

WORTH KNOWING ABOUT

# Danish Withholding Taxes - Outbound payments



Denmark levies withholding taxes on certain payments, including the following:

- Dividends
- Royalties
- Interest payments to certain affiliated companies

## Outbound dividends

Payments of dividends from Danish companies to foreign recipients are subject to Danish withholding tax. The withholding tax rate is generally 27 % for individuals.

However, if the dividends are paid to a foreign corporate entity which is entitled to reduction or elimination of Danish withholding tax pursuant to a tax treaty with Denmark or the EU parent/subsidiary directive, Danish withholding tax will not apply. It is noted that in determining whether a foreign parent company is entitled to claim such reduction, a very strict test of beneficial ownership and/or test of abuse of tax treaty rights is applied which in a number of situations has led to a denial of tax treaty or EU tax directive benefits, cf. below.

With regard to outbound dividends to other shareholders, the Danish company is obliged to withhold and pay 27 % in withholding tax to the Danish Tax Authorities. This applies even if the recipient is a person or company where the Danish tax on dividend is to be reduced pursuant to a tax treaty. The shareholder can in this case claim a refund of the excess withheld tax by the Danish Tax Authorities.

## Outbound royalties

Payments of royalties from Danish sources to a foreign recipient are liable to Danish withholding tax. However, please note that the Danish withholding tax on royalties does not apply to payments for the use of rights to literary, artistic or scientific work, e.g. author's royalties, music royalties, and motion picture royalties. The withholding tax rate on royalty payments is 22 %.

For royalty payments to recipients resident in jurisdictions entitled to a reduction or elimination of Danish royalty tax pursuant to a tax treaty with Denmark or the EU Interest and Royalty directive, the withholding tax rate will be reduced or eliminated accordingly. It is noted that in determining whether a foreign recipient of royalty from Denmark is entitled to claim such reduction, a very strict test of beneficial ownership and/or test of abuse of tax treaty rights is applied which may lead to a denial of tax treaty or EU tax directive benefits, cf. below.

## Outbound interest

A 22 % withholding tax is at the outset applicable to all intra-group interest payments from Danish companies to a controlling foreign company.

This withholding tax is for practical purposes most often limited to situations where interest payments are made to a group company situated in a tax haven as the withholding tax will not apply in the following situations:

TAX AND VAT  
February 2024

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*If the dividends are paid to a foreign corporate entity which is entitled to reduction or elimination of Danish withholding tax pursuant to a tax treaty with Denmark or the EU parent/subsidiary directive, Danish withholding tax will not apply.*

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1. If taxation must be reduced or waived according to a tax treaty. This will be the case for almost all the Danish tax treaties;
2. If the taxation must be waived according to the EU interest/royalty directive;
3. If the creditor company is controlled by a company situated in a tax treaty country and if this company is covered by the CFC legislation of that country; or
4. If the recipient is subject to tax on the interest payment at an effective rate of at least  $\frac{3}{4}$  of the Danish corporate tax rate (i.e. currently 16.5 %)

### Conduit companies and beneficial owner

Please note that the Danish Tax Authorities have successfully argued in a number of cases that a foreign company in another EU country receiving dividends or interest payments from a Danish company cannot claim the benefits of the relevant tax treaty or the relevant EU directive if the receiving EU company is regarded as a conduit company, i.e. it has no substance and no power of decision with regard to the received amounts and has transferred the amounts to a beneficial owner resident outside EU in a jurisdiction without a tax treaty with Denmark. Thus, the Danish Tax Authorities have successfully argued that the Danish company is obliged to withhold Danish tax on the payments.

When testing whether the beneficial ownership requirement is met, it has been emphasized that facts such as the operation of the company, its accounts, the structure of the company's costs and the actually incurred expenses, employees employed by the company and the premises and equipment at its disposal are relevant. Further, one of the key take-aways from the recent 2023 rulings from the Danish Supreme Court is that the consideration should comprise each transaction as the facts and circumstances for each transaction may vary regardless of whether the legal structure remains the same.

### International anti-abuse clause

Based on EU legislation an international anti-abuse clause has been adopted in Danish Tax law. The anti-abuse clause prevents companies from benefiting from Danish double tax treaties and tax legislation in general if the main purpose or one of the main purposes of the arrangement is to achieve a tax advantage contrary to the purpose of the double tax treaty or the tax legislation.

### Other outbound payments

As a main rule, there is no withholding tax on capital gains on Danish shares realised by a foreign shareholder by sale or liquidation. However, if the shareholder is a parent company resident in a country outside the EU or in a non-tax treaty country - i.e. for practical purposes in a tax haven - the liquidation proceeds will be regarded as dividends and the withholding tax rate of 22 % for dividends, see above, will apply.

If shares in a Danish company are transferred to an intergroup company, the purchase price will under certain conditions be classified as dividend and trigger Danish withholding tax. This will e.g. be the case if:

1. a legal entity transfers shares held in a group-related entity to another group-related entity for payment consisting of other valuables than shares (e.g. cash) in the acquiring company, and
2. the transferring legal entity does not qualify for exemption from Danish withholding tax on dividends received from the transferred company before the transfer of shares.

This will under certain conditions also apply when shares in a Danish company are transferred to a new company or a company with no or limited business activities and the seller (before the transfer of shares) did not qualify for exemption from withholding tax on dividends received from the transferred company. Similar rules apply to certain sale of shares, followed by a reinvestment into the buyer group structure.

The dividend treatment also applies to certain cases of tax-exempt restructuring of companies. Specific and stricter rules apply to cases where dividend is distributed from a Danish company if this company is a conduit company. There is no withholding tax on interest payments to all other creditors than an affiliated company in a tax haven country.

As a main rule, there is no withholding tax on fees such as management fees, consultancy fees, and other fees paid from Denmark to a foreign recipient.

**DO YOU HAVE ANY  
QUESTIONS?  
PLEASE CONTACT**



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