Deloitte Tax LLP
Global Employer Services

GES NewsFlash
Denmark – Amendment to the Danish Expat Scheme

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Summary

Deloitte has in our previous Alert described the elements that were stated in the Danish Budget 2011. A bill (L81) has now been introduced and more details have therefore been published.

The bill contains amendments of two very crucial areas and by planning NO LATER than 31 December 2010 it will be possible for certain employees to optimize their tax situation.

The present rules

At present, the Expat Scheme allows for either 25% tax for 3 years or 33% for 5 years. Including the social tax (AM-contribution) of 8% the effective rates are 31% and 38.36% respectively.

Also, at present it is a condition that the employee has not been tax liable to Denmark within the past 3 years (quarantine period). If the employee has not been liable for Danish taxation for at least 5 years prior to the commencement of the employment, there is no requirement to leave Denmark (in order to avoid retroactive ordinary taxes) after maximum 4 years upon the period of 25%/33% taxation. More lenient rules apply for approved researchers (PhD level).

A significant amount of Danes also benefit from the scheme after having finalized a stay abroad.

Significant amendments will be introduced.

26% tax for 5 years

Instead of the 25% and 33% tax rates, a new 26% tax is introduced which applies for a maximum period of 5 years. Including the AM-tax of 8% the effective tax rate will be 31.92%.

Both the 25% and 33% schemes will be repealed with effect from 1 January 2011. From 1 January 2011 there will only be one tax rate, i.e. the 26% tax.

Not tax liable to Denmark for at least 10 years (prolonged quarantine period)

In the future, the scheme can only be applied by employees who have not been tax liable to Denmark within the past 10 years.

The target group of this amendment is, of course, Danes who after a number of years abroad return to Denmark. The motive behind the amendment is that these Danes will return to Denmark anyway, irrespective of the Danish Expat Scheme.

If this amendment is implemented, the result will be that almost no Danes can benefit from the Scheme.

The requirement for retroactive taxation will be removed

As a consequence of the prolonged quarantine period the rules on retroactive taxation will be removed.

When will the new rules apply?

The new rules will apply from 1 January 2011.

Transitional rules

An interesting issue is what options the new rules will give the employees who apply the 25%/33% expat scheme today.

The transitional rules distinguish roughly between the employees who:

1. Before 1 January 2011 have already used either the 25% or the 33% expat scheme for 36 months.
2. At the beginning of 2011 are still comprised by either the 25% or the 33% expat scheme.

We have based our outline below on which scheme the employees currently apply.

Employees who have applied the 25% expat scheme before 1 January 2011

Employees who have already used the scheme fully cannot apply the new rules to revert to the 26% expat scheme for 2 years more. The purpose of the rule is e.g. the employee who has applied the 25% scheme during the period 1 January 2007 to 31 December 2009. This employee cannot re-enter the scheme.

Employees who commenced the 25% expat scheme on exactly 1 January 2008 and who have been on the scheme for 36 months on exactly the 31 December 2010 have to choose the 33% expat scheme before the end of December 2010 in order to obtain 26% tax for two years more. This choice triggers payment of differential tax (the difference between 25% tax and 33% tax) retroactively. Whether this is an advantage compared to taxation pursuant to the ordinary rules for the extra two years requires a concrete calculation.

For employees whose 25% expat scheme has not expired on the 31 December 2010, the expat scheme will be extended to 5 years, however the tax will as of 1 January 2011 increase from 25% to 26%.

Advantages/disadvantages of the amendment

Whether the new rules are an advantage depends on for how long time the employee has applied the scheme and for how long time the employee expects to stay in Denmark. The longer the period on 25% tax before 1 January 2011 (however maximum just below 36 months) and the longer the period in Denmark after 1 January 2011 (maximum 5 years in total), the more advantageous the new rules are.

Employees who have for instance just taken up the 25% expat scheme and who anticipate to work in Denmark for e.g. 3 years will be worse off with the new rules.

The opposite is the case for employees who commenced the 25% expat scheme later than 1 January 2008, because they can get at least 2 years more on the new 26% tax (maximum for 5 years), which is a considerable advantage in respect of the present rules.

Employees who have applied the 33% expat scheme before 1 January 2011

These employees are taxed by 26% for the remaining part of the period for which they could have chosen 33% tax pursuant to the present rules. (i.e., taxation by 26% for the remaining part of the five-year period).

For employees who opted for the 33% expat scheme from the very start and who on the 31 December 2010 have not yet been on the scheme for 36 months, it will – according to the wording of the bill – be possible to shift to the 25% scheme and thus be reimbursed with the difference between the 33% tax and the 25% tax. This shift must be effected before 31 December 2010. This is a significant advantage.

We emphasize that pursuant to the wording of the explanatory notes of the bill it must be possible for employees who have been on the 33% tax for 36 months on the exact day of 31 December 2010 to continue on the 26% tax for 2 years more.

Other comments

Employees who have left Denmark immediately after having applied the scheme for a period of less than 36 months can return to Denmark and apply the new rules. Whether they must fulfil the new 10-year quarantine rule is not stated 100% clearly in the bill.

Employees who qualify according to the present rules, but not according to the new rules (because of the prolonged quarantine period of 10 years), should consider speeding up their return to Denmark.

The Danish parliament will have the first reading (out of three) on 1 December 2010. Deloitte will follow up.

People to Contact

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