

WORTH KNOWING ABOUT

Hire of Foreign Labour



Many Danish businesses hire foreign labour, but Danish tax is rarely withheld from the payment. The reason is that labour in most cases is hired through foreign businesses who often also receive the payment.

Such agreements are often overruled by the Danish tax authorities on the grounds that the agreement constitutes hiring-out of labour and that the Danish business has hired the foreign employees. This may lead to considerable tax claims against the Danish business.

Basic principles

In overall terms, foreign employees may be attached to a Danish business by:

- Ordinary employment
- Hiring-out from a foreign business
- Assignment by a foreign business in the course of contract work
- Employment in a Danish business

The employees must pay tax to Denmark in accordance with the Danish rules. A tax card must be obtained and the employer must withhold labour market contribution and tax-at-source. The rules apply also to employees employed by a Danish temporary employment agency and hired out to a Danish business.

Hiring-out of labour

If the employees are employed by a foreign business but perform work in Denmark for a Danish business, the work may be considered hiring-out of labour for tax purposes.

In the situation of hiring-out of labour, the Danish business will have to withhold labour market contribution and tax-at-source. If those taxes have not been withheld, the tax authorities will normally claim subsequent payment of 8 % labour market contribution and a hiring-out tax of 30 % on the total amount (the gross payment) paid to the foreign business.

In September 2012, the government enforced restrictive legislation in concern of hiring-out of labour. Consequently, work has been considered as hiring-out of labour if it is an integral part of the activities of a Danish company. However, these rules were relaxed in June 2014. Hence, the work was not considered as hiring-out of labour if the activity is considered as outsourced on a permanent basis and it is sufficiently separated to an independent foreign business enterprise.

When determining whether it is international hiring-out of labour or contract work it may be relevant to look at:

- Who has the right to instruct the employee on how to perform the work?
- Who controls and is responsible for the workplace?
- Is the Danish enterprise invoiced for the salaries/wages?

TAX AND VAT
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- Who supplies tools and machinery?
- Who has influence on the amount of hired labour to be used and the qualifications needed?
- Who has the right to pick the person who is going to perform the work, and who has the right to remove that person from the work?
- Who has the right to impose sanctions on the employee in relation to the work?
- Who determines the working hours and holidays?

On basis of the answers to these questions, an overall assessment of the contracts and the information available can indicate whether the work is considered as hiring out of labour or not. The Danish company has the burden of proff if the actual conditions are subject to doubt.

Contract work

If a Danish business outsources, on a permanent basis, a contract to a foreign business, payments to this business are not subject to tax-at-source. It is a condition that the contract will not subsequently be an integral part of the Danish business and that the foreign business is responsible for the result of the work and instructs the people performing the work.

The outsourcing does not exclude that the foreign employees have to pay tax to Denmark. The payment of tax depends on whether or not the foreign business has a permanent establishment in Denmark in relation to the work.

If the foreign business is considered to have a permanent establishment in Denmark, the foreign employees will generally have to pay tax to Denmark only if they stay in Denmark for more than 183 days within a current period of 12 months or if they acquire an actual residence in Denmark.

Social security

If a Danish business employs or hires a foreign citizen from another EU country or from an EØS country, the rules for social security must be observed. The principal rule is that the employee is subject to social security in the country of work and that the business has to pay ATP etc.

If the employee also performs at least 25 % of the work in his home country - for example in connection with weeks off - the Danish business will be liable for payment of the employer charges in that country. It may very well be considered to ask the employee to sign a declaration to the effect that he/she is not allowed to perform paid work without prior agreement with the Danish business.

VAT

The foreign business is not required to register for VAT purposes in Denmark for hiring-out of labour or contract work (work on real property) if the customer is a Danish business.

The foreign supplier will instead have to issue an invoice without charging VAT. If the supplier is resident in another EU country, "reverse charge" and the customer's VAT number must be reflected on the invoice. The Danish business will now have a duty to pay Danish VAT which may be deducted as purchase VAT if allowed by the common rules for deduction.

If the customer is a Danish individual, the VAT rules distinguish between contract work and hiring-out of labour. If the work is contract work, the foreign business must be VAT registered in Denmark and it must add VAT to the invoice. Similar rules apply if the activity is hiring-out of work and the supplier is resident outside the EU. However, if the supplier is resident in another EU country, the supplier is not required - if the activity is hiring-out of labour - to register for VAT in Denmark, but is to charge VAT to the invoice according to the rules in his/her home country.



**DO YOU HAVE ANY
QUESTIONS?
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