

Global Mobility

International Hiring out of Labour rules in Denmark: what to be aware of

In situations in which Danish companies are having employees from foreign companies working in Denmark, the Danish tax rules on hiring out of labour may apply. It is of course best to adhere to the rules in advance before the companies are inspected by the Danish tax authorities.

What is hiring out of labour?

Situations where a foreign employee is sent to Denmark by a foreign employer to do work in Denmark for a Danish company can be deemed as hiring out of labour. The result of a hiring out of labour situation is that Danish companies in these cases must withhold labour market contributions of 8% of the gross income as well as withhold taxes of 30% after labour market contributions. In most double taxation agreements with Denmark the liability to pay tax in Denmark occurs from day one of working in Denmark. If The Danish company does not withhold taxes and labour market contributions in the salary of the foreign employees, the company will be obliged to pay the taxes and labour market contributions that should have been withheld to the Danish state.

How to assess whether the hiring out of labour rules apply?

Certain aspects are taken into consideration when assessing these types of situations. First, the Danish national rules on the matter are based on a “substance-over-form”- assessment. This means that after an overall assessment of the case the company that is de facto employing the employee is seen as the employer.

Determining the de facto employer is done by looking at whether it is the foreign company or the Danish company that carries the responsibility as well as the economic risk of the work result. This is where the character of the services come in to play.



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E.g., if a farmer is having a stable built by employees from a foreign company, the building services would not be considered an integral part of the farming business' area of practice. However, if the service carried out by the employees from the foreign company is related to work in the fields or in the stable then it would be considered an integral part of the farming business' area of practice. In the first situation the work is segregated to an independent foreign company and is therefore not covered by the hiring out of labour rules. In the second situation the work is integral to the area of practice of the farming business and therefore the hiring out of labour rules applies.

When do the rules not apply?

As mentioned above the rules on hiring out of labour apply if the foreign employees work in Denmark for a Danish company and if the work is considered to be integral to the area of practice of the Danish company.

However, two situations constitute exceptions to this rule. That is:

1. If the foreign employer has a permanent establishment in Denmark
2. If the work is not an integral part of the Danish company's area of practice, and the work performed by the foreign employees is permanently outsourced from the Danish Company.

Registration of foreign employees working in Denmark

It is a requirement to register the employees if their work is carried out in Denmark. The registration takes place in the Danish RUT which is a part of the Danish Business Authority. The registration gives the Danish Tax Agency access to identify the location of the work carried out by the employees working for foreign companies while in Denmark.

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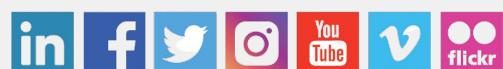
If you require guidance in this area when talking with your clients, please contact a member of the MGI Worldwide CPAAI Global Mobility Group who will advise and assist you in more detail about the obligations and points of attention for the relevant country.



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