



TAX:WATCH

Danish tax exemption when working abroad

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In a recent ruling, the National Tax Tribunal overruled the Danish Tax Agency and allowed an individual taxpayer exemption from Danish tax on salary earned abroad.

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In the case before the National Tax Tribunal, the taxpayer had worked abroad for an employer and later worked abroad again for another employer.

Between work for the two employers, the taxpayer had stayed in Denmark within the maximum allowed 42 days in any 6-months period according to the tax exemption rule.

Specifically, the nature of the taxpayer's stay in Denmark was subject to dispute during the case before the National Tax Tribunal.

The taxpayer was not employed and did not earn income during his stay in Denmark. Nor did he receive unemployment benefit.

The Danish Tax Agency argued that since the taxpayer was unemployed during the stay in Denmark, he did not qualify for exemption relief on the salary earned for work performed abroad.

In the opinion of the Danish Tax Agency, it was of no concern that the taxpayer did not receive unemployment benefit during his stay in Denmark.

The National Tax Tribunal disagreed and ruled that the law was to be interpreted so that stay in Denmark, for any reason other than occupational purposes, is allowed under the tax exemption rule.

As the taxpayer had not performed work in Denmark or received unemployment benefit, he qualified for exemption from Danish tax on his salary earned for work performed abroad.

The ruling of the National Tax Tribunal seems correct and is hardly surprising as it seems rather difficult to find a valid legal basis for the argument of the Danish Tax Agency.

Background

According to the Danish Tax Assessment Act, section 33 A, salary earned abroad by a Danish tax resident individual may qualify for tax exemption in Denmark under certain conditions.

The conditions include that the taxpayer spends at least 6 months abroad.

During any 6-month period of the stay abroad, the taxpayer can stay in Denmark (including Greenland and the Faroe Islands) for a maximum of 42 days.

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When counting the 42 days, all days spent entirely or partially in the country counts as whole days in the country. Consequently, for example, arriving in Copenhagen Airport late in the evening on Friday and departing early the following Monday morning counts as 4 days spent in Denmark.

Valid reasons to stay in Denmark are necessary work in Denmark directly linked with the stay abroad, holiday or similar. According to the ruling of the National Tax Tribunal, “holiday or similar” is to be interpreted so that stay in Denmark for any reason other than occupational purposes is allowed under the tax exemption rule.

Working abroad when using the tax scheme for inbound expatriates

From 2017, the requirements for taxation according to the tax scheme for inbound expatriates were relaxed slightly in relation to work performed abroad. A binding ruling sheds light on how this is to be interpreted.

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According to the current rules, a Danish tax resident employee, who is taxed on salary in Denmark according to the special Danish tax scheme for inbound expatriates, can work abroad for a maximum of 30 days within the calendar year under such conditions that the country of work has the right to tax salary for work performed in that country according to its double tax treaty with Denmark.

Before 2017, work performed abroad under such conditions would disqualify the employee from taxation on salary in Denmark according to the tax scheme for inbound expatriates.

After the introduction of the 30-day rule, it remained unclear exactly when the taxpayer would be disqualified from taxation according to the tax scheme, should the employee exceed the 30-day limit.

Would the employee be disqualified with future effect beginning on the 31st day of work abroad, or would the employee be disqualified from the first workday of the year spent abroad or perhaps simply from the beginning of the year?

The National Tax Board was recently asked these questions in a request for a binding ruling and answered that the employee would be disqualified from taxation according to the tax scheme from the first day of work abroad in the income year under such conditions that the country of work can tax salary for work performed in that country.

Background

Due to the high rates of individual income taxes in Denmark compared to many other countries, a special Danish tax scheme exist for Danish businesses to attract skilled labour from abroad.

The scheme allows employees, recruited abroad, to relocate to Denmark and be taxed in Denmark on cash salary and certain benefits in kind from a Danish employer at a total flat rate of 32.84 pct. (8 pct. gross tax and 27 pct. tax on the remaining amount) for a total period of 7 years.

Several conditions apply for an employee to be taxed according to the scheme. Most notably, a minimum salary requirement exists, which is adjusted yearly. From 1 January 2019, the monthly minimum salary according to the employment contract must amount to at least DKK 66,600 after deduction of mandatory social security contributions.

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