

TAX:WATCH

DANISH TAX AND VAT NEWS IN ENGLISH

The tax authorities contact companies regarding TP documentation

TAX:WATCH NO. 10
28-10-2016

The Danish tax authorities expect that about 100 companies have not completed the tax return correctly regarding documentation on transfer pricing and inter-company transactions.

By Anders Kiærskou, æk@bdo.dk

In the coming weeks, the Danish tax authorities will issue guidance on the completion of the tax return relating to transfer pricing and inter-company transactions. It is the opinion of the tax authorities that there might be companies that have not completed the tax return properly. This may have consequences for the subsequent verification by the authorities. The guidance relates to both the obligation to disclose information and the documentation requirements.

The guidance will be sent to the 100 companies which are expected to have filed erroneous tax returns. Hence, not all companies will receive a letter in this respect. The first letters are currently being dispatched. Subsequently, the Danish tax authorities will evaluate whether further action should be taken.

Obligation to disclose information

Information on the nature and extent of commercial and financial inter-company transactions must be disclosed on the tax return. It can be indicated on the tax return that the obligation to disclose information in this respect does not apply.

However, it is important to note that although the company is not subject to the documentation requirements, the company is still obligated to disclose information if the total intra-group transactions exceed 5 million DKK.

The tax return is insufficient if the declared information about inter-company transactions are incorrect. Consequently, the Danish tax authorities can estimate the tax liability.

Documentation requirements

Companies are required to keep a written record of prices and terms for inter-company transactions.

It can be indicated on the tax return that the company is not subject to the rules on transfer pricing documentation. This means that the company is subject to limited documentation requirements. Companies are not subject to the full documentation requirements if it alone or with group companies have fewer than 250 employees and has an annual balance sheet total less than 125 million DKK or an annual turnover below 250 million DKK.

Whether the activity is in Denmark or abroad has no impact on documentation requirements. Hence, the company can be subject to the documentation requirements although the activity in Denmark is minimal. Notwithstanding the above de minimis thresholds, the company will

CONTENT

- The tax authorities contact companies regarding TP documentation
- The tax treatment of foreign group contributions

be subject to the documentation requirements in case of intra-group transactions with parties outside the EU/EEA in a country that has not concluded a double tax treaty with Denmark.

If incorrect information is declared on the kind of transfer pricing documentation that is required, the company may risk a fine.

In the dispatched letters, the Danish tax authorities will ask the companies once again to consider whether the company has had inter-company transactions in 2015, and thus may be subject to the documentation requirements in 2015. By reconsidering the above, the probability of adverse consequences subject to verification by the authorities is reduced. Hence, the companies are encouraged to check the tax return in respect of transfer pricing and inter-company transactions.

The tax treatment of foreign group contributions

If a foreign group contribution is considered having passed an intermediate Danish company, the question arise how this distribution should be treated tax wise.

By Anders Kiærskou, aek@bdo.dk

The Danish tax authorities have been asked whether a group contribution from a foreign subsidiary of a foreign parent company should be considered passing through an intermediate Danish company. Further, should this indeed be the case, it has been asked whether the contribution should be qualified as dividend and if so, whether the dividend would be tax free or taxable in Denmark.

To this question, the Danish tax authorities have replied that whether the contribution shall be deemed to have passed the intermediate Danish company depends on an individual assessment of whether the purpose of the group contribution is to benefit certain group companies.

If this is not the case based on an individual assessment, the group contribution is not to be considered having passed the Danish company, and it should therefore not be taxed in Denmark.

Conversely, if the group contribution is deemed to have passed the intermediate Danish company, it is qualified as dividend.

As such, the contribution will be tax free, unless the distributing company can deduct the distribution for tax purposes. Should this be the case, the contribution will generally be taxable in Denmark in order to avoid double non-taxation.

However, the distribution may not be taxable in Denmark in cases where the distribution will be taxed in the ultimate parent company upon redistribution.

Thus, it is the opinion of the Danish tax authorities that if an intra-group contribution can be considered having passed the intermediate Danish company, it should be treated as dividend.

The contribution will generally not be subject to Danish tax if the ultimate parent company will be taxed on the redistribution. Hence, the intermediate Danish company will not be liable to Danish tax on the distribution, even if that contribution is considered having passed the intermediate Danish company.

A binding ruling from the Danish tax authorities can be requested in specific situations.

BDO Statsautoriseret revisionsaktieselskab, a Danish limited liability company, is a member of BDO International Limited, a UK company limited by guarantee, and forms part of the international BDO network of independent member firms. BDO is the brand name for the BDO network and for each of the BDO Member Firms. BDO in Denmark employs almost 1,100 people and the world wide BDO network has more than 64.000 partners and staff in 154 countries.

This publication has been written in general terms and should be seen as a broad guidance only. The publication does not cover specific situations and you should not act, or refrain from acting, without obtaining professional advice. Please contact BDO to discuss the specific matters. BDO, its partners and employees do not accept or assume any liability for any loss arising from any action taken or not taken in reliance on the information in this publication.