

Denmark

Taxation

HEDGE FUNDS 2009

Hedge fund managers/advisors

Taxation

Tax rates applying to hedge fund managers/advisors

The legal basis for establishing hedge funds in Denmark was implemented in 2005. As yet, only a very small number of hedge funds have been established in Denmark. Thus, the number of Danish hedge fund managers/advisors should be rather limited.

If the Danish fund manager is established as a company (would likely be the case) it will be subject to Danish corporation tax on its net taxable profits at a rate of 25 percent.

If the Danish fund manager is established as a limited liability partnership (K/S), it is viewed as a transparent entity for tax purposes and the tax liability will apply at the level of the partners of the K/S. A corporate partner will be subject to corporation tax on its net taxable profits at a rate of 25 percent cf. above.

The effective tax rate usually suffered by hedge fund managers/advisors

The effective tax rate should be equal to the statutory corporate tax rate of 25 percent.

Tax concessions, allowances, or exemptions specifically available to hedge fund managers/advisors

There are no concessions, allowances, or exemptions that are specifically available to Danish hedge fund managers/advisors.

Details of anti-avoidance tax rules that could bring the profits of an offshore hedge fund into tax

According to domestic legislation a foreign company is subject to Danish corporate taxation if:

- the company has its place of effective management in Denmark; or
- the foreign company has a permanent establishment in Denmark.

Place of effective management

For the place of management test, the location of the day-to-day management is normally decisive and the evaluation of where the place of effective management takes place is a concrete evaluation of the facts and circumstances in connection with the decision taking in the company. Further Danish tax practice shows that where no day-to-day management can be pointed at directly, the place of effective management must then be measured at the board level looking at overall decisions.

Permanent establishment

Danish tax law interpret the exposure to permanent establishment in accordance with the agreed double taxation treaties and the commentary to the OECD model convention. According to this interpretation PE exposure requires the existence of a fixed place of business or a depending agent.

Under the depending agent clause a permanent establishment can be created for a foreign hedge fund by virtue of an investment manager/advisor acting as agent for the fund. This, however, does not apply if:

- the agent is independent legally and financially; and
- the agent carries out the activity in the course of its normal business.

Requirements to charge VAT (or equivalent sales tax) and the rate

As a starting point, management services will be subject to VAT in Denmark. However, negotiation in securities is VAT exempt. Thus, the fund manager is not required to charge VAT to the extent the services consist in negotiation in buying and selling securities (investment services) and ancillary services.

The place of supply of investment services is where the recipient is located. The place of supply of other management services, as a starting point, is where the supplier is located. As of 1 January 2010, the place of supply of management services will also be where the recipient is located, and thereby covered by the reverse charge mechanism.

The Danish VAT rate is 25 percent.

The fund manager can deduct VAT to the extent he supplies services subject to VAT or supplies VAT exempt investment services to customers outside the EU (refund).

Hedge fund structures

Taxation

Tax rates applying to the fund

Danish onshore hedge funds incorporated in accordance with the rules in the Danish law on Investment funds (Investeringsforeningsloven) chapter 16 A are for Danish tax purposes covered by the rules of investment companies.

A hedge fund is for Danish tax purposes considered as an investment company if:

- The hedge fund is covered by the UCITS Directive.
- The hedge fund's business is investing in securities and the shares/units of the hedge fund shall be repurchased by the fund or a third party on demand of the investor at a price which does not in a substantial matter deviate from the net asset value.
- The corporation or fund has eight or more owners and at least 85 percent of the accounting assets are on an average basis during the accounting year invested in securities (shares, bonds, derivatives, etc.).

Investment companies are basically corporate tax exempt. A final withholding tax of 15 percent is however, levied on dividends from Danish shares paid to Danish investment companies.

A non-resident hedge fund may be classified as a tax transparent entity for Danish tax purposes. The transparency concept implies that each investor is considered to be the owner of part of the fund's assets and liabilities and will be taxed on their proportion of the fund's income and gain/losses.

Access to double tax treaties

The fund should have access to the widespread net of Danish double tax treaties. The status will however vary from treaty to treaty.

Value-added Tax registration and charging requirements

The fund is not required to register for VAT as it performs no VAT taxable services. However, being a taxable person the fund is required to settle VAT under the reverse charge scheme. The VAT rate is 25 percent. The fund cannot deduct VAT.

Withholding tax on dividends or interest payments

Dividend distributions from a Danish hedge fund are subject to the ordinary withholding tax rate of 28 percent on the gross amount. Non-resident unit holders may claim a withholding tax relief according to the provisions of a double tax treaty.

Tax return requirements

A Danish fund considered as an investment company is generally tax exempt and therefore not obliged to file a Danish tax return.

Normally, an obligation to file information on dividend distributions and transfer of units etc. applies to the custodian bank if Danish.

Investors

Taxation

Specific anti-avoidance tax legislation applying to an investor in an onshore fund

There is generally no anti avoidance tax legislation applying to Danish investors in Danish hedge funds. However, capital gains and losses are generally taxed on a mark-to-market principle. For individuals, capital gains and losses are taxed as capital income with a marginal rate of 59 percent. For companies the three-year holding tax exemption that normally applies to Danish companies' investments in shares and certain share based mutual funds do not apply to investments in hedge funds.

Specific anti-avoidance tax legislation applying to an investor in an offshore fund

There is generally no anti avoidance tax legislation applying specifically to Danish investors in Danish hedge funds. The Danish taxation on investments in offshore hedge funds depends on the qualification of the hedge fund for Danish tax purposes. An off shore hedge fund should for Danish tax purposes normally be considered as an investment company. A hedge fund may however, also be considered as a transparent or a corporate entity.

Controlled Finance Company (CFC) taxation does not apply to off shore companies considered as an investment company for Danish tax purposes. In other situations CFC taxation may apply.

Tax information needs of investors

A Danish resident is likely to require details on distributions, acquisitions, and disposals of units/shares etc. in respect of the off shore fund, depending on the investor's tax status. Also, the articles of association of the fund may be requested in respect of the qualification of the hedge fund for Danish tax purposes.

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act upon such information without appropriate professional advice after a thorough examination of the particular situation.