TAX:WATCH

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CONTENT

Limitation of claims for reimbursement of dividend withholding tax

The Danish tax authorities change practice concerning limitation of claims for reimbursement of withholding tax on dividends. Prospectively, the limitation period for such claims will be 3 years instead of the current 5 years.

By Anders Kiærskou, aek@bdo.dk

In guidelines issued by the Danish tax authorities, it has been stated that there is a 5-year limitation period for claims for reimbursement of surplus withholding tax on dividends.

This practice has been based on an interpretation of a provision in the Withholding Tax Act according to which the provision also includes claims for reimbursement of withholding tax on dividends.

However, the Danish tax authorities have recently reconsidered this interpretation.

To non-resident taxpayers, who have received dividends subject to withholding tax in excess of the tax applicable according to a tax treaty or Parent/Subsidiary Directive, refunds will be paid at the request of the taxpayer according to the Withholding Tax Act.

Similarly, withholding tax is refunded on request when a taxpayer who is not liable to Danish tax has acquired dividends subject to withholding tax.

According to the Limitation Act, the limitation period is three years, unless otherwise stated elsewhere.

According to the new interpretation by the Danish tax authorities of the aforementioned provision in the Withholding Tax Act, the provision shall not apply when determining the limitation period concerning claims for reimbursement of withholding tax on dividends.

This means that claims for reimbursement of surplus withholding tax are statute-barred after 3 years according to the general rules of the Limitation Act.

However, this does not apply if another limitation period applies under a double taxation agreement - for example, article 46(3), in the Danish-German double taxation treaty, which provides a limitation period of 4 years for the recovery of withholding tax.

Consequently, the Danish tax authorities have changed their policy prospectively in order to apply a general limitation period of 3 years regarding claims for reimbursement of withholding tax on dividends.

It is only possible to launch an aggravating policy change with effect for the future and after the announcement of an appropriate notice, which allows taxpayers to adapt to the changed legal circumstances.

Hence, the changed practice concerning limitation will take effect 3 months after publication of a notice issued by the Danish tax authorities on 13 June 2016.

It implies that claims for reimbursement of withholding tax on dividends are considered statute-barred after 5 years if the claim is received by the Danish tax authorities within 3 months of 13 June 2016. In other words, claims concerning 2011-2012 must be submitted before 13 September 2016 or the claim will expire.

Claims for reimbursement of withholding tax on dividends lapse as follows:

- after 5 years, if the request for reimbursement is received by the Danish tax authorities no later than 13 September 2016

- after 3 years, if the request for reimbursement is received by the Danish tax authorities later than 13 September 2016

Reduced tax rate on dividends paid to foreign companies

According to a bill recently adopted by the Danish Parliament, the tax rate applicable to dividends paid to foreign companies is reduced from 27 pct. to 22 pct.

By Anders Kiærskou, aek@bdo.dk

The reason for reducing the tax rate on dividends paid to foreign companies from 27 pct. to 22 pct. is the current rules' lack of compliance with EU law.

A company resident in the EU/EEA owning at least 10 pct. of the share capital in a Danish dividend-paying company may be taxed at a rate of 27 pct. on dividends from the Danish company.

This will be the case if the tax liability should not be waived or reduced according to the Parent/Subsidiary Directive or according to a double taxation agreement based on the fact that the immediate recipient is not the beneficial owner of the dividend.

However, the immediate recipient, which is the company liable to Danish tax, could rely on the rules concerning freedom of establishment under EU law.

It is considered disproportionate in relation to EU law to tax the dividend recipient at a rate that is higher than the Danish corporation tax rate of 22 pct. applicable to Danish dividend receiving companies.

In principle, the tax rate of 27 pct. could be upheld in relation to companies established outside the EU/EEA, where the rate should not be reduced or waived according to a double taxation treaty.

However, in practical terms, investors could obtain a tax rate of 22 pct. by channeling investments through a company in the EU/EEA. Hence, the rate reduction is generalised.

The reduced tax rate applies to dividends distributed from 1 January 2007 or later if the dividend recipient is a company resident in the EU or the EEA and from 1 July 2016 or later, if the recipient is a company resident outside the EU and the EEA.

Due to the changed corporation tax rate over the years, the tax rate is set to 25 pct. for the calendar years 2007 to 2013, 24.5 pct. for the calendar year 2014 and 23.5 pct. for the calendar year 2015.