Granting, vesting, sale etc.
Timing of a taxable event?

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Timing of taxable events

Why is the timing of taxable events relevant?

- Timing of taxation (upon realization)
- Timing of valuation
- Exit/entry – right to levy tax

The claim of legal title/time of sale

- Signing of the agreement
- Granting
- Vesting
- Delivery of the shares/options/warrants

Timing of taxable events

Illustrate how timing of realization can be shifted

- What can be considered taxable events for Danish tax purposes

Example 1:
Conditional agreements

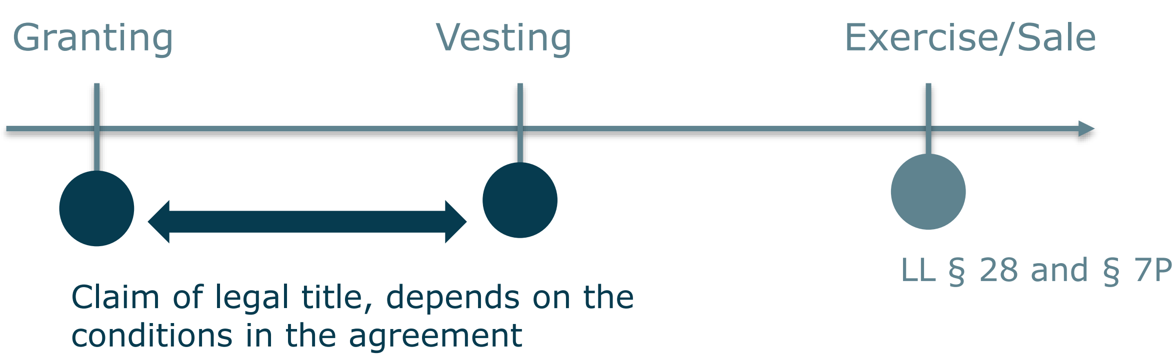
Example 2:
Amended terms & conditions

Example 3:
Mutual binding options

Example 1

Conditional Agreements (share based salary)

- Relevant tax treatment of employee
  - Taxable value and timing of taxation



Example 1 - continued

Conditional agreements (general considerations)

- Taxable event: When claim of legal title is obtained

Conditional agreements

- May shift the time of claim of legal title
  - Retrospective (the assets should be returned upon non-payment)
  - Suspensive (the transfer of the asset is contingent on payment)

- Suspensive conditions? Relevant factors
  - Can the taxpayer control the outcome, i.e. whether the condition(s) will be meet
  - Does a real uncertainty exits

Example 1 - continued

Conditional Agreements (share based salary)

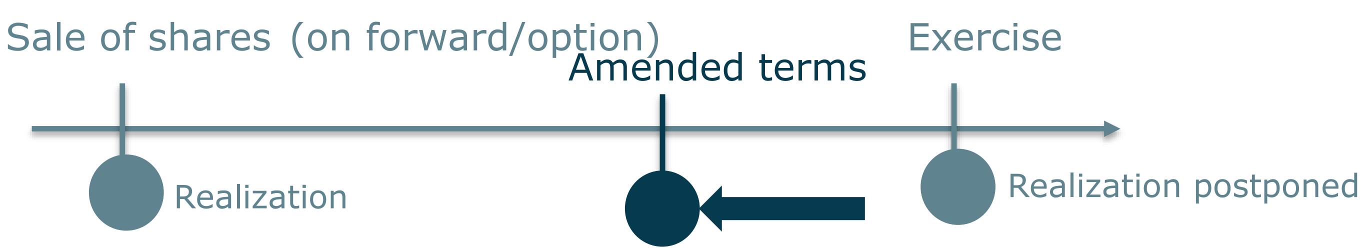
- Main rule: claim of legal title is obtained upon granting
  - Shares: When the agreement is entered into
  - Options/warrants: When decision is made on a general meeting

- Usual conditions in employee programs
  - Vesting contingent on reaching economic goals
  - Vesting contingent on the employee being alive at the time of delivery/exercise
  - Vesting contingent on employment at a certain time
    - Covered by the "Stock option Act" or not
    - Sufficient uncertainty of whether the shares etc. will be vested

Example 2

Amended terms and conditions (forwards and options)

- Relevant tax treatment
  - Taxable value and timing of taxation of shares (vs. derivatives)



Significant amendments of terms and conditions may trigger realization

Example 2 - continued

Amended terms and conditions (general considerations)

- Significant amendments of terms and conditions are considered disposal/sale for tax purposes
- The remuneration is represented by the amended agreement
- Amended terms – incl. waived rights – on non-acquired shares, options etc. has no tax consequences

Forwards and options – significant amendments?

- Amendments of key terms
  - Exercise price
  - Exercise period/time

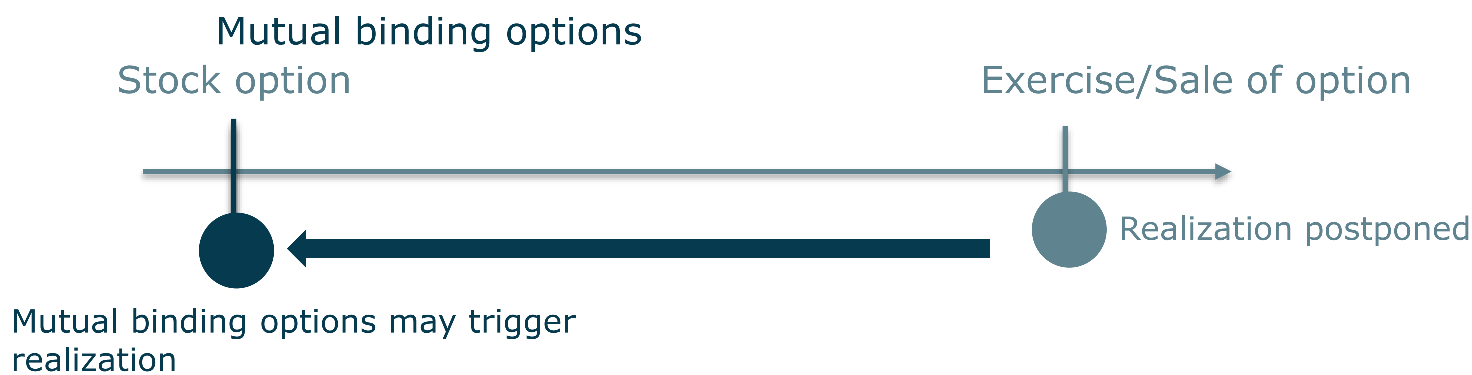
Employee programs - significant amendment?

- Amendments based on restructurings
- New shares due to conversion of the company for civil law purposes
- IPO
- Smaller amendments in regard to warrants accepted

Example 3

Mutual binding options

- Relevant tax treatment
  - Taxable value and timing of taxation of shares vs. derivatives



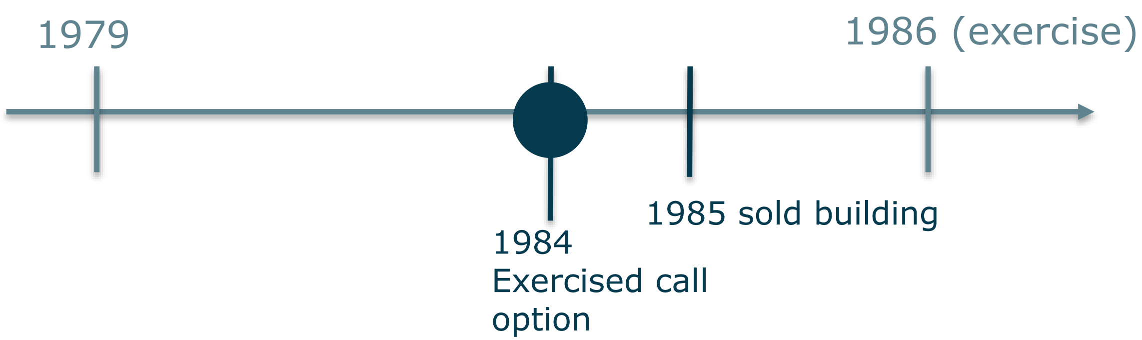
General considerations

- When two or more options are entered into resulting in a situation similar to sale
- Not to be confused with a straddle transaction

Example 3 - continued

Mutual binding options (TfS 1996, 469 H)

- In 1979 a taxpayer acquired a firm
- Entered into a lease of the building, that terminated 31/10 1986. The lease could not be terminated earlier
    - Call option (no fixed exercise time)
    - Obligation to buy (same terms and price)



Decision

- Sufficient degree of uncertainty about outcome of the agreements
- 7 years until (latest) exercise -> it was uncertain whether he 1) was still owner of the firm and 2) whether he was able to fulfill the terms of the purchase agreement

Example 3 - continued

Mutual binding options (TfS 1999, 214 H - dissent)

- In 1983 a director resigned and sold some of his shares in the company
  - Issued a call option
  - Loan (principal equal to exercise price)
  - Shareholders agreement, limiting distributed dividends

Decision (3 out of 5)

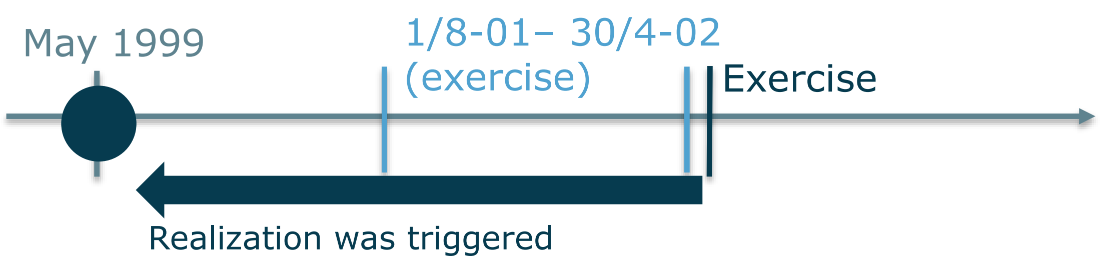
- Unlikely that the call option would not be exercised
- The shares were in reality already paid for in 1983
- The seller could obtain tax exempt gain on shares
- The buyer was essentially in the same position as if the shares were sold in 1983

Example 3 - continued

Mutual binding options (TfS 2005, 933 H)

- 75 % of the shares in a company were sold in May 1999

  - Call option on the additional shares (Exercise price app. 92 M DKK)
  - Put option on the addition shares (Exercise price app. 121 M DKK)



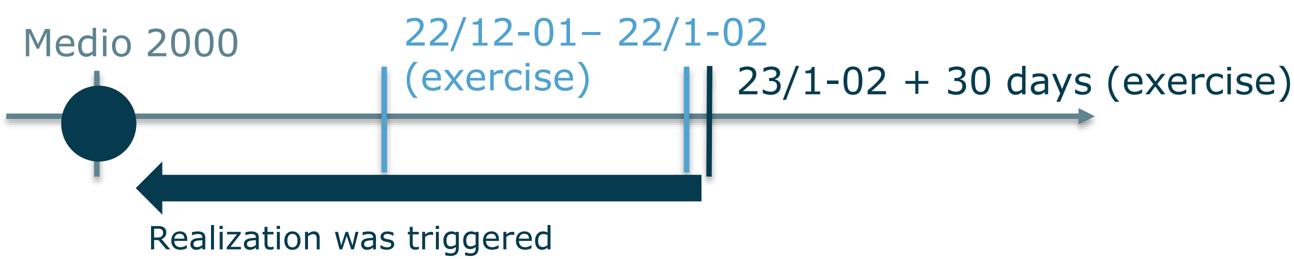
Decision

- Based on a probability assessment, it must have been clear to the parties that a transfer would be made
- Significant difference in exercise price

Example 3 - continued

Mutual binding options (SKM2011.533.H)

- Medio 2000 two existing shareholders (H2 and G1) entered into a put and a call on the shares in the jointly owned company (G1 DK).
  - G1 was granted a call option
  - H2 was granted a put option (exercise price 2.5 % lower than under call)



Decision

- Purpose of the agreement: G1 wanted the company to be a 100 % owned subsidiary
- It was highly unlikely that none of the parties would exercise the options, as the exercise prices were almost identical
- It makes no difference that the call price was higher than the put

Timing of taxable events

Conclusions?

- Concrete assessment
- Uncertainty
- Shift in economic balance/value
- Control
- Tax motivation?

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