

## **SKM 2017.691 – Remote workplaces – does an e-mail address and webpage trigger a permanent establishment?**

In a recent binding ruling the Danish Tax Board ruled that a lawyer working from abroad (post relocation) using a Danish website and a Danish e-mail address did not have a permanent establishment in Denmark.

### **Facts**

The taxpayer was a Danish lawyer preparing to retire. The lawyer relocated to another country. After the relocation, the intention was that the taxpayer should continue for a period of time and then hand over all clients and cases to other lawyers. The taxpayer maintained her e-mail address and maintained access to the platform of the law firm (which was a shared office) used to prepare documents, letters etc. The taxpayer was not co-owner of the platform before or after the relocation.

Moreover, the taxpayer would continue to appear from the web site of the law firm and continued to use the letterhead of the law firm, including the registration number and bank account of the law firm.

After the relocation, the taxpayer ran her business from home, via telephone as well as e-mails and continued to use the platform of the law firm.

Meetings and negotiations in court cases would mainly be handled by other lawyers of the law firm who would then invoice the taxpayer or the clients directly. The taxpayer would also participate through Skype and only in very special occasions by way of personal meetings with a client.

The taxpayer would not have access to an office in Denmark, but had the opportunity to receive assistance from the secretaries of the law firm in the preparation of invoices etc. The taxpayer did not pay for the access to the platform and the secretarial assistance as the payment was the prospect of taking over the clients.

## **Decision**

The Danish Tax Board ruled that the taxpayer did not have a permanent establishment (PE) in Denmark. Reference was made to Article 5 of the OECD Model Tax Convention with respect to the definition of a PE as the term for Danish domestic law purposes is defined in accordance with the OECD model.

Based on the above facts the Danish Tax Board concluded that the taxpayer did not have a fixed place of business in Denmark, since the taxpayer had no access to an office in Denmark. In addition, the secretarial assistance obtained by the taxpayer was considered to be of a preparatory and auxiliary nature.

The Danish Tax Board made a specific remark on the e-mail address and the appearance on the website of the law firm and referred to the commentaries of the OECD Model Tax Convention par. 42.2 regarding e-commerce, stating that an internet website cannot in itself be considered a “tangible property”, which can be seen as “facility”. In the view of the Danish Tax Board, a website cannot be seen as a location, which can be considered a fixed place of business for tax treaty purposes. Further, and although not explicitly stated in the commentaries of the OECD Model Tax Convention, this apply for e-mail addresses according to the Danish Tax Board.

Finally, specific reference was made to the access to the platform of the law firm. Here it was assumed that the platform was located on a Danish server. In this respect the Danish Tax Board stated that the fact that the taxpayer did not operate the server, but merely was a user hereof through the platform of the law firm, would not trigger a permanent establishment in Denmark, although it is stated in par. 42.2 of the commentaries of the OECD Model Tax Convention, that a server can be viewed as a “tangible property”, which is moreover considered a location, which can constitute a place of business for the enterprise operating the server.

## Comments

This decision may give an indication as to how *the workplaces of tomorrow* can be viewed from a tax perspective. Modern business models often facilitate working from the distance without any physical presence in the country of the customers. . This may be the case for entrepreneurs, freelancers or as in this case a sole independent person providing personal services (a lawyer) working from abroad. Further, the case demonstrates that a PE is not triggered as far as the only connection to Denmark is an e-mail address, appearance on a webpage (not operated by the taxpayer), access to a business platform and having clients in the country. It should be noted that, this result requires that the concept of a service PE does not apply.

Finally, it should be noted that although not aiming at scenarios like this, the current discussions within the EU aiming at introducing a digital or virtual PE, might affect even such (small) business structures as the one illustrated in this case.

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