

Consequences of termination of the tax treaty between France and Denmark.

Double taxation relief



Consequences of the termination of the double tax treaty between France and Denmark

The terminated double tax treaty:

- Reduced withholding taxes and avoided double taxation

Danish government assumed that no financial or administrative consequences of importance would be triggered as a result of the termination

After the termination income is taxed according to:

- French and Danish domestic tax rules
- EC parent-/subsidiary and interest-/royalty directives
- Fundamental freedoms within the EU

Consequenses?

Consequences of the termination of the double tax treaty between France and Denmark

Possible areas of conflict and double taxation

- Dividends outside the scope of the EC parent/-subsidiary directive
 - Anti-avoidance provisions
 - May influence holding companies
- Interest and royalty payments outside the scope of the interest/-royalty directive
 - Concept of a group does not include indirect holdings under interest-/royalty directive
 - Companies not mentioned in the annex to the directive
 - Anti-avoidance provision
- Different definitions of a permanent establishment
- Service fees (including management fees) and payments for leasing of assets (tangible as well as intangible assets)
 - Subject to French 33.33% withholding tax (gross principle)

Danish Domestic Relief

Section 33 and sec. 33 F of the Danish Tax Assessment Act

Section 33 – Credit relief

- Relief for tax charged in France
- Tax levied on income from sources in France
- Foreign income is reduced by the related deductible costs – the net principle
- The amount of the relief depends on the deductibility of the costs related to the taxed income.

$$\frac{\textit{Foreign net income} \times \textit{Danish tax}}{\textit{Global income}}$$

- Withholding taxes levied at gross payments result in an increased effective global tax rate.
 - WHT on gross payments may, however, violate EU Law (See for instance ECJ Case C- 282/07 (Truck Center))
 - Danish government assumes that France will allow net taxation

Danish Domestic Relief – The net principle

Section 33F of the Tax Assessment Act

Example

Global income	€ 2,000,000.00
Danish tax (25 % of global income)	€ 500,000.00

Service fee from French subsidiary:

<i>Income</i>	€ 1,000,000.00
<u><i>Related costs</i></u>	<u>€ 950,000.00</u>
<i>Net income (5 % profit)</i>	€ 50,000.00

French WHT (33 % of gross amount)	€ 330,000.00
<u>Relief in Danish tax</u>	<u>€ 12,500.00</u>
Total global tax	€ 817,500.00

Effective global tax percentage: 41 %

Special exemption provision

Section 13(6) of the Danish Debt Recovery Act (inddrivelsesloven)

The Danish tax authorities can give respite or exempt levied tax if specific circumstances particularly speak in favour thereof.

Scope:

- The Danish tax authorities have stated that the provision *only* applies if the authorities have made mistakes similar to *force majeure*
- The provision has been applied to prevent a situation in which an amendment of the legislation had an unintended retroactive effect.

According to the explanatory notes to Act No 85 of 20 February 2008:

- The termination of the double tax treaty between Denmark and France will have no economic or administrative consequences of importance for the business community.

Conclusion

A high-ranking Danish official once stated that we hardly need tax treaties

- This case clearly indicates that he was wrong

Until renegotiation results in a new tax treaty:

- Rely on EU directives
- Fundamental EU freedoms
- Domestic provisions providing relief
- Tax planning

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