

Duties in the financial sector

Practice area under Tax

VAT and payroll tax play important parts in the financial sector. The limited right to deduct input VAT and the liability to pay payroll tax contribute to heavy expenditure in the sector. This is why the Danish Customs and Tax Administration (SKAT) has also been focusing on this area and has instituted several test cases concerning VAT and payroll tax.

Plesner conducts legal proceedings about VAT and payroll tax in the financial sector before the Danish courts on a regular basis. So far, such cases have resulted in the Danish State having had to repay billions of Danish kroner relating to unlawfully collected duties to the financial undertakings.

VAT - the ATP case

One of the most discussed cases is the ATP case where the Court of Justice of the European Union (ECJ) set aside the Danish authorities' practice and upheld ATP PensionService's contention that the services it provides to PensionDanmark are exempt from VAT as services relating to transactions concerning payments and transfers or as the management of an investment fund. ATP PensionService and the Danish Ministry of Taxation settled the matter and SKAT had to repay a triple-digit million amount to ATP PensionService. On this background DKK 1.3bn has been earmarked in the Danish Finance Bill for 2016 for repayment of unlawfully collected VAT to other undertakings. Read a comprehensive presentation of the case [The Danish Ministry of Taxation and the ECJ may end up in a new VAT dispute](#).

Due to the judgment and the settlement SKAT has had to relax its practice in respect of VAT exemption for payment transactions and the management of unit trusts even if SKAT, in our opinion, interprets the ECJ's judgment somewhat restrictively.

In the guidelines subsequently issued in respect of the ATP case the Danish Ministry of Taxation does accept that a pension fund or another pension provider can be deemed to be an "investment fund". However, SKAT denies that the ECJ has set aside SKAT's interpretation of the concept of management, finding that the services provided by ATP PensionService may be included in the existing practice in respect of which services that may be deemed to constitute the "management of unit trusts". Furthermore, SKAT recognises that the ECJ has set aside SKAT's practice with respect to "transactions concerning payments and transfers " but SKAT restricts its new practice to services corresponding to the services provided by ATP PensionService to PensionDanmark. In doing so, it is our opinion that SKAT fails to recognise the principle expressed by the ECJ's judgment on this point.

Plesner has regularly received requests from the financial sector and providers to financial undertakings about the scope of the judgment since it was passed by the ECJ. The settlement and the guidelines issued by SKAT mean that the implementation of the ECJ's judgment can be initiated in respect of the rest of the financial sector and its providers. We expect that SKAT's restrictive interpretation of the judgment will give rise to additional cases about the correct understanding of the VAT exemptions.

See also [EU tax litigation](#)

Payroll tax

Plesner is also conducting a number of leading cases about payroll tax and the question of how financial undertakings are to distribute their payroll in the calculation of payroll tax (lønsumsafgift) when the employees are involved in both activities that are subject to VAT and activities that are VAT exempt (liable to payroll tax). The legislation stipulates that payroll tax is to be paid on the part of an undertaking's payroll that is used for the activities that are liable to payroll tax (VAT exempt).

SKAT claims in the cases that the financial undertakings cannot apply the percentage for deduction of VAT as an allocation method and has instead ordered the financial undertakings to make distributions on the basis of a discretionary assessment made by SKAT.

Plesner represents the banks involved and we have requested that the courts, firstly, consider whether the financial undertakings are entitled to use the percentage for deduction of VAT as an allocation method. Secondly, the courts have been requested to consider the criteria for SKAT to carry out and enforce an estimate deviating from the discretionary assessment made by the financial undertaking itself.

Most recent Spar Nord Bank A/S was successful before the Danish Western High Court in that the bank's discretionary allocation of payroll costs on taxable and non-taxable activities based on the breakdown of turnover under section 38 of the Danish VAT Act could not be set aside as the Danish Customs and Tax Administration had not proved that the Administration's estimate was more correct than the bank's.

Cases

Case News 12.07.2024

The Eastern High Court rules in favour of EET Group A/S in extensive transfer pricing case

Case News 18.06.2024

Sampo plc announces a public exchange offer to the shareholders of Topdanmark A/S

Case News 13.10.2023

The National Tax Tribunal reverses the case law of the Danish Tax Agency on additional taxation of foundations' tied-up funds on dissolution

Case News 30.06.2023

The Supreme Court finds in favour of the Ministry of Taxation in another "beneficial owner" case

Case News 24.05.2023

Viking Life-Saving Equipment A/S successful in extensive transfer pricing court case

Case News 04.05.2023

Danish Supreme Court rules against tax payers in two "beneficial owner" cases regarding interest

Case News 24.02.2023

Vækstfonden raises DKK 2.4 billion in Dansk Vækstkapital III

Case News 09.01.2023

The Danish Supreme Court has given its judgment in the first two Danish "beneficial owner" cases

Case News 20.09.2022

Danish insurance company Codan Forsikring successful in transfer pricing case before the Danish Eastern High Court

Case News 31.03.2022

The Eastern High Court reduces the Ministry of Taxation's interest claim significantly in beneficial owner case

Case News 04.03.2022

First Danish transfer pricing dispute decided in arbitration under the EU Arbitration Convention

Case News

25.11.2021

The Eastern High Court rules against the tax payers in two new "beneficial owner" cases

Ratings



2024 The Legal 500

Within Tax, Plesner is a first tier firm.

"Their industry and practice knowledge is very strong"

"They have a detailed knowledge of tax and, combined with an incredible business understanding, they are able to turn a complex matter into a simple line of arguments to make a convincing story"

"Very experienced and competent within tax litigation and transfer pricing. Strong mindset around people"

"Responsive, convey technical legal matters well in general business terms"



2024 Chambers Europe

Plesner is listed in "Band 1" as regards Tax.

"The team is very experienced, knowledgeable and proactive in its approach"

"The lawyers are able to understand a problem holistically, and are very knowledgeable regarding practical case handling. They are always responsive and good at explaining complex matters to business teams"



2024 World Tax

Plesner is ranked in Tier 1 in the World Tax ranking as the only Danish firm across the three tax categories (General Corporate Tax, Transfer Pricing and Tax Controversy).



2023 The Legal 500

Within Tax, Plesner is a first tier firm.

"Best track record for tax litigation in Denmark. Highly skilled team"

"Strong analytic skills including the ability to mitigate complex matters"

"Great team work with different skill sets and very strong capabilities within transfer pricing and tax litigation"



2023 Chambers Europe

Plesner is listed in "Band 1" as regards Tax.

"The team at Plesner is excellent - easily the best in tax in Denmark, and one of the best in tax in Europe. The lawyers provide wonderful client service, are responsive and give cutting-edge advice"

"The lawyers are knowledgeable within tax controversy and transfer pricing. They are also very proactive"



2023 World Tax

Plesner is ranked in Tier 1 in the World Tax ranking as the only Danish firm across two tax categories (General Corporate Tax and Tax Controversy).

"Plesner is widely regarded as the leading Danish law firm for all areas of tax law, including tax litigation"



2022 The Legal 500

Within Tax, Plesner is a first tier firm.

"Very strong tax team, and in particular within tax litigation"

"They are truly outstanding, and have the rare ability to completely handle a case and offer very clear strategic advice"

"They have a team that works like clockwork, which supports the overall output of the work product being absolutely best in class and outstanding"

"Impressed by the way the partners work together in teams on large litigation cases. No other Danish law firm can offer such experienced teams to litigate complex tax cases"

"They draw on their superior litigation experience to identify solutions that will withstand governmental as well as public scrutiny, and – when relevant – utilise their vast network within the tax authorities for solution-oriented informal discussions"

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EUROPE

2022

Chambers Europe

Plesner is listed in "Band 1" as regards Tax.

"A trusted partner"

"Plesner is deeply aware of technical details on international tax matters and brings to bear experience from a wide range of international clients"

"The Plesner folks are always technically good, creative and very responsive"

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