New legislation forces Danish domiciled investment funds to withhold tax on redemptions

As new tax legislation has entered into force, Danish domiciled investment funds[1] are now forced to withhold dividend tax on all redemptions. The new tax rule applies to both domestic and foreign investors.

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The new rule states that if an investor sells back investment certificates to the Danish investment fund that issued the investment certificates in question, the entire sales price shall be taxed as dividend.

Furthermore, the purchase price for the investment certificates sold cannot be deducted when calculating the taxable sales price.

The dividend tax is at present 27% for individuals and 22% for companies. Thus, the investment fund shall withhold the dividend tax in connection with the payment of the sales price. The investment fund shall pay the dividend tax amount directly to the tax authorities.

The Danish dividend tax may be reduced according to the provisions of a possible double taxation treaty between Denmark and the country where the investor is resident taxwise.

International investors can obtain repayment of overpaid dividend tax from the Danish tax authorities.

The dividend tax in the country where the investor resides depends on the local tax rules of that country.

Exemptions: UCITS and certain listed and/or foreign funds

The new rule on dividend tax on redemptions does not apply to UCITS funds in general or to non-UCITS funds if they are under an obligation to diversify investments and a duty to redeem in national legislation.

Since there is no obligation to do so either in the Danish implementation of the AIFM Directive, all Danish Alternative Investment Funds are forced to withhold dividend tax on redemptions. Since however certain EU member states have chosen to implement an obligation to diversify investments in their national legislation, Alternative Investment Funds from these jurisdictions will also be exempt from the new rule and as a result have a significant advantage on similar Danish investment funds.

Furthermore, all investment funds that are listed on a regulated market will be exempt from the new rule. In this context a regulated market will for instance be a regulated market in terms of MiFID.

[1] For the purpose of this memo it has been assumed that funds deemed a Danish tax resident would be classified as an "investment company" pursuant to the Danish Corporate Tax Act section 3, 1, 19 and the Danish Capital Gains on Shares Act section 19.

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