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Judge Confirms Initial Victory for Denmark in \$2.1B Tax Fraud Case

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One Battery Park Plaza • New York, New York 10004-1482 • +1 (212) 837-6000

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January 18, 2019 — The firm's initial victory for the government of Denmark in a \$2.1 billion tax fraud case was confirmed by a New York federal judge who previously declined in a bench ruling to dismiss the multidistrict litigation at the pleadings stage.

In 2018, HHR filed more than 140 suits in U.S. district courts on behalf of the Customs and Tax Administration of the Kingdom of Denmark, or Skatteforvaltningen (SKAT), to recover \$2.1 billion stolen through an international tax fraud scheme involving U.S. pension plans and their representatives. The pension plans sought to dismiss 53 of the complaints under the "revenue rule," a common-law doctrine preventing foreign sovereigns from using U.S. courts to collect tax revenues.

After indicating at a Nov. 5 hearing that he would rule against the pension plans, U.S. District Judge Lewis A. Kaplan, who oversees the MDL, issued a written opinion on Jan. 9, confirming his decision and finding that more evidence may be needed to determine whether the revenue rule applies.

"If plaintiff can prove that the defendants never in fact owned the relevant Danish stocks -- and the court is obliged to accept their allegations as true for present purposes -- the revenue rule would not apply because the substance of the claims would be for garden-variety commercial fraud," Judge Kaplan wrote. "Accordingly, the motion to dismiss is denied. Whether in light of discovery and a fuller presentation the revenue rule will be of greater aid to the defendants must await developments."

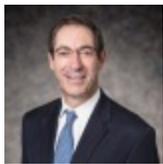
The case has received significant media attention in Denmark because it is one of the largest acts of financial fraud in the country's history. In the complaints, SKAT alleges that the pension plans falsely claimed to own stock in Danish companies, and submitted fraudulent requests to SKAT for refunds of taxes they claim were withheld on dividends from the alleged stocks. Danish companies are required to withhold a 27 percent tax on dividends, a levy that is refundable to non-Danish shareholders under double taxation treaties with some countries, including the U.S.

For three years until August 2015, SKAT distributed 12.7 billion Danish kroner, or approximately \$2.1 billion, in allegedly withheld dividend tax to agents representing 277 pension funds in the U.S. and others in the U.K., Canada, Malaysia and Luxembourg.

After filing the initial cases in May and June, HHR negotiated a settlement in October with two of the pension funds to pay the full amount of what they previously received in refunds. The remaining cases were consolidated before Judge Kaplan. HHR will proceed with document discovery and depositions this year as part of SKAT's recovery efforts in U.S. courts.

Sarah Cave leads the HHR team, which includes Bill Maguire, Marc Weinstein, Neil Oxford, John McGoey, Dustin Smith, Greg Farrell, Valerie Cahan, Adam Weinstein, Patrick Feeny, James Henseler and Jack Kilgard.

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William R. Maguire



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John T. McGoey



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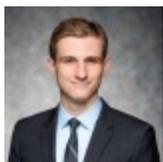
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