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The Ministry of Taxation's processing of tax evasion cases

1. Introduction and conclusion

1.1. Purpose and conclusion

1. This report concerns the Danish Ministry of Taxation's processing of tax evasion cases involving individuals and businesses. We use the term tax evasion, when individual citizens or businesses either deliberately or through gross negligence submit incorrect, misleading or incomplete information to avoid paying the taxes, VAT or duties they are required to, pursuant to Danish tax, VAT and duty legislation

In the period from 2016 to 2020, the Danish Tax Agency annually adjusted taxes and duties reported by citizens and businesses by an average of net DKK 14.3 billion. Some of this amount was related to understandable errors and some to gross negligence or deliberate violations, of which some were in the category of actual tax and duty evasion. The Ministry of Taxation estimates that approx. one in ten businesses deliberately under-declare tax and VAT

Because a good part of the adjustments can be related to actual tax and duty evasion, it is important that the Ministry of Taxation's responds effectively to evasion in relation to both tax and VAT compliance and processing of criminal cases. Effective processing of criminal cases should have a preventive effect on tax and duty evasion, because individuals and businesses see that tax evasion is punishable. This means, for instance, that the period of limitation for tax cases should not be allowed to expire, before action is taken. Additionally, it follows from the general principles of law that committing criminal offences should have consequences and not go unpunished.

Six criminal case units within the Danish Tax Agency handle processing of all criminal cases for the Danish Customs and Tax Administration. In 2020, the six criminal case units closed approx. 4,500 cases. Cases that the compliance units consider should be assessed for criminal liability are transferred to the six criminal case units. Several previous studies and audits carried out by Rigsrevisionen have found that only a limited number of the compliance cases that could potentially turn out to be criminal cases, are transferred to the Danish Tax Agency for assessment of criminal liability.

Criminal cases

In the report, the term *criminal cases* covers all cases that are subjected to assessment of criminal liability, irrespective of whether the offence leads to a penalty, the case is referred to the police and the Danish Prosecution Service, or the Danish Tax Agency has to drop the charge.

The tax compliance units of the Danish Customs and Tax Administration

These units are placed in the Danish Tax Agency, the Danish Customs Agency and the Danish Motor Vehicle Agency, who all transfer cases for assessment of criminal liability by the criminal case units within the Danish Tax Agency. The Danish Customs Agency is not included in this report.

Period of limitation expired in full or partially

Periods of limitation for criminal offences may expire in full or partially. The period of limitation is said to be partially expired, if some – but not all – the offences date back to fiscal years where the authorities can no longer bring claims. The period of limitation is expired in full, when all the offences date back to fiscal years, where the authorities can no longer bring claims.

The purpose of the study is to assess whether the Ministry of Taxation is tackling tax evasion in a satisfactory manner. Firstly, we have examined whether the compliance units within the Danish Tax Agency and the Danish Motor Vehicle Agency ensure that all relevant cases are evaluated to determine whether they should be transferred for assessment of criminal liability. Among other things, we have examined whether the evaluations made by the compliance units are supported by guidelines, and whether the guidelines ensure that the evaluations are well founded. Secondly, we have examined whether the Danish Tax Agency ensures satisfactory processing times. In practice this means that processing of cases should be completed, and the cases submitted for assessment of criminal liability, before the period of limitation expires in full or partially. At the same time, processing times should generally not be allowed to increase, and processing should not be allowed to go on for so long that it affects rulings and, for instance, leads to reduction of penalties.

Rigsrevisionen initiated the study in December 2020.



Main conclusion

The Ministry of Taxation's effort in tackling criminal cases warrants criticism. The processing of a significant number of criminal cases go on for so long that the period of limitation expires, before they can be subjected to assessment of criminal liability. The consequence is that many individuals and businesses are not sanctioned for violating the tax and duties regulations.

The compliance units within the Danish Tax Agency and the Danish Motor Vehicle Agency are not adequately ensuring that cases are evaluated to determine whether they should be transferred for assessment of criminal liability.

Guidelines on transfer of cases for assessment of criminal liability exist, but the guidelines do not present examples of cases that could potentially involve criminal violations. Nor do the guidelines include descriptions of what staff should do, when the same rules have been repeatedly violated by the same citizens or businesses. It is Rigsrevisionen's assessment that staff's evaluation of whether cases should be transferred for assessment of criminal liability would benefit from example-based guidelines. The guidelines can also be improved in relation to evaluations of whether the same citizens or businesses have repeatedly violated the same rules.

According to the present guidelines, staff are not required to document their decisions not to transfer cases involving potentially criminal offences for assessment of criminal liability. Rigsrevisionen found examples of cases involving potentially criminal offences, including cases of repeated violation of the same rules, where staff had not documented their decision not to transfer them for assessment of criminal liability.

The processing time for criminal cases in the Danish Tax Agency is long and increasing, and for many of the cases, the period of limitation expires either in full or partially, before they can be assessed for criminal liability.

The time it takes the criminal case units to process criminal cases has on average more than doubled from 202 days in 2016 to 451 days in 2020. The long processing time is mainly due to the extended period of time that passes from the criminal case units receive the cases until processing is started. Approx. 4,500 cases, which is half of the cases that are ready for processing, are thus still waiting to be processed after more than 12 months. These cases include offences relating to social dumping, organised supply chain fraud and VAT carousel fraud.

Due to the long case processing time, the period of limitation expires in full or partially for many of the criminal cases, before they are being assessed for criminal liability. According to the Danish Tax Agency's records, the period of limitation has expired either in full or partially for approx. 1,000 cases in the period from 2016 to 2020. However, this number may turn out to be considerably higher, because the criminal case units, up to the summer of 2020, only to some extent registered cases where the period of limitation had partially expired. Additionally, the period of limitation may also have expired in full or partially for a large number of cases in the backlog of pending cases.

In several cases, rulings have been affected by the long processing times resulting in penalties being reduced or offenders receiving conditional discharges.

The Danish Tax Agency closed approx. 4,000 to 5,500 cases annually in the period from 2016 to 2020. However, the inflow of cases to the criminal case units has been growing and has throughout the period exceeded the number of cases settled by the Danish Tax Agency or transferred to the police and the Danish Prosecution Service. Thus, the backlog of pending cases has more than tripled from approx. 3,600 in 2016 to approx. 12,300 cases in 2020. Late in 2020, the backlog corresponded to two or three years of production. In the opinion of Rigsrevisionen, the growing backlog of cases entails a risk that the processing time will increase further, and that the period of limitation will expire for an increasing number of cases in the future.

In the course of the period examined in this study, the Danish Tax Agency has taken various steps to improve its effort in the area. However, Rigsrevisionen has established that the initiatives have not yet turned the development, as processing time, the number of cases for which the period of limitation has expired and the number of pending cases continue to increase. The Ministry of Taxation has informed Rigsrevisionen that the Danish Tax Agency has set up two new criminal case units in mid-2020 in response to this development. In the course of 2021, approx. 50 man-years will be allocated to these two units.