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

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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

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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

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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

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