Taxation of individuals and goods in the Nordic countries upon cross border mobility

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Introduction

Taxation of migrating individuals is gaining an increasing significance as the globalisation, the creation of international labour markets and the competition in attracting especially skilled labour leads to more and more cross border migration among workers. The globalisation and the competition in attracting labour are global trends, whilst an international labour market has been created within the Nordic countries at the Nordic level and at the European Union (EU)/European Economic Area (EEA) level.

At the Nordic level an *Agreement on a Common Nordic Labour Market* was signed 6 March 1982 and took effect on 1 August 1983 (http://www.norden.org/avtal/arbetsmarknad/uk/index.asp?lang=6). The agreement prohibited any requirement of work permits and any other discrimination in the labour market for employees from other Nordic countries.

At the EU/EEA level the free movement of workers and goods are two of the fundamental freedoms creating the internal market.

The treaty basis for the free movement of workers is the EC Treaty articles 39-42 and the EEA Agreement articles 28-30. The free movement of workers is elaborated in Regulation 1612/68, including equal tax treatment in article 7. Based on these provisions the ECJ has developed fairly detailed requirements to the tax treatment of migrating workers, primarily regarding the taxation of non-resident workers in the receiving state, but also to a certain extent regarding the taxation of resident workers in the state of departure. These provisions facilitate the free movement of workers in general in the same way the abovementioned Nordic agreement does, but are in this context of special interest due to the direct implications they have had to the tax systems of the member states.

The WTO and GATT have liberalised international trade in goods and represent essential rules in that field. Mainly, these rules reduce customs. Even if they also can have implications on the taxation of goods through their restrictions on measures having an effect equivalent to customs, this is a pendant to the regulation of customs. Below the topic of the reports is limited against customs. Thus, the WTO and GATT rules are of less relevance in this context and will not be discussed any further.

The topic has not earlier been covered by the seminars of The Nordic Tax Council. The topic has partly been covered by the IFA Congresses, most recently at the 2002 Oslo Congress. The 1997 New Delhi Congress covered *Taxation of expatriates*. Also, the *European Association of Tax Law Professors* covered many sides of the topic at the 2008 Cambridge congress under the title *Taxation of Workers in Europe*.

[1] Any viewpoints put forward by me as a general reporter are put forward on my account and must not be interpreted as representing the view of the Norwegian Ministry of Finance.

The main objective of the national and general reports is to highlight the tax effects of an individual travelling as a private person or taking up employment in another Nordic country, the considerations behind the national rules of each country and the possible incentives the rules create. A juxtaposition of the mechanisms for the avoidance of double taxation and non-taxation in the fields of direct taxation and indirect taxation is also desirable.

Generally, it is an aim that the tax rules either should be neutral in relation to the underlying economic factors or should create the motivations that they are aimed at. From this point of view it is of interest to explore the effect of the national tax rules of each country and especially the effect of the national tax rules of the country of origin and the national tax rules of the country of destination in combination.

The main focus of the reports is the Nordic countries' rules on individual taxation and taxation of goods regarding cross border migration of workers between the Nordic countries. For the sake of completeness, these rules will be related to the rules regarding third countries, cf. item A.1.3, A.3.3 and B.1.3 below.

The reference to "taxation of individuals" implies that tax rules for companies and other juridical persons are not included. Neither will the reports cover taxation of businesses carried on by individuals in the form of sole proprietorship or migration for pure private purposes, such as migration of pensioners. The taxes to be covered are income taxes, net wealth taxes and social security contributions and not inheritance taxes.

The topic is limited in the same way regarding taxes on goods. Thus, the rules applicable to the cross border migration of an individual are to be described, leaving out the general rules on imports and exports and in relation to the cross border carrying out of business. Taxation of services is not covered. The taxes to be covered are value added taxes (VAT) and excise duties and not customs.

The topic of the seminar has not been found suitable to be analysed through economic national reports. Thus, there are only legal national reports. However, an economic general report is written by Torhild Martinsen, Norwegian Ministry of Finance, based on information gathered by her.

A Taxation of individuals

A.1 Income taxes

A.1.1 Tax liability

A.1.1.1 Under which conditions are non-resident workers liable to tax?

A.1.1.1.1 Domestic law

All four countries tax income of non-resident workers performing employment in the country. The criteria for taxation are quite conform.

The Finnish, Norwegian and Danish rules[2] are all based on two connecting factors for tax liability for income from private employment: the first is the territorial connection of the work to the country by it being performed there, and the second is that the employer has a

[2] The Swedish report does not go into the details here.

connection to the country by either being a resident there or by having a permanent establishment there.

In respect of the territorial connection of the work to the country, the Finnish national reporter touches upon the issues arising when the employment is performed partly in Finland and partly abroad. There the solution is that if the employment is primarily exercised in Finland, the whole salary is generally considered as sourced in Finland.

The Swedish, Norwegian and Danish national reporters state specifically that tax liability incurs irrespective of whether the right to the income or payment arises after the termination of the employment/stay in the country.

Finland, Norway and Demark stand on one side by taxing hired out labour, whilst Sweden stands on the other by not taxing such labour. The Danish rules on hiring out of labour include specific taxation rules. The employee can choose either to be taxed according to the general rules for limited tax liability, or to pay a final withholding tax at 30 % of the gross income. The Danish national reporter touches upon a subject which most likely is of relevance to all the three countries; the need to distinguish hired-out labour from performance of services by an enterprise.

A.1.1.1.2 Implications of tax treaties and Community law

Article 15 of the OECD model tax convention gives the general rules for taxation of income from employment.[3]

Article 15 gives the state of residence a general right to tax. The other state is only given the right to tax income from employment exercised there. This right is further restricted through the 183-day rule of paragraph 2. According to this rule employment can be exercised in the other state up to 183 days in any twelve month period without being taxed there. The condition is that the employer neither is a resident of that state nor has a permanent establishment there bearing the remuneration.

The Nordic tax treaty article 15 paragraph 1 and 2 follows the OECD model, except for paragraph 2 litra d. According to the latter, the 183-days rule does not apply in the case of hiring out of labour. The provision is elaborated in the protocol to the treaty article V.

Since Sweden does not tax rules hired out labour specifically, cf. item A.1.1.1.1 above, Sweden cannot use this rule, and levy tax, in situations where employees are hired out to work in Sweden for less than 183 days. On the other hand, this issue can cause inconvenience for Swedish assignees working in Denmark, since Denmark applies the term "economic employer". This creates situations where Swedish tax residents become tax liable in both Sweden and Denmark since both countries consider the employer belongs to their respective country.

Article VI of the protocol to the Nordic tax treaty contains special rules for cross-border commuters living in a municipality on the borders between Finland, Sweden and Norway. Provided that certain circumstances are met, only the state of residence may tax the salary, even though the salary is sourced in the other country.

[3] The particular rules in domestic law and in tax treaties for some specific employment activities will not be covered here (article 16 on director's fees, article 17 on artistes and sportsmen, article 19 on governmental service).

Under the Øresund Agreement between Denmark and Sweden the right to tax salaries for work performed in both countries is given to the employer's country, even if some of the work is carried out in the country of residence.

A.1.1.2 Under which conditions do migrant workers become tax residents – a brief description

A.1.1.2.1 Domestic law

When it comes to establishing residency, Sweden, Finland and Denmark have relatively elaborate rules, whilst Norway has very simple rules. All four countries establish residency based on presence of a certain duration in the country.

In Sweden, Finland and Denmark this connecting factor is based on the concept of "permanent stay"/"continous presence" and the threshold is six months.

The Swedish and the Finnish national reporters elaborate what the details of the concepts imply, for instance regarding temporary absences abroad and persons staying/not staying overnight. The Swedish reporter remarks that uncertainty regarding what constitutes a permanent stay and not, causes difficulties in situations where an individual works rather frequently in Sweden but lives in another Nordic country. For the Öresund area this is less of a problem where Danish residents go to Sweden on a daily basis to work since they never spend nights in Sweden and are, therefore, not in question of becoming Swedish tax residents.

The rules establishing residency in Denmark based on the duration of the stay seem to take into consideration more factors than do the rules of Sweden and Finland. In deciding whether the conditions for residence in Denmark are met, there is an emphasis on whether the person in question, by establishing a home, renting a residence or by other measures, has indicated an intention to reside in Denmark. If a taxpayer has access to a year-round residence in Denmark, this access is a necessary and sufficient condition for establishing residence. In the case of a temporary stay in Denmark, full Danish tax liability can arise if during his/her stay the taxpayer carries out work in Denmark, since such a stay cannot be regarded as a temporary stay for the purpose of holiday or suchlike. The Supreme Court has found that the stay in Denmark of a Danish-American director for a maximum of 1 year, could not be regarded as a temporary stay. In practice, an uninterrupted stay in Denmark lasting more than 3 months or a total stay of more than 180 days within a 12 month period is not regarded as being a short term stay for the purpose of holiday or suchlike.

As of the income year 2004, Norway has the simplest rules regarding establishment of residency. An immigrant worker becomes a tax resident of Norway if he/she has been present in Norway for one or more periods exceeding in the aggregate 183 days during a 12-month period. The same applies for a person who has been present in Norway for one or more periods exceeding in the aggregate 270 days during a 36-month period. As the Norwegian national reporter point out, the aim of the new rules was to draw up criteria that are more precise for tax residency than the former rules. Thus the tax liability has become more predictable, but less flexible.

In addition to the rules described above, Sweden and Finland establish residency using the dwelling of an individual as the connecting factor. Thus, an individual that has his real home in Sweden[4] or his main abode in Finland is considered a resident of that country. A person has his main abode in Finland if centre for personal and economic interests is there.

The Finnish national reporter touches upon the relation between the population register and the question of tax residency and points out that there is no legal connection between them.

Both Sweden, Finland and Denmark consider a person establishing residency by way of these criteria, as a resident from the date of arrival.

A.1.1.2.2 Implications of tax treaties and Community law

The main key to the application of tax treaties is the term “resident”. When a person is resident of two states according to their domestic law, the OECD model article 4 paragraph 2 decides in which state the person shall be deemed to be a resident for the application of the treaty (“tie breaker rule”). The criteria are in the following order: the person’s permanent home, centre of vital interests, habitual abode and nationality. If none of these criteria solve the case, it shall be solved by mutual agreement between the relevant states.

The tie breaker rule of the Nordic tax treaty article 4 paragraph 2 follows the OECD model.

There seems to be an inconsistency between Norway and Sweden in the application of the tie breaker rule. In general, the Swedish Tax Agency would consider a person that works and stays in Sweden with the family is considered a Swedish resident both according to the internal tax legislation and the Nordic tax treaty. On the other hand, the residency may remain in Norway when an individual and his family move from Norway even though the period outside Norway may be two years or even longer, cf. item A.1.1.3.2 below.

Under the earlier bilateral tax treaties between Norway and Denmark and Norway and Sweden and the fact that under these treaties, migrant workers were not deemed residents of the immigrant country for stays of shorter duration than 12 and 10 months respectively.

A.1.1.3 Under which conditions does tax residency cease to exist – a brief description

A.1.1.3.1 Domestic law

As a starting point it could seem logical that emigration was the negation of immigration and that tax residency would cease to exist when the conditions for establishing tax residency are no longer met. However, under such a regime, a person would oscillate between being a resident and not in a way that is not practical for something so fundamental as an individual’s status as resident or non-resident in a country. It is therefore not surprising that all four countries have emigration rules which require the connection between the taxpayer and his country of residence to be looser for the taxpayer to be accepted as emigrated than what is necessary for the taxpayer to become a resident.

Sweden, Finland and Norway have different sets of rules for individuals who have strong ties to the country and for individuals who have looser ties to the country. For the first group strict conditions apply, whilst more flexible conditions apply for the last group.

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[4] The Swedish national reporter also refers to essential ties to Sweden as a reason for residency to exist. The way I read it, this is a rule regarding the continuing existence of an established residency, making it a rule about how residency ceases to exist. The rule is therefore described under item A.1.1.3.1. The status of the rule will be clarified during the seminar.

In Sweden, as a starting point, the tax residency will cease to exist if all the alternative criteria for establishing residency no longer are fulfilled. This is the case if the individual does no longer have a real home in Sweden, does not stay in Sweden permanently and does no longer have any essential ties to Sweden. The Swedish residency would normally cease to exist on the day of departure from Sweden. This corresponds to the Finnish rule that individuals who are residents of Finland solely on the basis of his continuous presence, and do not have their main abode in Finland, will cease to be residents of Finland from the day following the day of departure. Individuals who have their main abode in Finland, will be considered residents even after departure from Finland. The corresponding Norwegian rule is that tax residency in Norway ceases to exist when a person substantiates that she/he has moved abroad permanently, has not stayed in Norway for one or more periods exceeding in the aggregate 61 days during the income year, and neither she/he nor any closely related person has a home in Norway at their disposal.

The stricter rules apply to the following groups:

- Sweden:
    - Swedish citizens
    - persons who for at least ten years had a real home or habitual abode in Sweden.

- Finland:
    - Finnish nationals

- Norway:
    - persons who have been a resident of Norway for at least ten years

The stricter conditions applicable to the mentioned groups of people:

- Sweden:
    - The persons remains resident of Sweden for another five years from the day of departure, unless the individual is able to prove that there are no essential ties with Sweden
- Finland:
    - The national remains a resident of Finland for the rest of the income year in which he left Finland and the three following calendar years, unless he can prove that he does not have “substantial ties” to Finland
- Norway:
    - The person remains a resident of Norway for the rest of the income year in which he left Norway and the three following income years
    - during each of the three mentioned years the person must not stay in Norway for one or more periods exceeding in the aggregate 61, neither can he nor any closely related person have a home in Norway at their disposal

Both the Finnish and the Norwegian national reporters points out that the residence article of tax treaties normally solve dual-residence situations caused by the stricter rules and thus limit the right tax in these cases.

When it comes to Denmark, the law does not provide how residence ceases to exist. In practice, attention is paid to which intention the person in question shows by establishing a home, acquiring a residence or by other measures. If a taxpayer owns a residence in Denmark or has tenant's rights to an apartment or house in Denmark, there is an administrative rule establishing a presumption that a 3 year irrevocable letting or subletting means that the taxpayer cannot be regarded as having maintained their residence in Denmark during these 3 years.

A.1.1.3.2 Specific topics arising from Community law/the Nordic tax treaty

The Finnish national reporter points out that the three-year rule is somewhat problematic from a community law perspective, since the three-year rule distinguishes between Finnish and foreign nationals. The three-year rule can cause discrimination and can also be seen as an obstacle to free movement. The three-year rule leads under certain circumstances to situations where Finnish nationals are taxed more severely than non-nationals. Finland does not anymore include the three-year rule into new tax treaties.

In Norway, a Supreme Court decision 24 April 2008 (*Sølvik)* regarding the tax treaty with the United States, which the taxpayer won, has lead to new guidelines from the Tax Directorate regarding the criterion "permanent home available". The guidelines imply that a taxpayer who rents out his home to an independent third party during a stay abroad that lasts 2 ½ years, does not have a permanent home available to him in Norway during the stay.

The Norwegian national reporter further refers to a case raised by a Norwegian residing in Sweden, in which the Parliamentary ombudsman has concluded that he will not look into the substance of complaints against Norwegian tax authorities' denial of deeming the taxpayer to be resident of another state according to the tax treaty, if the taxpayer's documentation does not show that he has acted as a tax resident in the other state by reporting income which is taxable for residents there.

A.1.2 Taxation

A.1.2.1 A brief description of the general tax rates on employment income

All four countries distinguish between municipal taxes and state taxes.[5] The municipal taxes are relatively flat whilst the progression of the system is taken care of by the state taxes.

In Sweden, income from employment is subject to national and local income taxes in Sweden. A basic national tax (*statlig inkomstskatt*) of 20 per cent is levied on taxable income in excess of SEK 367,600 (2009). A higher national tax of 25 percent is levied on taxable income in excess of SEK 526,200. Local Municipal tax (*kommunalskatt*) is charged at a flat rate ranging from 29.7 to 36 percent. The average local tax rate amounts to 31 percent.

In Finland, employment income is subject to state income tax, municipal income tax and church tax. The following table applies for the state income tax as of 1 January 2009 (945/2008):

Taxable income (EUR)	Tax on lower amount (EUR)	Rate on excess (%)
13,100 – 21,700	8	7
21,700 – 35,300	610	18
35,300 – 64,500	3,058	22
64,500 –	9,482	30.5

[5] Cf. *Yearbook for Nordic tax research 2005 (Local taxation)*

Each municipality levies upon its residents a proportional municipal income tax. The tax is set annually by the municipal council. The tax rate ranges in 2009 from 16.5 to 21 per cent. Members of either the Evangelical Lutheran Church or the Orthodox Church pay church tax on the income as assessed for the municipal income tax. Church tax is imposed at flat rate varying between 1 and 2 per cent depending on the municipality.

Norway has a dual income tax system under which there is a net and a gross tax base, referred to as general and personal income respectively. Income from employment falls within both tax bases. The tax rate on the general income is 28 percent. The personal income is subject to 9 percent tax on income above 441 000 NOK and 12 percent on income above 716 600 NOK.

In the spring of 2009 the Danish Parliament carried out a tax reform that, among other things, makes changes to the taxation of earned income.[6] One intention is to reduce the top marginal tax rate from 62.3 % in 2009 to 55.4 % in 2010. The changes made by the reform will primarily take place in 2010.

The progressive state taxes are imposed upon personal income with the addition of positive capital. The taxes range from 5.04 % in 2009 (3.76 % in 2010) to 15 %. A health contribution of 8 % is also payable to the state. The health contribution is calculated on the taxable income after deduction of the personal allowance.

The amount of local government tax varies from authority to authority. Those with limited tax liability pay local government tax at the average local government rate, which in 2009 is 24 %. Church tax is only paid by members of the State church. The rate varies between local authorities, but in 2009 the average is 0.88 %.

The calculated taxes are reduced by the tax value of the personal allowance. This applies both to persons with full tax liability and persons with limited tax liability on earned income.

A.1.2.2 Which rules apply specifically for workers migrating to your country?

Within international taxation of migrating individuals two features are to be seen. On the one hand, they might be treated less favourable than sedentary workers because they are subject to final withholding taxes on gross income or because they are not given the same deductions as sedentary workers. This usually applies to non-residents. On the other hand, there might exist special regimes which are intendedly more favourable for migrant workers than the general regime that applies for sedentary workers. Such rules might be motivated by the extra costs o migrant worker has compared to sedentary workers, but they can also be motivated by tax competition and thus be applicable also after the worker has become a resident.

The jurisprudence of the ECJ has resulted in well established case law regarding non-resident's right to personal allowances and deductions in the source state: A non-resident has the right to personal and family allowances in the source state from which he obtains his income entirely or almost exclusively if he does not receive sufficient income in his state of residence enabling his personal and family circumstances to be taken into consideration there, ref. cases C-297/93 *Schumacker*, C- 170/04 *Asscher*. This requirement is fulfilled by the source state when personal allowances and deductions are given to non-residents earning 90 pct. or more of their income there, ref. case C-391/97 *Gschwind*. When assessing the

[6] The amendments to income tax were introduced in Law No 450 of 12 June 2009.

residence state situation, income which by its nature is not subject to tax, can not be taken into consideration, ref. case C-169/03 *Wallentin*. [7]

Sweden and Finland apply final withholding tax on gross income to non-resident workers, the tax rates being 25 % and 35 % respectively. The filing of an income tax return is not required. Finland gives a basic deduction of EUR 510 per month or EUR 17 per day if the working period does not amount to a month. In Sweden the withholding tax is applied when the individual spends less than six months in Sweden or when the individual habitually spends time in Sweden but the number of nights in Sweden is limited.

In Norway and Denmark non-residents are taxed through assessment, but as a starting point certain restrictions apply as to which deductions they are given. In both countries it is a general condition that the relevant expense is related to the income taxable there. In Denmark this implies that a taxpayer with limited tax liability neither will be able to deduct contributions to private pension schemes nor maintenance contributions to a former spouse.. In Norway most deductions which are not income related are given, but they are reduced according to how much of the income year the stay has lasted.

Not surprisingly, Denmark has special rules regarding pensions saving. As a starting point domestic pension savings are taxed according to an EET principle, whilst foreign savings are taxed according to a TTE principle. As of 1 January 2008 the rules have been amended. Now, persons who, in connection with moving to Denmark, become fully liable to tax and are covered by pension schemes established by life assurance companies, pension funds or credit institutions in another Member State of the EU/EEA, can have the pension scheme approved as a tax-privileged pension scheme for a period of 60 months. This applies even if the scheme does not fulfil the Danish conditions for tax privileges. Several conditions are attached to this rule. The Øresund Agreement contains rules on the mutual recognition of pension schemes with regard to cross-border workers and persons who move between Sweden and Denmark.

All four countries have modified their tax rules regarding non-residents to comply with the abovementioned EU obligations. Sweden and Finland has implemented an option for the individual to file an income tax return and be taxed through assessment, being entitled to the same deductions as residents. In Finland and Norway the rules are restricted to residents of EEA member states. In Finland and Denmark it is a requirement that at least 75 per cent of the total net earned income during the tax year is sourced there, whilst the requirement in Norway is that all or almost all their income is taxable in Norway.

When it comes to favourable rules for non-residents in the general tax system, Norway and Denmark have a few provisions on deductions available for non-residents or other immigrant workers only. In Norway this is the 10 % standard deduction, limited to NOK 40 000. The deduction may be opted for in stead of most of the regular deductions as long as the taxpayer has a limited tax liability and for the first two years of residency. In Denmark, a standard deduction for increased living costs in connection with a temporary stay in Denmark is available for 2 years from the start of the tax liability. The deduction is DKK 8,000 plus 5 % of the gross salary, but may not exceed 25 % of the gross salary.

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[7] The ECJ jurisprudence regarding deductions for interest costs will be covered by a separate lecture during the seminar.

The general rules for taxation of migrant workers give rise to critical comments from the Swedish and the Norwegian national reporters. Behind the formal neutrality of the Swedish rules, the Swedish national reporter observes that it might cause problems in some situations for a migrant worker that he has not been able to sell his private home before he moves to Sweden. Sweden's method with a postponement of taxation of gains from sale of private properties is not attractive for individuals that would not have paid any tax in their home country if the house had been sold before the arrival in Sweden. Further, it is observed that the new Swedish rules on taxation of stock options may also prevent individuals from moving to Sweden due to heavy taxation of income already earned outside Sweden. From the Norwegian side the comment is the opposite, reflecting that behind formally very neutral Norwegian rules, lies an advantage for persons becoming residents according to the Tax Act, but remaining residents of the country of origin according to the tax treaty. They get the full basic allowances and deductions of the Norwegian tax system and can thus obtain an income from Norway that is not insignificant without paying tax here. Combined with the use of exemption methods for wages in the country of residence according to the Nordic tax treaty, this tax exemption becomes final.

In Sweden, Finland and Denmark there are *tax regimes* for migrant workers. They have the following features:

- Sweden:
    - Conditions for application
        - foreign expert, scientist or executive
        - resident of Sweden
        - employer is Swedish or a permanent establishment there of a foreign enterprise
        - first three years of the assignment period
    - Taxation
        - 25 percent of the income is tax exempt (along with certain expenses)
        - no social security charges are levied on the exempt income
- Finland:
    - Conditions for application
        - the work requires special expertise
        - resident of Finland
        - not a Finnish national
        - not resident in Finland during the five calendar years preceding the year in which the stay commenced
        - the salary is at least EUR 5,800 a month during the whole period of employment (except research for the public good and university teaching)
        - up to 48 months
    - Taxation
        - withholding tax of 35 % per cent on the Finnish-sourced salary
- Denmark:
    - Conditions for application
        - work is carried out in Denmark
        - not full or limited tax liability within the preceding 3 years

    - not within 5 years prior to the appointment direct or indirect participation in the management or control of or significant influence over the employing undertaking
    - not employed in the undertaking during a period of 3 years prior to or 1 year after the termination of tax liability
    - not previously sent abroad as a PhD student, paid for by public means from Denmark
    - payment must constitute an average in the same calendar year of DKK 63,800 per month (does not apply to employees of universities)

  - Taxation for a maximum of 36 months
    - 25 % of the gross payment
    - included labour market contributions the tax rate is effectively 31 %

  - Taxation for a maximum of 60 months
    - 33 % of the gross payment
    - included labour market contributions the tax rate is effectively 38.36 %

Amongst others the special tax regimes give rise to questions regarding neutrality and tax competition. They were discussed under the title 'Special Measures for Temporary Residents' at a seminar led by Professor Frederik Zimmer at this year's IFA Congress in Vancouver. There the question was risen as to whether such rules breach the State aid rules of Article 87 of the EC Treaty.

A.1.2.3 Which rules apply to workers migrating from your country?

A.1.2.3.1 Rules for the avoidance of double taxation

All the four countries apply the credit rule as a main rule and all of them have modified this starting point significantly by introducing exemption methods for employment income in the Nordic tax treaty and in domestic legislation. Sweden applies full exemption, whilst the other countries ensure progression on other income by applying the alternative exemption method or the exemption with progression method. Article 26 paragraph 2 contains a switch-over rule for the case that the source state does not tax an income it is given the primary taxing right to.

Paragraph 7 second subparagraph of article 25 decides that the methods above switch over to credit if the employer in the state of destination is associated with or a permanent establishment of an employer the employee has or had immediately before that employment. The aim of the rule is to prevent splitting of income. Since the rule is an anti-avoidance rule, there are given criteria in subparagraph 3, which leads back to the main rule if the tax payer proves they are fulfilled.

The domestic exemption methods have the following main features:

- Sweden has two sets of rules
  - 6-month rule
    - assignment abroad for at least six months without interruptions
    - the income is taxed in the country where it is derived
    - not in Sweden during the assignment period more than 36 days or in the average six days for each full month during the period abroad

  - 12-month rule

        - assignment abroad for at least one year
        - the whole year is spent in the same employment in the same foreign country
        - the income must be tax exempt in the working country as a consequence of
            - that state's domestic legislation
            - a treaty other than a tax treaty with that state
            - a special decision of an authority in the state
            - no existing tax provisions in the state

- Finland
    - employment exercised abroad for a continuous period of at least six months
    - stay in a foreign country has to be due to the employment in that country
    - not in Finland in average more than 6 days per month
    - not employed by the State of Finland, a Finnish municipality or any other domestic statutory body
    - state of residence does not have the primary right to tax according to tax treaty

- Norway
    - work abroad for a period that lasts for at least 12 months
    - stays in Norway must be limited to an average of six days a month
    - Norway does not, pursuant to a tax treaty or other agreement in international law, have an exclusive right to tax the income

- Denmark
    - the taxpayer has stayed outside Denmark for at least 6 months without interruption
    - total duration of stays in Denmark is not more than 42 days

The Swedish and Finnish rules give full exemption, whilst the Norwegian and Danish rules ensure progression on other income by applying the alternative exemption method and the exemption with progression method respectively. Denmark has a special rule for the situation that a tax treaty gives Denmark the taxing right over those who are privately employed. Then the total income tax is reduced by half the amount that is proportionately payable on the foreign income.

In 1999, the Danish Parliament adopted an amendment to the relief provisions in the Nordic Tax Treaty. In principle the Law contains a change from exemption with progression to credit for persons who are not covered by social insurance in the country where they work. The aim of this was to put an end to the tax system's unintended favouring of those resident in Denmark and working in one of the other Nordic countries. The Law only concerns those who, under Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons and their families moving within the Community, did not pay social security contributions in the country where they worked because they were covered by social security in Denmark, and therefore paid less than other taxpayers both in Denmark and in the country where they worked. The difference was due to the fact the relief for foreign tax did not take account of the fact that social security payments were not made abroad.

It follows from case C-336/96 *Gilly* that there is no directly effective Community law obligation on the Member state to avoid double taxation. However, in case C-385/00 *De Groot* the ECJ may be said to have inserted the *Schumacker* doctrine into national rules aiming at avoidance of double taxation. The outcome of the case was that the state of residence in the computation of domestic and foreign income for the purpose of avoiding double taxation, must allocate personal allowances and deductions to the domestic income if the tax payer also received income from another Member state without his personal or family deductions being taken into account. The national reporters do not report about any amendments done based on this jurisprudence.

A.1.2.3.2 Exit taxes

Exit taxes have gained importance due to the increased migration. This is reflected in the attention given to such taxes in the national reports. The Nordic exit taxes cover items such as stock options, shares held and pension savings.

However, it is relatively undisputable that taxes imposed upon emigrating workers, exit taxes, constitute a restriction on the free movement for workers. The main question is how the considerations behind such taxes can be taken care of without constituting a restriction and whether there are justifications for possible restrictions. In case C-92/02 *De Lasteyrie* France tried to justify its exit tax on shares by the need to prevent abuse by temporary emigration and disposal of the share during the stay abroad. The ECJ referred to the possibility of taxing the capital gains upon the taxpayer's return to France and did not accept the justification as proportionate. The ECJ's jurisprudence regarding exit taxes was further elaborated in case C-470/04 *N*. In this case the aim of the rule was to ensure taxation of unrealized capital gains accumulated during the residency in the state of departure. In light of such an aim the ECJ accepted that taxation is in principle done upon emigration, but required that the payment of the tax is postponed without any security requirement until the shares are realized, and that a reassessment based on any lower value at that time is offered.

The Nordic tax treaty article 13 paragraph 7 contains a rule related to exit taxes. The rule was amended by the latest protocol to the treaty, signed 4 April 2008, and now gives the state of departure the right to tax capital gains from the disposal of shares within 10 years from the year of emigration. However, the taxing right is restricted to the capital gains accumulated until the person became a resident of his present state of residency. Sweden is the only country to report use of this rule.

Sweden in particular seems to have made many amendments to their exit taxes bases on the EU obligations.

For individuals, a capital gain on a non-professional disposal of a real property is taxed as capital income. On certain conditions the taxation of the gain from a sale of a permanent home in EU/EEA can be postponed if the taxpayer buys a new permanent home within the EU/EEA.

Earlier, Sweden taxed employee stock options as employment income upon exercise. If an individual left Sweden and held employee stock options that was vested when the individual was resident in Sweden, the options were taxed at the day of departure as if the options were exercised. However, as of January 1, 2009 the rules were amended and this exit taxation was abolished due to the abovementioned EU obligations.

Sweden and Finland both have had rules to recapture tax exemptions enjoyed by exchange of shares under business restructurings. Such rules are of less relevance to migrating workers, but it is worth mentioning that amendments to the Swedish rules are proposed due the EU obligations. The Finnish national reporter questions the compatibility between the rules and the EU obligations.

Denmark and Norway have exit tax rules for *latent share gains* etc. of individuals moving from the country. A person who ceases to be a tax resident is liable to tax on the increase in value of shares etc. up until the date of emigration. In both countries it is possible to obtain a suspension of the tax until the disposal of the shares. Norway requires adequate security for the deferment, but this does not apply towards EEA countries with which Norway has a treaty that obliges the country to assist in the recovery of tax claims. The Norwegian exit tax rules are based on an assessment of the EEA obligations following from the *de Lasteyrie* and *N* cases, but have been criticised for not fulfilling the criteria of *de Lasteyrie*[8].

The aim of the exit tax rules of Norway is to secure a neutral taxation of the increase in value that has taken place while the taxpayer has been resident in Norway and thus neutralize any motivation to move to a state with no or low taxation of gains before realizing the built up gains. Thus, if the gain is subject to tax in another state, this tax is credited in the Norwegian tax. To protect taxpayers with only minor gain shares, and for administrative reasons, a threshold of NOK 500,000 is introduced. The threshold has been criticized for being too low – no one would emigrate to save 140,000 in tax.

Also in this context, Denmark distinguishes itself by having special rules on pension savings. A person who ceases to have full tax liability by moving abroad will be subject to additional tax on certain pension savings to which the employer has made extraordinary contributions.

A.1.3 Deviations between the rules applicable between the Nordic countries and the rules applicable versus other countries

The general impression is that none of the four countries have systematic deviations between for migration between the Nordic countries from what applies to other migration, with one important exception, and that is the use of the exemption method in the Nordic tax treaty. For all these countries the importance of this is reduced by domestic exemption rules with a general application.

Finland reports that only the Nordic tax treaty and their tax treaties concluded with Belarus, Estonia, Lithuania, Latvia, Georgia and Moldavia allow taxation of hired out labour in the country where the employment is exercised. The Norwegian and Danish point of view is that the concept of hired-out labour in the Nordic tax treaty generally corresponds to what is understood as hiring out of labour in other tax treaties.

A.2 Net wealth taxes

Net wealth taxes can be an important element in the tax considerations of an individual. However, Denmark abolished the net wealth tax in 1997 and was followed by Finland in 2006 and Sweden in 2007. This leaves Norway as the only country imposing net wealth taxes and the Norwegian national reporter as the only reporter to describe net wealth taxes. Here only

[8] Fredrik Zimmer: Internasjonal inntektsskatterett (2009) page 316.

the features of the Norwegian net wealth tax rules that are most relevant to migrant workers are described.

The general liability to pay net wealth tax follows the tax residency at the turn of the year, cf. A.a.a.a. The tax liability will not apply fully if the person is deemed to be a resident of another country according to tax treaty and the treaty covers capital.

Taken that all the other Nordic countries have abolished net wealth taxes, it is somewhat surprising that Norway did not see to it that the provisions regarding taxation of capital were deleted from the Nordic tax treaty when the protocol of 4 April 2008 was negotiated. This is more of a drafting problem than a legal problem, due to the subject to tax clause of article 26.

For 2009, the general net wealth tax is 0.4 percent of the total net wealth above 470,000 NOK to the state and 0.7 percent to the municipalities, altogether 1.1 percent of the net wealth above the threshold.

A.3 Social security contributions

The social security systems of the Nordic countries vary quite a bit, both regarding what is covered by the public social security system and regarding how the contributions are made.

For instance, on the contribution side the Norwegian system is based on contributions both from the employers and the employees, whilst the Swedish system is only based on contributions from the employer. On the coverage side Denmark distinguishes itself by having a relatively large part of the welfare system outside the state, for instance regarding unemployment benefits (AMBI) and pension savings.

For an employer it is of relevance whether the employee’s work in one state or the other results in an obligation for the employer to contribute to the social security system. Likewise, for the employee it is of relevance whether the performance of employment in one state or the other has implications on his payment of social security contributions.

Regulation 1408/71 and the subsequent Regulation 883/2004 coordinate the social security membership rules of the EEA states and thus the employee’s contribution to the social security system. The main rule is that the employee is a member of the social security system of the country in which the employment is performed. However, under certain conditions posted workers remain members of the social security system of their country of origin for stays lasting maximum of 12 months. An employee performing employment in more than one EEA state, remains a member of the social security system of his state of residence if part of the employment is performed there. If this is not the case and the employee has only one employer, he is to be a member of the social security system of the state in which the employer has his seat.

In addition to the Regulations, there is a Nordic social convention. Due to the Regulation, this convention is only relevant for persons who are residents of the Nordic countries without being citizens of an EEA state. The convention is therefore not discussed any further.
The rules above are the same for all the Nordic countries and did not necessiate any further description by the national reporters. The national reporters have therefore only described the specific rules in their country under the items below. For the sake of completeness, the Danish

national reporter has described the parts of the welfare system that are outside the state as far as they are especially relevant for migrant workers.

A.3.1 Liability to pay

A.3.1.1 Under which conditions is there a liability to pay for employment exercised by migrant workers?

A.3.1.1.1 Domestic law

As a starting point all the four countries impose a liability to pay social security contributions for work performed there.

In Sweden the contributions are paid by the employer for work performed in Sweden. The employee pays a pension insurance fee if he is taxable in Sweden on the employment income.

Finland has a fine-meshed system, where the contributions are paid either by the employer, the employee or both. The rules applicable in situations of cross border movement vary considerable between the different types of contributions, the country of destination/origin and depending on the length of stay. Individuals moving to Finland to work for a domestic Finnish employer are usually immediately covered by the employment based social security, regardless of the country of departure or length of stay.Usually a two years stay in Finland will constitute residency and give the most comprehensive membership and liability to contribute. Foreign employers are obliged to pay the contribution only if the income is taxable in Finland and the employer has a permanent establishment here, or the salary is paid by a representative for the employer. The social security contributions are according to the principal rule levied on the salary subject to prepayment of tax.

For a person migrating from Finland, the employment based social security ends immediately as he ends his work in Finland irrespective of the country where the work will be performed. Residence based social security is phased out in a more gradual way and can last up to 10 years totally.

The general rule is that contributions and premiums are calculated on the basis of the gross income.

In Norway, employers have to pay social security contributions on wages and other remuneration that the employers have to report. The obligation to pay employer’s social security contributions does not follow the membership of the employee and can apply even if the employer is not engaged in activity in Norway and even if the employee is not liable to tax in Norway. However, the obligation to pay contributions does not apply for remuneration for labour abroad when the employee is a foreign citizen not a member of the Norwegian Social Security, or the work is performed for a permanent establishment abroad of a Norwegian enterprise by an employee who is not a tax resident of Norway.

Persons who are resident in Norway are as a rule obliged to be members of and to pay contributions to the Social Security Scheme. A person is resident if his/her stay in Norway is intended to last or has been lasting for more than 12 months. In addition, a person having a work permit and exercising employment in Norway becomes a member irrespective of whether he/she is liable for tax. Such membership lasts up to 1 month after the employment has ended. All employees that are insured in their home country, are exempt from the Social Security Scheme if they are not taxable to Norway according to the Tax Laws or Tax Treaty if the stay is not to last more than three months.

In general, the membership ceases if the member moves abroad and the stay is intended to last or lasts more than 12 months or is intended to or has lasted more than 6 months a year for two or more subsequent years or the member starts working abroad, unless the employee has to pay social security contribution on the remuneration.

Employees who have earned income from work carried out in Denmark and who have full or limited tax liability must pay labour market contributions, regardless of whether their employer is Danish or foreign. This applies whether or not the foreign employer has a permanent establishment in Denmark.

For employees who work abroad for a foreign employer, there is only an obligation to make a contribution if they have full tax liability in Denmark, and are covered by social security legislation in Denmark.

A.3.2 Contributions paid

A.3.2.1 A brief description of the general social security contribution rates

The statutory social security contributions from employers amount to 31.42 percent (for 2009) of the total remuneration paid to the employees including all taxable benefits in kind. In addition, an employer bound by a collective agreement, pays in the average 18 percent of salaries to cover the cost of contractual pension plans. Special charges apply for youths. The employees are charged a pension insurance fee of 7 percent of the employment income, maximum SEK 28,800.

In Finland, for each employee a private employer has to pay a general social security contribution varying between 2 – 5,1 per cent of the employees' wages before taxes. For other employers the contribution is 3,05 per cent. Individuals covered by the national health insurance pay a health insurance contribution of 1,98 per cent. The unemployment insurance contribution is 0,20 per cent for the employee, 0.65 per cent for the employee on wages up to 1,788,000 EURO and 2.7 per cent for the employee on wages exceeding 1,788,000 EUR. The employment pension contribution is on the average 22 per cent and is mostly paid by the employer. The accident insurance premium will vary between 0.3 – 8 per cent. The group life insurance contribution is roughly 0.07 per cent where applicable.

In Norway, the employer's social security contributions are stipulated as a percentage of the reported amount. The contributions are differentiated, with rates that vary between different geographical zones. The highest rate applies to Zone 1, which includes large areas of southern Norway. The rate for Zone 1 is 14.1 percent. There are several, lower rates for rural areas. For the northernmost municipalities of Norway the rate is 0.

Employee's social security contributions are stipulated as a percentage of personal income. For pay and other personal income the rate is 7.8 percent. No social security contribution is paid if the income is 39 600 NOK or less.

Denmark has relatively low social security contributions. Employees pay 8 % in labour market contributions. Labour market contributions are calculated on the gross earned income, including certain personal benefits, for example the value of a company car. Labour market contributions are also paid on contributions to pension schemes administered by the employer. Labour market contributions are withheld in the same way as withheld A tax and are deducted from personal income.

Labour market contributions were changed as from 1 January 2008 so that, in relation to tax treaties and the rules on relief, such contributions are treated as a tax. In spite of this, Denmark still allows relief under Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons and their families moving within the Community and other social security agreements.

Employees and employers pay to the employee's labour market supplementary pension scheme (ATP). Employees pay a fixed annual amount of DKK 1,080 per full-time employee.

The employer pays 2/3 and the employee pays 1/3 of the contribution; see the Law on the ATP § 15(4). Employers who are covered by the Law on the ATP also pay contributions to the Employers' Reimbursement System (AER). Private employers also pay to finance the Employees' Guarantee Fund. The employer's contribution is DKK 2,160 per full-time employee.

A.3.2.2 Do any rules apply specifically for immigrant workers?

None of the countries have specific rule for immigrant workers regarding the rates or base the contributions are computed on.

The Swedish social security legislation applies to Swedish citizens as well as immigrant workers. However, in order to benefit from the social security benefits, the individual must be comprised by the Swedish social security system.

In Finland, individuals who are subject to the social security system in Finland on the basis of residence receive better benefits than those who are subject to the social security system only on the basis of employment. This distinction gives rise to concerns regarding the free movement of workers from other EU/EEA-countries.

In 1999 the Nordic Tax Treaty was amended so that relief from double taxation was made dependent on social security status.

Denmark and Sweden have deviated from Regulation 1408/71 for work in the Øresund region. They allow an employer and an employee to agree that if more than half the work in a 3 month period is carried out in Denmark and the rest in Sweden, the employee can be covered by the Danish social security and oppsite.

A.3.3 Deviations between the rules applicable between the Nordic countries and the rules applicable versus other countries

None of the four countries report systematic deviations between the rules applicable to migration between the Nordic countries and the rules applicable to other countries. The main difference will therefore rely upon whether the relevant country is an EU/EEA country and covered by Regulation 1408/71 or not and whether there exists a social security agreement with the country or not.

A.4 Critical remarks

Item A.1.1.1 shows that Finland, Norway and Denmark tax non-residents based on connecting factors that are well known from the general rules of the first paragraph of the OECD model article 15 and the exceptions of the second paragraph.

It can be questioned whether it is an adequate solution. The rules have different functions, as the domestic rules decide how far the tax liability reaches whilst the tax treaty provisions give the conditions for a tax exemption in the source state. This may be illustrated by an example. Let us say that a Swedish employee of a Swedish company works in Finland for over 183 days without the employer having a permanent establishment in Finland. In such a case, Finland has the taxing right according to the taxing right according to article 15, but does not exercise it.

If we continue the example and let the employee stay in Finland over 183 days, Finland's taxing right according to tax treaties is unrestricted. In such situations it is more likely that the employer has a permanent establishment in Finland state with the consequence according to Finnish that tax liability for the employment income arises. But if the employer does not have a permanent establishment in the source state, which can also be very likely, we will again have a situation where Finland has the taxing right according to article 15, bout does not exercise it. In countries where a 183-day rule is applied for residency, coherence is maintained by taxation based on the residence as fast as the taxing right of the source country is not restricted by the 183-day rule. But for countries that apply other criteria, like Finland, ref. A.1.1.2 above, this means that they might not tax.

If Sweden in these cases just applied the exemption rule, cf. item A.1.2.3.1 above, this would result in non-taxation. This would most likely be very undesirable, specially between neighbour countries where such a loophole can be exploited relatively easily. However, in this case the Nordic tax treaty is applicable and non-taxation is avoided if Sweden applies the subject to tax clause, cf. item A.1.2.3.1 above. But if the employer comes to Finland, Norway or Denmark from a country that applies the exemption method with which the tax treaty does not have a subject to tax clause, non-taxation will occur.

When it comes to the taxation of migrant workers, cf. item A.1.2 above, it is also the combination of the application of the exemption method in the state of departure with very favourable taxation in certain cases in the state of destination which creates the most startling results. Firstly, item A.1.2.2 above shows that Sweden and Finland have general withholding tax regimes for non-residents which can be quite favourable compared to progressive taxation under the general tax system of both that country and the country of departure. Secondly, item A.1.2.2 shows that Sweden, Finland and Denmark have specially favourable tax regimes for certain migrant workers. Thirdly, item A.1.2.2 shows that migrant workers who pass the thresholds of residency according to domestic law get the full basic allowances and deductions. All these rules combined with the exemption method of the Nordic tax treaty and domestic law create situations in which it is more favourable to work wholly or partly in another Nordic state than in the state of residence. One can wonder why the tax system should motivate two persons from different Nordic countries simply to exchange jobs. These effects are elaborated further in the economic general report.

B Taxation of goods

General

Taxes on goods are taxes on consumption. Two types are recognized; A general consumption tax covering supplies of all goods (and services), namely the VAT, and excise taxes covering supplies of specific items, e.g alcohol, tobacco and mineral oils. For goods grossing borders, consumption taxes are in international trade based on the destination principle. This implies that the starting point is taxation in the state of consumption. Thus, import is taxed and export is exempt from tax. The principles are not transformed into legally binding obligations between states to any extent of significance. However, the principles are adhered to extensively in EU and domestic law.

The OECD work on VAT has had its main focus on international services and intangibles. In 2006, the OECD launched a project aimed at providing guidance for governments on applying VAT to cross-border trade. Pending completion of this project, OECD countries have agreed on two fundamental principles for charging VAT/GST on internationally traded services and intangibles:

- For consumption tax purposes internationally traded services and intangibles should be taxed according to the rules of the jurisdiction of consumption
- The burden of value added taxes themselves should not lie on taxable businesses except where explicitly provided for in legislation

The proposed guidelines are needed in today's environment of rapidly increasing international trade, because a current lack of international "rules of the game" can lead to double taxation or unintentional non-taxation. Tax administrations struggle with applying the tax on international transactions where there are no internationally agreed rules.

As the reports are restricted to taxation of individuals and goods, the OECD work on the guidelines will not be mentioned further.

VAT has been harmonized within the EC for more than 40 years, and is today regulated by Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax. Excise taxes on alcohol, tobacco and mineral oils are, to a large extent, harmonised as well. When the internal market was established on 1 January 1993, fiscal custom based controls at internal frontiers were abolished and the EC introduced common rules (procedures) for VAT and excise duties on intra community supplies.

This has the effect that the main rules are equal for goods crossing any border within the EC (intra community trade), i.e. also for goods crossing any border between Denmark, Sweden and Finland. The legislation as regards goods imported into EU from third countries, e.g. from Norway, is also largely harmonised. On the one hand, little would be left to the national reporters if the general reporter was to describe these common rules, and on the other hand, the national reports would be redundant if all were to describe the rules. Therefore, each of the national reporters of the EU countries has been asked to cover one part of item B.1.1, B.1.2 and B.1.3.

Even though VAT and a number of excise duties are harmonized, the different countries are not obliged to have identical systems, and EU countries can also maintain certain special national rules. The rates of duty are characterized by being minimum rates, i.e. the Member States must charge duties that are higher or equivalent to the minimum rate determined by the EU. The standard VAT must according to EU Law be minimum 15 per cent. In Sweden, it is 25 percent (like in Norway), in Finland 22 per cent and in Denmark 25 per cent. Reduced

VAT rates are allowed for specific goods and services. The EU VAT and excise duties directives also have provisions on duty exemptions and modifications.

Besides the harmonized excise duties, the individual Member States can maintain and introduce a number of purely national excise duties if they do not violate EU Law. In this report, focus is mainly on the harmonized excise duties.

Since the starting point is tax liability for imports of goods, the Norwegian report and the Finnish report (VAT and excise duties on goods crossing an EU third country border) mainly, consist of a description of which exceptions from the starting point apply when a private person crossing the border carries goods. Regarding exports of goods, the question is whether double taxation is avoided by an exemption from taxation in the country of origin (or in the country of destination). Under item B.1.3, the EU third country rules and the Norwegian rules are compared.

Between the Nordic countries there are also certain agreements regarding the taxation of goods:

The Agreement of 26 March 1980 concerning taxation of baggage in passenger traffic between Denmark, Finland, Norway and Sweden and concerning duty-free sales at airports in those countries aims at avoiding double taxation and non-taxation between the Nordic countries, cf. Article 1 and 2. The starting point is that goods bought by a person resident in one of the other Nordic countries for export as passenger's luggage, shall be taxed in the country where they are sold. However, if the goods are exported in immediate connection to the sale, and VAT has been paid on import, the sale is regarded as export and the VAT can be refunded in the exporting country. It is a condition for export sale that the sales price, VAT not included, is at least 1000 NOK, SEK, DKR or FMK. Article 1 does not apply for goods bought tax-free at an airport.

The Agreement Article 3 is meant to harmonize the tax-free rules in the member states. The tax-free shops on airports are according to the agreement not allowed to sell other goods than alcoholic beverages and tobacco if the goods are meant to be exported as passenger's luggage. The provision applies regardless of where the person is resident.

After the abolishment of tax-free sales between the EU countries, the abovementioned Agreement has lost its relevance between the Nordic EU Member States. Between Norway and the three EU countries, it should still apply. The tax-free shops in Norway seem however not to limit the tax-free sale to alcoholic beverages and tobacco products, while Finland seems to practice the limitations towards Norwegian travellers.

The objective of the Agreement of 1 January 1969 concerning provisioning of passenger vessels in traffic between harbours in Denmark, Finland, Norway and Sweden is partly to control sale and serving of non taxed goods on passenger vessels to avoid "floating tax free supermarkets" between the countries. The agreement therefore limits the possibility to tax free provisioning to such vessels.

B.1 VAT on goods crossing a border within the EU (Sweden)

There are two different principles to determine where to tax goods in case of a cross border transaction within the EC.

Under the *principle of destination*, goods are subject to VAT in the country where the goods are transported. This principle is, with a few exceptions only applied on transactions between taxable persons. One important exception to this principal rule is, however, acquisitions of new means of transports made by private individuals. This implies that a new car acquired from a Danish reseller and transported to Sweden consequently should be subject to Swedish VAT of 25 percent.

Under the *principle of origin*, goods are subject to VAT in the country where the seller resides. The principle of origin can be regarded as the main rule when private individuals acquire goods. Since VAT is only due in case of a supply of goods by a taxable person or in case of an intra-Community acquisition, a private individual bringing goods to Sweden from another EC member state, or from Sweden to another EC member state, is not obliged to report or pay any additional VAT. Consequently, a Swedish citizen can benefit from the lower Finnish VAT rate if he acquires the goods in Finland and transports it back to Sweden. Precautions should, however, be taken if the good in question is a new means of transport. As mentioned above, such transactions are considered as intra-Community transactions despite a private individual being involved in the transaction.

The principle of origin does not apply if the goods are transported by the seller or on his behalf, if the goods concerned are subject to excise duties or if the value of the seller's supplies exceeds a certain threshold. If the threshold is exceeded, the seller is obliged to register for VAT in the country of destination and charge local VAT. The Swedish threshold amounts to SEK 320 000 and is calculated on all supplies to customers in Sweden during the current and previous year.

B.2 Excise duties on goods crossing a border within the EU (Denmark)

B.2.1 Introduction

The harmonization of excise duties is less advanced than the harmonization of Value Added Tax. Today only energy products (originally mineral oils), manufactured tobacco, alcohol and alcoholic beverages are harmonized.

Excisable products moving within the Community do so under excise duty suspension arrangements. No excise duties have been paid on these products, they have not been released for consumption, and they move from a tax warehouse in one Member State to a tax warehouse in another under cover of the accompanying administrative document (AAD). This ensures that the excise duty − the duty payable on the consumption of these products – is collected in the Member State in which it is assumed that consumption is deemed to take place. Even though taxation of excise products are in principle based on the *origin principle,* excise taxation of commercial transactions is de facto based on the *destination principle*; hence the suspension arrangement makes it possible to postpone taxation until the products reach the country of destination.

Excisable products already released for consumption − on which excise duty has therefore been paid in one Member State − may also be moved within the Community. The horizontal Directive[9] Articles 7 to 10 regulate movements of this type. These Articles lay down the

[9] Council Directive 92/12/ECC on the general arrangements for products subject to excise duty and on holding, movement and monitoring of such products.

general principles governing the taxation of such products and the procedures for applying the principles. One aim is to enable members of the public to buy excisable products on the domestic market of one Member State and then take them to another Member State without having to pay more excise duty. A further aim is to ensure that where products are moved for commercial purposes, excise duty is paid in the Member State where the excisable products are consumed.

B.2.2 The place of taxation

Article 8 of the horizontal Directive states that "[a]s regards products acquired by private individuals for their own use and transported by them, the principle governing the internal market lays down that excise duty shall be charged in the Member State in which they are acquired". As it appears from this provision, the place of taxation in relation to private individuals´ purchase of excisable products is established according to *the origin principle*, because, as a rule, you have to pay excise duty in the country where the product is purchased. This provision only applies if two conditions are met: The products shall be acquired for the purchasers´ *own use* and shall be *transported by them*.

B.2.3 For their own use

B.2.3.1 For their own use

The term "for their own use" has its limitations and is opposed to the term "for commercial purposes". It follows from the horizontal Directive Art. 9 (2) that in order to establish that the products referred to in Art. 8 are in fact intended for commercial purposes and not for the private individuals´ own use, *"Member States must take account, inter alia, of the following:*

- *the commercial status of the holder of the products and his reasons for holding them,*
- *the place where the products are located or, if appropriate, the mode of transport used,*
- *any document relating to the products,*
- *the nature of the products,*
- *the quantity of the products.*

For the purposes of applying the content of the fifth indent of the first subparagraph [the quantity of the products], Member States may lay down guide levels, solely as a form of evidence."

In case C-5/05, B.F. Joustra, the European Court of Justice (ECJ) stated that it is clear from the actual terms in which Article 8 of the horizontal Directive is couched that it requires that the products *be intended for the personal use of the private individual who has acquired them.* It therefore excludes products acquired by a private individual for the use of other private individuals.

B..2.3.2 Transported by the private individual

If a private individual acquires a product in another Member State for his own use and transports it himself to another Member State the transaction, will unquestionable fall within the scope of the horizontal Directive Art. 8, with the effect that the origin principle shall be applied to the transaction.

In those instances where the product is *transported directly or indirectly by the vendor or on his behalf*, the destination principle will apply, whether the product is acquired for the private individual's own use or not; see Art. 10 (1). In such cases, the duty of the Member State of destination shall *be chargeable to the vendor* at the time of delivery; see Art. 10 (2).

The horizontal Directive is vaguer in cases where the product is acquired for the private individual's own use, but is transported by a carrier on behalf of the private individual and without any direct or indirect involvement of the vendor. In case C-5/05 *B.F. Joustra*, the ECJ found that it is apparent from the words 'transported by them' in Article 8 of the Directive that for that provision to apply, the products *must be transported personally by the private individual who purchases them*. If the buyer does not personally accompany the products, the excise duties are chargeable again in the Member State of destination according to the ECJ´s interpretation of the horizontal Directive.

A restrictive interpretation of Article 8 in this context may even suggest that non-commercial movements (e.g. in the course of removals or gifts) may not be exempted from excise duty in the Member State of destination unless the products are physically carried by the private individuals for whom they are intended. Consequently, movements that, subject to certain conditions, were exempt from duty before establishment of the single market are now taxed - which completely contradicts the principles of the single market.

This restriction on private individuals' right to buy goods in one Member State and, having paid taxes on them in that Member State, to transport them to another without being taxed again, also runs counter to the general rule for VAT. VAT is payable in the Member State of destination only on distance sales (where goods are dispatched or transported by or on behalf of the vendor). However, VAT on distance purchases (where the goods are dispatched or transported by or on behalf of the buyer) is always payable in the Member State of departure, even when the goods are subject to excise duties.[10]

B.2.4 The new horizontal Directive

In 2004, the European Commission put forward a proposal to simplify and liberalize the rules on intra-EU movements on products on which excise duty has already been paid in a Member State. In the Commission's view it was no longer justifiable to restrict the general principle governing the single market in the above-mentioned way. The Commission therefore proposed, in line with the principle applied to VAT that all movements of excise goods other than manufactured tobacco for the personal use of private individuals *carried out by or on behalf of a private individual* should by virtue of their non-commercial nature only be subject to taxation in the Member State of acquisition.

The European Economic and Social Committee (the EESC) expressed its concern with this part of the proposal. In the view of the EESC *"from a legal point of view, and contrary to the principle of taxation at the point of actual consumption, the goods could […] always be deemed to have been purchased by private individuals and sent or transported on their behalf and therefore be subject to excise duty in the Member State in which they were purchased, even if dispatch was effected by the seller"*.[11]

[10] See Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, Art. 32 and 33.

[11] See Opinion of the European Economic and Social Committee on the Proposal for a Council Directive concerning the general arrangements for excise duty, COM(2008) 78 final/3 – 2008/0051 (CNC), section 4.9.1.

On 16 December 2008, the new horizontal Directive was adopted[12] which will repeal the former horizontal Directive with effect from 1 April 2010. The above-mentioned elements in the proposal from the Commission did not reach the final Directive. Even though the wording of the provisions has changed a bit, the ECJ´s ruling in the Joustra case must therefore be assumed to stand. The wording of the new horizontal Directive Art. 33, that will replace the horizontal Directive Art. 7 currently in force can, however, give rise to considerations about the extent of the ECJ´s ruling in the Joustra case.

B.3 VAT and excise duties on goods crossing an EU third country border (Finland) or a Norwegian border (Norway)

B.3.1 Imports

B.3.1.1 Main rule

As a general rule, all goods imported by individuals to the EU tax area[13] or to Norway are subject to VAT and excise duties (for EU both harmonized and national excise duties). The EU tax area broadly corresponds with the geographical area of the European Union. The so-called exceptional areas, *e.g.* Åland Islands, are areas that fall under the geographical territory of the EU, but do not belong to the EU tax area. These areas are treated for import VAT and excise duty purposes in the same way as third countries, such as *e.g.* Norway. The Norwegian VAT and excise duty area is the Norwegian mainland and appurtenant territorial waters, but not Svalbard, Jan Mayen or Norwegian dependencies.

B.3.1.2 Exceptions

B.3.1.2.1 Permanent

The EU countries shall, based on either monetary thresholds or quantitative limits, exempt from VAT and excise duty goods imported in the personal luggage of travelers, provided that the imports are of a non-commercial character. The same exception applies at importation of goods to Norway.

If one compares the Finnish national duty free system and the Norwegian, the monetary threshold for duty free import to Norway is approximately EUR 720 (NOK 6000) for persons who have been outside Norway for at least 24 hours. If the duration of the stay has been less than 24 hours, the monetary threshold is approximately EUR 360 (NOK 3000). In Finland, the monetary threshold for air or sea passenger is normally EUR 430. The maximum limit for passengers in other than air or sea traffic is EUR 300. The Norwegian monetary threshold for duty free import is therefore considerably higher.

In addition to the monetary threshold, a person is generally allowed to import into Finland specific amounts of alcoholic beverages and tobacco products. For alcoholic beverages the amounts are 4 liters of still wine, 16 liters of beer and either 1 liters of strong alcoholic beverages (over 22 per cent) or 2 liters of alcoholic beverages (max 22 per cent). Norway has *within the monetary thresholds* quantitative limits for alcoholic beverages, tobacco products,

[12] Council Directive 2008/118/EC.

[13] The EU excise duty area is roughly the same as the EU VAT area and therefore the term EU tax area is often used to refer to both areas in question

fuel, meat, meat products and cheese. For alcoholic beverages, the amounts are 3 liters of wine/beer (2.5 to 22 per cent) **or** 1 liter of strong alcoholic beverages (over 22 per cent) as well as 1,5 liter with wine/beer (2.5 to 22 per cent). The duty free quotas for these high taxed products are thus lower in Norway.

According to both EU law and Norwegian law, personal property (removal goods) shall under certain circumstances be admitted free of import duties. According to EU regulations, personal property means *e.g.* cycles and motor cycles, private motor vehicles and their trailers, camping caravans, pleasure craft, private aeroplanes and any property intended for the personal use of the persons concerned or for meeting their household needs. No relief is granted for alcoholic products, tobacco and tobacco products, commercial means of transport and articles for use in the exercise of a trade or profession, other than portable instruments of the applied or liberal arts. According to Norwegian Law, motor vehicles, aircrafts, professional equipment, foodstuffs, alcohol beverages or tobacco products, cannot be imported as removal goods.

In Finland, motor vehicles can not be imported free of excise duty. The car tax, which must be paid before the imported vehicles can be legally used on public roads in Finland, is however under certain circumstances *reduced* by a maximum of EUR 13,450, if the vehicles have been imported as removal goods. In addition, a person who has stayed in Finland temporarily before moving to Finland permanently is under certain circumstances entitled to this reduction. In Norway, all used vehicles get a reduced vehicle tax.

B.3.1.2.2 Temporary

Temporary importation is a custom procedure which allow the use in the customs territory of the Community or of Norway, with total or partial relief from import duties, of goods intended for re-export without having undergone any change except normal depreciation due to the use made of them. The maximum period during which goods may remain under the temporary importation procedure is 24 months in both EU and Norway.

The high level of excise duties on motor vehicles in the Scandinavian countries creates challenges regarding the temporary use of foreign registered motor vehicles. The conditions for temporary us both in Finland and in Norway differs between situation where the person is resident in Finland/Norway and is resident abroad.

According to Finnish regulations, vehicles imported by persons *permanently resident outside the EU tax area* are considered as so-called tourist cars and can under certain conditions be used temporarily in Finland without being subject to car tax. The vehicle is under no circumstances allowed to be used for longer than six months, continuously or interruptedly, during a period of twelve months.

Persons with *permanent residence outside of Norway* may use motor vehicles in Norway duty free. The same applies for persons with *temporary residence in Norway*. The residence is regarded as temporary if the stay is not planned to last for more than maximum two years from the date of entry.

A person who *permanently lives in Finland* and whose place of employment is in a country outside the EU tax area, may temporarily use a vehicle free of car tax on Finnish roads, provided that the vehicle is permanently registered in that other country and owned or controlled by his employer and used exclusively for purposes of his occupational tasks.

Persons *permanently living in Norway* may import and temporary use foreign-registered motor vehicles in certain situations, e.g._foreign-registered rental car in connection with a journey from abroad.

B.3.2 Exports

According to articles 146 and 147 of the VAT Directive, Members States shall under certain circumstances exempt from VAT transactions according to supply of goods dispatched or transported to a destination outside the EU tax area.

Both Finland and Norway has a VAT refund system for persons resident abroad/outside the ET tax area. According to Finnish National regulations, the goods has to be purchased in so-called tax-free sales (special tourist sales), this is not a condition in Norway. In Finland, the minimum value of the purchase is EUR 40 and the goods have to be exported from the EU tax area as new, unused, within three months after the sale. In Norway, the minimum purchase amount and other qualifying terms depend on where the tourist is resident. For sales to residents of other countries than Sweden, Denmark and Finland, the purchase price of individual items must be at least approximately EUR 30 (NOK 250), and the item must be exported to the customer's home country within a month from the time it was delivered. Contrary to what applies to residents of Denmark, Finland, Norway and Sweden, it is not a condition for Norwegian VAT refund that VAT is paid in the customer's home country.

Neither the EU nor Norway has a refund system for excise duties. This may lead to a double-taxation situation if the products bought within the EU tax area/Norway are also subject to excise duty in the country of destination.

Both in the EU and Norway, goods can be sold VAT and excise duty free at a customs warehouses situated in an airport, to an individual travelling to a destination outside the EU tax area/outside Norway. There are however limitations as to what kind of goods the tax free shops may sell, e.g. alcoholic drinks, tobacco products, chocolate and confectionery, perfumes, cosmetic preparations and toilet articles.

B.4 Critical remarks

The starting point for imports of goods to Norway and to EU countries from third countries is tax liability. For individuals crossing borders within the EU, the starting point is the reverse. Under the principle governing the single market, all products carried within the Community by individuals for their own use should be subject to taxation solely in the Member State where the products are acquired.[14] EU individuals can thus take advantage of lower VAT rates of the other EU Member States (this not applying for acquisitions of new means of transport). For excise duties, this main rule is confined by the fact that only a limited number of excise duties are harmonized within the EU, e.g not excise duties on motor vehicles. In addition, a private individual personally has to accompany belongings brought into another Member State if the goods are to be tax only in the country where they were acquired.

Even though the taxation rules for border crossing within the EU differs a lot from the rules for crossing the borders to the EC tax area/crossing the Norwegian border, the tax result for

[14] See COM(2004) 227 final, p. 20.

persons taking up employment in one of the other Nordic countries probably not differs significant due to the exemptions for removal goods. The indirect taxations systems neither create an obstacle nor and incentive for moving, unless one have a wish to move to a country where the tax level in general is lower. An exemption from this is excise duties on motor vehicles, which may create challenges for stays of longer duration in Finland, Norway and Denmark. In Finland, Denmark and Norway, motor vehicles cannot be imported tax free as removal goods. The registration fees on motor vehicles are in all three countries of a considerable size, even though it is reduces for used vehicles. The possibility for temporary use is also restricted.

The indirect taxes may however create incentives for shorter visits to other countries. Travelling *within the EC* could be motivated by lower VAT and (harmonized) excise duties rates. For goods where the excise duty rates differs a lot, like for alcohol and tobacco products, the difference in price can be significant. For import to Norway/the EC tax area, the amount each person can bring duty free, is more limited, thus limiting the possibility of cross-border shopping. Since the level of excise duties is very high in Norway, the incentive for such shopping is however considerably. Persons in Norway will generally benefit from buying goods subject to Norwegian excise duties abroad, even taxed goods (goods bought in ordinary shops), as long as the tax-free quotas, including the monetary threshold, are not exceeded. As shown under item B.3.1.2.1, the monetary threshold for duty free import for goods brought as personal luggage, must be regarded as high in Norway. Together with the system of VAT refund, which exists in many countries, the duty free quotas often will result in taxation in neither the exporting nor the importing country. The Agreement concerning taxation of baggage in passenger traffic between Denmark, Finland, Norway and Sweden however limits the possibility of VAT refund between the Nordic countries.