters, which is obviously relevant.

However, the company also has a large number of employees who are sent on short-term assignments/trips to countries such as Norway and Sweden. Typical labour hire. It would therefore be highly relevant if a simplification of the rules (e.g. on tax settlement) would also apply to such situations, including inter alia, that ongoing reporting and settlement may not be required other than in the home country.

The company spends a lot of resources on running shadow payroll in Norway and Sweden, including obtaining tax numbers and ensuring correct tax payments according to annual tax returns. The company has a very precise split of salary data in Denmark, which is also shared with the Danish Tax Agency. It would therefore be ideal if the obligation to

regularly report and withhold in Norway and Sweden could be replaced by only reporting and withholding in Denmark (with the Danish tax rate), where information on the salary split between Denmark/Norway and Denmark/Sweden is then naturally submitted.

If a common Nordic calendar is being worked on, the company finds that it may also be relevant to consider whether to give employers/employees the option to upload data from their own systems. Many people have either time tracking or a calendar in other contexts, so automatic uploading/synchronisation is worth looking into.

Another company states that it generally experiences the same challenges as mentioned in the report and supports a simplification towards a more common set of rules in terms of

- when a permanent establishment is established,
- fewer registrations in the countries where work is performed
- only taxing the employee in the country of employment, and
- tax rate equalisation between the authorities in the respective countries.

The specific comments of the companies on the main obstacles in relation to employees working across borders in the Nordic countries are:

Permanent establishment risk

It is very complex to analyse the risk of establishing a permanent establishment when employees work remotely in another country. Even if an external advisor is involved, it is not always clear when a permanent establishment is considered to be established. This is particularly difficult to assess in relation to Norway and Finland.

Multi-country registration

If the company has employees working in other Scandinavian countries for a few days ("seconded" or "remote" work), it is necessary to register the foreign company in the country where the work is performed.

Registering in other countries is expensive and involves a lot of administration for the company. In Norway, it is mandatory to register the foreign company if employees from the Danish company work in Norway. Sweden has implemented similar rules, where it is now mandatory to register the foreign company if invoices are issued to a Swedish subsidiary or to a customer in Sweden. This is true even if employees are not liable for tax.

Taxing an employee from day one in Norway and after 45 days in Sweden results in a lot of administration and extra costs for the company:

1. The company must withhold personal income tax on the same income monthly in both the home country and the country of work.
2. The company must create a "shadow payroll" in the host country:
 - a. if the list is drawn up internally in the company, it is associated with a lot of

administration

b. if the list is drawn up by an external provider, an additional cost is incurred.

3. This affects the employee's liquidity or, alternatively, the company must pay foreign tax on behalf of the employee and get the amount refunded in connection with the tax return.
4. Tax return assistance is required in both home and work countries to ensure compliance with all regulations and tax equalisation.

Taxation of income earned in another Nordic country

Most of the company's employees working in other Nordic countries are Danish employees working in Norway or Sweden. For these employees, the total salary is taxable in Denmark, and only income earned in Sweden and Norway is taxable in Sweden and Norway. Tax relief is granted in Denmark for taxes paid in Sweden and Norway. Taxation in both the home and host country is mostly an administrative burden, as stated above under the heading "Multi-country registration".

For those employees who live in one Nordic country and work in another Nordic country, there are several complex sets of rules related to the taxation of the individual, such as bilateral agreements, different ways to avoid double taxation and the impact of where the employee is covered by social security. The company in question has found that the very complex set of rules within the Nordic countries has led to some people turning down job offers (transfer from Sweden to Denmark) as it was too difficult to get a full overview of the financial consequences.

Pension taxation

Pension is a general problem in terms of deductions for foreign pension contributions and taxation of the foreign pension when paid out. Recognising the pension schemes of the other Nordic countries can be a good way to solve the problem.

In addition, I can inform you that, today in an article in Berlingske, the Danish daily newspaper, DI's industry director for DI Transport, Karsten Lauritzen, focuses on the fact that the deduction for crossing the Øresund Bridge should be adjusted (1st section, page 6; in order not to infringe copyrights, I am not attaching the article). Adjusting the deduction could also help increase labour mobility in the Nordic Region – at least in the Øresund region. As the rules stand today, the deduction is not adjusted.

Please let me know if you have any questions about the above or if I can help you in any other way. DI is very interested in making the Nordic labour market work better.

Sincerely yours

Lene Nielsen

Senior Consultant

Response to Denmark (DI) from the project team

Dear Lene Nielsen,

Thank you very much for your detailed comments on the report. We understand from the comments that you generally agree with the report's solutions. The report's solutions address the vast majority of the problems you outline. We agree that a greater focus on "short-term trips to Sweden and Norway" and "the option of employer/employees to upload data from their own systems in connection with a shared calendar system" will help ease the administrative burden for companies in the Nordic Region.

FINLAND

The dialogue meeting was held at KPMG in Helsinki on 1 February 2023.

The Finnish representative of the Freedom of Movement Council, Kimmo Sasi, chaired the dialogue meeting. Good and constructive dialogue took place at the meeting. The issues in the report were found to be accurate and the proposed solutions were generally recognised as a good way to simplify the area. However, some concern was expressed about how tax revenues will be distributed between countries after the reform.

Meeting attendees:

- Niko Pankka, SAK (The Central Organisation of Finnish Trade Unions)
- Elena Gorschkow, STTK (The Finnish Confederation of Professionals)
- Pasi Sorjonen, Akava (Confederation of Unions for Professional and Managerial Staff)
- Lauri Lehmusojä, EK (Confederation of Finnish Industries)
- Jukka-Pekka Hellman, SY (Entrepreneurs of Finland)
- Emmiliina Kujanpää, EVA (Finnish Business and Policy Forum)
- Minna Ojala, Ministry of Finance
- Ann-Sofie Stude, Ministry for Foreign Affairs
- Anna-Leena Rautajuuri, VH (Tax authorities)
- Paula Holmström, KPMG Finland
- Fredrik Lundgren, KPMG Denmark
- Petri Suopanki, Nordic Council of Ministers

ICELAND

The Icelandic representative of the Freedom of Movement Council, Siv Friðleifsdóttir, has been in charge of the consultation process. She sent the report mid-February with a deadline of 10 March to the employers' organisation Confederation of Icelandic Enterprise (SA) and the workers' organisations Alþýðusamband Islands (ASI) and BSRB, Bandalag háskolamanna BHM and Kennarasamband Islands KI.

The feedback is that the issues have been identified accurately and the proposed solutions were generally perceived as a good way to simplify the area.

Feedback from Iceland (teachers' union):

(machine translated from Icelandic)

Below are our answers and general justifications.

- a) Do you agree that the situation described there has or could have a negative effect on your members/organisation? Yes
- b) Are the proposals suitable for improving your members'/companies' freedom of movement and/or working environment? Yes
- c) Do you have any other suggestions? No, not at this time

Other comments (machine translated from Icelandic):

- Individuals and/or families choose to live in two or more countries and/or move between countries for long or short periods of time. Therefore, for example, teachers may have gone on study leave and to study in other countries and their spouses in some cases moved with them and worked remotely while the teachers were studying, or the person has maintained two homes, one in the country of study and the other in Iceland. In some cases, spouses work in two or more countries. If the tax environment is too complicated in the country where the teacher intends to pursue further education, this may lead to the spouse's employer not agreeing to the spouse working remotely, for example because of the increased costs associated with the purchasing of payroll processing services and the risk to the employer that such work could lead to the establishment of a permanent establishment for the employer abroad. If the spouse's employer does not accept remote work due to the complex tax environment and the resulting increased costs, it can lead to the teacher in question opting out of studying abroad.
- There are also examples where teachers' spouses have chosen to study abroad and the respective teachers have chosen to move abroad with them and engage in distance teaching, e.g. for upper secondary education, temporarily, while the spouse is studying. This could be good for the employer (Icelandic school), as the teacher in question would improve their proficiency in a new language and get to know a new culture, which could benefit the school community. If the tax environment is

complex and the school needs to purchase payroll processing services abroad, this may prevent the authorisation of such remote work/distance teaching.

- A complex multinational tax environment discourages employees, their families and employers from moving and studying between countries and defeats the purpose of the EEA Agreement.
- It is important to encourage teachers, principals and others to seek further education in other countries, e.g. to increase the diversity of education and background of employees in Iceland. The opportunities for students' spouses to work remotely can make a difference in the feasibility of studying abroad.
- The benefits of increasing the flow of labour, such as school administrators, teachers and students, between countries include increasing the diversity of employees and students in workplaces including schools. Increased diversity brings together people from different backgrounds, including different education and experience. This can lead to more diverse, new and even more thoughtful ideas and decisions, as they can be examined from many different angles and therefore lead to better solutions. It can be assumed that increased diversity can lead to increased innovation and competitiveness for the benefit of society as a whole.
- To this we can add that by simplifying the tax environment, it can make it easier for Icelandic companies to sell goods and services abroad and incentivise foreign companies to start operations in Iceland. A complex tax environment can also lead to tax evasion and tax being reported in the wrong country, as it becomes too complicated for employers and employees to declare income, pay withholding taxes and payroll-related fees in the right country.

Reply to Iceland

Thank you very much for your reflections and feedback in relation to teachers. We are convinced that this area represents similar issues in other professional areas. We can see that you agree with our problems and solutions. Thank you for the feedback.

GREENLAND

The Greenlandic representative of the Freedom of Movement Council, Jens Heinrich, has been in charge of the consultation process. A draft of the report was sent out mid-February 2023 with a response deadline of 10 March 2023. The report has been sent to the Tax Agency in Greenland and the trade unions SIK (Greenland Labour Union), ASG (Academics' Union) and IMAK (Teachers' Union).

Feedback from Greenland:

Here is a summary of feedback on the presentation of the tax report from the tax agency in Nuuk by Kim Neumann, manager, and Morten Selvejer, legal adviser:

- Problem area 1 – permanent establishment when working from home:
 - also increase in the amount of work performed from home, but this is not very prevalent in Greenland since there are few employees from the other Nordic countries
 - many of the people from other Nordic countries are employed on trawlers, in the mining industry and large construction projects – as well as consultants in the construction industry
 - the expectation is that more work from home will cost tax revenue
- Problem area 2 – Employer registration requirements in multiple countries:
 - there is already an agreement with Denmark, which is where most people come from
 - expectation that it is difficult to succeed, as there will be cases where you fall between two stools
- Problem area 3 – taxation of salary income from work in another Nordic country:
 - in practice, the system is not set up for salaries to be paid to someone without a Danish national ID number. This will make things difficult with Nordic employees
 - some kind of additional ID number will need to be created. For employees
 - expectation that Greenland will lose money
 - tax treaties are therefore needed with the other Nordic countries (there are no agreements with Sweden and Finland)
- Problem area 4 – taxation of pensions etc. when working in another Nordic country
 - Greenland has had a pension agreement with Denmark since 2017
 - the current scheme works for Greenland, where the payment is taxed
 - Greenland will lose tax revenue if it is taxed at payout

Reply to Greenland

Dear Kim Neumann and Morten Selvejer,

Thank you for providing your feedback on the report and solutions.

Regarding problem area 1 in relation to tax revenue, we propose that the allocation of tax should basically be distributed as it is today, cf. Article 15 of the Nordic Double Taxation Agreement, based on where the work is performed; but there may certainly be other factors that should be weighted in an equalisation scheme.

Regarding the remaining problem areas, we recommend that Denmark acts on your behalf with regard to resolving tax issues related to remote working. Your comments are therefore included in the report.

ÅLAND

Max Andersson, representative of the Freedom of Movement Council, has been in charge of the consultation process. The report was sent out mid-February with a consultation deadline of 15 March. The report has been sent to selected individuals in the Åland Provincial Government. As well as trade unions, business associations as well as directly to the largest companies and the university.

Feedback from Mathias Brink, Provincial Government of Åland

- For those who have Sweden as their country of residence and Finland as their country of employment through their work on Åland, it is important to achieve two separate simplifications of the regulation.
- One solution is that working from home in the country of residence should be equated with work in the employer's country. This is a very important proposal that would have great practical significance for individuals who work in Åland but have Sweden as their country of residence.
- The second solution is that, regardless of whether you are a private or public sector employee, the exemption method is applied to the service income. This could make the Åland labour market more attractive, as Åland's tax level is significantly lower than Sweden's.

Feedback from Sofia Higson, Provincial Government of Åland

- My general observation is that the proposal in the report contributes to a more manageable tax system for taxpayers and is thus in line with the provincial government's budget goal of making it easy to work remotely from Åland. When it

comes to the impact on tax revenue, we would probably need to analyse the actual effects that the proposals would have. At the moment, I have not had time to do such an analysis.

- In general, I believe the report is focused and based on the border situation in Øresund. This is a natural effect of the fact that most cross-border commuters are located there, but it makes it a little more difficult to analyse the consequences for our Sweden-Finland border situation.
- Problem areas 2 and 3 propose solutions to implement a common electronic calendar and a compensation system for workers who opt for taxation in the country of work. Such solutions may require system changes or the creation of new cross-border systems. It can be time-consuming and costly and should be a consequence for the Nordic countries, but it is not mentioned under each problem area.

Reply to Åland

Dear Sofia and Mathias,

Thank you for your positive response to the report. We are glad that the report hits on some relevant issues and that you see the solutions as relevant. However, we would like to point out that the solutions are conceived as joint Nordic issues with a focus on all countries and Nordic borders. Not with a specific focus on individual border regions.

FAROE ISLANDS

It has not been possible to organise a consultation in the Faroe Islands.

Pan-Nordic issues NFS (Nordic Professional Association)

Feedback from NFS

To the Freedom of Movement Council – Nordic Council of Ministers

Dear Nordic colleagues,

First of all, I would like to thank you for the constructive and rewarding dialogue meeting in Stockholm on 14 February on Nordic tax treaties related to work in a cross-border perspective. It was a very productive conversation and dialogue, and we received a good presentation on the challenges as well as the possible solutions that the consultants point out.

At the meeting, we agreed on the possibility of providing additional input for the finalisation of the assignment. As the NFS has emphasised on several occasions, we generally look positively on increasing mobility and integration in the common Nordic labour market. It is important that regulations do not hamper mobility.

At the same time, we have also pointed out that regulations and possible simplifications of existing regulations and procedures must not be changed or simplified to such an extent that they no longer apply or become less strict in other countries, or such that establishments, operating centres and tax advantages are chosen in order to circumvent existing regulations or take advantage of a simplified regulatory framework that leads to unhealthy competitive advantages or undermines defined conditions and/or social protection.

We have now discussed these aspects in more detail with some of the member organisations in NFS, and would like to add that it is also important that both the report and the proposals for possible solutions identify these challenges more clearly than before, such that new proposals will not result in unintended consequences. Meanwhile, we, of course, continue to share the ambition to make it easier for both employees and serious companies to deal with these issues. To highlight this and provide some specific examples of challenges and issues that should be captured and highlighted, we attach this report prepared by our colleagues at Norwegian YS.

We are of course available for further dialogue and discussion on these issues.

Kind regards,

Magnus Gissler

Generalsekretæren / General Secretary

Reply to NFS (Magnus Gissler)

We refer to the same answer we have given to YS below.

YS (Norwegian Confederation of Vocational Unions)

Feedback from YS



Deres ref.:

Vår ref.:

Dato:

LAG

13.03.2023

Skriftlig innspill vedrørende skatteproblemer under corona og mulige justeringer i den nordiske skatteavtalen

YS viser til mottatt invitasjon til dialogmøte 19 desember om mobiliteten i Norden knyttet til den nordiske skatteavtalen, og det nordiske Grensehinderrådets prosjekt som ser på hvordan avtalene kan oppdateres. Videre følger noen innspill fra YS til dette arbeidet, og til skatterapporten basert på KPMGs analyser.

Et felles nordisk arbeidsmarked er viktig for norske arbeidstakere og de nordiske økonomiene. YS er i utgangspunktet for et smidig og velfungerende felles arbeidsmarked, med forutsigbarhet og enkle regler for arbeidstakere og arbeidsgivere. Dette inkluderer gode løsninger for at arbeidstakere som ønsker det skal kunne arbeide hjemmefra til tider.

Koronapandemien tydeliggjorde noen av de hindringene som fortsatt eksisterer på det felles nordiske arbeidsmarkedet, både for ansatte og bedrifter. YS ønsker velkommen en gjennomgang og diskusjon av disse hindrene, deriblant skattehindre. Samtidig er det aspekter ved skattesystemet som denne rapporten fra KPMG ikke behandler, men som er av stor betydning for de nordiske landene. Det er også problematiske sider ved å øke mobiliteten på denne måten, som ikke blir diskutert i rapporten. YS mener at det er behov for en grundigere gjennomgang, der konsekvensene av de foreslåtte endringene vurderes i en bredere forstand, før vi kan ta stilling til forslagene i rapporten. Under er noen av de punktene YS særlig mener at trenger en grundigere behandling.

Sosialt sikkerhetsnett

Da grensene mellom de nordiske landene stengte under koronapandemien, fikk dette store negative konsekvenser for arbeidstakere som arbeider i et annet land enn der de er bosatt. I perioder fikk de såkalte grensependlerne lov til å fortsette å pendle mellom landene, uten innreisekarantene, men måtte sitte i fritidskarantene mens de var hjemme. I andre perioder ble disse personene avskåret fra å utføre arbeid i det landet de var ansatt i, men uten rett på økonomiske ytelser som dagpenger.

Komplikasjonene vedrørende skatt for de som plutselig måtte arbeide hjemmefra, var en del av dette bildet, men kan ikke ses alene. YS mener det er viktig å se på ansattes rett til sosiale ytelser og et økonomisk sikkerhetsnett ved uforutsette situasjoner, samtidig som vi ser på skattesystemet. Koronapandemien var en ekstrem situasjon, men den viste hvor sårbare grensependlere kan være i slike situasjoner. Skal vi gjennomføre endringer i skattesystemet som sannsynligvis øker andelen som arbeider på tvers av grensene våre, må vi samtidig utrede om vi har de nødvendige ordninger for at disse blir ivarett når kriser inntreffer. Det er også viktig å vurdere eventuelle konsekvenser for de sosiale ytelsene av at mange flere kan komme til å både bo og utføre en stor del av arbeidet i et annet land enn der de er tilhørende i trykkesystemet. Tilsvarende kan en økning i mobilitet, kombinert med den foreslåtte hovedregelen om å skatte i arbeidsgiverlandet heller enn det landet der du befinner deg og forbruker tjenester og infrastruktur, kunne ha konsekvenser for landene. YS savner betraktninger rundt dette i rapporten fra KPMG.

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side 2

Selskapsplanlegging for skatt og arbeidsvilkår

Å øke mobiliteten ved å sikre at bedrifter kan etablere seg i et av de nordiske landene, men ha ansatte som utfører arbeidet i et annet land, kan også skape noen andre utfordringer. Det er faktiske forskjeller mellom de nordiske landenes skatte- og avgiftssystemer, skattenivåer, kollektivavtaler og lønnsnivåer. Ved å åpne helt for at bedrifter kan være etablert i ett land, men ha alle sine ansatte sittende i et annet land, åpner man også opp for at disse forskjellene systematisk kan utnyttes. Det vil være vanskelig for skattekontorene å vurdere når stor bruk av hjemmekontor og fjernarbeid er basert på de ansattes eget ønske, og når det er basert på bedriftens interesse.

Dersom et selskap ikke må ta hensyn til hvor de ansatte er bosatt, og ikke trenger å etablere seg i det samme landet som de ansatte sitter i, kan selskapet velge å kun etablere seg i det landet der selskapet får de skattemessige beste vilkårene for sin selskapsbeskatning. Et norsk IT-selskap som har alle sine arbeidstakere i Norge, kan f.eks. velge å heller etablere selskapet sitt i Sverige, for å få lavere selskapsbeskatning. Samtidig som de beholder alle sine norske arbeidstakere, men på hjemmekontor.

De foreslåtte endringene åpner også for at selskaper som kan benytte fjernarbeid, kan planlegge hvilket land de vil ansette fra, basert på lønns- og arbeidsvilkårene i det landet. Kanskje vil dette også ha konsekvenser for fagorganisering og muligheten til å kreve tariffavtale for de ansatte, når selskap og ansatte er i forskjellig land.

Dette kan føre til et høyere innslag av skatteplanlegging, skattekonkurranse mellom landene, og negativ konkurranse på lønns- og arbeidsvilkår. Selv om alle de nordiske landene har stabile ordninger, med stor utbredning av tariffavtaler og et høyt nivå på vilkårene for de ansatte, kan vi ikke se bort ifra at dette vil kunne legge et uønsket press på systemene. Dette må være med i en vurdering.

Tilsvarende, for arbeidstakere, foreslås det at arbeidstakeren skal kunne bestemme å skatte i "hjemlandet" dersom det er mer gunstig. Vi ønsker heller ikke et slikt skattesystem, der ansatte kan arbeide i ett land, men velge hvilket land de vil bo i basert på hvor det er skattemessig mest gunstig å skatte av sin lønnsinntekt.

Hjemmekontor

YS mener hjemmekontor er en positiv ting, som kan bidra til større valgmuligheter for de ansatte, gi mindre stress i hverdagen, og bidra til å senke utslipp fra transport. Men hjemmekontor kan også ha sine baksider. Vi er opptatt av at hjemmekontor skal være en frivillig mulighet for de ansatte, og ikke et pålegg fra arbeidsgiver. Alle skal ha rett på å ha en arbeidsplass å gå til, og vi mener tillitsvalgte bør være involvert i å legge detaljerte rammer for hjemmekontor. Hjemmekontor er lite regulert i Norge i dag, og det er mange uklarheter rundt f.eks. gjennomføring av regler for helse, miljø og sikkerhet for hjemme- og fjernarbeid, og hvordan reglene for yrkesskader gjelder ved hjemme- og fjernarbeid. YS vil peke på risikoene ved å legge til rette for ubegrenset bruk av hjemmekontor på tvers av de nordiske landene, samtidig som vi ikke har avklart situasjonen for hjemmekontor internt i alle disse landene. Det hadde vært nyttig dersom vi også hadde et kunnskapsgrunnlag på dette.

Med vennlig hilsen

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Answers to pan-Nordic questions from NFS and YS

The project group is grateful for the positive and welcoming dialogue we had at the meeting. We are pleased that YS and NFS also believe that tax problems should be solved for those who work remotely across borders, so that employees and companies experience fewer problems and less administrative hassle.

YS and NFS address three main problem areas

1. The social safety net
2. Home office
3. Corporate planning for tax and labour conditions

Points 1 and 2 relate to working conditions and entitlement to social benefits in hybrid and remote work and are outside the scope of this report. Therefore, it is not up to the project team to answer the questions.

Point 3 deals with the risk that a company or an employee could take advantage of the proposed rules to obtain a lower level of tax by registering in another country. For convenience, we have included the YS example in the answer

YS example of possible utilisation of tax rules:

- "If a company does not have to take into account where its employees reside and does not have to establish itself in the same country as its employees, the company can choose to establish itself only in the country where it has the best tax conditions in terms of corporate taxation. For example, a Norwegian IT company that has all its employees in Norway may choose to establish its business in Sweden to achieve lower corporate taxation. At the same time, they keep all their Norwegian employees, but in home offices."

Reply to YS and NFS:

The above example is not a risk with the proposed set-up for solutions in the tax analysis.

Firstly, employees will be taxed in the country of residence if the work is performed exclusively there. Secondly, the distribution of tax will be divided between the country of work and the country of residence according to the same principle as today, based on where the work is performed.

What is new in the project group's proposal is that tax revenue between the countries is between the countries' tax authorities and not, as today, based on the individual employee's tax return. This will reduce the hassle and administration of filing taxes in two countries and will also reduce the risk of errors.

We see no risk of a company establishing itself in the country with the best tax conditions, cf. your example where a company establishes itself in Sweden

but has its employees working remotely from Norway.

In this case, the company would have to request confirmation from the tax authority in Norway that it is not a permanent establishment in Norway (from a tax perspective), which the Norwegian tax authority would refuse. Therefore, the activity that the Swedish company carries out in Norway becomes subject to corporate income tax according to the same principles that apply to Norwegian companies and permanent establishments.

As the corporate tax rate in the Nordic countries only varies between 20-22%, any profit from trying to take advantage of this will be very small.

About this publication

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