New Danish tax legislation
Abolishment of the "Entrepreneurial Tax"
Closing of "loopholes"
“Entrepreneurial Tax” abolished

• Capital gains and dividends on subsidiary shares (shareholding 10 % or more) have been tax exempt for corporations since 2010

• “Entrepreneurial tax” = Taxation on corporations’ capital gains on shareholdings less than 10 % (also defined as portfolio shares).

• Capital gains on portfolio shares are tax exempt as of 1.1. 2013

• New term: Tax exempt portfolio shares
Tax Exempt Portfolio Shares

• Definition:
  – Shares owned by a corporation holding less than 10 % of the shares in the portfolio corporation
  – The portfolio corporation is a Danish A/S or ApS or a similar foreign entity
  – The shares of the portfolio corporation are not listed
  – The portfolio corporation does not own listed shares with a value exceeding 85 % of the equity
Possibilities

• Business angels may invest in growth corporations via a holding company
• Portfolio investments for venture capital and private equity
• Industrial investors’ strategic portfolio investments
• Management co-investment via holding companies

• NOTE: Dividends on tax exempt portfolio shares are still subject to corporate taxation
Closing of “loopholes”

• Legislation against
  – Danish conduit corporations
  – Requalification of taxable dividend payments to tax exempt payments
Danish conduit corporations

• 27% Danish WHT on dividends from Danish subsidiaries to foreign parent companies, provided, however, that the following conditions are all met:
  – The dividends distributed is a redistribution of dividend received from a foreign subsidiary of the Danish subsidiary
  – The Danish subsidiary has no or very limited substance and authority with regard to the use of the dividends received
  – The foreign parent company is located outside the EU
Danish conduit corporations

- Will for practical purposes affect dividend distributions to parent companies in treaty countries outside the EU (dividends to parent companies in non-treaty countries are already subject to 27% WHT)
- The Danish WHT will in most cases be reduced pursuant to the relevant treaty
- New legislation effective for dividends distributed on 1 January 2013 or later
Legislation against requalification

- **Aimed at the following model:**
  - A Ltd (in a Tax Haven) owns B A/S in Denmark
  - Direct distribution of dividends from B A/S to A Ltd will be subject to 27% WHT
  - **Alternative model:**
    - A Ltd sells the shares in B A/S to a new Danish subsidiary, C A/S, against a note
    - B A/S distributes dividends to C A/S without any WHT
    - C A/S redistribute the dividends received to A Ltd as a payment on the note without any WHT
Legislation against requalification

- **Effects of the new legislation:**
  - The sales sum for shares will for tax purposes be regarded as a dividend payment subject to WHT, provided, however, that the following conditions are met:
    - The consideration is not paid as shares in the acquiring company, but as e.g. cash or a note
    - The seller, the buyer and the transferred entity are all part of the same group
  - The new legislations is effective for share transferred on 3 October 2012 or later
Legislation against requalification

- The new rules:
  - May affect sales of shares from a Danish subsidiary to a foreign parent company
  - The sales sum for shares will for tax purposes be regarded as a dividend payment subject to WHT, provided, however, that the following conditions are met:
    - The consideration is not paid as shares in the acquiring company, but as e.g. cash or a note
    - The seller, the buyer and the transferred entity are all part of the same group
  - The new legislations is effective for shares transferred on 3 October 2012 or later