RSM plus Tax News

Beware of dividends, interest and royalties to foreign companies

Dividends to foreign companies are generally tax-exempted, as long as the receiving company owns at least 10% and is located in another EU country or if Denmark under a double taxation agreement with the company's home country must relieve the tax on dividends.

This also applies for interest and royalty payments to associate companies in other EU countries or generally to companies in most countries, with which Denmark has a double taxation agreement. In similar situations there is also tax exemption in Denmark on interest on controlled debt.

SKAT (the Danish Tax Authorities) requires solid documentation to proof that a foreign company can be considered the real beneficiary

SKAT has, however, taken the viewpoint that a unique and rigorous test of the reality of foreign companies must be performed, before a company can be considered as the real beneficiary of dividend, interest and royalty from Denmark. If the foreign company is not considered the real beneficiary, the tax exemption will be lost.

This applies, simultaneously with that there are absolutely no similar requirements placed on the reality of a Danish receiving company. If SKAT's view should also prevail in pure Danish constellations, most major shareholders would be taxed personally of the dividend, interest and royalty income, which their holding company has earned. In other words, the main shareholder would be deemed to have received the income personally.

The National Tax Tribunal has in a few individual cases, by and large, agreed with SKAT's views. The cases are, however, expected to be decided by the courts, for which reason the current legal position can be modified at a later stage.

Danish companies are liable for omitting to withhold tax of dividend, royalty and interest

Danish companies which distribute dividends or pay royalties and/or interest (on controlled debt) to foreign companies are liable for omitting to withhold tax.

Therefore, it can have significant economic consequences for Danish companies, if tax, by mistake, is not withheld.

In relation to the payment of royalty, the problem is, however, solved by the fact that a Danish company can only omit to withhold royalty tax, if SKAT, in advance, has given an exemption regarding the actual royalty recipient. In practice there are probably some companies that are not aware of obtaining such exemption.

As regards payment of dividends and interest, SKAT shall not pre-approve that the payer is exempted to withhold tax.

Distributions of dividends and interest payments on controlled debt without withholding tax are therefore the company's own responsibility. In cases of doubt, an advance ruling should be obtained from SKAT.

Naturally we are helpful to perform a preliminary consideration whether an advance ruling should be obtained from SKAT in the actual situation.

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