DENMARK: ONSHORE BENEFITS

A Guide to the use of Danish Entities

HONG KONG PANAMA PRAGUE

Why Denmark?

The Kingdom of Denmark boasts the highest personal income tax rate in the world and is in the mid-range with regards to corporate taxation. If this is true, how can an offshore, overly regulated jurisdiction assist in effective tax planning and international structuring?

There are major advantages which include tax-transparent partnerships for trade, highly effective holding entities for dividend structures and excellent compliance with international standards. Denmark has never been considered a tax shelter, low tax jurisdiction, or offshore centre. It has never been blacklisted and it is well regarded internationally.

For sophisticated investors located in high taxed and overly regulated jurisdictions, Denmark poses an interesting onshore alternative. It is not a cheap jurisdiction to incorporate in nor is it cheap to maintain; therefore the level of investment must be worthwhile.

It is not for the faint-hearted and it will require constant administration and maintenance from the experts at Aspen Group Limited; however, if you seek an unquestionable tax tool, continue reading.

Main Characteristics

Incoming Dividends: Incoming dividends remitted by the subsidiary to the holding company must either be exempted from or subject to low withholding tax rates in the subsidiary's jurisdiction.

Dividend Income Received: Dividend income received by the holding company from the subsidiary must either be exempted from or subject to low corporate income tax rates in the holding company's jurisdiction.

Capital Gains Tax on Sale of Shares: Profits realized by the holding company on the sale of shares in the subsidiary must either be exempt from or subject to a low rate of capital gains tax in the holding company's jurisdiction.

Outgoing Dividends: Outgoing dividends paid by the holding company to the ultimate parent corporation must either be exempt from or subject to low withholding tax rates in the holding company's jurisdiction.

By these criteria Denmark is a fiscally attractive jurisdiction in which to locate a holding company:

Withholding Taxes On Incoming Dividends

Denmark is a EU member and it is governed by the EU's Parent-Subsidiary Directive. This means that when a Danish holding company controls 10% of the shares in an EU subsidiary for a minimum period of 12 months any dividends remitted by the EU subsidiary to the Danish holding company are free of withholding taxes.

If the above does not apply, then Denmark's extensive anti-double taxation treaty network conditions apply and a reduction in withholding tax rates on dividends remitted to Denmark from the subsidiary jurisdiction will be in effect.

There are more than 80 double taxation treaties in place. Most offshore jurisdictions do not impose withholding tax on dividends remitted internationally, thus all dividend income received in Denmark will be free of withholding tax.

Corporate Tax On Dividend Income Received

Danish corporate income tax rate is 25%. However incoming dividends received by a Danish holding company from its foreign subsidiary are exempt from corporate income tax in Denmark as long as the holding company satisfies the following criteria:

- 15%/10% Shareholding: The Danish holding company must hold a minimum of 20% of the shares in the foreign subsidiary. The required minimum was reduced from 25% to 20% in 2001 and from 20% to 15% in January 2007. It is due to be reduced again to 10% as of January 2009.
- 12 Month Period: The eligible shareholding must have been held for a minimum continuous period of at least 12 months. The 12 month holding period is due to be abolished from January 1, 2010.
- Not a Controlled Foreign Corporation: The foreign subsidiary must not be a "CFC". A company is a CFC if it meets the following 2 criteria:
  - **33% of Assets or Income***:* 33.3% or more its assets are "financial assets" or if it earns at least 33.3% of its income from "financial activities", including net bank interest), dividends, royalties, lease premiums and any profits on the sale of financial assets being assets which give rise this type of income. Related tax deductible expenses can be netted off against the other kinds of CFC income in calculating total CFC income.
  - **Income from real estate is not included in the definition of financial income**. An insurance company or a bank will almost always be a financial company, although CFC waivers can often be obtained for banking and insurance subsidiaries of Danish companies; and
  - **Lower Level of Taxation:** The foreign company's income has been subject to tax at less than 75% of the rate of tax as calculated under Danish law.

Qualifying dividends received by a Danish holding company from an offshore subsidiary are not subject to corporate income tax irrespective of whether or not tax has been paid in the offshore location on the profits out of which the dividends have been paid.

Capital Gains Tax on the Sale of Shares

Capital gains taxes are not levied on any profits realized by a Danish holding company on the sale of its shares in a foreign subsidiary provided the following criteria are satisfied:

- **Shares held for 3 Years**: The shares sold must have been held for at least 3 years.
- **Not a Controlled Foreign Corporation:** The foreign subsidiary must not be a "CFC". At the time of writing, a company is a CFC if it meets the following 2 criteria:
    - **33% of Assets or Income***:* 33.3% or more its assets are "financial assets" or if it earns at least 33.3% of its income from "financial activities", including net bank interest , dividends, royalties, lease premiums and any profits on the sale of financial assets being assets which give rise to these sorts of income. Related tax deductible expenses can be netted off against the other kinds of CFC income in calculating total CFC income.
    - As from 2002 income from real estate is no longer included in the definition of financial income. An insurance company or a bank will almost always be a financial company, although CFC waivers can often be obtained for banking and insurance subsidiaries of Danish companies; and
    - **Lower Level of Taxation:** The foreign company's income has been subject to tax at less than 75% of the rate of tax as calculated under Danish law.

Withholding Taxes on Outgoing Dividends

The standard rate of withholding taxes levied in Denmark on outgoing dividends is 15% as long as the recipient holds less than 10% of the shares in the distributing company and there is a tax agreement in place between Denmark and the state where the non-resident is located. This rate can be reduced by both the provisions of a double taxation treaty and by the provisions of the EU Parent-Subsidiary Directive. Alternatively where the dividends are remitted by an intermediate Danish Holding Company to a foreign parent corporation no withholding taxes are deducted provided that there is a double tax treaty in force between the two countries, and:

- The foreign parent corporation holds a minimum of 10% of the shares in the intermediate Danish holding company if the shareholding is less than 10% then the double tax treaty rate will apply;

- The parent corporation is non-resident; and

- The shares must have been held by the parent corporation for a minimum continuous period of at least 12 months.

Advantages of use of Danish entities

1. No capital tax / stamp duties on share capital.

2. No duties on increase of share capital.

3. No taxes whatsoever when a non-resident sells shares in an ApS.

4. No stamp duties / transfer taxes.

5. Double Taxation Treaties with 87 countries.

6. Liquidation proceeds not subject to withholding tax if the shareholder is corporate entity from tax treaty or EU country.

7. Companies can be set up within 1-2 days after the minimum share capital transfer.

8. No restrictions on offshore jurisdictions.

9. Most registrations done on-line.

10. No government fees for registering changes to directors, share capital, articles of association, etc.

Uses

1. Holding structures free of tax inbound, outbound and liquidation dividends or gain on sale of shares.

2. Foreign Real Estate ownership free of tax gains on sale or rent of properties outside of Denmark.

3. Royalty payments free of tax “cultural” royalties, optimized taxation of other types of royalties.

4. Employment agency free of tax salaries for foreign workers of Danish companies.

5. Partnerships for international trading a Danish partnership with foreign partners operating outside of Denmark are free of tax in Denmark.

The foregoing does not constitute legal advice and it is merely Aspen Global Incorporations opinion based on use and experience. If you are not a professional service provider, please consult a tax attorney, solicitor, and/or accountant before you pursue any venture in a tax free environment. Aspen Global Group will be glad to meet with you and assess your requirements. Legal evaluations in each jurisdiction are available at a time cost fee.

If you would like additional information on this jurisdiction, please contact us at enquiries@aspenoffshore.com; or contact any of our offices.

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