WORTH KNOWING ABOUT

Reconstruction of Danish subsidiaries

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Basically, a foreign parent company has four different models for improving the financial basis of a Danish subsidiary:

1. Guarantee for the subsidiary's debt
2. Loan to the subsidiary
3. Capital contribution without issue of shares
4. Capital contribution against issue of shares.

When evaluating the different models, the tax effects in Denmark as well as in the jurisdiction of the parent company must be taken into consideration.

The tax effect for the Danish subsidiary of these different models is described below.

Guarantee

A debt guarantee from the foreign parent company does not have any immediate effect on the subsidiary's tax situation. However, a guarantee premium, which is to be calculated on an arm's length basis and paid by the subsidiary to the foreign parent company, will be deductible for the subsidiary over the term of the loan.

"A debt guarantee from the foreign parent company does not have any immediate effect on the subsidiary's tax situation."

If and when the guarantee becomes effective - i.e. the foreign parent company has to pay the debt to the creditor - the parent company will have a recourse claim on the subsidiary company for the repaid debt. This change of creditor will not in itself have any tax effects for the subsidiary. However, the Danish subsidiary will not in most cases be able to repay the recourse claim and will - therefore - normally be released in part or in full without repayment. The tax effects for the subsidiary will be similar to the tax effects of any other release of debt without repayment. These effects are described under Loan below.

Loan

A loan to the subsidiary from a foreign parent company or any other foreign group company must carry market interest, normally calculated at the alternative interest rate on a similar loan to the subsidiary from an independent creditor.

In case the subsidiary is able to repay the loan and the interest, the only tax effect for the subsidiary will be that the interest payments are deductible. The interest payments to a foreign parent company or group company may be subject to 22 % Danish withholding tax, however, no withholding tax will be levied on interest payments to group companies in other EU countries or in other countries covered by a tax treaty.

If the subsidiary is released from the debt without repayment, the released amount will not be taxable for the subsidiary provided, however, that the foreign parent company cannot deduct the loss on the debt for tax purposes pursuant to the domestic tax law in its home jurisdiction. Thus, if the parent company is able to deduct the loss on the debt for tax purposes, the Danish subsidiary will be taxable on the released amount regardless of whether or not the foreign parent company actually deducts the amount. However, if the release of debt is comparable to a deed of arrangement, i.e. if it includes all or the majority of the subsidiary’s debt, the released amount will not be taxable but will only reduce any Danish tax losses carried forward by the subsidiary.

It should be noted that if it is considered likely that the subsidiary will not be able to repay the loan, even at the time the loan is granted, the Danish Tax Authorities may reclassify the payment of the loan as a contribution from the foreign parent company. See below regarding the tax effects of a capital contribution.

Capital contribution without issue of shares

Capital contributions without issue of shares will not be taxable for the Danish subsidiary, provided that the following three conditions are met.

i. The contribution is received from a group company, i.e. from a company directly or indirectly holding a controlling share of the receiving company or another company directly or indirectly controlled by the same parent company as the receiving company.

ii. The contributing company is not allowed to deduct tax on the contribution pursuant to the domestic tax law of its home jurisdiction.

iii. All group companies between the contributing company and the receiving Danish subsidiary are located in another EU country or in another country covered by a tax treaty with Denmark.

Contributions from all other sources without issue of shares will be taxable for the receiving subsidiary.

Capital contributions without issue of shares are not subject to any legal formalities.

Capital contribution against issue of shares

If a capital contribution is made against issue of shares, the capital contribution - including a share premium - will not be taxable for the Danish subsidiary.

The execution of a capital contribution against issue of shares is subject to certain legal formalities.

DO YOU HAVE ANY QUESTIONS? PLEASE CONTACT

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