



TAX:WATCH

New double tax treaty between Denmark and France

TAX:WATCH NO. 5
31-05-2019

The Danish tax minister has concluded an agreement with France on the taxation of pensions. Based on this agreement, it is expected that a new double tax treaty will be concluded.

By Anders Kiærskou, æk@bdo.dk

For a long period, Denmark and France have negotiated constructively for a new double tax treaty.

A new double tax treaty based on the agreement that has now been reached will be an improvement for Denmark compared to the previous treaty, which was terminated by Denmark in 2008.

The agreement will benefit Danish companies and individuals in France. Particularly, the agreement will benefit Danish pensioners wanting to spend their retirement in France.

The agreement implies that Danish pension payments to pensioners residing in France will no longer be fully taxed in both Denmark and France.

Specifically, the agreement will allow Denmark to tax future pension payments from Danish pension schemes to pensioners living in France. This was prohibited by the previous double tax treaty between the two countries.

As Denmark was previously unable to reach an agreement with France to change this, Denmark terminated the double tax treaty with France in 2008.

Consequently, Danish pensioners wanting to relocate to France to enjoy their retirement and live on disbursements from their Danish pension schemes were forced to change plans.

Currently, in the absence of a double tax treaty between the two countries, Danish pension payments are fully taxed in both Denmark and France.

However, transitional rules apply to pensioners, who had already relocated to France on 28 November 2007 and started receiving pension payments on 31 January 2008.

According to the new agreement, in return for the right to tax Danish pension payments received by pensioners residing in France, Denmark has agreed to reduce the Danish taxes on the pension payments with an amount corresponding to the French taxes on the pension payments.

This is a departure from the way double tax treaties are usually structured, where the country of residence reduces its taxes to avoid double taxation.

CONTENT

- New double tax treaty between Denmark and France
- The deadline for preparing TP documentation for 2018 approaches

As the Danish tax rates are generally higher than the French tax rates, the Danish tax minister estimates that a substantial part of the tax revenue from Danish pension payments to pensioners resident in France will be attributed to Denmark.

The deadline for preparing TP documentation for 2018 approaches

Companies with a fiscal year corresponding to the calendar year are from the fiscal year 2018 covered by new rules for when their transfer pricing documentation must be available in its completed form.

By Anders Kiærskou, aek@bdo.dk

In many of the recent years significant transfer pricing cases, it has been discussed when the transfer pricing documentation, which the companies are obligated by law to prepare, must be available in a completed form.

This issue was decided to the advantage of the companies when the Danish Supreme Court ruled in a transfer pricing case concerning Microsoft.

The Supreme Court stated that for the income years the case concerned, the documentation was not required to be available at the deadline for filing the tax return.

However, the far-reaching significance of the ruling by the Supreme Court is questionable, as the Danish parliament adopted an amended Tax Control Act at the end of 2017.

It is now clear that from 1 January 2019, the documentation must be completed no later than the deadline for filing the tax return.

For companies with a fiscal year corresponding to the calendar year, the new rules have effect from the fiscal year 2018. Hence, for those companies, the documentation must be available in a completed form on 30 June 2019.

The companies still have a deadline of 60 days to submit the documentation upon request by the Danish Tax Agency.

However, it is allegedly the position of the Danish Tax Agency that the 60-day deadline for submitting the transfer pricing documentation cannot be used to prepare the documentation.

The obligation to prepare and store transfer pricing documentation applies to all companies that have controlled transactions with parent companies, sister companies and subsidiaries.

However, companies with less than 250 employees on a consolidated basis, which either have a total balance of less than DKK 125 million or an annual turnover of less than DKK 250 million, shall only prepare documentation for controlled transactions with related parties in non-EU/EEA countries with which Denmark has not concluded a double tax treaty.

Although the rules primarily apply to larger companies, many small Danish companies are also included as they are part of larger international groups.

The documentation must include a joint documentation for the entire group (Master File) and a country-specific documentation for each company with a description and analysis of the controlled transactions (Local File).

Lack of transfer pricing documentation puts the company at risk of being fined, and the Danish Tax Agency can estimate the company's income.

BDO Statsautoriseret revisionsaktieselskab, a Danish limited liability company, is a member of BDO International Limited, a UK company limited by guarantee, and forms part of the international BDO network of independent member firms. BDO is the brand name for the BDO network and for each of the BDO Member Firms. BDO in Denmark employs almost 1,200 people and the world wide BDO network has more than 80,000 partners and staff in 160 countries.

This publication has been written in general terms and should be seen as a broad guidance only. The publication does not cover specific situations and you should not act, or refrain from acting, without obtaining professional advice. Please contact BDO to discuss the specific matters. BDO, its partners and employees do not accept or assume any liability for any loss arising from any action taken or not taken in reliance on the information in this publication.