

Denmark announces plan to exempt nonresident charitable organizations from dividend withholding tax

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The Danish Minister of Taxation on 14 September 2020 announced that the Government intends to present a bill in December 2020 exempting nonresident charitable organizations from Danish withholding tax (WHT) on portfolio dividends.

Resident charitable organizations are subject to 22% tax on portfolio dividends. However, such organizations can claim a tax deduction for actual distributions, and provisions for distributions, to charitable purposes usually causing the effective taxation of dividends to be nil. By contrast, nonresident charitable organizations are subject to 22% WHT on dividends received from Danish companies which subsequently may be reduced to 15% through a refund process. The Danish dividend taxation of resident and nonresident charitable organizations are thus different.

The European Commission on 14 May 2020 submitted a formal notice (2020/4003) to the Danish Government stating that the Danish dividend taxation constitutes an unjustifiable discrimination of nonresident charitable organizations in breach of the free movement of capital set forth in Article 63 of the Treaty on the Functioning of the European Union (TFEU) and Article 40 of the European Economic Area Agreement.

The Minister of Taxation has acknowledged that existing Danish law is in breach of European Union (EU) law. The bill is expected to exempt both resident and nonresident charitable organizations from Danish dividend taxation. More details about the bill are currently not available. Since the scope of Article 63 on the free movement of capital is not limited to transactions between EU Member States the bill may potentially include charitable organizations from

third countries. However, whether Denmark is required to expand tax exemption to charitable organizations from third countries depends on an interpretation of the stand-still rule in Article 64(1) TFEU. Nonresident charitable organizations that have suffered Danish dividend WHT in the past should consider submitting a refund claim since Danish law has been in breach of EU law. Whether the statute of limitations for refund claims is three or five years is currently being litigated.

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