



International Tax

Denmark Tax Alert

12 April 2014

National Tax Board issues favorable ruling on PE and anti-avoidance rules

Contacts

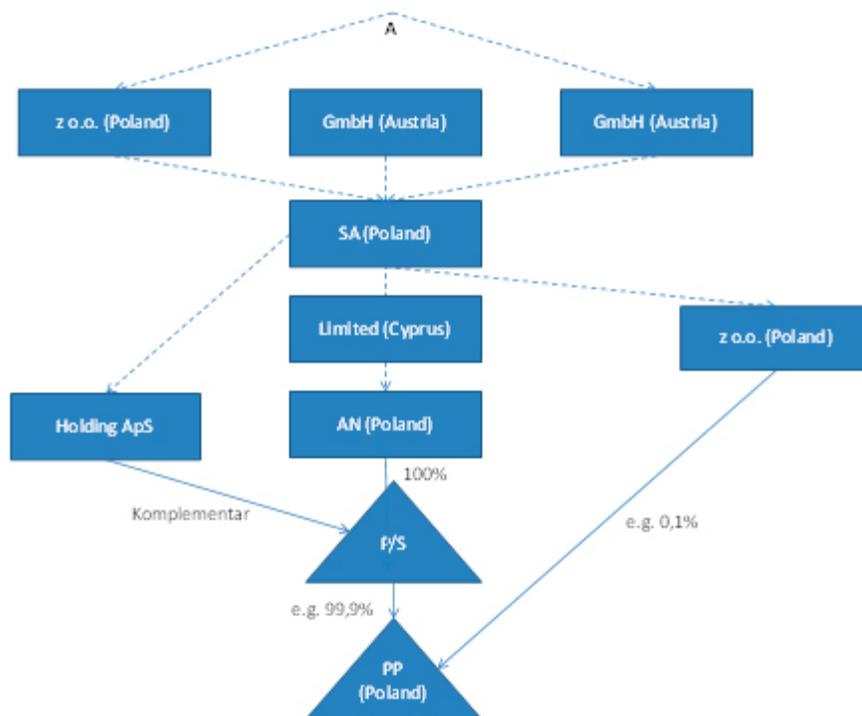
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Denmark's National Tax Board published a binding ruling on 25 March 2014, in which it confirmed that foreign owners investing through a Danish partnership (P/S) did not have a permanent establishment (PE) in Denmark and that the P/S was not taxable under Danish tax law.

Facts of the case

The legal structure and facts of the case are as follows:



A tax resident in Poland owned companies in Austria, Cyprus and Poland, including a Polish general partnership (PP), all of which were engaged in the cable TV business. AN (Poland) was treated as a tax-exempt company (not transparent) for tax purposes in Poland and PP (Poland) was treated as a partnership (transparent) according to Poland's tax rules.

The Danish P/S and the general partner were registered with a "C/O" address at a Danish law firm and did not have rights to dispose of any premises in Denmark. The Danish P/S did not have employees in Denmark, and general assemblies and board meetings in the P/S between the general partner were to be held at rotating locations.

The board of directors of the Danish P/S was comprised of two Danish lawyers and the Polish owner A, the latter of whom also was the managing director of the Danish P/S. However, in the future, it was planned to have at least two Polish tax residents on the board of directors.

Ruling of the National Tax Board

The National Tax Board confirmed that AN (Poland) did not have a Danish fixed place PE as defined in article 5(1) of the OECD model treaty. The board based its conclusion on the following:

- AN (Poland) did not have any affiliation with Denmark aside from holding an ownership share in the Danish P/S;
- The Danish P/S could not dispose of any premises in Denmark, even though it had a C/O address at a Danish law firm;
- The Danish P/S did not have any employees in Denmark;
- Decisions regarding the operations of the Danish P/S were to be made outside Denmark; and
- General assemblies and board meetings of the Danish P/S and the general partner were to be held at rotating locations.

Furthermore, since AN (Poland) did not have a representative in Denmark with a power of attorney to conclude contracts in the name of AN (Poland), there could not be a dependent agent PE in Denmark under article 5(5) of the OECD model treaty.

Moreover, since the Danish P/S was treated as a transparent entity for Polish tax purposes, the Danish P/S was not subject to Danish corporation taxation.

Comments

It is important that partnership structures in Denmark be set up correctly to avoid a foreign investor from having a Danish PE. In another recent ruling, the National Tax Board held that foreign owners investing through a Danish limited partnership (K/S) did have a PE in Denmark, because (among other reasons) the general assembly was held at the premises of a Danish management company.

Further, under Denmark's anti-avoidance rules, a Danish P/S or K/S may be subject to normal Danish corporate taxation if the foreign owner considers the Danish entity as nontransparent or if the foreign owner is tax resident outside the EU and the country of residence has not concluded a tax treaty with Denmark that contains tax relief for outbound dividends.

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