



Bill to abolish VAT exemption in connection with property administration

The Danish Government and Dansk Folkeparti (the Government's cooperative partner) (hereinafter referred to as the Parties) have 1 March 2009 entered into an agreement on the package of measures to be implemented in the spring, version 2.0. In that connection, a draft bill has been introduced to amend the Value Added Tax Act and the Payroll Tax Act.

According to the Parties, the reason for the draft bill is the existing special VAT rules. Different types of VAT exempt business activity entail a competitive advantage over related activities.

On this background, the Parties have agreed to abolish VAT exemption in connection with delivery of real property, travel agencies etc., and property management as from 1 January 2011.

Further, the Parties have agreed to increase payroll tax for companies in the financial sector. The amendment takes effect as from 1 January 2013.

Governing law on property administration

According to the Value Added Tax Act Section 13(1) no. 8, administration in connection with letting and leasing of real property is VAT exempt. The exemption applies both in relation to the administration of rental property and the administration of owner-occupied property and housing societies.

Under governing rules however, administration of real property is subject to pay payroll tax, cf. the Payroll Tax Act Section 1(1).

Janitor services are exempt from the "typical" tasks in real property administration, which are included in the VAT exemption. This means that if janitor services are performed against consideration, VAT is imposed.

If administration of real property is not performed against consideration, e.g. if letter performs the administration and the costs in this connection are included in the VAT exempt rent, these internal services are not included in the tax basis.

Content of the bill

If the introduced bill is passed, the present VAT exemption for administration of real property will be abolished. As a consequence, administration of real property will be subject to VAT in the future according to the Value Added Tax Act's principal rule on the delivery of taxable services.

Further changes to the Payroll Tax Act are unavoidable as a consequence of the imposition of VAT liability, in that the liability to payroll tax is abolished.

If the administration of real property is made liable to VAT, the amendment will not in itself imply VAT on internal administration services, in that those services are not performed against consideration.



The amendment thus provides letter with a VAT incentive to perform the administration of real property himself. To counteract this competitive distortion between administrators of real property, who wishes to perform the administration themselves, and administrators who perform services against VAT liable consideration, it has likewise been proposed to introduce TAX liability to letters and societies when they perform the administration of real property at their own expense ("VAT enforcement").

The tax basis for delivery of administration services and janitor services would be the paid consideration. In a similar situation where a letter of a, owner or housing society wishes to perform the abovementioned services themselves through the means of employees, the tax basis would be the normal value for such services. In such situation, the normal value is calculated as the amount which would have been applied under free terms of competition.

Consequences of the bill

As a consequence of the above, janitor services will be subject to VAT liability when performed by internal employees in connection with their own properties.

The governing VAT exemption is authorised by the Value Added Tax Act Section 13(1), nor. 8, according to which Denmark applies the permission to exempt certain professional services from paying tax, pursuant to the Council Directive 2006/112/EC of 28 November 2006, article 371, cf. appendix X, part B, no. 2. If Section 13(1) of the Value Added Tax Act is restricted or abolished, it cannot be expanded nor recommenced again.

If you have any questions or require additional information on the package of measures to be implemented in the spring, version 2.0, please contact attorney Dan Moalem (dmo@mwblaw.dk), attorney Lasse Dehn-Baltzer (ldb@mwblaw.dk) or attorney Henning Hedegaard Thomsen (hht@mwblaw.dk).

The above does not constitute legal counselling, and Moalem Weitemeyer Bendtsen does not warrant the accuracy of the information. With the above text, Moalem Weitemeyer Bendtsen has not assumed responsibility of any kind as a consequence of a reader's use of the above as a basis of decisions or considerations.