



TAX:WATCH

Late submission of TP documentation will result in large fines

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The tax authorities seem to be more successful in winning legal proceedings concerning untimely submission of TP documentation than cases concerning adjustment of intra-group prices. A new ruling confirms the high level of fines.

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In 2018, the Danish tax authorities suffered defeat in several major cases where they attempted to override intra-group settlement prices and, consequently, increased the taxable income of Danish group entities.

While both the National Tax Tribunal and the courts have been reluctant to back up the Danish Tax Agency in cases of income adjustments, the situation is somewhat different in cases of fines for lack of or untimely submission of TP documentation.

According to the rules, a fixed basic fine amounting to DKK 250,000 per year is applied if the taxpayer is unable, within 60 days, to submit sufficient documentation for intra-group prices. However, the fine is reduced to half if the documentation is submitted subsequently, but conversely it can also be increased by 10 pct. of any income increase that the tax authorities decide.

A new ruling confirms the high level of fines. The case concerned a Danish subsidiary of a multinational group that conducted business-to-business sales of hair care products.

The Danish company received a letter from the Danish Tax Agency on 20 December 2016 requesting - within 60 days - to submit documentation for the company's controlled transactions for the years 2011 - 2015.

Due to an internal communication error, the letter was not forwarded to the relevant employee. Consequently, the Danish Tax Agency did not receive the requested TP documentation until 7 April 2017 - approx. 6 weeks late.

Following a review of the TP documentation, the Danish Tax Agency announced that the intra-group settlement prices were approved.

Nevertheless, the Danish Tax Agency issued a fine of DKK 625,000 for late submission of the TP documentation, equivalent to DKK 125,000 per year, according to the basic rate.

This fine was sustained by the district court on the grounds that, although the Danish Tax Agency had requested TP documentation for 5 years in a single letter, it could not be considered as just one violation of the rules.

The ruling seems harsh. Last year, two rulings were made on the same issue and in both cases, a reduction of the basic fine was granted.

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In one case, the High Court ruled that a fine calculated based on the basic rate and number of years would result in an excessively high penalty. In this light, there could be grounds for an appeal.

Regardless of the size of the fine, it should be noted that fines are applied by the Danish Tax Agency even in cases of small violations of the deadline and regardless of whether intra-group prices are in order.

Verification when reporting to the EC sales list concerning VAT

The Danish tax authorities no longer provide a notification, if a company has used an invalid VAT number when reporting to the EC sales list. Companies must check for error messages and correct errors.

By Pernille Rise, pri@bdo.dk

Danish companies selling goods or services to companies in other EU countries shall generally not charge VAT on sales, because they are subject to the rules on reverse charge. This means that the buyer is responsible for settling the VAT.

However, in order for the sale to be invoiced without VAT, it is a condition that the seller verifies the buyer's VAT number and reports both the sales and the VAT number to the EC sales list. This applies to the sale of both goods and services. The latter is overlooked by many. Verification of a foreign customer's VAT number must be done on a regular basis and at least quarterly.

The EC sales list is a verification system used by tax authorities within the EU to ensure proper VAT treatment of goods and services traded within the Union.

In Denmark, reporting must generally be made no later than the 25th of each month, and the report must be reconcilable with the amounts reported in Box B on the VAT return.

However, companies settling VAT either quarterly or half-yearly may be allowed to report quarterly to the EC sales list, if they only sell services to other EU countries, or if the value of sales does not exceed DKK 400,000 quarterly.

Previously, companies received a notification from the Danish tax authorities, if they had reported an invalid VAT number to the EC sales list. This is no longer the case.

However, companies need to check if they receive error messages from the system. It takes 14 days before the final check in the EU database has been completed. When this happens, a small triangle will appear in the "status", if there are errors in the reported VAT numbers. These should then be corrected.

Failure to verify the buyer's VAT number is, like the failure to report to the EC sales list, subject to penalty.

If a company's trade in goods - both purchases and sales - with other EU countries exceeds certain thresholds, it will be required to report this trade to "Intrastat", operated by Statistics Denmark, which describes Denmark's trade in goods - but not trade in services - with the other EU countries.

In 2018, the threshold values are set at 4.7 million DKK for EU exports and to 6.2 million DKK for EU imports. Typically, information submitted on the VAT return is used to identify the companies that are required to report, and Statistics Denmark gives notice to the companies that must report to "Intrastat".

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