WORTH KNOWING ABOUT

Danish Withholding Taxes - Outbound payments

TAX AND VAT
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Denmark levies withholding taxes on the following outbound payments:

- Dividends
- Royalty payments
- Interest payments to affiliated companies in tax havens

Thus, there are no withholding taxes on other outbound payments, including interest payments to individuals, management, and consultancy fees and capital gains on shares.

Outbound dividends

Payments of dividends from Danish companies to foreign recipients are subject to Danish withholding tax. The withholding tax rate is 22 % for corporate shareholders and 27 % for individuals.

However, if the dividends are paid to a recipient in a jurisdiction covered by a tax treaty with Denmark, the withholding tax rate will, according to the relevant tax treaty, in most cases be reduced to 15 % or less, in many cases at an even lower rate applicable to dividend payments to a foreign parent company.

Outbound dividends from a Danish subsidiary to a foreign parent company in another EU country or in a tax treaty country may be paid without Danish withholding tax. However, the exemption will not apply if the Danish subsidiary is regarded as a conduit company and the dividends are paid to a parent company outside the EU. A foreign parent company is a company holding at least 10 % of the capital in the Danish subsidiary.

"*Outbound dividends from a Danish subsidiary to a foreign parent company in another EU country or in a tax treaty country may be paid without Danish withholding tax.*"

With regard to outbound dividends to other recipients, the Danish company is obliged to withhold and pay 27 % in withholding tax to the Danish Tax Authorities. This applies even if the recipient is a company where the withholding tax rate is reduced to 22 % or the recipient is entitled to a reduced tax rate pursuant to a tax treaty. The recipient can in this case claim a refund of the excess withheld tax by the Danish Tax Authorities.

Outbound royalty payments

Payments of royalties from Danish sources to a foreign recipient are liable to Danish withholding tax. However, please note that the Danish withholding tax on royalties does not apply to payments for the use of rights to literary, artistic or scientific work, e.g. author's royalties, music royalties, and motion picture royalties. The withholding tax rate on royalty payments is 22 %.

However, for royalty payments to recipients resident in jurisdictions covered by a tax treaty with Denmark the withholding tax rate will be reduced - in many treaties to zero. Further, for payments to companies in other EU countries the Danish taxation must normally be waived according to the EU interest/royalty directive.

Outbound interest payments

A 22 % withholding tax is applicable to all intra-group interest payments from Danish companies to a controlling foreign company.

This withholding tax will for practical purposes only apply if the interest payments are made to a group company situated in a tax haven as the withholding tax will not apply in the following situations:

1. If taxation must be reduced or waived according to a tax treaty. This will be the case for almost all the Danish tax treaties.
2. If the taxation must be waived according to the EU interest/royalty directive. This will cover payments to companies in all other EU countries.
3. If the creditor company is controlled by a company situated in a tax treaty country and if this company is covered by the CFC legislation of that country.

Conduit companies and beneficial owner
Please note that the Danish Tax Authorities have argued in a number of cases that a foreign company in another EU country receiving dividends or interest payments from a Danish company cannot claim the benefits of the relevant tax treaty or the relevant EU directive if the receiving EU company is regarded as a conduit company, i.e. it has no substance and no power of decision with regard to the received amounts and has transferred the amounts to a beneficial owner resident outside EU in a jurisdiction without a tax treaty with Denmark. Thus, the Danish Tax Authorities have argued that the Danish company is obliged to withhold Danish tax on the payments.

A number of cases regarding dividends as well as interest payments are all still pending at the Danish courts and the state of law is therefore uncertain.

International anti-abuse clause
Based on EU legislation an international anti-abuse clause has been adopted in Danish Tax law. The anti-abuse clause prevents companies from benefiting from Danish double tax treaties and tax legislation in general if the main purpose or one of the main purposes of the arrangement is to achieve a tax advantage contrary to the purpose of the double tax treaty or the tax legislation.

Other outbound payments
As a main rule, there is no withholding tax on capital gains on Danish shares realised by a foreign shareholder by sale or liquidation.
However, if the shareholder is a parent company resident in a country outside the EU or in a non-tax treaty country - i.e. for practical purposes in a tax haven - the liquidation proceeds will be regarded as dividends and the withholding tax rate of 22 % for dividends, see above, will apply.

If shares in a Danish company are transferred to an intergroup company, the purchase price will under certain conditions be classified as dividend and trigger Danish withholding tax.

This will be the case if:

1. a legal entity transfers shares held in a group-related entity to another group-related entity for payment consisting of other valuables than shares (e.g. cash) in the acquiring company, and
2. the transferring legal entity does not qualify for exemption from Danish withholding tax on dividends received from the transferred company before the transfer of shares.

This will under certain conditions also apply when shares in a Danish company are transferred to a new company or a company with no or limited business activities and the seller (before the transfer of shares) did not qualify for exemption from withholding tax on dividends received from the transferred company.

The dividend treatment applies also to certain cases of tax-exempt restructuring of companies. Specific and stricter rules apply to cases where dividend is distributed from a Danish company if this company is a conduit company.

There is no withholding tax on interest payments to all other creditors than an affiliated company in a tax haven country.

As a main rule, there is no withholding tax on fees such as management fees, consultancy fees, and other fees paid from Denmark to a foreign recipient.

DO YOU HAVE ANY QUESTIONS? PLEASE CONTACT

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