

TAX:WATCH

DANISH TAX AND VAT NEWS IN ENGLISH

Foreign businesses' obligation to register for VAT in Denmark

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Should a foreign business register for VAT purposes in Denmark when contracting a foreign subcontractor to carry out services in Denmark?

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When a foreign business (A) is contracting another foreign business (B) to carry out services in Denmark, the foreign business (A) may in some instances be required to register for VAT purposes in Denmark and calculate Danish acquisition VAT on the amount paid to its subcontractor (B) for the services rendered.

In other cases, the subcontractor (B) is required to charge 25 pct. Danish VAT when invoicing the foreign business (A).

Inter alia, the VAT treatment depends on the status of the seller and buyer, the services rendered in Denmark etc.

Background

The Danish act on VAT contains a special rule concerning services related to real estate located in Denmark.

For example, such services comprise services rendered by real estate agents, services related to preparation for construction, renovation of property, masonry, repair work on real estate, fixed structures and wind turbines etc. located in Denmark.

Practice

Services rendered in relation to real estate located in Denmark are subject to Danish VAT. Further, the mandatory reverse charge mechanism applies to such services under certain conditions. Consequently, in some cases, subcontractor (B) is required to issue an invoice without VAT and the recipient (A) must register for VAT purposes in Denmark and calculate Danish acquisition VAT.

That will be the case if subcontractor (B) is not established in Denmark and the foreign business (A) is a person liable to duty or a legal person registered for VAT that is not liable to duty.

The reverse charge mechanism applies even if the subcontractor (B) is already registered for VAT purposes in Denmark.

When is a business deemed to be established in Denmark for VAT purposes?

In cases where the subcontractor (B) is deemed to be established in Denmark for VAT purposes, the subcontractor (B) is required to charge 25 pct. VAT.

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This leads to question when a business is established in Denmark.

The primary criteria in this assessment is whether the subcontractor (B) has the necessary human and/or technical resources in Denmark to render the services in question.

If this is not the case, in some instances, subcontractor (B) may still be considered to be established in Denmark if subcontractor (B) has acquired a permanent structure through the purchase of services from a subcontractor (C), which is established in Denmark.

Whether the foreign business (A) should register for VAT purposes in Denmark as a result of the purchase of services rendered in Denmark from foreign subcontractors depends on an individual assessment.

Relaxed conditions for utilising the Danish 26 pct. tax regime

Recent rulings by the National Tax Tribunal leads to slight relaxation of the conditions for utilising the Danish 26 pct. tax regime. Some approved researchers may be able to utilise the regime despite initial rejection.

By Anders Kiærskou, aek@bdo.dk

The Danish tax authorities have recently published new guidelines concerning the conditions for utilising the 26 pct. tax regime for approved researchers.

The 26 pct. tax regime allows highly skilled individuals and approved researchers recruited abroad by Danish employers to be taxed on their salary for work performed in Denmark at a flat rate of 31.92 pct. (8 pct. gross tax and 26 pct. tax of the remaining amount).

This tax regime is favorable compared to ordinary Danish tax at a marginal rate of 56 pct.

Several conditions apply in order to use the tax regime. For example, a minimum salary requirement must be met unless the employee is a researcher approved by the Danish authorities.

In recent years, the Danish tax authorities generally only allowed researchers to utilise the 26 pct. tax scheme if approval as researcher had been granted by the Danish authorities from commencement of the employment.

However, a ruling by the National Tax Tribunal has resulted in the aforementioned new guidelines being published concerning this condition.

With effect from 1 January 2016, the Danish tax authorities accept that the employment begins prior to the approval as researcher has been granted by the authorities as long as an application for approval as researcher has been submitted within one month from commencement of the employment.

The new guidelines further specify that resumption of tax assessments from the tax year 2011 can be granted, if a taxpayer has been denied access to use the 26 pct. tax scheme as researcher on the grounds that approval as researcher had been granted subsequent to commencement of the employment.

Another ruling by the National Tax Tribunal, yet to be publicized on the website of the Danish tax authorities, seems to indicate that recent years' strict adherence to formal requirements in relation to the employment contract - a practice contrary to the Danish tax authorities' usual emphasis on substance over form - may be relaxed.

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