



Frédéric Gérard, Tax Partner, and Adrien Raoux, Tax Associate

French withholding tax on payments to Denmark: get refunded!

Denmark has no longer been bound by any tax treaty with France since 2009. So far, should a Danish company provide services in France (unless through a French permanent establishment), the remuneration of the services is likely to be subject to:

- A 33.33% withholding tax (“WHT”) in France;
- A 22% corporate income tax (“CIT”) in Denmark.

Some services are subject to the WHT (e.g. management fees and IT fees), whereas some others are not (e.g. intellectual property such as branding fees or patent royalties).

Inconveniences for Danish tax residents are twofold:

1. They are subject to an additional tax, which is not fully offset against Danish CIT;
2. This WHT is computed on a gross amount, meaning that the related expenses paid by the Danish company are not taken into account for the calculation of this WHT. Yet, they would be allowed to deduct these expenses for the calculation of the CIT due in France, should they be French tax company.

The French company’s point of view

If the French debtor fail to levy the WHT, it is personally liable to pay in the place of the Danish provider on an increased basis: since the payment is regarded as an “after WHT” payment, the WHT must be levied at 50%. Today, French supreme court “Conseil constitutionnel” stated that this WHT was complying with the provisions of the French constitution (decision #2019-784 QPC).

Refund process

Fortunately, French tax authorities (“FTA”) provide a reimbursement process, which may be initiated either by the French paying company or by the Danish provider.

The reimbursement is subordinated to 2 cumulative conditions:

- The Danish tax legislation does not allow the Danish provider to totally offset the amount of the French WHT against Danish CIT;
- The Danish provider is subject to a higher taxation in France than the one he would have suffered, should it be a French tax resident.

Based on our experience, both of these conditions are generally met.

What to do?

The Danish company has to make 2 separate calculations to determine the amount of the potential reimbursement:

1. The amount of the theoretical CIT the Danish company would have paid as a French tax resident on the same French income.
2. The amount of the WHT that was not offset against Danish tax.

Who can claim?

As mentioned, the claim can be filed either by the Danish provider or by the French beneficiary of the services. The choice of the claimant has a consequence on the time allowed for sending the claim:

- A claim sent by the Danish provider must be filed by December 31st of the following year of the payment of the WHT;
- A claim sent by the French company must be filed by December 31st of the second following year (i.e. one more year).

For confidentiality purposes, we generally recommend to send the claim on behalf of the Danish company, especially in case of transactions between unrelated parties, since the claimant has to analyse the accounts of the Danish company.

The FTA department in charge of examining the claim depends on the identity of the claimant:

- If the Danish provider → the claim is filed before the department in charge of foreign taxpayers (*"Direction des residents à l'étranger et des services généraux"*);
- If the French company → the claim is filed before the tax center of the French company.

Based on our experience, it takes around 4 to 6 months to get refunded, generally around 95% of the WHT.

► to know more: contact@velvet-avocats.com

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