Denmark introduces international GAAR

On 26 January 2015, the Danish Minister of Taxation published a draft bill that introduces two general anti-avoidance rules (GAARs) into domestic Danish law with the aim of preventing abuse of tax treaties and EU direct tax directives. The background for this development is that the EU Council on 27 January 2015 amended the EU’s Parent-Subsidiary Directive by adopting a general anti-avoidance rule that must be implemented in national law by 31 December 2015.¹ Moreover, the Organisation for Economic Co-operation and Development (OECD) has proposed a general anti-avoidance rule in the context of the Base Erosion and Profit Shifting (BEPS) Action 6.²

The draft bill introduces a directive GAAR and a tax treaty GAAR in section 3(1) and (3), respectively, of the Danish Tax Assessment Act. The scope of the directive GAAR is the EU’s Parent-Subsidiary Directive (2011/96/EU), Interest-Royalty (2003/49/EC) and Merger Directive (2003/133/EU), whereas the scope of the tax treaty GAAR is income tax treaties concluded by Denmark. The wording of the directive GAAR is based on the rule adopted by the EU Council and the tax treaty GAAR is based on the rule proposed by the OECD. The wording of the two rules is not identical, but it is the opinion of the Minister that they will normally be applicable in the same type of situations. Under both rules, a taxpayer cannot obtain the benefits of a directive or tax treaty, if obtaining such benefit was one of the main purposes of any arrangement or transaction resulting in that benefit. Among other things, the new rules will be applicable to conduit companies. However, other situations may also be captured by the rules.

In recent years the Danish tax authorities have been preoccupied with auditing arrangements where taxpayers rely on the benefits of tax treaties and EU directives in order to reduce Danish withholding taxes. The new rules may cause the tax authorities to step up withholding tax audits. Taxpayers are thus advised to review existing arrangements in order to ensure that they will not be covered by the new rules.

Both rules will be applicable from 1 May 2015, and will apply to existing and new arrangements and transactions (no grandfathering rule). The draft bill will need to pass three hearings in Parliament before it becomes law.
Endnotes


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