Several major tax bills to be postponed by the Danish government

The Prime Minister and Danish government have announced that a number of legislative initiatives will be postponed until the next sessional year of the Danish Parliament, i.e. 2020/2021. This is due to the corona crisis and the impact it has on the work of the Danish Parliament.

As for tax, one of the bills to be postponed is the reading of L48 on international taxation such as CFC, permanent establishments (PE), transfer pricing, etc.

The amendment to the CFC rules ("Controlled Foreign Companies") is intended to prevent the transfer of mobile income to low-tax countries and the related erosion of Danish tax proceeds resulting from such a transfer. Consequently, this income will have to be taxed in Denmark if the mobile income of controlled foreign entities accounts for a certain percentage of the total income. Accordingly, the amendment of the rules implies a removal of the asset test and a tightening of the income test. In other words, the CFC income is only to exceed the total taxable income of the subsidiary by one third.

The purpose of the amendment was for the update of the rules on permanent establishments to include the OECD recommendations. A new definition of "permanent establishment" was going to be introduced by the bill. And this would imply the adoption of a so-called anti-fragmentation in Danish law. Consequently, activities, each of which could be considered of preparatory and auxiliary nature - and therefore not to constitute a permanent establishment – could, however, in some cases be considered a permanent establishment if viewed as a whole.

In addition, the bill was intended to incorporate a requirement to the effect that as of the income year 2020, transfer pricing documentation had to be submitted no later than 60 days after the submission of the consolidated tax return, whereas previously, companies were only required to have completed their transfer pricing documentation when filing their tax return.

We, Baker Tilly, expect that the postponement of the bill will also result in a postponement of the effective date, for which reason the bill is not expected to become effective until the income year 2021. A clarification already now of when the bill is to become effective will be welcomed for the sake of all businesses. We therefore keep a close eye on the legislative process.

Now, for tomorrow

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