



# TAX:WATCH

## Be careful when applying for the Danish 27 pct. tax scheme

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*Taxation according to the Danish 27 pct. tax scheme for inbound expatriates is favourable, but care should be taken when applying for taxation according to the scheme in order to avoid rejection.*

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The special tax scheme for inbound expatriates was introduced back in 1992 to improve corporate competitiveness.

Employees recruited from abroad by Danish businesses, who were either highly paid or approved as researchers, could apply to be taxed on their salary at a favourable flat rate of 25 pct. after deduction of 8 pct. labor market contributions.

Over the years, a number of adjustments to the tax scheme have been made, aiming to make the conditions for being taxed according to the scheme simpler and more flexible.

Generally, this has been a success. For example, employees' reduction in wages during a maternity period is now disregarded when determining whether the minimum wage requirement for taxation according to the scheme is met.

Previously, employees could risk being disqualified from taxation according to the scheme simply because they decided to start a family while living and working in Denmark.

For 2019, the average monthly minimum wage amounts to DKK 66,600 after deduction of social security contributions.

However, in some instances, the Danish tax authorities are quite rigid. For example, application for taxation according to the scheme has been rejected, if the employer and employee have not signed an employment contract/posting contract prior to the employee starting the position in Denmark.

In another instance, incorrect registration as Danish tax resident in the systems of the Danish Tax Agency proved to be decisive for an employee's possibility for taxation according to the scheme - regardless of the fact that the employee had not been a Danish tax resident for decades and all other conditions were met.

Further, if an individual has signed a consultancy agreement with a company, the Danish Tax Agency has rejected application for taxation according to the tax scheme, even though all conditions, including fixed salary, holiday pay and fixed weekly working hours, were indicative of employment.

In most other situations, the Danish Tax Agency would have considered the same contract to be an employment contract, but in relation to application for taxation under the favourable tax scheme, the contract was not regarded as employment.

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Although the positions taken by the Danish tax authorities in these cases are often difficult to agree with, it is advisable for employers and employees to be careful to make sure that the right contracts are signed on time.

Further, it is advisable for individuals to check whether they are correctly registered as residents or non-residents when relocating to/from Denmark, in order for incorrect registration not to be decisive for taxation according to the tax scheme.

## The rules on TP documentation are being tightened

***In the future, multinational enterprises must submit their TP documentation at the same time as reporting their income. If they fail to do so, the Danish Tax Agency can both issue a fine and estimate the taxable income.***

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Transfer pricing has received a lot of political attention during the past years, and it has broadly been agreed that the tax authorities should have extensive powers in the fight against multinational enterprises' intra-group transactions not adhering to the "arm's length"-principle.

Consequently, missing or insufficient TP documentation may be sanctioned with a fine, and the tax authorities may estimate the taxable income.

Generally, large fines are imposed for late submission of TP documentation, even though there is no basis for changing the taxable income.

The Ministry of Taxation has recently submitted a draft bill in consultation.

According to the draft bill, companies will have to submit their TP documentation together with the reporting of taxable income.

Hence, the current rule allowing companies to submit the TP documentation within 60 days from the tax authorities requesting it, will be abolished.

The draft bill clearly states that the new rules will reduce the requirements for the Danish tax authorities' documentation concerning the basis for estimating taxable income.

In other words, it will be harder for companies to achieve a successful outcome in TP cases, if they prepare their TP documentation too late, and thus themselves cause the tax authorities to estimate the taxable income.

According to the draft bill, the new rules are scheduled to take effect for income years beginning on or after 1 January 2020.

Thus, for companies with financial years following the calendar year, documentation for the financial year 2020 must be submitted by 30 June 2021.

For companies with a financial year different from the calendar year, the new rules are scheduled to take effect from the financial year 2020/21.

We consider it likely that there will be adequate support for the draft bill to be adopted, and companies may well start to adjust to the new rules.

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