

## Denmark proposes new withholding tax regime for dividends

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### Executive summary

On 18 May 2020, the Danish Government published an agreement (the Agreement) between the Danish Ministry of Taxation and Finance Denmark (the Danish business association for the banking industry) on a new withholding tax on dividends regime. Under the proposed regime, dividend withholding tax (WHT) would be based on relief at source principles with custodian banks playing a central role and taking on liability for faulty withholding.

### Detailed discussion

In August 2015, the Danish Tax Authorities suspended the processing of all dividend WHT refund claims with immediate effect due to alleged dividend reclaim tax fraud of approximately DKK12.7 billion.

The Danish Ministry of Taxation, Finance Denmark and VP Securities (the Danish CSD) have in collaboration agreed on the principles for a new dividend WHT regime based on relief at source and introducing registration of nonresident shareholders with the Danish tax authorities and liability for banks for faulty withholding. The new regime is presented as a measure to prevent reclaim fraud.

### Current regime

Under current law a shareholder is generally subject to 27% statutory WHT on dividends. Nonresidents subject to a lower tax rate under a double taxation treaty or Danish domestic law are eligible for reclaim of excess WHT through the filing of a refund application with the Danish tax authorities. Applying for a refund requires the shareholder to provide the tax authorities with relevant documentation after the dividend distribution.

### Proposed regime

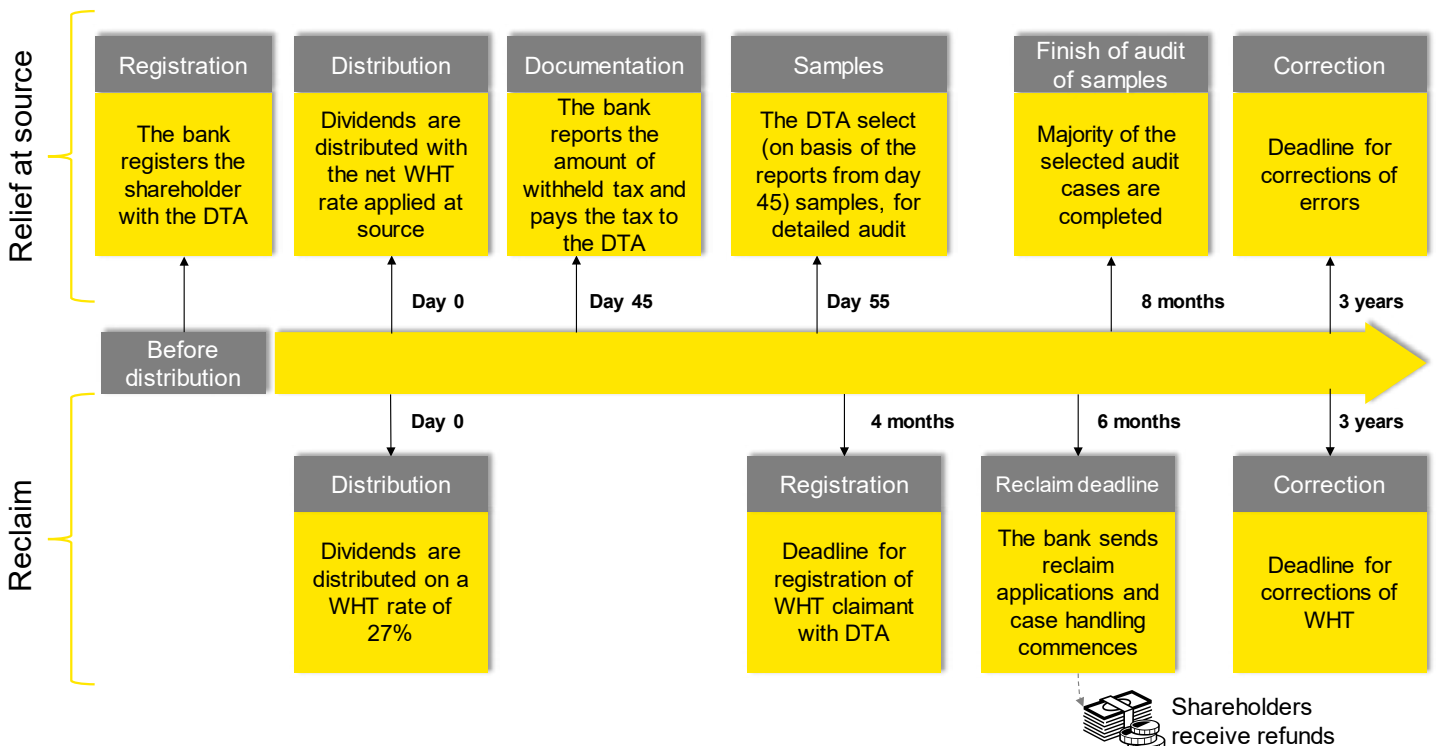
The Agreement aims at ensuring the final WHT rate pursuant to a double tax treaty or domestic Danish law is withheld upon the dividend distribution by replacing the current reclaim regime with relief at source. As a vital part of the concept, a nonresident shareholder must be registered with the Danish tax authorities and relevant documentation substantiating beneficial ownership shall be made available prior to the dividend distribution.

#### Registration of shareholders

A nonresident shareholder will have to register with the Danish tax authorities to benefit from a reduced tax rate (i.e., rates below the standard statutory rate of 27%). The registration may be carried out by the investor’s custodian bank only and will provide the investor with a withholding tax identification number identifying their custody account and the correct WHT rate (often 15% pursuant to a double tax treaty).

A reclaim concept will supplement the relief at source regime and allow shareholders, that did not in time register the WHT identification number prior to a distribution the possibility to reduce the tax rate by way of refund. To obtain a refund, the shareholder must be registered for filing a reclaim application. Such registration must be filed within four months from the dividend date.

The primary steps of the new regime are illustrated below.



### Shareholders with special rates

Certain shareholders are eligible for a special reduced dividend WHT rate (down to zero percent) pursuant to either a double tax treaty or domestic Danish law. Such shareholders may include pensions funds and states/governments and to benefit from the reduced rate at source, these shareholders must complete a pre-approval process with the tax authorities.

### Introducing liability for banks

The nonresident shareholder's custodian bank can be held liable for withholding at lower rates than the shareholder is eligible for.

According to the Agreement, the liability of the bank ensures that the tax authorities may collect tax directly from the *Danish* banks where an audit concludes that tax was withheld at a faulty rate. The Agreement does not mention liability of non-Danish banks participating as custodians or in a chain of custodians, but states that it is a requirement from the Danish bank's participation in the new regime, that a Danish bank may direct a tax claim towards a non-Danish bank in the chain of custodians meaning that the new regime is depending on non-Danish custodians also signing up.

In general, the liability for banks shall cover all circumstances where the tax authorities' audit sampling reveals an error and may e.g., include scenarios where an incorrect tax rate has been applied by mistake, the registration of a shareholder with the tax authorities was not performed correct or the registered shareholder is not accepted as the correct beneficial owner for Danish tax purposes. The Agreement mentions that a "beneficial ownership-statement" signed by the dividend receiving shareholder will be implemented with the statement providing guidance on situations, where the dividend recipient is generally not accepted as the beneficial owner for Danish tax purposes.

### Timeline

The Agreement does not contain any information on when the proposed model would enter into force.

The Danish Minister of Taxation has indicated that there are approximately 62,000 applications on the refund of excess WHT pending with the Danish Tax Agency. The proposed model should ease the administrative burden and eliminate the need to reclaim excess WHT.

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