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Selected Danish tax highlights for the year 2017

The year 2017 in Denmark in review from a tax practitioner's perspective.

NEW TAX INCENTIVES FOR BUSINESSES AND INVESTORS

During 2017, the Danish liberal government continued its economic growth focus and announced almost 30 initiatives directed towards businesses and investors. Some of the significant tax initiatives are:

Employee incentive schemes. The special tax scheme for shares, options and warrants granted to employees is expanded so that shares etc. representing a value of up to 20-50% of the employees' salaries may, subject to certain requirements, be comprised by the tax scheme.

Increased R&D allowance ("superdeduction"). The allowance research and development expenses will be gradually increased from 100% to 110%.

Excise duty reform. A number of the many Danish excise duties on different goods and products, including the duties applicable to nuts, tea, chocolate, wine, PVC, packaging of certain alcoholic beverages, will be reduced or abolished. Further initiatives are expected to be announced in late 2018.

Business angel allowance. Investments in unlisted small and medium-sized businesses, either directly or through certain qualifying investment vehicles, will be tax deductible for the investor within certain thresholds.

Share investment incentive. Individuals can opt for an annual mark-to-market tax scheme in respect of investments up to DKK 200,000 in listed shares and share-based unit trusts entailing a lower effective tax rate (17%) for capital gains and dividends received on such investments.

Foreign investors. It has been announced that a bill will be introduced in early 2018, aimed at ensuring that foreign investors in tax transparent Danish capital and venture funds are not deemed to create a Danish permanent establishment solely as a consequence of such investment. The bill will also seek to establish a more uniform taxation of foreign and Danish investment funds and ease the taxation on foreign pension funds' investments in Danish real estate.

THE WAY FORWARD FOR HANDLING REFUNDS OF DIVIDEND WITHHOLDING TAX BECAME A LITTLE MORE CLEAR

In the wake of the 2015 Danish withholding tax scandal, the Danish government has now presented a high-level outline of the contemplated future system for dividend withholding taxes in Denmark, though only in relation to listed shares. In short, the proposal contains an obligation for the distributing company to – on the basis of a prior registration by the shareholders – withhold the applicable, final net dividend withholding tax, rather than a gross amount subject to a subsequent reclaim procedure.

It is expected that, in the spring 2018, the Danish government will publish a bill containing a specific model for handling dividend withholding tax on listed and unlisted shares.

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The costs of the dividend withholding tax scandal have been estimated at approx. DKK 12.3 billion and caused the payment of dividend withholding tax refunds to be suspended in 2015.

In December 2017, a former tax administration officer was sentenced to prison for 6 years for aggravated fraud due to his involvement in the repayment of approx. DKK 37 million in dividend withholding tax refunds to a company controlled by an accomplice. The accomplice was also sentenced to prison because of his involvement in the fraud. The court decision has been appealed.

DEDUCTIBILITY OF PAYROLL COSTS IN RELATION TO M&A ACTIVITY

In 2 decisions made by the Danish Supreme Court in June 2017, the Court ruled that enterprises cannot deduct payroll costs for employees if such costs relate to the employees' engagement in the expansion or attempt at expansion of the enterprise's business beyond its current scope. As a result of the decisions, enterprises could not deduct any internal costs, including payroll costs, incurred in relation to M&A projects and activities. However, further to an announcement made by the Danish Minister for Taxation in a press release in April 2017 (i.e. prior to the court decisions), legislation was passed in the autumn of 2017 which allowed for the right to deduct such payroll costs.

The new legislation gives enterprises the right to deduct any business-related payroll costs, including directors' fees, and business-related expenses paid in relation to the employment relationship or the directors' tasks.

However, the new legislation only applies to Danish payroll costs, and not to e.g. external costs to advisors etc. Accordingly, it will be of critical importance for Danish tax purposes whether an M&A expense qualifies as a payroll cost or an external cost going forward. Furthermore, only costs for work performed by employees of the company itself or by other group companies being subject to Danish tax consolidation with the company deducting the cost will qualify as payroll costs.

As a result, payroll costs related to employees of foreign group companies are in practice more or less always non-deductible, while costs related to work performed by employees of Danish group companies will generally be deductible. It remains to be seen if and when this de facto differentiation between domestic and foreign group companies will be challenged under EU law.

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CONTINUOUS FOCUS ON BEPS AND TAX AVOIDANCE

In recent years, BEPS and tax avoidance have been very hot topics on the international tax agenda and, in 2017, Denmark continued playing an active role in the international cooperation towards tax base erosion, etc. This includes the adoption in late May 2017 of the Anti Tax Avoidance Directive II (ATAD II) dealing with hybrid mismatches with third countries etc. Denmark is expected to implement the ATAD I and II into Danish tax legislation in 2018.

In June 2017, Denmark – among many other countries – also signed OECD's Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting. Some noteworthy results are that the Multilateral Convention provides the signatory states with the option to implement the minimum standard to combat treaty abuse into their tax treaties with respect to eliminating double taxation without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance and expansion of the definition of permanent establishments.

Further, on 5 December 2017, the EU Member States took another step towards fighting tax havens and avoiding erosion of the Member States' tax bases when agreeing upon the so-called "black list" containing jurisdictions that are non-cooperative for tax purposes. Apart from displaying the non-cooperative jurisdictions on the black list, certain defensive measures towards the jurisdictions were also agreed upon, e.g. strengthening the national anti-avoidance rules towards jurisdictions on the black list.

MISCELLANEOUS DOMESTIC TAX UPDATES

In June 2017, the legislation regarding the new Danish property valuation system was adopted by the Danish Parliament, which in general is expected to lead to a (significant) increase in the tax base values in and around large cities. Homes and business properties will be taxed with respect to the new valuations in 2019 and 2020, respectively.

Also in June 2017, the Danish Parliament passed a bill that reduces the inheritance and gift tax in connection with business successions from 15% to 5% in 2020. The Danish government plans for this rate to be 0% in 2025. The announced proposal regarding tax succession for business foundations is still under way and is expected to enter into force from 2019, at the earliest.

Further, going back to the result of a broad political agreement in November 2016, the tariff on public service obligations, which is payed through the electric bill, will be gradually discontinued in the years 2017-2022. This constitutes quite a big relief in taxes for companies and end users.

CONTACT

Accura's Direct & Indirect Tax Team provides highly specialised advisory services on Danish and international direct and indirect tax matters with a special focus on transactions, financing and corporate structures.

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