

DENMARK RESUMES

DIVIDEND WITHHOLDING TAX REFUNDS

Since August 2015, all refund claims for Danish dividend withholding tax have been suspended because of suspected fraud in the amount of at least DKK 9.1 billion. After several months of investigations as well as planning and implementing new procedures, the Danish tax authorities (SKAT) announced on 17 March 2016 that they had lifted the suspension of claims for refunds on dividend withholding tax.

On 24 August 2015, the refund claims for dividend withholding tax were suspended because SKAT suspected tax fraud by foreign claimants during the tax years 2012-2015. The preliminary investigations showed that foreign claimants had defrauded SKAT by claiming a refund of dividend withholding tax based on fictitious shareholdings and falsified documents. The subsequent investigations showed that the fraud regarding refunds of dividend withholding tax amounted to DKK 9.1 billion.

On 25 September 2015, the Danish Minister for taxation, Karsten Lauritzen, published an internal audit report which criticised SKAT's administration of the refund process, partly because SKAT had not adequately investigated whether a claimant was in fact a shareholder in the distributing company and whether Danish dividend withholding tax had in fact been paid.

In the same month, the Danish Auditor General initiated an investigation of SKAT's administration of the refund of dividend withholding tax and the Danish Ministry of Taxation's supervision thereof. The report, which was published on 24 February 2016, was highly critical of SKAT's and the Danish Ministry of Taxation's administration and supervision of the refund system. The Auditor General's report stated that SKAT's administration of the refund claims for dividend withholding tax had been entirely inadequate, and that the Danish Ministry of Taxation's supervision of SKAT had been exceedingly flawed. Following this criticism, a number of measures were presented to avoid future tax fraud.

Within SKAT the following measures have now been implemented:

- i. Documentation requirements:** A new department has been established to handle all existing and future refund claims. Furthermore, it has been announced that the documentation requirements will be tightened.
- ii. Effective control:** Task Force Udbytte (Dividend Task Force) has been established to ensure the effective control of the refund claims. The task force will process refund claims, undertake analyses and identify general patterns in order to strengthen efficiency of the work performed in the above new department.
- iii. Increased surveillance:** A new unit has been established to monitor all types of payments from SKAT. The unit has the mandate to suspend all refund payments, e.g. if the unit suspects fraud.
- iv. Anti-fraud:** an anti-fraud unit is being established to analyse trends and risk scenarios in international organised crime as well as organised crime and fraud in regard to taxes, value added taxes and duties. The purpose of the unit is to ensure that SKAT is kept up-to-date on new types of fraud.



The measures which have been implemented in the Danish Ministry of Taxation include a new supervision division to unify and strengthen the supervision of SKAT. The main purpose of the division is to ensure that the current risk exposure and particularly critical auditor reports from the internal auditors of the Danish Ministry of Taxation and the Auditor General are presented to the top management of the Danish Ministry of Taxation. Furthermore, early warning procedures will be strengthened for all employees in the Danish Ministry of Taxation, and the surveillance of the tax and duties areas will be intensified.

As a response to the General Auditor's report, Karsten Lauritzen has also announced that he will ensure a more robust legislation in the area to avoid future fraud, including government intervention in foreign investors' dividend tax avoidance.

As from 17 March 2016, SKAT resumed the payment of refunds to the extent that supporting documentation is provided (see below). However, extended case processing time should still be expected.

If the processing time of the refund claims exceeds six months, interest will be added to the refund. This will, however, only be the case if the delay is due to circumstances which are not attributable to the claimant. If the claimant fails to submit all the necessary information and documentation, the six months' deadline will not begin until all the necessary information and documentation has been submitted. SKAT will, of its own motion, pay the interest on any overdue refunds if the conditions are met.

In order to receive a refund of dividend withholding tax – and in order to start the six months' deadline – the claimant must prove that:

- i. the claimant has received Danish dividends;
- ii. the claimant is the beneficial owner of the dividends;
- iii. Danish dividend tax has been withheld; and
- iv. the claimant is liable to pay tax in another country covered by a double taxation agreement with Denmark at the time when the dividend distribution was agreed.

Accordingly, a claimant should submit a certificate from the foreign competent authority stating that the dividend recipient was covered by a double taxation agreement at the time when the dividend distribution was agreed as well as settlement notes (contract notes and dividend vouchers), custody account statements and bank statements. If the dividends have been transferred to the final dividend recipient from a Danish bank through one or several foreign banks, settlement notes should be submitted for all transfers.

Furthermore, it should be stated/proved in the refund claim whether the shares have been borrowed under a stock loan agreement. This has not previously been an explicit requirement, but the Danish tax treatment of dividends in stock lending arrangements has been subject to controversy and, therefore, SKAT is more aware of the implications thereof now.

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