

FAQ - Ørsted appeals against decision from the Danish Tax Agency on Danish taxation of two offshore wind farms in the UK - 01.12.2020

What has happened up to this point?

- Ørsted project companies in the UK acquired technical assistance on development work conducted in Denmark. For this, the project companies in the UK paid a developer fee, priced on market terms.
- To be proactive and to avoid double taxation on the projects where we had recently taken or about to take an investment decision, an APA (Advanced Pricing Agreement) process was initiated in 2015 between the Danish and British tax authorities where Ørsted proposed a model on how to allocate profits and taxes between the two countries for the two projects.
- After three years of negotiations in the APA process, the DK Tax Agency withdrew from the process and started its own national tax audit of the two wind farms. Withdrawing from an APA process is, as far as we are aware of, unheard of.
- The outcome of the tax audit by DK Tax Agency was that they require Danish taxation of the full NPV value covering the lifetime of the assets, at the time of FID - i.e. years before the projects have been constructed and commissioned. The Danish taxes already paid by Ørsted relating to the two projects (DKK 6.1bn) was deducted.
- The argument from the DK Tax Agency is, that the full value of the projects has been created and secured in the development phase, and therefore, the market price of the development fee should be the lifetime NPV of the projects with some discretionary adjustments.

What is Ørsted's position?

- We strongly disagree to the Danish Tax Agency's position. We do this based on three main misconceptions of facts:
 - It is not Danish entities and employees that perform all the development work. The UK companies and employees play a significant role in the development work, not least in the Development Consent Order (DCO) and Contract for Difference (CfD) processes.
 - The most significant risks embedded in these offshore wind farms are not in the development phase. A significant part of the risks and value creation occur during the construction and operations phase.
 - The UK companies have from initiation been owners of the wind farm asset, including holding permits, leases and subsidies. Therefore, there has been no transfer of an asset, tangible or intangible.
- The services rendered by the Danish organisation has been provided to the UK at market terms with comprehensive external benchmarks supporting the transfer price.
- Based on leading Danish Tax experts' advise, and based on Ørsted knowledge of risks related to the development, construction and operation of complex offshore wind farms, we believe we have a very strong case against the Danish Tax Agency, and we also believe that it is highly unlikely that a potential EU arbitration process will result in a material further tax payment to Denmark.

Why 2015 and 2016?

- Tuesday night's announcement only applies to these two specific UK projects because the Danish Tax Agency's tax audit focus was for projects included in the APA process and Final Investment Decision was taken on these projects in the calendar years 2015 and 2016.

How is the NPV impact calculated?

- The DKK 4bn amount has been calculated as 1) tax differences between UK (19%) and DK (22%) and 2) timing (upfront vs over the lifetime). The latter is the most important effect.

Can you provide more details on deferral of the payment of the DKK 5.1bn plus interest?

- Ørsted will ask to not pay any additional tax until the case has been finally settled. However, interest will accrue with the applicable rate, and will be due on any amount eventually payable.

Could this impact other projects?

- Newer projects: At this point, we don't know if the authorities will look at other projects, but they potentially could. If the Danish Tax Agency would make a similar claim to all recent projects, the negative NPV effect (due to differences in terms of amount and timing of taxation) would increase from up to DKK 4 billion to around DKK 8 billion.
- Older projects (Burbo Bank, etc.): Wind farms with FID before 2015 are time barred (i.e. statute of limitations).

Will there be an impact on the competitiveness of your future auctions?

- We expect no impact because the Danish tax authorities have misunderstood how and when value creation is created on our wind farms. Also, today, even more of the work and responsibility for development is handled locally.
- We will continue to maintain balanced and prudent tax assumptions in our business cases, and do not expect any impact on our future competitiveness. The Danish Tax Agency has historically taken an aggressive approach to transfer pricing issues but has a low hit rate and has recently lost several high-profile cases in Danish Tax Courts, most notably the Microsoft and Ecco cases.

Does this impact partnerships?

- The decision is Danish and relates to Ørsted companies only.
- The outcome of the decision means we would have a higher share of the total taxes being paid up front.
- The counter impact of that is that we also have higher tax depreciation in the project-co going forward.
- However, in our partnerships, there is a mechanism where the partner compensates us for that saved tax, meaning we pay the full tax, but we also get the full benefit of higher deductibles.

Is there any correlation between the Danish Tax Agency and the Government, who is a shareholder?

- No, Danish Tax Agency operates at arm's length.

What are your next steps?

- There are two processes:
 - Our appeal to the Danish Tax Tribunal which secures access to the Danish court system.
 - The Mutual Agreement Procedures under the Double Tax Treaty and EU Arbitration Convention, which is a negotiation procedure between DK and UK Tax authorities.
 - It is important to have this filed and accepted before 31 Dec, so we can have it through EU Mutual Agreements Procedure before the UK leaves the EU.
 - However, under the recent OECD Multilateral Instrument, there is also access to arbitration under the Double Tax Treaty even for cases filed and accepted after 31 December 2020.
- Ørsted continuously identifies and evaluates risk, including tax risk. Transfer pricing risk, which this is, that primarily relates to the difference in tax rates, are part of the tax risks that Ørsted has already provided for. We have not increased our provisions based on this ruling.

How long until you know the outcome?

- It could be 2-4 years before we know more.