Denmark to introduce GAAR for double tax treaties and EU Directives

December 19, 2014

In brief

Denmark is focusing on combating tax havens. Amongst proposed measures, the most important is the introduction of a general anti-avoidance rule (GAAR) which will apply to any foreign transactions with a Danish entity. In essence, the protection normally available to transactions under Danish tax treaties and EU Directives will no longer be available unless multinational companies meet certain substance and commercial reasons tests.

Note that certain EU countries may be viewed as tax havens for Danish purposes.

In detail

On December 9, 2015, the EU member States agreed to introduce a GAAR into the Parent-Subsidiary Directive. On December12, the Danish government agreed with several Danish parties to focus on combating tax havens. It seeks to achieve this by introducing a number of bills that target tax havens. One of the measures would introduce a GAAR that aligns with the EU member States agreement. However, in Denmark the proposed GAAR would apply to transactions covered not only by the Parent-Subsidiary Directive, but also by Danish double tax treaties, the EU Interest-Royalty Directive, and the EU Merger Directive.

The protection that the above-mentioned directives and double tax treaties would normally give to such transactions would only be available if the main purpose of the transactions is not to achieve tax advantages.

However, if the transactions have been put into place for valid commercial and economic reasons, the GAAR will not apply.

The proposed effective date for the GAAR is no later than May 1, 2015.

The takeaway

US multinationals should review any structures that include Denmark to see whether the new GAAR might affect them.

Let's talk

For a deeper discussion of how this might affect your business, please contact:

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