

Denmark- Added interest on corrections of VAT and excise duties enters into force 1 July 2023

June 2023

New legislation - added interest on corrections of VAT and excise duties

The Danish Ministry of Taxation has announced that legislation regarding added interest on corrections of VAT and excise duties in Denmark enter into force 1 July 2023.

From July 1, 2023, it will no longer be interest-free to make corrections and payments for VAT and duties for past periods in Denmark. The rules have retrospective effect and interest will therefore also be calculated on retrospective declarations that cover old duty periods.

Therefore, we recommend all VAT registered business in Denmark to investigate whether they are in fully compliance with Danish indirect tax rules and practices (including VAT, energy taxes, excise duties, special payroll tax etc.) – including potential ongoing discussions with the Danish Tax Authorities (“DTA”) regarding possible, enforced corrections – where possible are completed and submitted no later than June 27, 2023 before the legislation takes effect from 1 July 2023.

Thus, the added interest will concern all corrections, regardless of whether the correction is initiated by the DTA or the business itself – and regardless of whether the correction concerns tax periods prior to the legislation entering into force.

The ordinary period of resumption in relation to VAT and excise duties is 36 months. Monthly calculation of interest and the current interest level (currently +8,5% p.a.) entail that added interest of almost 30% will be calculated for corrections regarding the oldest period of the ordinary period of resumption.

Considerations regarding ongoing cases

Most likely, the implementation of the legislation entails that ongoing cases in which the VAT payable is increased by an enforced correction from the DTA will be subject to added interest, if the decision is issued after the effective date of the legislation. If the disputed period is more than eight years in the past, the added interest itself will exceed the disputed amount of VAT payable. Therefore, such cases should be expedited and closed as soon as possible.

Revision of current handling of VAT and excise duties

The DTA can implement corrections within the ordinary resumption period of 36 months if the taxable amount **for each month** is incorrect.

Examples of situations resulting in an incorrect taxable amount include:

- The business has deducted the VAT on a cost for which the documentation was not yet secured – or where the VAT has been incorrectly charged by the supplier.
- The business has not calculated canteen VAT or has deducted too much VAT on costs related to employee benefits.
- Lacking (timely) filing of EU export to “EC Sales List”.
- The required documentation in relation to intra-community supplies was not secured by the time of filing.
- The business has incorrectly deemed a supply exempt of VAT.
- The tax base and/or tax rate for calculating the refund for energy taxes and excise duties is wrong.

The Tax Agency is currently conducting control campaigns that cover many of these areas, and we draw attention to the fact that an ongoing control or dialogue with the Tax Agency does not affect the interest calculation. This means that interest will be calculated if the control or dialogue results in a correction that is declared and paid from July 1, 2023 and onwards - regardless of whether the dialogue has been ongoing for several years and concerns old periods.

Processes for future handling

In the future, each reporting period and its taxable amount will be subject to increased focus. This entails that in practice, corrections made in an incorrect period can be regarded as evasion of added interest.

Therefore, corrections of previous reporting periods must not be made on the ordinary reporting of a subsequent period.

As such, we recommend that processes concerning documentation requirements, reporting and corrections of VAT payable in previous reporting periods are assessed and made more rigorous, if necessary.

Businesses entitled to partial VAT deduction

The legislation also comprises a number of details regarding the handling of the pro rata VAT deduction rate for businesses with both VAT taxable and VAT exempt activities.

The purpose of these provisions is that businesses should not pay added interest on the possible increase of VAT payable as the result of the final pro rata VAT deduction rate being calculated at a lower rate than the aconto rate employed through the year.

The Danish Minister of Taxation is to define the legislation in further detail.

However, it is essential to note that corrections which are not the result of changes to the pro rata VAT deduction rate *will* be subject to the legislation regarding added interest, e.g. corrections as the result of requalification of costs from attributable to VAT taxable supplies to general costs or ascertained reverse charge obligations.

Thus, several distinctions must be made when calculating regulations of payable VAT due to partial VAT deductibility. We recommend that businesses establish an extended division and documentation of these regulations in such a way that the distinctions appear clear and controllable.

Recommendation entitled to partial VAT deduction

We recommend assessing whether the VAT and duty accounts for the last three years contain transactions and procedures that should give rise to corrections before July 1, 2023. We are, of course, very happy to assist with making an assessment and review.

Please feel free to contact us, if you would like to discuss the above.



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