



## **Suspected fraud with Danish dividend withholding tax now expected to exceed DKK 9bn (approx. EUR 1.2bn)**

On 15 November 2015, the Danish Tax Authorities announced that they had filed a report with the Danish Public Prosecutor for Serious Economic Crime regarding suspected tax fraud of an additional amount of DKK 2.9bn (approx. EUR 0.4bn). The total suspected fraudulent amount thereby exceeds DKK 9bn (approx. EUR 1.2bn).

The fraud is believed to have been made possible partly by the use of falsified and fictitious dividend notes created by fraudsters, and partly due to insufficient control on the part of the Danish tax authorities. As such, this issue is not a tax issue by nature, but rather a criminal case, concerning reclaims of Danish dividend withholding tax based on fraudulent documentation.

On 24 August 2015, the Danish Tax Authorities ("DTA") filed their first report with the Danish Public Prosecutor for Serious Economic Crime ("SEC") on suspected fraud with Danish dividend withholding tax reclaims of approx. DKK 6.2bn (approx. EUR 0.8bn).

As the investigation continued, it became clear that the fraudulent amount was much higher than initially assessed. On 16 November 2015, the DTA announced that they had filed a follow-up report with the SEC on fraud in the amount of DKK 2.9bn (approx. EUR 0.4bn). The total suspected fraudulent amount thereby exceeds DKK 9bn (approx. EUR 1.2bn).

The DTA's preliminary investigation showed that the fraud presumably involves companies reclaiming withholding tax on dividends on Danish shares which such companies had untruthfully and fictitiously stated that they owned. Allegedly, the documentation provided to the DTA as a basis for the reclaims was falsified, but the factual circumstances currently disclosed are very scarce.

Based on information made available by the Danish media, it appears that SEC's investigation of the initial fraud in respect of DKK 6.2bn (approx. EUR 0.8bn) primarily focused on 12 specific companies and a British financier.

The results of an investigation of the dividend withholding tax reclaims fraud performed by the internal audit department of the DTA were released on 24 September 2015. According to the report, the main reasons for the payout of fraudulent dividend withholding tax reclaims are lack of control on the part of the tax authorities, the structure of the data reporting systems for dividends and insufficient management focus with the DTA on the processing of claims for the refund of withholding tax.

As part of the ongoing investigation, SEC has conducted searches of a number of addresses in London. In addition, an amount of DKK 1.7bn (approx. EUR 0.23bn) believed to derive from the fraudulent dividend withholding tax reclaims has been confiscated from foreign bank accounts.

At this stage, the exact future procedure for the handling of dividend withholding tax reclaims has not been determined by the Ministry of Taxation.



While all processing of reclaims of withholding tax on dividends has been suspended since August 2015, the DTA has announced that they are in the process of reviewing the approx. 27,000 dividend withholding tax reclaims currently pending.

As a consequence of the increased focus on dividend withholding tax reclaims, a new supervisory unit has been established which will oversee all payments made by the DTA as well as a new anti-fraud unit with its sole focus on prevention of international tax crime and fraud.

Due to the significant political astonishment having been triggered by the fraudulent reclaims of withholding tax, we anticipate that all cases pertaining to the matter of reclaiming withholding tax on dividends and the basis thereof will be subject to in-depth consideration by the DTA.

Furthermore, it is likely that the procedure for reclaiming withholding tax may be tightened to the effect that future reclaims will be subject to increased documentation requirements, which in turn may prolong and complicate the dividend withholding tax reclaim process.

The Danish tax authorities have announced that they are reviewing the reclaims currently awaiting processing; however, we expect this to be a lengthy process.

According to the information disclosed by the Danish Tax Ministry so far, there is no indication that this issue concerns any misinterpretation of current Danish tax law or even an attempt of stretching the current interpretation of Danish tax law. It simply appears that this is solely an issue of criminal fraud of reclaims of Danish dividend withholding tax.

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