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REPORT

From: General Secretariat of the Council

To: Delegations

Subject: Code of Conduct Group (Business Taxation)
- Report to the Council

Denmark - Amendments to the rules on taxing investment vehicles (DK006)

Agreed description

Background

Denmark notified the amendments to their rules on taxing dividends from investment vehicles on 3 February 2020.

Amendment

Relevant provisions

The Danish rules on taxing investment vehicles were changed by act no. 84 of 30 January 2019 with effect from 1 March 2019.

Design of the measure

The intention behind the measure is to align foreign investment through investment vehicles with foreign direct investment by eliminating the pre-existing taxation of dividends.

Before the rules on taxing investment vehicles were changed by Act no. 84 of 30 January 2019 a foreign investor investing directly in Danish shares would pay 15 percentage on the dividend received. The foreign investor is not taxed on capital gains when selling the shares.¹

Under Danish law investment vehicles can have different setups for tax purposes. It can pay tax itself on the payments that it receives from its investments, or taxation can occur on the share of the aggregate yield resulting from the investments.

If a foreign investor invested in Danish shares via a Danish investment vehicle and the investment vehicle would pay 15% Danish tax on the dividend received from the distributing company, the foreign investor would pay additional 15 percentage when the dividend received was further distributed from the investment vehicle to the investor as part of the yearly yield.

¹ See tables in annex 1.

Under the new provisions² foreign investment through Danish investment vehicles are exempt from withholding tax on dividends if the investment vehicle is taxed in Denmark on the dividend.³

A foreign investor investing in Danish shares will suffer 15 % tax paid through the Danish investment vehicle and there will be no supplementary tax on the distribution (or yearly yield) paid from the investment vehicle to the foreign investor. A foreign investor investing only in foreign shares via a Danish investment vehicle will pay no taxes in Denmark.

The taxation of a Danish investor via an investment vehicle was not changed by law no. 84 of 30 January 2019. A Danish corporate investor will be taxed at the level of 22 percent on the total dividend/yield paid by the investment vehicle including dividend from companies resident in Denmark or abroad received by the investment vehicle.

Taxation of dividends resulting from an investment in foreign shares by a foreign investor via a Danish investment vehicle is thereby also changed through the new measures. They are now completely exempted from Danish tax.

The following example can illustrate the effects of the measure. A Danish investment fund (which has chosen the status of paying tax on dividend received from Danish companies) has invested in a Danish company A. The investment fund receives 200 in dividend on which the investment fund is taxed at a 15 percent rate. A Danish company and a foreign company are investors in the Danish investment fund. They each receive 85 (200-30/2). The Danish company is taxed with 22 percentage. The foreign company pays no withholding tax. The Danish Company is left with 66,3⁴ and the foreign company is left with 85.

² Kildeskatteloven, lovbekendgørelse nr. 117 of 29 January 2016, as amended, § 2.1.6. Selskabsskatteloven, lovbekendtgørelse nr. 1164 of 6 September 2016, § 2.1.c.

³ See tables in annex 2.

⁴ Thus, a Danish company would most likely not invest in Danish shares through an investment fund which has chosen the status of paying tax on dividend received from Danish companies. Instead a Danish company will choose an investment fund, which has not chosen the status of paying tax on dividend received from Danish companies.

Denmark has added that they are currently considering how to further change the rules on taxation of investment vehicles due to a ruling from the European Court of Justice⁵. A proposal for such amendments of the rules is scheduled for October 2020.

⁵ Judgment of the Court (Fifth Chamber) of 21 June 2018, Fidelity Funds and Others v Skatteministeriet, Case C-480/16.

Situation before 1 March 2019**1.1 Cases with investment fund that does pay tax on Danish shares**

Dividend from	Danish tax at the level of Investment Vehicle		Danish tax on the Distribution of Investment Vehicle		Total tax on 100
Danish entity	15%	Investment vehicle	22%	Danish beneficiary	33,7
Foreign entity	0%	Investment vehicle	22%	Danish beneficiary	22
Danish entity	15%	Investment vehicle	15%	Foreign beneficiary	27,75
Foreign entity	0%	Investment vehicle	15%	Foreign beneficiary	15

1.2 Cases with investment fund that does not pay tax

Dividend from	Danish tax at level of Investment Vehicle		Danish tax on the Distribution of Investment Vehicle		Total tax on 100
Danish entity	0%	Investment vehicle	22%	Danish beneficiary	22
Foreign entity	0%	Investment vehicle	22%	Danish beneficiary	22
Danish entity	0%	Investment vehicle	15%	Foreign beneficiary	15
Foreign entity	0%	Investment vehicle	15%	Foreign beneficiary	15

Situation from 1 March 2019**2.1 Cases with investment fund that does pay tax**

Dividend from	Danish tax at the level of Investment Vehicle		Danish tax on the Distribution of Investment Vehicle		Total tax on 100
Danish entity	15%	Investment vehicle	22%	Danish beneficiary	33,7
Foreign entity	0%	Investment vehicle	22%	Danish beneficiary	22
Danish entity	15%	Investment vehicle	0%	Foreign beneficiary	15
Foreign entity	0%	Investment vehicle	0%	Foreign beneficiary	0

2.2. Cases with investment fund that does not pay tax

Dividend from	Danish tax at level of Investment Vehicle		Danish tax on the Distribution of Investment Vehicle		Total tax on 100
Danish entity	0%	Investment vehicle	22%	Danish beneficiary	22
Foreign entity	0%	Investment vehicle	22%	Danish beneficiary	22
Danish entity	0%	Investment vehicle	15%	Foreign beneficiary	15
Foreign entity	0%	Investment vehicle	15%	Foreign beneficiary	15