

## NEW AND FAVOURABLE TAX RULES FOR EMPLOYEE SHARE SCHEMES

*On 2 February 2016, the Danish Ministry of Taxation launched a consultation on a bill proposing favourable tax rules for shares, options and warrants.*

As announced in the agreement on the Danish Finance Act (finansloven) on 19 November 2015, the Danish Minister for Taxation is now consulting on a bill proposing new and favourable tax rules for taxation of shares, options and warrants granted to employees as part of their employments.

To a great extent, the draft bill reintroduces the former and popular rules of section 7H of the Danish Tax Assessment Act (ligningsloven) repealed in 2011, but now as a new provision of section 7P of the Act.

The draft consultation document proposes that shares etc. granted to employees will not be taxable as salary, but will instead be taxable as capital gains if and when the shares are sold. The condition for receiving shares etc. not taxable as salary is that shares etc. must be of a value corresponding to 10% of the annual salary without income taxation. This means that the mere grant of shares etc. or the grant and exercise of options and warrants will not result in the employee being subject to taxation. As was the case under the former rules of section 7H of the Danish Tax Assessment Act, the employee will not be entitled to deduct the value of the shares etc.

The new rules will apply to agreements concerning the grant of shares etc. entered into on 1 July 2016 or later.

According to the draft consultation document, the new tax rules of section 7P of the Danish Tax Assessment Act will apply subject to satisfaction of the following conditions:

1. The employer company or its consolidated company enters into a written agreement concerning the application of the rules.
2. The rules only apply to granted shares etc. of a value corresponding to no more than 10% of the annual salary.
3. The shares etc. are granted by the employer company or its consolidated company as part of an employment.
4. The consideration is shares etc. in the employer company or its consolidated company.
5. The shares etc. do not represent a special share class.
6. The granted shares etc. are non-transferable.
7. In case of the grant of options/warrants, the employee or the company must be entitled to receive/provide shares (consequently, this does not include pure cash-settled share-based payment arrangements).

The requirement according to the former rules for submission of an attorney's or auditor's declaration of satisfaction of the formal conditions is omitted. However, the employer must submit a number of information on the scheme to the Danish Tax and Customs Administration – SKAT.

According to the draft consultation document, the new rules will come into force on 1 July 2016 and will have effect on agreements entered into on 1 July 2016 or later. Accordingly, agreements concerning share-based payments granted before 1 July 2016 will not be subject to the new favourable tax rules, but will presumably fall within the scope of the existing rules that will continue to apply in parallel to the new rules.

Accura will follow the continued process of the bill, and we will be pleased to provide legal and tax advice in relation to employee share schemes now and in future.

### CONTACT



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