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Relaxation of the rules concerning international hiring-out of labour

The Danish tax authorities are working on new guidelines for interpreting the tax rules on international hiring-out of labour. The current very rigid interpretation is expected to be abandoned – with retroactive effect.

By Anders Kiærskou, aek@bdo.dk

The Danish tax rules concerning international hiring-out of labour were tightened significantly in 2012. The rules imply that Danish businesses are required to withhold international hiring-out of labour tax at a rate of 35.6 pct. from payments to foreign businesses when the services rendered in Denmark by a foreign business constitutes an "integral part of the Danish business".

In situations where the rules apply, the Danish business is liable for payment of the international hiring-out of labour tax if no tax has been withheld at source.

From the outset, the tax authorities adapted a very restrictive approach when interpreting the new rules. This was met with considerable criticism from several industries.

In October 2013, the tax authorities issued clarifying guidelines for interpreting the rules in relation to haulage contractors.

Currently, the tax authorities are working on new – and more general - guidelines.

According to a draft for these general guidelines, the fact that a foreign business operates in the same industry and offers the same services as a Danish business no longer - by default - implies international hiring-out labour.

It is decisive whether the Danish or the foreign business bears the major part of the responsibility and financial risk of the services rendered. If this can be attributed primarily to the Danish business, the rules on international hiring-out of labour apply.

The draft guidelines further state that Danish companies being part of an international group are only subject to the rules on international hiring-out of labour to the extent that they utilise employees of foreign affiliates – including foreign employees working as part of the management team of the Danish company.

Hence, the rules do not apply when group meetings are held in Denmark with participation of employees of foreign group companies acting as representatives of their foreign employer. Neither will the rules apply to group training courses held in Denmark for foreign employees, or for example implementation of a group-wide strategy involving supervision by specialists employed by foreign group companies.

The new guidelines are expected to take effect retroactively from the tightened rules in 2012.

The main implication of the new guidelines seems to be that the rules on international hiring-out of labour will henceforth primarily impact foreign blue collar workers.

Foreign white collar workers seem less likely to become subject to the rules.

However, in many real-world situations, the draft guidelines still leave considerable uncertainty as to whether the rules on international hiring-out of labour will apply. Hence, it will be useful to follow the application of the new guidelines by the tax authorities once they are published.

BDO can assist your business if you require an assessment of whether you are at risk of being subject to the rules on international hiring-out of labour - including guidance on what alternatives exist.

Unexploited tax losses to be recorded in a central register

A proposed new bill will force companies to report all unexploited tax losses to the Danish tax authorities.

By Hans-Henrik Nilausen, hhn@bdo.dk

The Minister of Taxation has recently proposed a bill which will force companies once and for all to report all unexploited tax losses to the Danish tax authorities.

As of the income year 2002, companies have been able to carry forward tax losses without time constraint.

Naturally, all tax losses have been declared but the tax authorities have yet to establish a register in which the declared losses can be specified. However, such a register will be established in connection with digitalisation of the company tax return - if and when the draft bill is passed in Parliament.

According to the draft bill, all companies having unexploited tax losses must report these losses to a new central register. Unreported losses will be irrevocably lost. A 3 month deadline for reporting losses will apply. However, it is still unknown when the tax authorities will open the register for reporting. This will be announced later but it is expected to be in the second half of 2014.

The report must comprise information on the size of unexploited losses computed per company. Further, the income years in which the losses originate must be specified. For companies subject to tax consolidation, reporting must be done by the parent company.

The tax losses appearing on the latest tax assessment must be reported. This applies even if a complaint is pending regarding the tax loss.

Besides unexploited tax losses, companies will be obligated to report information on tax exempt restructurings, tax exempt mergers, demergers and contribution of assets relevant to exploitation of tax losses.

The draft bill provides an option for the Minister of Taxation to grant exemption from the yearly reporting obligation. This may be relevant for companies not subject to tax consolidation, having tax losses for several years.

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