The new government's overview of expected tax legislation

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Earlier this month, the new Danish government presented its list of intended legislation for the new session of the Danish parliament.

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Concurrent with opening of the Danish parliament earlier this month, the government presented its list of intended legislation for the new session of the parliament.

The minister of taxation contributed 22 proposals – a few less than last year. Based on experience from earlier years, more than the presented list of intended legislation can be expected.

The proposals for the year ahead are diverse and most of them are of a technical nature. The following can be highlighted:

- The minister of taxation has presented a bill to create a legal basis for laying down rules that implement the EU directive on mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements that could potentially be used for aggressive tax planning. The bill aims to provide opportunities for similar agreements with non-EU countries to be concluded.

- A purpose of another bill is to implement the minimum requirements of the EU anti-tax avoidance directive concerning Member States' CFC rules.

  Further, the bill proposes to adjust the definition of permanent establishment in accordance with OECD's amended definition.

  As a follow-up to a ruling from the European Court of Justice, the bill also proposes to grant Danish companies the possibility of deducting definite loss in foreign subsidiaries, etc. in certain instances.

  Additionally, it is proposed to clarify the tax administration's option to determine taxable income on a discretionary basis, when transfer pricing documentation is not submitted in a timely manner.

  It is also proposed to bring certain Danish rules in relation to reportable financial accounts with foreign ties in accordance with international standards.

- The minister of taxation has also presented a bill to amend the VAT act. The purpose of the bill is to implement EU rules that modernize the VAT rules concerning cross-border trade in goods and services, including the abolition of VAT-exempt imports of goods with a value of less than DKK 80 and harmonization of the distance selling threshold for EU companies' sales to consumers.

These amendments are proposed - among other things - to be supported by an extension of the existing One Stop Shop system.

Taxation of Restricted Stock Units

If you are employed by a US-owned company, you have most likely heard of Restricted Stock Units, which are a form of share pay. Unfortunately, RSUs are not always subject to the favorable rules for taxing such schemes.

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In the United States of America, remuneration with shares are rather common. Hence, even in smaller Danish companies, this kind of remuneration often occurs, if the company is American owned.

The schemes can be very different. In some companies, they are aimed at all employees, whereas in other companies, only the management is eligible. Generally, it is a common characteristic that the right to the shares is earned over a period, that certain financial goals for the period are met (performance requirements) and that one must be employed in the company at the time the right can be exercised.

Restricted Stock Units are usually in the nature of free shares. They are transferred to a depository in a (often foreign) financial institution when and if the stipulated conditions are met. The recipient must then decide when to sell the shares. In rare cases, a lock-up period may apply, according to which the shares received may only be sold after a while.

Although Denmark has quite favorable rules for taxing certain types of share pay, it is rare for American RSU schemes to be covered by these rules, because the applicable conditions are not met. This is not due to reluctance on the part of the owners, but an indication that the schemes are typically based on uniform conditions for employees in many countries and that it would be too cumbersome if local considerations were to be made.

The Danish tax treatment of RSU schemes - which are not covered by the special share pay rules - can be summarized as follows:

- The RSU grant usually has no tax implications. Generally, taxation takes place when the shares are transferred to the employee's custody account. Taxation takes place regardless of whether the shares are sold immediately or retained.

- The taxable amount corresponds to the gain at the time the shares are transferred to the custodian, which would equal the market value of the shares at this date. The marginal tax rate is approx. 56 pct. The employer must report the amount to the Danish Tax Agency, but the employee must make sure that the amount is included on his annual tax statement.

- A subsequent increase in value of the shares will be taxed upon realization with a marginal tax rate of 42 pct. If the shares decrease in value, the tax treatment of the loss depends on whether the shares are listed. If this is the case, the loss can only be offset against subsequent gains on other listed shares and only if the employee has provided the Danish Tax Agency with information on the shares. If the shares are unlisted, the loss can be deducted as negative share income. The tax value thereof can be offset against the tax on other income, including salary.