

Lyngby, 6 March 2014

## **New Danish legislation – Registration of tax losses**

It has been decided to set up a central digital register for tax losses in Denmark in 2014 or 2015.

As part of the preparation of the establishment of a tax loss register the Danish tax minister has proposed new legislation concerning the registration of existing tax losses carried forward.

One important effect of the proposed legislation is that the tax losses carried forward will be forfeited if they are not timely registered.

### **1. Which entities?**

The following entities will be obliged to make a separate report to the Danish Tax Authorities regarding the tax losses carried forward:

- All legal entities subject to Danish corporate taxation, i.e. all Danish corporations and foreign corporations subject to Danish corporate taxation of a Danish permanent establishment or based on effective management in Denmark.
- Foundations and associations subject to Danish taxation pursuant to the Foundation Tax Act.

Individuals are not subject to the obligation to register tax losses.

### **2. What information to report?**

The relevant corporations etc. must make a digital registration to the tax loss register of all tax losses carried forward at the time of registration.

Thus, the registration must include losses carried forward from the tax year 2002 and subsequent tax years ending prior to the registration date.

The registered tax losses must be allocated to each relevant tax year. However, a registration of the aggregated amount of tax losses may be registered if the periodization has no effect on the possible utilization of the losses, e.g. for corporations not included in a Danish tax consolidation with other entities.

Further, a separate registration must be made of all tax exempt restructurings (mergers, demergers and transfer of assets) for the period from 2002 and subsequent years, however, only with regard to restructurings resulting in a transfer of a tax loss from one entity to another.

### **3. Which entities are obliged to file?**

All relevant corporations with losses carried forward must file the information to the tax loss register.

However, the information for all entities included in a Danish tax consolidation must be filed by the management company of the tax consolidated group.

### **4. When to file?**

The information cannot be filed now as the tax loss register has not yet been established.

It is expected that the tax loss register will be operational in 2014 or 2015. At this time more detailed rules regarding the registration will be published, probably with a 3 months' deadline for the digital registration of the required information. The registration period is expected to be carried in late 2014 or early 2015.

### **5. The effect of untimely registration?**

Tax losses not registered within the deadline will be forfeited and cannot be utilized against future taxable income. Please note that this will also be the case even if the Danish Tax Authorities previously has received information regarding the losses in the filed tax returns.

If the aforementioned tax exempt restructurings are not registered within the deadline the transferred tax losses will be forfeited.

### **6. What to do now?**

The proposal is expected to be adopted by the Danish parliament in a few months and the tax loss register is expected to be operational in 2014 or 2015.

Thus, the 3 months' registration period will probably be in late 2014 or early 2015.

A correct registration at that time can only be made if the relevant entities has collected and produced the following information:

- A calculation of all tax losses carried forward from 2002 and subsequent years allocated to each of the relevant years.
- For tax consolidated groups, an allocation of the combined tax losses between tax consolidation losses and tax separate losses for all entities/subgroups
- For tax consolidated groups, a list of all tax exempt restructurings which have resulted in transfers of losses between the entities in a tax consolidated group.

The collection of this information can often be quite time consuming. Thus, we recommend that the relevant entities initiate this process now in order to be able to file the relevant information within the deadline.