Denmark

Relaxation of the requirements for the Danish expatriate tax scheme from 1 January 2019

Executive summary
The Danish government has adopted amendments to the current Danish expatriate tax scheme for foreign researchers and highly paid employees to make it easier for individuals to fulfil the necessary requirements.

From 1 January 2019, foreign researchers and highly paid employees can be covered by this scheme even if they have been employed by the same legal entity prior to starting employment in Denmark. This is particularly helpful for organizations with branch structures. There are also changes to the scheme regarding the contractual requirements, maternity leave and post-departure payments.

Background
Legal employer
Currently Danish headquartered companies with a branch structure (as opposed to a subsidiary structure) are not able to apply for employees from a foreign branch to become covered by the Danish expatriate tax scheme, due to the branch being the same legal entity as the Danish Company.

This also applies to foreign companies with a Danish branch as they are not able to apply for employees going to Denmark to be covered by the Danish expatriate tax scheme. This is because the law requires that the Danish employment must start close to the time the employee becomes liable to tax in Denmark, to be eligible for the expatriate tax scheme.

From 1 January 2019, it will be possible for companies with a branch structure to have their assigned employees covered by the Danish expatriate tax scheme as long as all the other requirements of the Danish expatriate tax scheme are fulfilled as well. The changes to the rules result in the Danish employment being considered a new employment regardless of the company structure.

Employers with a branch structure who wish to use the scheme should still ensure that the individual has not been liable to tax in Denmark in the previous 10 years.

Contracts
When dealing with an application for the Danish tax expatriate scheme, the Danish tax authorities do not currently evaluate the actual circumstances to determine if there is a Danish employer; the evaluation is limited to the formal written contract.

From 1 January 2019 the authorities will analyze the actual circumstances to determine if there is a Danish employer. Where the employee is liable to tax in Denmark, due to performing work in Denmark for a Danish economic employer, then this will fulfill the requirement of having a Danish employment.

In this respect, it is important to highlight that the new rules do not give “hired out” personnel from abroad (employees who have their formal employment contract abroad) the option to use the Danish expatriate tax scheme.
To avoid further complications, it is still recommended that employers prepare a formal contract to be signed by the Danish company and have this signed before the employment in Denmark begins. This contract must be filed together with the application for the Danish expatriate tax scheme.

**Maternity leave**
If an individual covered by the Danish expatriate tax scheme goes on maternity leave and does not receive income during this period, then they could lose coverage from the expatriate tax scheme due to not meeting the minimum salary requirements.

From 1 January 2019, an employee cannot lose the right to be covered by Danish expatriate tax scheme if the employee is on maternity leave and does not fulfill the minimum salary requirement. The maternity leave period can cover different fiscal years and the employee will still be eligible to for the Danish expatriate tax scheme after maternity leave.

The total time the Danish expatriate tax scheme is available is not extended by any absences for maternity leave.

**Post-departure payments**
At present if an employee receives a bonus or other income (such as stock remuneration) post-departure relating to work performed in Denmark, then this income is not covered by the Danish expatriate tax scheme. In fact, where the individual is to return to Denmark within 10 years of receiving such income they would not be eligible to use the expatriate tax scheme again.

The new legislation allows an employee to receive remuneration from a former Danish employer after leaving Denmark without it preventing them from using any remaining period of the Danish expatriate tax scheme on return to Denmark, if the remuneration derives from the prior employment period in Denmark covered by the expatriate tax scheme. Any remuneration paid out after an employee has left Denmark, which relates to the Danish employment, will still have to be taxed in Denmark using ordinary tax rules as is presently the case.

**Next steps**
The new rules will provide more flexibility for the circumstances of employees assigned to Denmark who wish to make use of the Danish expatriate tax scheme. Employers with branch structures should now seek to make use of the arrangement where employees fulfill the other conditions.

It is still recommended that employers use a Danish contract in order to confirm the Danish employment relationship and that the minimum wage requirement is met.

Employers should also review cases involving maternity leave or post-departure payments as many of these will now continue to be eligible to use the scheme where this was not the case previously.