

# tax:watch

Danish Tax and VAT News in English



## Withholding obligation when paying non-Danish subcontractors

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*Businesses operating in Denmark cannot avoid the obligation to withhold income taxes on remuneration paid to non-Danish consultants and other suppliers simply by claiming that these are independent contractors.*

Content

By Anders Kiærskou, [aek@bdo.dk](mailto:aek@bdo.dk)

Many businesses operating in Denmark prefer to use non-Danish consultants or subcontractors for certain tasks instead of using their own employees. Usually, this preference is motivated by other factors than taxation.

This implies that the consultant or subcontractor sends an invoice for his work, and that the business in Denmark does not withhold taxes when the invoice is settled.

For tax purposes, the parties cannot themselves simply choose whether the consultant or subcontractor shall be deemed self-employed or not. This depends on an individual assessment of the parties' agreement and on a number of circumstances related to the consultant which the business does not have access to.

If it can be substantiated that the agreement is in fact an employment relationship, the Danish business will likely be deemed obligated to withhold income taxes and liable to pay these taxes to the Danish tax authorities.

Further, any VAT that may have been paid concerning the invoice will be non-deductible.

The problem is illustrated in a recently published ruling from the district court. The case concerned a business operating in Denmark that dealt with personnel hire, and who had entered into an agreement with a non-Danish metal worker to perform work for a shipyard in Denmark.

In the contract between the business and the metal worker, it was stated that the weekly working hours amounted to 37 hours and possibly additional work during weekends and overtime on weekdays.

Further, according to the contract, the metal worker was obligated to use the time sheets of the Danish business and he was prohibited from disclosing to the shipyard that he was working as an independent subcontractor.

The district court took the view that, in reality, the contractual relationship between the metal worker and the Danish business was in fact an employment relationship and the Danish business had been negligent in failing to withhold income taxes when making payments to the metal worker.

Consequently, the Danish business was liable to pay an amount equal to the income taxes that

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should have been withheld.

Should your business contemplate to engage non-Danish subcontractors or are you going to work in Denmark as an independent subcontractor, BDO can advise you in these matters.

## Spontaneous exchange of information between EU tax authorities

*In an increased effort to combat tax fraud and tax evasion, the tax authorities in the EU are now obligated to spontaneously exchange information in certain situations.*

By Anders Kiærskou, [æk@bdo.dk](mailto:æk@bdo.dk)

One of the benefits of the internal market is that EU citizens and businesses have the freedom to move, operate and invest across national borders.

Due to the fact that direct taxation is not harmonised across the EU, this freedom can imply that some taxpayers manage to avoid or evade tax in their country of residence.

In order to prevent this, the tax authorities in the EU have recently agreed to cooperate more closely so as to be able to combat tax fraud and tax evasion more effectively.

Hence, EU member states are now obligated to spontaneously exchange information with other countries in certain situations.

The information that must be spontaneously exchanged concern binding rulings etc. with a cross-border element linked to legal entities and "unilateral advance transfer pricing agreements".

If a binding ruling etc. involves the processing of data on both legal entities and individuals, information on both legal entities and the involved individuals are covered by the exchange.

Binding rulings etc. exclusively involving the processing of data on individuals are not subject to spontaneous exchange of information.

A unilateral advance transfer pricing agreement is a binding ruling related to transfer pricing defined as a prior agreement between the tax authorities in a member state and a taxpayer that may relate to establishment of principles for prices and terms of controlled transactions for a given future period. The agreement may also cover establishment of principles for determining the income of a permanent establishment for a given future period.

When processing requests for binding rulings etc., the tax authorities must exchange information spontaneously with the tax authorities in another EU member state if the information is deemed to be relevant for the tax authorities in the other EU member state based on an individual assessment.

Cases concerning binding rulings etc. that are settled as of March 2015 will be covered by the obligation to spontaneously exchange information.

Prior to the exchange of information, the taxpayer will be informed of the tax authorities' obligation to exchange relevant information with other member states' tax authorities.

The information shall be forwarded to the relevant tax authorities as soon as possible and no later than one month after the binding ruling has been issued by the tax authorities.



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