

tax:watch

Danish Tax and VAT News in English



Denmark as a tax haven

Danish media have recently been occupied by a story that certain tax advisers market Danish limited partnerships as a useful element of international tax planning.

Af Hans-Henrik Nilausen, hnn@bdo.dk

DR - the Danish national radio - recently broadcast a documentary on marketing of Danish limited partnerships to especially East European businesses.

The documentary concerned a very big Uzbek oil company which was allegedly owned by a Danish limited partnership whose owners are unknown, but probably are companies in Cyprus and Belize or the Seychelles.

This ingenious structure should enable distribution of dividend from the oil company to the Danish limited partnership and then to the actual owners without taxation of the dividend in any of the places.

The documentary resulted in wide media coverage in Denmark and the Danish Minister of Taxation immediately requested a report from the tax authorities.

BDO's opinion

Danish limited partnerships are not required to provide information on their owners. If anonymity is desired, it may therefore be a solution to include a Danish limited partnership in a group structure.

As regards the tax side of the matter, it may be difficult to see the advantages. The businesses that have purchased advice in this respect have most likely "bought a pig in a poke".

The present rules provide already good possibilities for the Danish tax authorities to charge tax on the money distributed by the Danish limited partnerships to foreign owners.

Danish limited partnerships - that are not independent taxpayers - are subject to tax as ordinary capital companies if the company has a controlling principal shareholder and this is person or a company resident in a tax haven, or resident in a non-tax haven which considers the Danish limited partnership an independent taxpayer.

The rule is supplemented by a practice according to which the Danish tax authorities charge tax on distributions of dividend from Denmark to a company in e.g. Cyprus, which is owned by a company in a tax haven and this is considered the beneficial owner of the dividend. The reason is that the tax haven company is the actual recipient of the dividend.

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A number of cases are pending at the Danish courts concerning the latter issue. The companies involved claim all that the Danish tax authorities are not allowed to charge the tax because neither the Danish company law nor EU's parent/subsidiary directive contains any misuse provisions.

The outcome of the cases is much anticipated. It is not certain, in our opinion, that the case of the authorities will be upheld. Should they lose the cases it will probably be a short respite. The EU is in the process of implementing a misuse clause in the directive, maybe already this year. And Denmark will no doubt implement the clause in Danish legislation immediately after.



Better opportunities of refund of energy taxes in Denmark

The Danish tax authorities have changed their practice and now approve more often than earlier refund of taxes on energy used for air condition systems.

Af Gert Jessen, gej@bdo.dk

Danish businesses may obtain refund of the full tax on energy used for process purposes, but only for a share of the energy tax used for comfort cooling. This is cooling out of regard to the comfort of employees or customers. The businesses within the liberal professions - which cannot otherwise obtain refund - can now obtain refund for comfort cooling.

Many businesses have cooling in rooms where there are several activities. This raises the question whether or not it is comfort cooling.

After having lost a couple of cases at the National Tax Tribunal, the Danish tax authorities have now issued new guidelines. It is stated in the guidelines that focus should in such cases be not only on whether persons stay in the relevant rooms but also the purpose of the cooling.

BDO's opinion

It should in our opinion be possible to file a subsequent report - to obtain refund with retrospective effect - based on the new guidelines. The difference between the refundable tax on energy for process purposes respectively comfort cooling is in 2014 DKK 0.409 per kWh. For many businesses the amounts will be significant.

You are welcome to contact us if you require an assessment of the possibility of subsequent reporting and the relevant financial advantages.

Sale from Denmark to other EU countries

Although the deadline for payment of VAT has been extended for a large number of small and medium-sized businesses, they still have to report their sales to customers in other EU countries on a monthly basis.

Af Louise Eide Hartung, ljs@bdo.dk

Danish businesses with revenue between DKK 1 and 5 m are required as from 2014 to settle VAT on a half-yearly basis instead of quarterly. And businesses with revenue between DKK 5 and 50 m are in future required to settle VAT quarterly instead of monthly.

Within the group of affected businesses there is a large number which sell their goods or services to customer in other EU countries. These businesses have till now reported their sales to the tax authorities on a monthly basis. And they will - irrespective of the changed deadlines for the VAT reporting - have to continue to report monthly. The reporting deadline remains to be at the latest on the 25th day in the following month.

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