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VAT payers' reporting to the EU sales list

Reporting to the EU sales list of sales to companies in other EU countries is still causing problems in many Danish companies, and it is not without risks. The problem seems greatest in service-providing companies.

By Louise Eide Hartung, ljs@bdo.dk

As a main rule, when Danish companies sell goods or services to companies in other EU countries, the sale must be invoiced without VAT because it is subject to the rules on reverse charge. Hence, it is the buyer who must settle VAT.

In order for the invoice to be issued without VAT, the seller must ensure that the buyer's VAT number is correct. The seller is required to report the sale and the buyer's VAT number to the EU sales list. This applies both to the sale of goods and services. However, we often experience that companies overlook the latter.

The EU sales list

The list is a means by which the tax authorities in the respective EU countries ensure the correct VAT treatment of goods and services traded within the EU.

Reporting is a supplement to the companies' obligation to verify the validity of their EU customers' VAT numbers. Companies must carry out the verification regularly and at least quarterly.

In Denmark, reporting should take place no later than the 25th of each month, following the month of the sale, and the report must match the amount reported in box B on the VAT return. This is most easily ensured if the required number of accounts are set up in the company's accounting system.

Consequences of failure to report

Failure to report to the EU sales list does not necessarily imply that the sale did not qualify for the reverse charge procedure. However, it can lead to inspections from the Danish tax authorities. If in this context, it cannot be substantiated that the buyer had a valid VAT number at the time of sale, the Danish tax authorities can require the seller to settle VAT on the sale of 25 pct. of the invoiced amount. It will then be up to the seller to recover the VAT from the buyer.

The risk of not being able to demonstrate the buyer's VAT number rises as time goes by. For example, the buyer may have changed VAT number, been sold, closed down or gone bankrupt.

In addition, the work effort of having to verify a previous buyer's VAT number will be considerable higher compared to a current buyer. Hence, there are many good reasons to ensure proper reporting to the EU sales list.

INDHOLD

Reports from jointly registered companies

In a recently published notice, the Danish tax authorities stated that it is still accepted that companies that are subject to a joint VAT registration merely disclose their individual CVR/SE number - and not the joint registration's VAT number - on their sales invoices.

When reporting to the EU sales list, jointly registered companies are at liberty to choose whether they want to use their individual VAT number or the VAT number of the settling company in the joint registration.

The Danish tax authorities were defeated in a major TP case

The Danish tax authorities are often eager to point out the very large raises of taxable income implemented in transfer pricing cases. However, not all of them are upheld, and the National Tax Tribunal has just reversed a decision.

By Pernille Pless, ppl@bdo.dk

The case concerned a large consulting business with offices in many countries including Denmark. The business was characterised by using employees from offices in other countries to carry out consultancy tasks. Hence, the case concerned that the Danish company had hired employees of affiliates abroad at costs that were deemed too high by the Danish tax authorities.

However, this was rejected by the National Tax Tribunal, which in its ruling stated that the company had presented a great amount of data to support the transfer prices. Therefore, it was up to the Danish tax authorities to substantiate that the company did not comply with the arm's length principle. As the tax authorities had failed to do so, there was no basis for the implemented raises of taxable income.

The management of transfer pricing cases

Danish companies forming part of a group is required to prepare transfer pricing documentation if the group globally has more than 250 employees and a balance sheet total exceeding 125 million DKK or a turnover of over 250 million DKK. A Danish company may therefore be covered by the rules, even if the activity in Denmark is minimal.

Not everyone is aware. Hence, the Danish tax authorities are currently mailing letters to companies that they believe are covered by the information or documentation requirements but have not complied with the rules.

The preparation of transfer pricing documentation is a demanding task. A work load that the Danish tax authorities are not always respectful of. It is not uncommon for the Danish tax authorities to override documentation that the company has devoted much effort in preparing with a stroke of the pen.

Companies selected for inspection with regard to their transfer pricing conditions are often surprised at the very hard line adopted by the tax authorities in these cases. To counter the views of the tax authorities, preparation of further documentation is often required which many companies balk against. In our experience, however, there is no alternative. The outcome of the above-mentioned case rested entirely on the huge resources that were sacrificed to show that things were in order.