

## **NEW DRAFT LEGISLATION ON COST COMPENSATION FOR COMPANIES**

### **Introduction**

On July 4 2011, the Danish Ministry of Taxation submitted a new draft legislation which proposes that the legislation concerning cost compensation for companies and funds are expanded.

It is proposed that the rules concerning cost compensation are reintroduced so that tax liable companies and funds may get 100% cost compensation for expenditures on competent assistance etc. in cases where the trial is commenced on the initiative of the Ministry of Taxation. The same applies to legal surveys before the National Tax Tribunal or the National Tax Board if full cost compensation has been granted.

### **Legislation Currently in Force**

According to legislation currently in force, tax liable companies and funds do not have the possibility of receiving cost compensation for expenditures on competent assistance etc. in complaints before the National Tax Tribunal. When legislation regarding cost compensation was revoked, new legislation concerning the right to deduct such expenses for companies and independent business owners in tax employment cases and complaints was introduced.

According to legislation on cost compensation for expenditures on competent assistance in complaints, 100% compensation is given when judgment is given fully or predominantly for the plaintiff as regards the claim set up. Equally, 100% compensation is

granted in legal surveys when the Tax Appeals Board, the National Tax Tribunal or the National Tax Boards have promised full compensation.

When the trial is initiated by the Ministry of Taxation or the tax minister, full cost compensation is always given.

According to legislation currently in force, compensation for expenditures on competent assistance is not given in first instance cases. Equally, only 50% compensation is given if the plaintiff loses his case or if judgment is only given for him to a lesser degree.

### **The Background of the Draft Legislation**

The draft legislation has its origin in thoughts on legal rights protection. The reintroduction of cost compensation provides companies and funds with the same economic possibilities as the state to take a case before the court in question and in legal surveys. So far, the economic consequences have at times been so significant that they would exceed the refunded tax, regardless of the outcome of the trial. Thus, after a reevaluation of the legislation, it is proposed that legislation regarding cost compensation is reintroduced.

### **The Content of the Draft Legislation**

The draft legislation suggests a reintroduction of 100% cost compensation for expenses related to competent assistance when the trial is initiated by the Ministry of Taxation and, in legal surveys, the National Tax Tribunal or the National Tax Board if full compensation has been promised. Compensation for expenses related to competent assistance in trials initiated by the Ministry of Taxation or the National Tax Board is only applicable to the part of the trial that has been initiated by the Ministry of Taxation.

As regards legal surveys, compensation is given in the legal survey case only and not in the substantial, underlying case at the National Tax Tribunal or the National Tax Board.

To the extent that compensation is given, the right to deduction lapses for expenses related to competent assistance in tax employment cases and complaints for companies and independent business owners.

If you have any questions or require any additional information on the new draft legislation, please contact partner, adjunct professor Jakob Bundgaard ([jbu@mwblaw.dk](mailto:jbu@mwblaw.dk)) or associate Kim David Lexner ([kdl@mwblaw.dk](mailto:kdl@mwblaw.dk)).

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