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INDEPENDENT TAX CONSULTING



TAX ISSUES FOR START-UPS FROM A TAX POINT OF VIEW



AGENDA

General on corporate income tax

- General overview
- Capital injection
- New legislation
- Proposed amendments

Restructuring

- Change of share classes
- Tax free business transfer/transfer of shares
- Flip-transactions

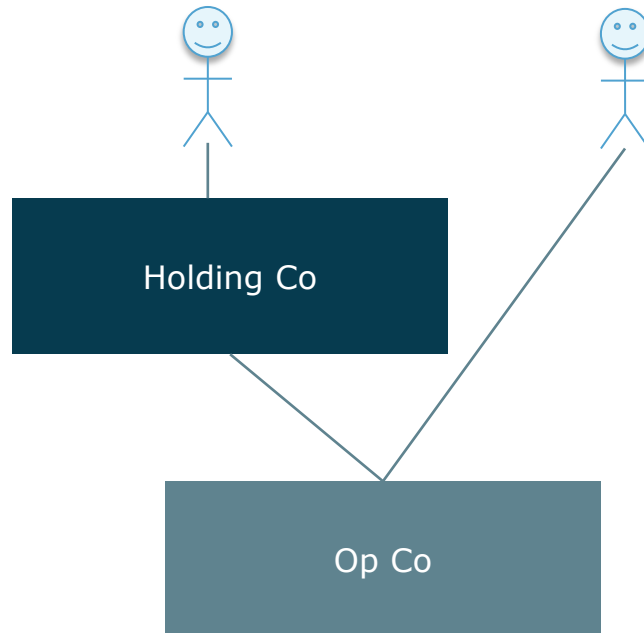
Share incentive schemes and exit bonuses



GENERAL ON CORPORATE INCOME TAX

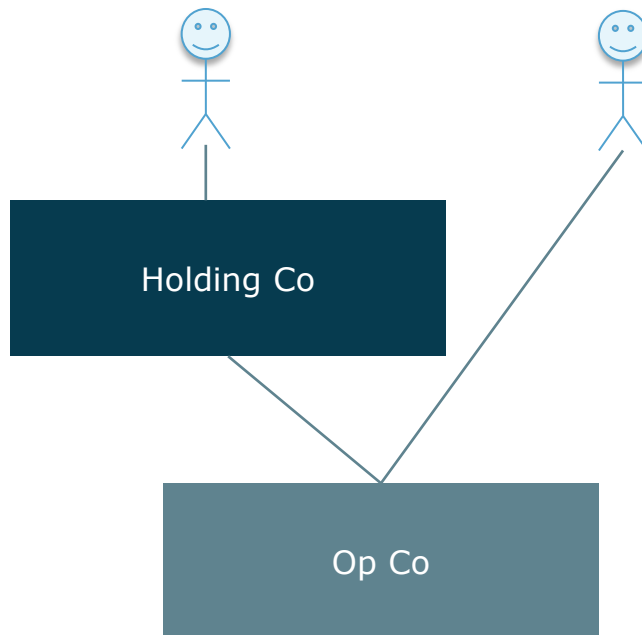


GENERAL OVERVIEW I



- Income in Op Co is only taxed in Op CO
- Return on share capital is either dividends or gains
- Dividend payments are taxed when the distribution is decided on
- Gains (and losses) on shares are generally taxed upon realisation
- The tax rate levied on dividends are generally equal to the tax rate levied on gains

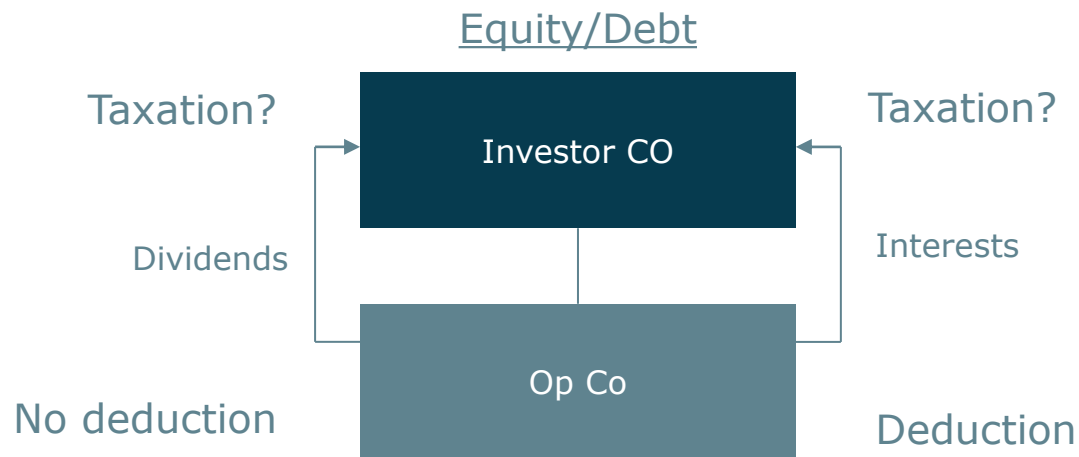
GENERAL OVERVIEW II



- Individuals:
 - Progressive tax 27/42 (DKK 48,300)
- Companies:
 - Subsidiary shares – no tax
 - 10 % ownership of share capital if DK, EU or Denmark has entered into a DTT
 - Anti-avoidance provisions apply
 - Group shares – no tax
 - Portfolio shares – 25 % flat rate (maybe changed soon)

CAPITAL INJECTION - OVERVIEW

Debt moves taxable income between jurisdictions unlike equity



Tools to change debt/equity ratio

- Debt finance to pay dividends
- Debt finance to buy back shares
- Debt push down

NEW LEGISLATION I

Carry-forward of losses is restricted

- Losses up to DKK 7.5 mio can always be set off against future positive net income
- Remaining losses may only reduce the remaining net income by 60 %
- Effective from the income year 2012

NEW LEGISLATION II

Additional depreciation (115 %)

- Investments in operating equipment (excl. cars and ships) made between 30 May 2012 and 31 December 2013
- The yearly depreciation accounts for 25 % of the depreciation base
- May only be added to the depreciation base with increases value provided that:
 - The equipment is only used for business purposes;
 - The equipment is newly manufactures; and
 - The equipment is not depreciated immediately, e.g. physical lifetime of less than 3 years, acquisition cost of less than DKK 12.300 and software



PROPOSED AMENDMENTS

Return on share capital - gains

- Exempting capital gains on sale of non-listed portfolio shares (as part of the tax reform)
- No requirement of minimum ownership period
- The purpose of this measure is that SMEs should be able to attract more venture capital
- No bills has been proposed
 - Exact content is uncertain
 - It is uncertain when the amendments will enter into force
 - It is uncertain whether transitional provisions regarding current portfolio shares will be adapted



RESTRUCTURING





RESTRUCTURING

- Change of share classes
- Tax free business transfer/transfer of shares
- Flip transaction

Purpose

- Optimizing legal structure
- Exit preparation



CHANGE OF SHARE CLASSES

Share classes

- Separate voting rights and ownership

Restructuring (splitting/abolishment)

- Potential taxable sale

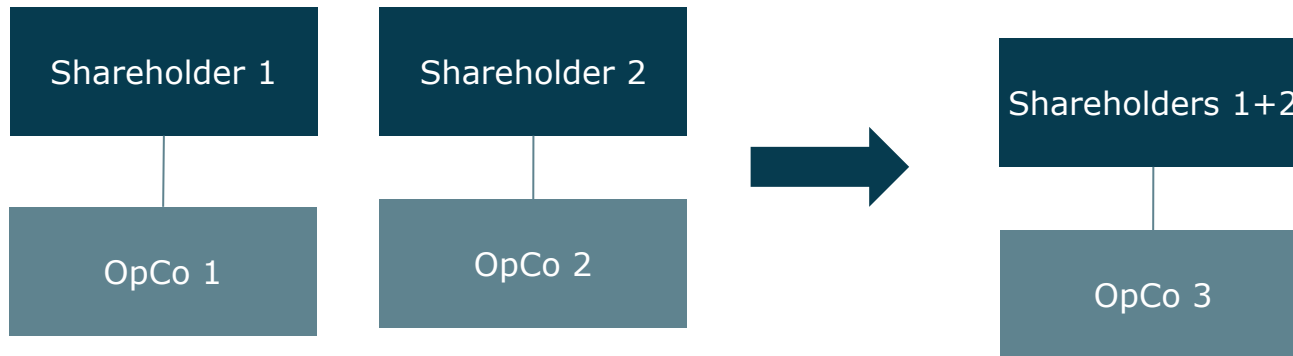
Shifting of economic rights = taxable sale

Shifting of voting rights = not a taxable sale



TAX FREE RESTRUCTURING

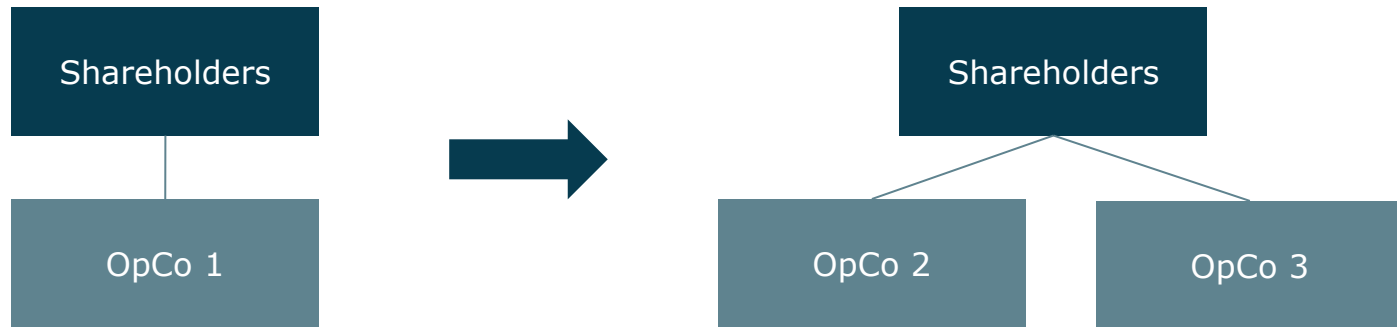
Merger (horizontal)





TAX FREE RESTRUCTURING

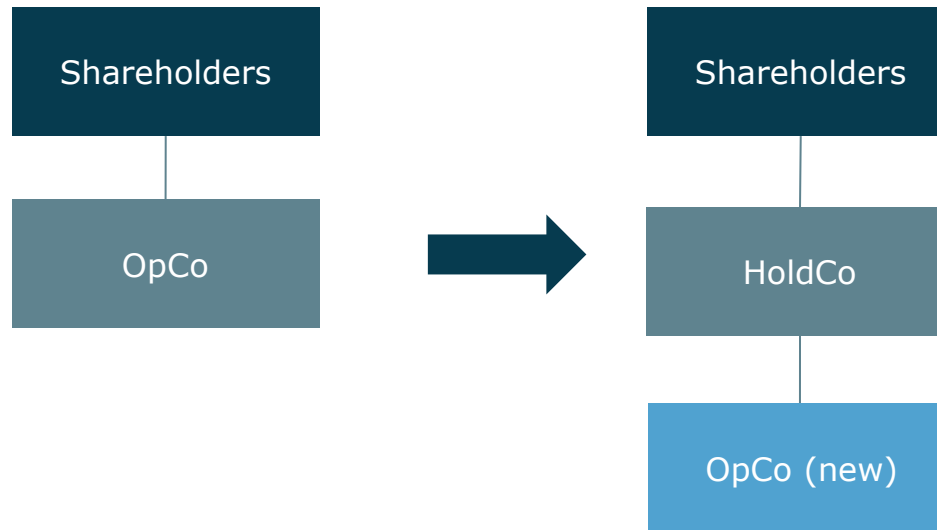
Demerger (split)





TAX FREE RESTRUCTURING

Business transfer (new OpCo)



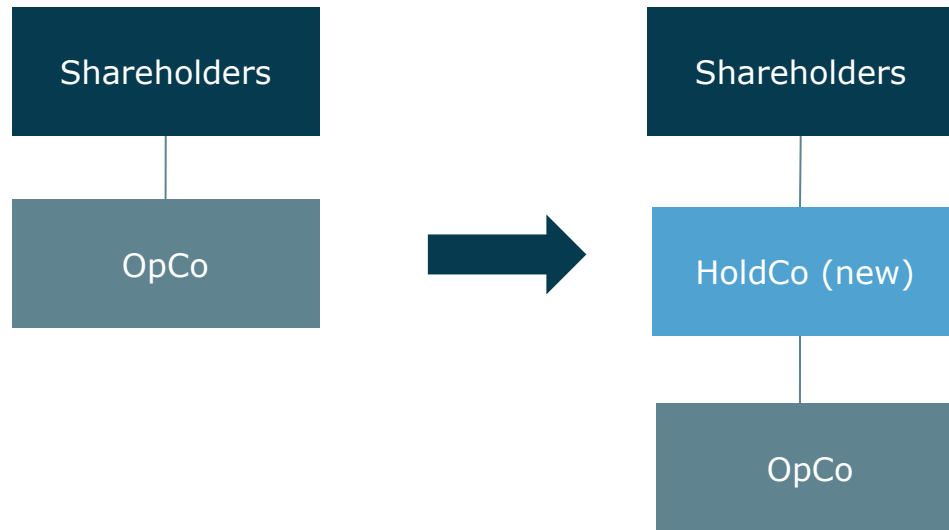


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TAX FREE RESTRUCTURING

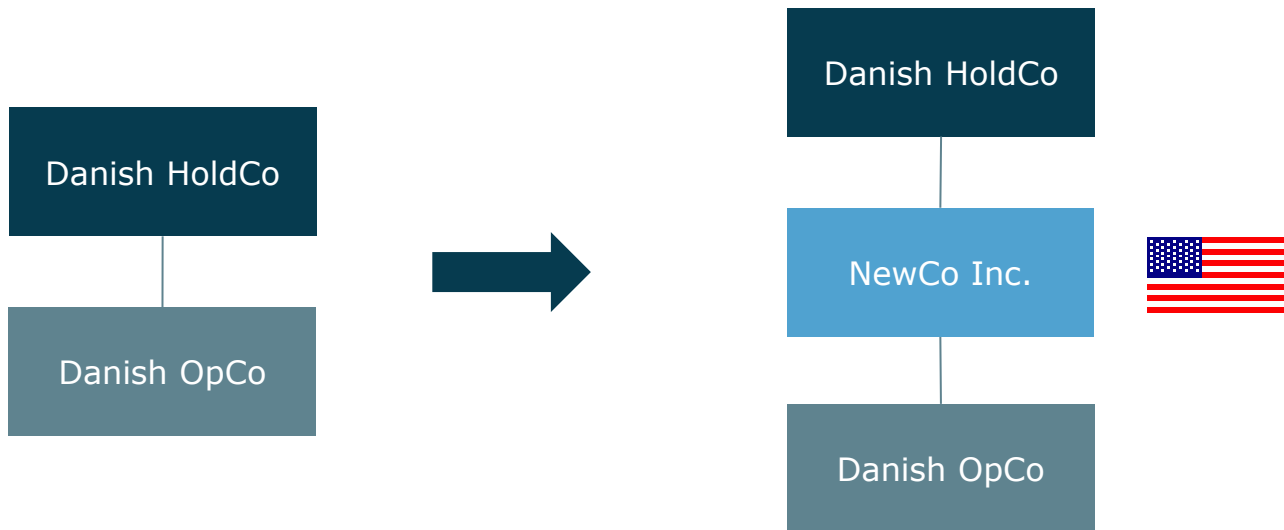
Exchange of shares



FLIP TRANSACTION

Classical flip transaction

- Incorporation of Delaware Inc.
- Shares for shares
- Tax free



Main motive

- Attract US investors



SHARE INCENTIVE SCHEMES AND EXIT BONUSES





WARRANTS & OPTIONS

Warrants and options are generally taxed together with the underlying shares. For options it is a requirement that:

- The option is exercised by delivery,
- The option is not sold, and
- No straddle transactions have been made

Warrant, option and other share-like incentives granted to a favorable price

- Favorable price = price below market value
- The difference between the market value and the favorable price is taxed as personal income
- Timing of taxation: Upon realization (i.e. when granted)



QUALIFYING WARRANTS & OPTIONS

Employees

- Timing of taxation is postponed to time of exercise or sale
- Upon exercise: Difference between the market value of the shares and the exercise price upon exercise with deduction of self-payment.
 - Shares acquired upon exercise are acquired to a price equal to the sum of the exercise price, the taxed favorable value and self-payment.
- Upon sale: The sales price with deduction of self-payment

Employer company and shareholders

- The employer company's right to deduct the expenses (difference between the market value and the exercise price) is postponed
- Issuance of warrants to a favorable price has no tax consequences for existing shareholders or the issuing company
- Issuance of share options entails a sale of shares subject to tax according to ABL.



QUALIFYING WARRANTS & OPTIONS

Requirements

- Remuneration:
 - from the employer company or
 - for performed work, e.g. by board of directors or assistant work for the board of directors
- Options and warrants in the employer company
- 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

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
- Time of payment (up to 6 months after vesting)

Employer

- If purpose is to increase the sales price, then an exit bonus is not a deductible operating cost (Supreme Court of Justice)
 - Contingent a sale
 - Contingent employment up until a sale
 - Bonus calculated on the basis of the sales price of the company
- Not in the interest of the target company, but instead in the interest of the shareholders
- Current focus of SKAT



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