

# tax:watch

Danish Tax and VAT News in English



## Tax free per diems are not always tax free

*In a recent ruling, the National Tax Board decided that per diems cannot be paid tax free if the agreed salary is of minor size.*

By Anders Kiærskou, [aek@bdo.dk](mailto:aek@bdo.dk)

Years ago, the rules on payment of tax free per diems were tightened. It was decided that an absolute condition for per diems to be paid tax free was that the per diems were not part of the salary. On the contrary, per diems were only supposed to cover expenses incurred during business travel.

Hence, if per diems are to be paid tax free to employees, salary cannot be redistributed as per diems in the way that employees accept lower salary than otherwise obtainable against payment of tax free per diems in addition to the lower salary.

In the preparatory work concerning the rules, an example of non-compliance with this condition was provided; an employee accepted not to be compensated for overtime against receiving tax free per diems.

The recent ruling by the National Tax Board concerned a Danish temporary employment agency providing labour from Lithuania to Danish businesses - primarily to construction businesses.

The Lithuanian workers were to be employed by the Danish temporary employment agency at a salary subject to negotiation but at least equal to the minimum salary according to Lithuanian law. It was expected that the hourly salary would amount to approx. 18 - 23 DKK. Overtime was to be remunerated according to hourly rates of approx. 60 - 83 DKK. In addition, the Danish temporary employment agency would pay per diems to the employees amounting to 360 DKK per day.

The National Tax Board ruled that the per diems could not be paid tax free. This was in part due to the insignificant size of the salary and in part because the salary was deemed redistributed as per diems by the National Tax Board. In the ruling, the National Tax Board referred to the size of the salary compared to the size of the per diems.

The ruling is notable due to the fact that the Danish tax authorities in fact suggested that the National Tax Board ruled that per diems could be paid tax free under the described circumstances. Unsurprisingly, the National Tax Board declined to do so.

It would have been appropriate had the ruling indicated a sufficient level of salary in order for per diems not to be deemed salary redistributed as per diems - consequently making the per diems taxable in the hands of the employees. The ruling undoubtedly leaves many businesses with uncertainty concerning how to comply with the rules. If businesses pay tax free per diems, they are liable to pay the missing withholding tax should the Danish tax authorities later decide

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that the per diems are not tax free.

BDO can assist your business if you require an assessment of whether the conditions for paying tax free per diems are met.

## 26 pct. tax scheme - reduction of the minimum salary requirement

*With effect from 1 January 2015, the monthly minimum salary requirement for using the 26 pct. tax scheme is being reduced to DKK 61,500.*

By Anders Kiærskou, [æk@bdo.dk](mailto:æk@bdo.dk)

As described in the April issue of tax:watch this year, the Danish government proposed to lower the minimum salary requirement for utilising the Danish 26 pct. tax scheme.

Yesterday, the Danish parliament passed the bill. Consequently, with effect from 1 January 2015, the monthly minimum salary requirement for using the 26 pct. tax scheme is reduced to DKK 61,500. This minimum salary requirement is reduced from DKK 70,600 in 2014.

## Denmark and the Faroe Islands - taxation on pension payments

*Denmark and the Faroe Islands have agreed on amendments to the protocol to the Nordic double tax treaty concerning new tax rules on pension payments.*

By Anders Kiærskou, [æk@bdo.dk](mailto:æk@bdo.dk)

On 23 October 2014, Denmark and the Faroe Islands agreed on amendments to the protocol to the double tax treaty between the Nordic countries. The amendments affect taxation on most pension payments (except i.e. social pensions) from pension schemes established in one part of the kingdom to individuals residing in the other part of the kingdom.

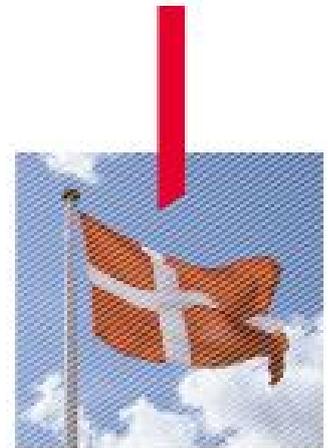
According to the agreement, pension payments can be taxed in the part of the kingdom where the pension scheme is established if contributions to the pension scheme have been exempt from taxation in this part of the kingdom. The part of the kingdom where the individual resides can also tax the pension payments. However, in that case, the tax must be reduced with an amount corresponding to the tax paid in the part of the kingdom where the pension scheme is established (maximised to the tax on the pension payments in the part of the kingdom where the individual resides).

According to the current protocol, pension payments can only be taxed in the part of the kingdom where the individual resides.

If contributions to the pension scheme have been taxed at the time of contribution in the part of the kingdom where the pension scheme is established, pension payments are exempt from taxation in that part of the kingdom. Such pension payments will also be exempt from taxation in the part of the kingdom where the individual resides. However, the pension payments may influence taxation on other income in this part of the kingdom.

The amendments have been agreed upon due to the fact that the Faroe Islands have changed the local rules concerning how pension scheme contributions and pension payments are taxed. According to these new rules, contributions are taxed and pension payments are tax free. Without the amendments to the protocol, this would lead to tax exemption in both Denmark and the Faroe Islands when payments from Danish pension schemes where contributions have been tax exempt are paid to individuals resident on the Faroe Islands.

The amendments are expected to take effect on 1 January 2015.



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