TAX ISSUES FOR START-UPS

AGENDA

- Corporate income tax
  - General overview
  - Shares: capital gains & dividends
  - Capital injection
  - Carry-forward of losses
  - Place of management & IP

- Establishing a start-up or holding company
  - Start-up company (IVS)
  - Personal holding company
  - Tax incentives

- Restructuring
  - Restructuring
  - Examples of restructuring

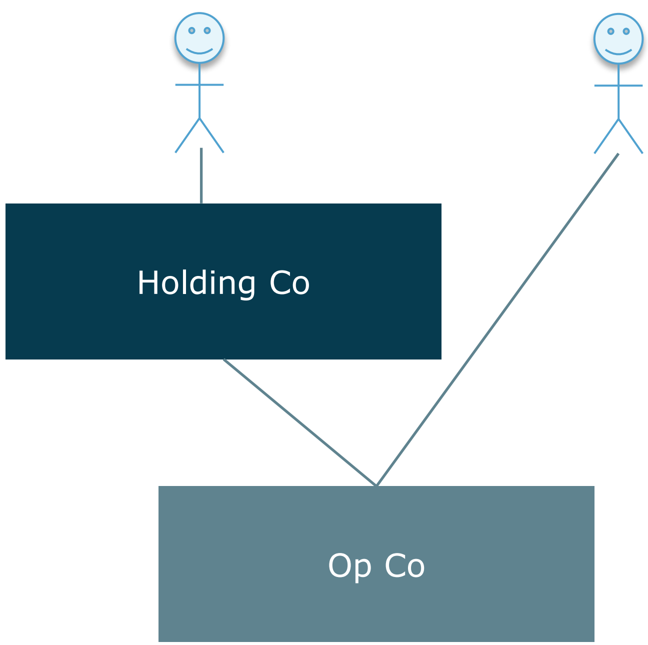
- Share incentive schemes & exit bonuses
  - Share-like incentives
  - Exit bonuses

CORIT ADVISORY©
INDEPENDENT TAX CONSULTING

CORPORATE INCOME TAX

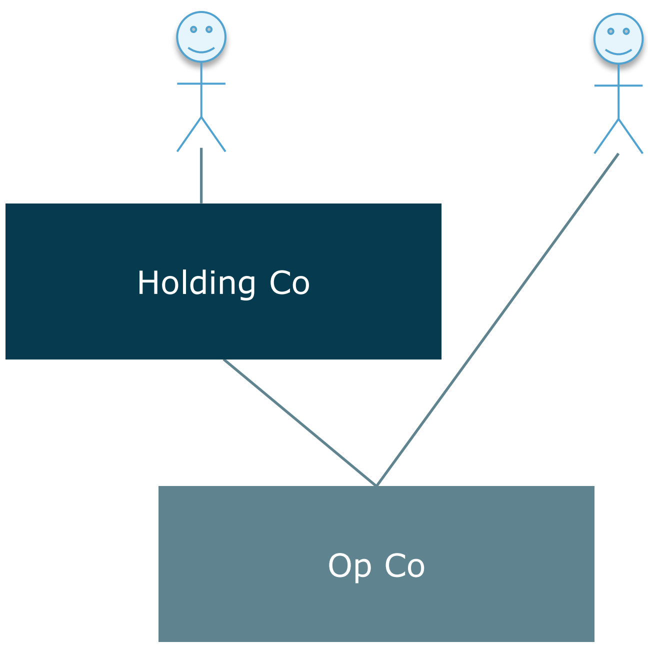
CORIT

GENERAL OVERVIEW



- Income in Op Co is only taxed in Op Co & income in Holding Co is only taxed in Holding Co
- The corporate income tax rate is 24.5% in 2014 (22% in 2016)
- Return on share capital to shareholders is either taxed as dividends or capital gains
- Dividend payments are taxed upon distribution

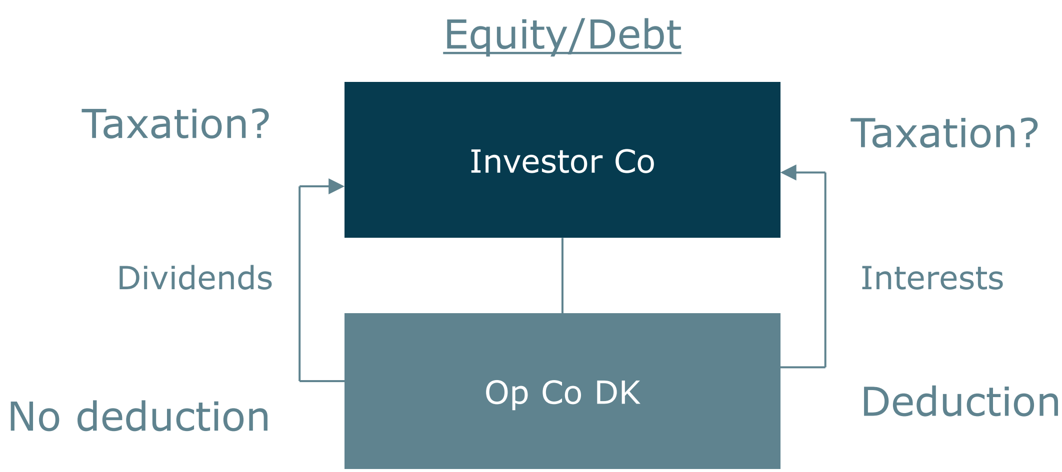
SHARES: CAPITAL GAINS & DIVIDENDS



- The tax rate is generally the same for dividends and capital gains
- Individuals
  - 27% tax on share income up to DKK 49,200 (2014) and 42% above that amount
- Companies (e.g. Holding Co)
  - Subsidiary shares – no tax on gains and dividends
    - Min. 10% ownership of share capital in companies resident in DK, EU or a treaty country
    - Anti-avoidance provisions apply
  - Non-listed portfolio shares – no tax on capital gains
    - Less than 10% ownership of non-listed portfolio shares
    - Political proposal (no bill presented)
      - Only 70% of the dividends is taxable, i.e. effective tax rate of 15.4% (2016)

CAPITAL INJECTION

- Returns on equity investments and debt finance are subject to different tax treatment



- Tools to change debt/equity ratio
  - Debt finance to pay dividends
  - Debt finance to buy back shares
  - Debt push down

ADVISORY©
INDEPENDENT TAX CONSULTING

CARRY-FORWARD OF LOSSES

- Reimbursement of the tax value of R&D losses
  - The tax value of net losses up to DKK 5 mio. (2014) and DKK 25 mio. (2015) from R&D can be reimbursed
  - R&D expenses are set off against other income and then the tax value of losses can be reimbursed

- Unutilized losses can be carried forward and offset against future positive net income
  - Losses up to DKK 7.5 mio. can always be set off against future positive net income
  - The remaining losses may only reduce the additional net income by 60%
  - The utilization of losses carried forward may be limited upon change of ownership

PLACE OF MANAGEMENT & IP

- Place of management – may create tax residence
  - A company is resident in Denmark if:
    - Registered in Denmark

    or
    - Has its place of effective management in Denmark
  - Place of effective management can also create residence in foreign countries for companies registered in Denmark

- Place of ownership of IP rights – is important for:
  - The right to deduct development costs etc.
  - The right to depreciations
  - The tax treatment of royalties (i.e. remuneration for the use of IP rights)
  - The tax treatment of gains upon sale of IP rights

ADVISORY©
INDEPENDENT TAX CONSULTING

ESTABLISHING A START-UP OR HOLDING COMPANY

ORIT ADVISORY©
INDEPENDENT TAX CONSULTING

START-UP COMPANY (IVS)

- Specific corporate act on start-up companies (IVS) recently adapted
- General characteristics of an IVS
  - Limited liability company
  - In most aspects considered similar to a Danish anpartsselskab (ApS). However, the capital requirement is DKK 1
  - 25% of the profit is tied to the capital requirement until equity capital is DKK 50,000
  - Not possible to distribute dividends until equity capital is DKK 50,000
  - No tax consequences of transforming an IVS into an ApS

ORIT ADVISORY©
INDEPENDENT TAX CONSULTING

PERSONAL HOLDING COMPANY

- Whether a personal holding company is preferred depends on the specific circumstances in question
- The main pros of having a personal holding company are:
  - More aligned ownership structure, e.g. easier exit strategies available
  - Can be used for other share investments
  - All income received in the holding company only taxable in the holding company
  - Capital gains on non-listed portfolio shares are tax free, i.e. reinvestment of tax free income

- The main cons of having a personal holding company are:
  - Transfer of assets/liabilities to a personal holding company may trigger tax
  - Taxable gains when establishing the holding company
  - Practical issues of having a company, i.e. accounting and separate tax return requirements

TAX INCENTIVES

- Two tax incentives for establishment of start-up companies have recently been introduced
  - It is possible to deposit salaries on a ”iværksætterkonto” or ”etableringskonto” for the purpose of establishing a start-up company
  - ”Iværksætterkonto”
    - Tax deduction of 30.6% (2014) of wage deposited on the account
  - ”Etableringskonto”
    - Full tax deduction of wage, except for the 8% labour market contribution deposited on the account
    - The deposits can only be used to establish a limited liability company or to buy shares

RESTRUCTURING

RESTRUCTURING

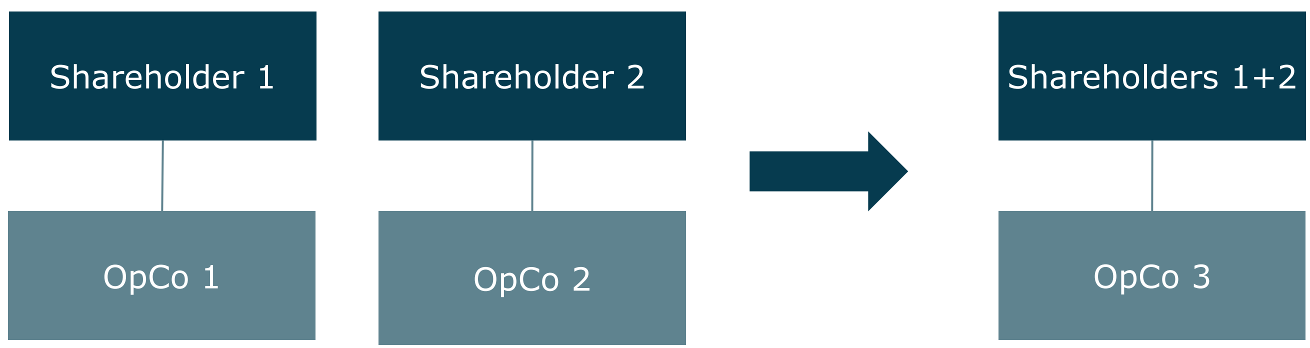
- Purpose
  - Optimizing legal structure
  - Exit preparation

- Tax consequences
  - Tax-free restructuring
  - Taxable restructuring

- Examples
  - Merger
  - Demerger
  - Exchanges of shares

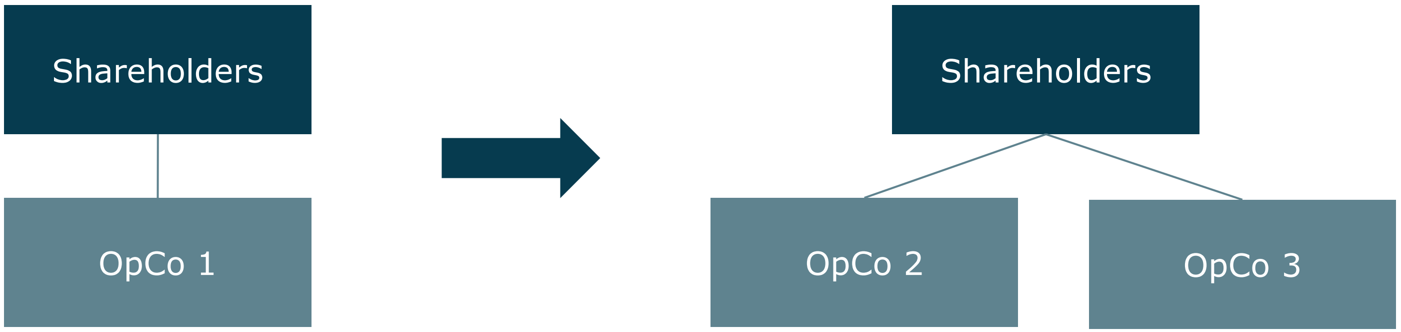
EXAMPLE OF RESTRUCTURING

- Merger (horizontal)



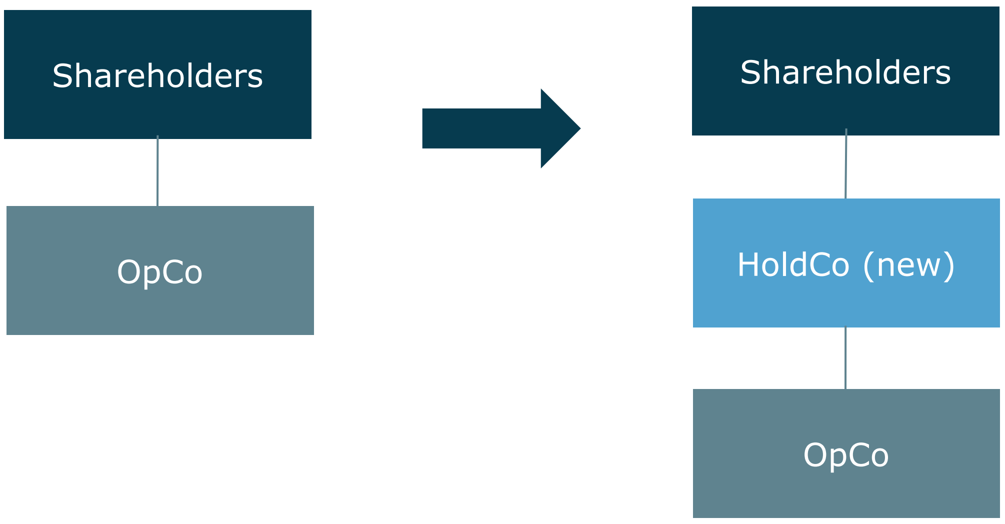
EXAMPLE OF RESTRUCTURING

- Demerger (split)



EXAMPLE OF RESTRUCTURING

- Exchange of shares
  - E.g. US flip transaction



ADVISORY©
INDEPENDENT TAX CONSULTING

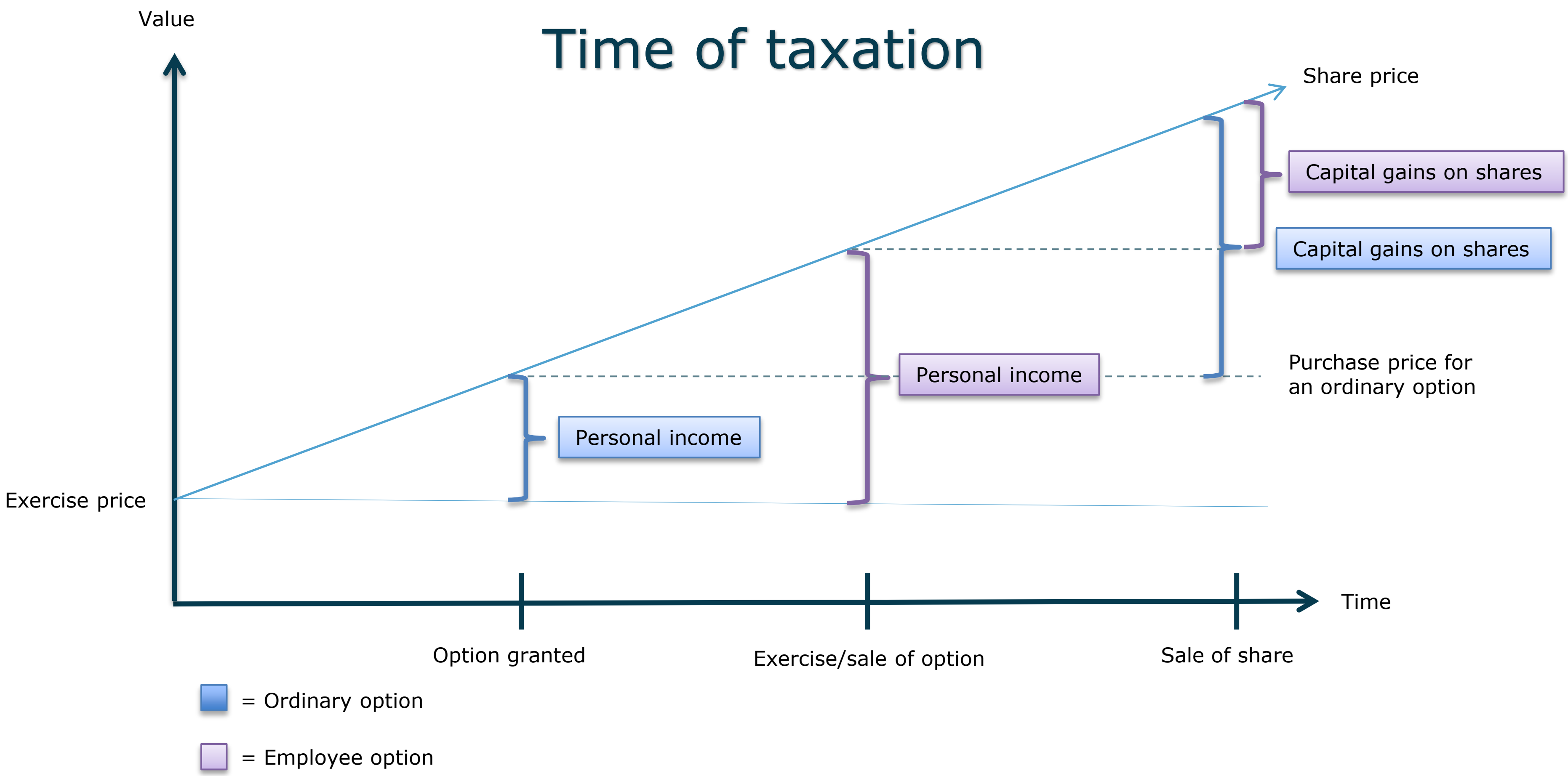
SHARE INCENTIVE SCHEMES & EXIT BONUSES

SHARE-LIKE INCENTIVES

- Warrants, options and other share-like incentives granted to a favorable price
  - The difference between the market value and the favorable price is taxed as personal income
  - Timing of taxation
    - Upon realization (i.e. when granted)

- Employees
  - Timing of taxation is postponed to time of exercise or sale (if certain conditions are met)
    - Upon exercise
      - Difference between the market value of the shares and the exercise price upon exercise with deduction of self-payment
    - Upon sale
      - The sales price with deduction of self-payment

SHARE-LIKE INCENTIVES



CORIT ADVISORY©
INDEPENDENT TAX CONSULTING

SHARE-LIKE INCENTIVES

- Employer company and shareholders
  - The employer company's right to deduct the expenses is postponted
  - Issuance of warrants to a favorable price has no tax consequences for existing shareholders or the issuing company
  - Issuance of share options entailes a sale of shares subject to tax according to ABL

- Requirements
  - Remuneration
    - From the employer company, or
    - For performed work, e.g. by board of directors or assistent work for the board of directors
  - Options or warrants to shares in a group company of the employer company provided that the options or warrants concern shares of the issuing company

CORIT ADVISORY©
INDEPENDENT TAX CONSULTING

EXIT BONUSES

- Purposes
  - Maintain key employees up until exit (stay-on element)
  - Incentive for key employees to work for the sale (transaction element)

- Employee
  - Taxable income
  - Taxable upon time of payment (up to 6 months after vesting)

- Employer
  - If purpose is to increase the sales price, an exit bonus is not a deductible operating cost (Supreme Court of Justice)
  - Not in the interest of the target company, but instead in the interest of the shareholders

CONTACT

This presentation does not represent tax advise

This presentation is prepared solely for the purpose of illustrating general tax issues for start-up companies

For further Danish and foreign analysis/information please contact CORIT Advisory P/S

JAKOB BUNDGAARD

MANAGING DIRECTOR
HONORARY PROFESSOR, M.SC., PH.D.
M: +45 40 42 22 84
E: JB@CORIT.DK

KATJA DYPPEL WEBER

SENIOR ASSOCIATE
ASSISTANT PROFESSOR, M.SC., PH.D.
M: +45 40 42 22 95
E: KDW@CORIT.DK