

Selected Danish tax highlights for the year 2016

The year 2016 in Denmark in review from a tax practitioner's perspective.

THE DIVIDEND WITHHOLDING TAX SCANDAL GREW

In 2015, the payment of dividend withholding tax refunds were suspended due to suspected fraud. The preliminary investigations showed that foreign claimants had defrauded the Danish tax authorities (SKAT) of up to DKK 9.1 billion by claiming refund of dividend taxes based on fictitious shareholdings and falsified documents. After continued investigations, it was announced in August 2016 that the suspected fraud amounted to DKK 12.3 billion.

Following the scandal, a full review of the Danish dividend withholding tax system has been initiated, so far resulting in a reduction of the period of limitation for refunds from 5 to 3 years. Moreover, public attention has turned towards the participation in stock-lending and dividend-stripping transactions by Danish and foreign financial institutions. It is clear that we have yet to see the full impact of the scandal on the Danish withholding tax landscape.

Further, as a direct consequence of the Court of Justice of the European Union's (ECJ) judgment in the Case C-47/12 (Kronos International Inc.), the Danish participation exemption to holdings in foreign subsidiaries was expanded to apply if the subsidiary is resident and subject to tax in a jurisdiction that exchanges information in tax matters with SKAT. As the previous participation exemption breached the principle of free movement of capital, the expanded participation exemption included an explicit right to reclaim Danish corporate income taxes paid on capital gains and dividends from foreign subsidiaries since 2007. At the same time, the maximum, final Danish dividend withholding tax for foreign companies was reduced from 27% to 22%. You may read more about this topic in our article [here](#).

THE BEPS & TAX AVOIDANCE AGENDA CONTINUES

In light of the dividend withholding tax scandal and the so-called "Panama Papers" etc., it is not surprising that the general anti-tax avoidance agenda also played a significant role in the Danish political debate and initiatives in Denmark.

In addition, 2016 was the year when SKAT's beneficial ownership campaign finally reached the Court of Justice of the European Union as, on 25 February 2016, the Eastern High Court of Denmark referred 5 cases to the Court of Justice of the European Union (cases C-115/16, C-116/16, C-117/16, C-118/16 and C-119/16). The decisions are yet to be rendered.

As Denmark has been a front runner in implementing new anti-abuse measures for some years, the technical impacts of the international actions on Danish tax law are somewhat limited – even though, as a consequence of the EU Anti-Tax Avoidance Directive, the introduction of a general anti-avoidance rule is a completely new concept. You may read more about this topic in our article [here](#).

The country-by-country reporting requirements for large multinational corporations came into force in Denmark on 1 July 2016 and generally apply to income years beginning on or after 1 January 2016. Besides the implementation of the country-by-country report itself, the most significant change in the Danish transfer pricing rules is the fact that ongoing filing of transfer pricing documentation (the country-by-country report) is now mandatory, whereas submission of transfer pricing documentation is otherwise still subject to SKAT's prior explicit request.

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IMPROVED POLITICAL TAX CLIMATE FOR BUSINESSES

A liberal government was elected in 2015 which – setting the BEPS and anti-tax avoidance agenda aside – has resulted in a number of initiatives to improve the legislative framework for businesses in Denmark. Two significant Danish tax initiatives were (i) the reintroduction as at July 2016 of a special tax scheme for shares, options and warrants granted to employees (reducing the marginal tax rate from app. 56% to 42% on such instruments, albeit within limits) and (ii) the coming reintroduction as at 1 January 2017 of the tax litigation costs compensation scheme for companies (expenses to external legal advisors in connection with Danish direct and indirect tax litigation cases may generally be recovered from the Danish state under the scheme. If the taxpayer prevails, all such costs are refunded, whereas only half of the costs are refunded if SKAT prevails).

The announced initiatives for the near future include a reduction of the Danish inheritance and gift tax in connection with successions from 15% to (potentially) zero per cent, tax succession for business foundations, allowance for corporate equity (ACE), super deduction for research and development, 3-year tax holiday period for entrepreneurs, equity investment incentives for individuals and improved cross-border regulation for collective investment funds. You may read more about the announced initiatives in our article [here](#).

However, following the introduction of these initiatives, certain changes were made in the government where 2 new parties (the Conservative Party and Liberal Alliance) were invited to join the government. It now remains to be seen whether and the extent to which the Danish minority government will be able to successfully implement these initiatives.

ONGOING REAL ESTATE STRUGGLES

In 2016, the Danish real estate sector has been faced with ongoing struggles in respect of Danish property value taxes (ejendomsværdiskatter).

Annual taxes are generally imposed on Danish real estate on the basis of the value of the land and the property, which is assessed by SKAT on a biannual basis. However, the assessment procedures were put on hold back in 2013 when the Danish Auditor General concluded that the accuracy of the assessments by SKAT did not meet an acceptable standard. Since then, SKAT has been working on improving its property value assessment model, but has not yet been able to come up with a viable model.

In October 2016, the deadline for rebooting the property value assessments was therefore postponed to 2019.

As a consequence of the assessment procedures currently being on hold, it is not possible to request a reassessment of the current tax value assessments.

With respect to VAT, SKAT clashes with the real estate sector with respect to the application of the VAT exemption for transfers of real estate. According to SKAT, the VAT exemption generally does not apply to transfers of real estate if, from the buyer's commercial perspective, the acquisition of real estate constitutes an actual acquisition of a building plot or is comparable to the acquisition of a building plot (i.e. if the buyer intends to demolish the existing building and develop the plot). It is very likely that we will see a referral of the matter to the ECJ in 2017 or 2018.

CONTACT

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