HOLDING COMPANIES: DENMARK

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1. General Tax and Corporate Rules

Denmark has no special holding company regime. Thus, the general tax and corporate legislation applies.

Companies established (registered) under Danish law are considered resident companies for Danish tax purposes. In addition companies incorporated in foreign countries (not registered in Denmark) are considered resident in Denmark if such companies are effectively managed in Denmark. Effective management generally refers to the place where the day-to-day management decisions are made.

Corporations resident in Denmark are liable to pay corporate tax at a flat rate of 25 % on their worldwide income. However, in general income from permanent establishments and real property in foreign countries is not taxable income. All other types of income of resident companies for example dividends, interest, royalties and CFC income are subject to worldwide taxation.

A company which is not subject to full tax liability to Denmark may be subject to limited tax liability with respect to income and gains deriving from certain sources in Denmark. Limited tax liability for companies applies to for example income from permanent establishments, immovable property situated in Denmark and dividends, royalties and interest distributed from sources in Denmark and certain capital gains on debt and claims.

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1.1 Requalification of non-transparent entities

Denmark has a special anti-avoidance rule to counter that a different tax qualification of Danish legal entities in Denmark and abroad makes it possible to avoid tax liability on certain types of income.

A legal entity will be considered to be transparent for tax purposes when, under the rules of another country, it is treated as a transparent unit for tax purposes with the consequence that the income of a Danish company is included in the assessment of affiliated legal persons taxable income in that country.

The purpose of the provision is to prevent a situation where a Danish company is treated as a transparent entity in the domicile country of the parent company, for example according to the US check-the-box rules so that interest payments are tax exempt in the US but may be deducted in the Danish company.

1.2 Requalification of transparent entities

A special anti-avoidance rule applies to counter that a different tax qualification of Danish branches and certain other entities (e.g. limited partnerships) in Denmark and abroad makes it possible to avoid incurring tax liability on certain types of income.

Under the rule, fiscally transparent entities and branches of non-Danish entities may be qualified as separate tax entities and taxed in the same way as limited liability companies, where direct owners holding more than 50 % of the capital or the voting rights are domiciled in a foreign state, if the state where the owners are domiciled:

i. considers the entity a separate entity; or

ii. is not a member of the EU and does not have a tax treaty with Denmark according to which withholding taxes on dividends are reduced or waived.

The rule applies where the transparent entity or branch is required to be registered in Denmark, has its registered office in Denmark or is effectively managed in Denmark.

Non-Danish entities and branches that are deemed transparent in their home jurisdictions are disregarded in determining who the direct owners are.

An exemption exists for venture funds investing in small and medium sized companies.

2. Capital Gains on Shares

2.1 Companies subject to full tax liability in Denmark

As a starting point, any income is taxable if the company is subject to full tax liability in Denmark. Capital gains are added to the taxable income as described in the following:

Danish law distinguishes between “subsidiary shares”, “group shares” and “portfolio shares”.

Subsidiary shares are shares where (i) the corporate shareholder owns at least 10 % of the shares in another company and (ii) the company is a Danish company subject to corporate tax or a foreign company where the taxation of any dividends it pays out must be waived or reduced according to the Parent-Subsidiary directive (Directive 90/435/EEC) or a tax treaty between Denmark and the jurisdiction where the foreign company is tax resident.

Group shares are shares where the corporate shareholder and the company are subject to Danish national joint taxation or could elect to be subject to Danish international joint taxation (generally this requires that the corporate shareholder controls more than 50 % of the votes in the company).

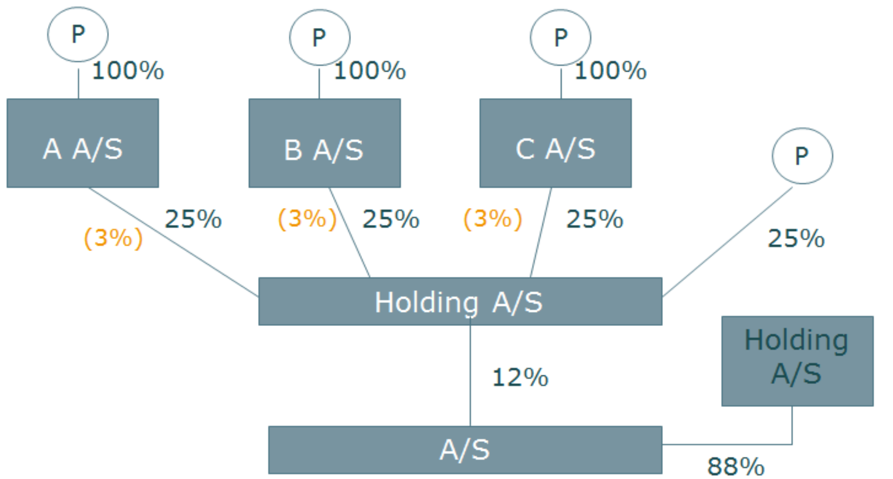
Portfolio shares are shares that do not qualify as subsidiary shares or group shares. A distinction is made between listed and un-listed portfolio shares, c.f. item 2.2 below.

In general, capital gains on subsidiary shares and group shares are exempt from taxation. Before 2013 capital gains on portfolio shares were generally taxable (at the full corporate tax rate of 25 %). As a starting point portfolio shares were taxed annually on a mark-to-market basis. Corporate tax payers may opt for taxation on a realization basis in relation to shares that are not traded on a regulated market.

Losses in respect of subsidiary shares and group shares are not deductible. Losses relating to taxable portfolio shares can be deducted from the taxable income. However, if the taxpayer has opted for taxation on realization basis, losses may only be off-set against shares that are taxed on that basis.

A change in the status from portfolio shares to subsidiary or group shares or vice versa is treated as a taxable disposal at the market value of the existing shares owned.

In order to counter structures where two or more corporate shareholders with shareholdings below the 10 % threshold pool their shares in a joint holding company to reach the 10 % threshold a highly complicated anti-avoidance provision has been introduced. The rule will, under certain conditions, apply, inter alia, in a situation as the one illustrated below:



Under the anti-avoidance provision, subsidiary shares or group shares held by a holding company ("Holding A/S") are for tax purposes deemed to be held by the shareholders of the holding company ("A", "B" and "C") (look-through approach) if the following cumulative conditions are met:

- the primary function of the holding company is to own subsidiary shares or group shares,
- the holding company does not carry out genuine economic business activities in relation to the shareholding,
- more than 50 % of the shares in the holding company are - directly or indirectly - owned by Danish resident companies (or a Danish permanent establishment of a foreign company) that would not be able to receive tax-free dividends in case of direct ownership of the shares owned by the holding company, and,
- the shares in the holding company are not listed on a regulated market or a multilateral trading facility.

If the conditions are meet the shares in A/S held by Holding A/S are deemed to be held by A, B and C. As a consequence gains are taxable since A, B and C only hold 3 % of the shares in A/S.

2.2 New bill abolishes capital gains tax

In August 2012 the Danish Minister of Taxation presented a bill, proposing to abolish capital gains tax on unlisted portfolio shares held by corporate shareholders as of 1 January 2013. Dividends paid on portfolio shares will still be taxable under the bill. As Denmark does not impose capital gains tax on shares held by foreign shareholders, c.f. item 2.3, the bill will only have effect for Danish corporate shareholders.

The abolishment will not only apply to shares in Danish companies, but also to shares in foreign companies that are comparable to an ApS or an A/S.

It is a requirement that the shares are unlisted and that a maximum of 85 % of the portfolio company's assets consist of shares in listed companies. If the portfolio company has a controlling influence in another unlisted company, those shares are not counted, but instead the controlled company's assets are included in the calculation, in proportion to the portfolio company's shareholding in the controlled company. For example, if the portfolio company holds 80 % of the shares in an unlisted company, which holds 100 % listed shares, 80 % of those listed shares are counted in determining whether 85 % of the portfolio company's assets are listed shares.

If portfolio shares in the same company are sold and repurchased within a 6 month period, the difference between the sales sum and the new acquisition sum is treated as a dividend distribution, if the sales sum is higher than the new acquisition sum.

2.3 Companies resident outside of Denmark

Foreign corporations owning shares in Danish companies are not subject to Danish taxation on capital gains realised on the transfer of shares.

However, on 3 October 2012 a bill was introduced, proposing to reclassify capital gains as dividends if a foreign legal entity transfers shares in a Danish company, which is controlled by the entity in question, to another Danish entity also controlled by said entity and the consideration for the shares consists in something other than shares in the other company. The reclassification rule will not apply if the dividend is exempt from Danish taxation according to the general provisions as set out below. The rule takes effect from 3 October 2012.

3. Dividends

3.1 Inbound dividends

In general, Danish recipient companies may receive tax free dividends on subsidiary shares and group shares. The tax exemption does not cover dividends if the distributing company is allowed to deduct the distribution of such dividends. However, the distribution of dividends is still tax-exempt if foreign taxation is waived or reduced pursuant to the Parent-Subsidiary Directive.

3.2 Outbound dividends

As a general rule, dividends distributed from a Danish company to a foreign shareholder are subject to 27 % withholding tax.

However, the withholding tax is waived completely by way of an exemption for dividends paid to a foreign parent company, if the foreign parent company owns at least 10 % of the share capital (subsidiary shares), and if the foreign parent company is resident in another EU country, or in a country with which Denmark has entered into a double tax treaty according to which Denmark must grant relief or reduction from withholding tax. Most of the tax treaties concluded between Denmark and other countries state that the Danish withholding tax on dividends is reduced or waived.

In recent years the Tax Authorities have challenged foreign holding companies that are established merely to avoid withholding taxes (conduit companies), by arguing that such companies should not be considered as the beneficial owner of dividends and interest payments. Thus, the Tax Authorities consider the payments to be received directly by the ultimate investors. If a receiving company is not considered the beneficial owner tax relief may be denied.

3.2.1 New rule aimed at Danish “stepping stone” companies

A bill presented on 3 October 2012 by the Danish Ministry of Taxation proposed a new rule aimed at Danish companies being used as stepping stones to avoid or reduce foreign withholding tax.

According to the proposal the exemption from Danish withholding tax on dividends paid by a Danish company to a foreign parent company shall no longer apply if:

- the dividends paid from the Danish company to the foreign parent company stems from dividends which the Danish company has received from a foreign subsidiary and
- the Danish company is not the beneficial owner of the dividends received from the foreign subsidiary.

Instead a withholding tax of 27% shall in such cases be applied to the dividends paid by the Danish company to the foreign parent company (or such lower rate as is provided for in a double tax treaty between Denmark and the jurisdiction of the foreign parent company, provided that the foreign parent company fulfils the beneficial ownership requirements, etc. in such double tax treaty). The new withholding tax does not apply if withholding tax must be waived pursuant to Directive 90/435 EEC regarding taxation of dividends between parent companies and subsidiaries within the EU. According to the preparatory works for the bill it remains a requirement also in the context of the Directive that the recipient qualifies as beneficial owner.

According to the bill, it is for the Danish tax authorities to determine whether or not the Danish company is the beneficial owner of the dividends received from a foreign subsidiary, and the Danish tax authorities must in this respect take into consideration the factual circumstances of each case, including whether or not the Danish company was established with the purpose of obtaining a lower withholding rate, and if the foreign parent company is exercising a control over the Danish company which goes beyond the planning and control usually exercised in a group context.

The rule took effect for distributions of dividends made on or after 1 January 2013.

4. Interest

As a main rule, there are no withholding taxes on interest payments. However, interest paid to a foreign controlling entity is in general subject to a withholding tax of 25 % if the creditor company is not covered by the EU Interest and Royalties Directive (Directive 2003/49/EEA) or protected by a double tax treaty under which withholding tax must be waived or reduced.

A foreign controlling entity is defined as an entity owning directly or indirectly more than 50 % of the share capital or controlling more than 50 % of the voting power in the company paying interest. For this purposes companies with joint management are treated as affiliated companies and regard is also taken of entities and associations which are fiscally transparent under Danish tax law but which is governed by the rules of corporate law, a corporate agreement or articles of association.

The withholding tax will not apply if the interest is attributable to a permanent establishment in Denmark.

Also with respect to interest, the Tax Authorities have challenged foreign holding companies that are established merely to avoid taxes (conduit companies) by arguing that such companies should not be considered beneficial owners of the interest payments. Thus, the tax authorities consider the payments to be received directly by the ultimate investors. If a receiving company is not considered the beneficial owner tax relief may be denied.

4.1 Capital gains on claims

In order to prevent taxable interest payments being converted into tax-exempt capital gains there is also a limited tax liability on capital gains. The limited tax liability on capital gains includes - with the same exemptions that apply to interest - capital gains on claims which are to be paid in a predetermined premium when the creditor is a foreign controlling entity.

The limited tax liability on capital gains is finally and fully met by the retention of a 25 % withholding tax.

5. Royalties

Royalties from Danish companies are subject to a withholding tax of 25 %. The concept of royalties includes payments for the use of, or right to use patents, trademarks, designs or models, plans, secret formulas or process or information concerning industrial, commercial or scientific experience etc.

The withholding tax on royalties may be reduced or exempted under a double tax treaty.

The withholding tax does not apply if the royalties are attributable to the recepient's permanent Danish establishment or the receiver is subject to the protection of the EU Interest and Royalty Directive (Directive 2003/49/EEA) which prohibits EU member states from retaining withholding tax on royalty and interest payments between affiliated companies within the EU.

A company is considered affiliated if another company owns at least 25 % of the share capital or if a third company owns at least 25 % of the two companies during a period of at least one year during which payment is made.

6. Capital Gains on Bonds, Debentures & Financial Contracts etc.

Companies resident in Denmark are subject to tax on all capital gains and losses on bonds, debentures and similar financial instruments, and on debts, irrespective of the currency and the interest rate. Capital gains on futures, options and other financial instruments are also subject to tax.

Structured bonds are generally taxed pursuant to the rules applicable to derivatives. A bond is for Danish tax purposes considered to be structured if the principle in whole or in part is adjusted in accordance with prices or other factors related to securities, goods or other assets.

Capital gains on convertible bonds are, however, treated as capital gains on shares. Also, special rules apply to inter-company debt between affiliated companies.

Gains and losses on most types of bonds held by companies are taxed annually on a mark-to-market basis.

7. Capital Gains on Real Property

Capital gains on real property are in general taxable.

Foreign companies owning real property in Denmark are subject to limited liability on income, including capital gains, allocated to the real property.

8. Liquidation Proceeds

A Danish company is liable to pay Danish tax until it is finally dissolved. The fact that a Danish company goes into liquidation does not affect the company's tax liability.

When a company disposes its assets under liquidation, gains are taxable according to the rules described above. As a general rule remaining surplus on winding up that is distributed in the calendar year where the liquidation is finally dissolved is taxed as capital gains. Surplus distributed prior to this year is treated as dividends.

As a starting point no withholding taxes are levied on liquidation proceeds distributed in the calendar year where the liquidation is finally dissolved.

However, the proceeds will be taxed as dividends if (i) the recipient company owns at least 10 % of the share capital of the liquidated company but is not a resident of the EU/EEA, Faroe Islands, Greenland or a country which has a double tax treaty with Denmark, or (ii) the recipient company owns lees than 10 % of the share capital in the liquidated company but is affiliated with the liquidated company.

Surplus is also taxed as dividends if the recipient company owns non-taxable portfolio shares in the liquidation company, and at least 50% of the assets in liquidated company consist of directly or indirectly owned subsidiary shares or group-shares or if such shares are transferred to direct or indirect share–holders or to a group company within three years before the liquidation.

9. Tax Treaties

Denmark has double tax treaties with a total of 86 countries:

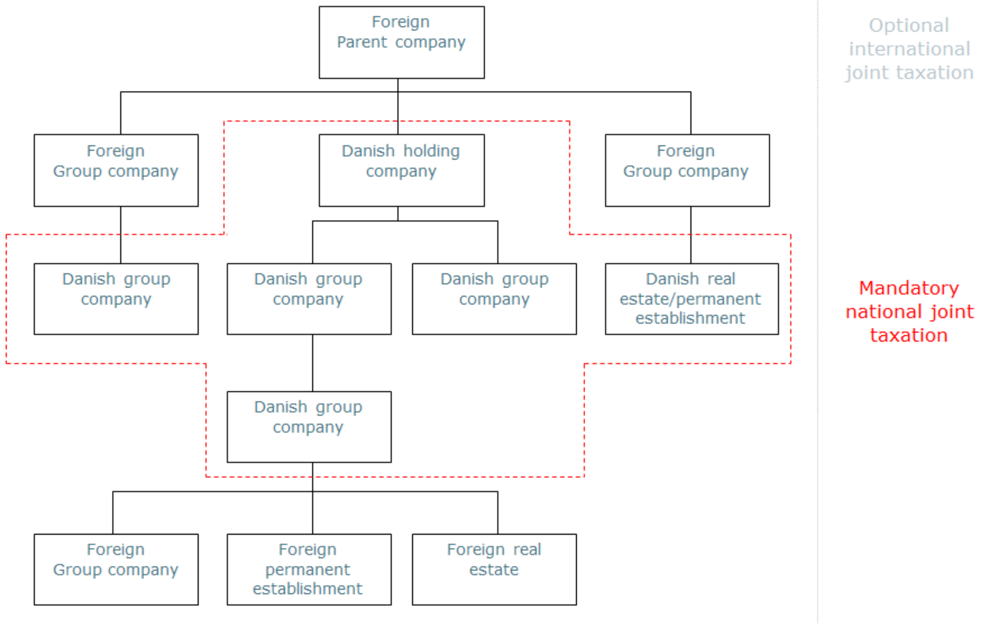
Argentina	Armenia	Australia	Austria
Bangladesh	Belarus	Belgium	Bermuda
Brazil	British Virgin Islands	Bulgaria	Canada
Cayman Island	Czech Republic	Chile	China
Croatia	Cyprus	Egypt	Estonia
Finland	Faroe Island	Georgia	Germany
Greece	Greenland	Guernsey	Holland
Hungary	Hong Kong	Iceland	India
Indonesia	Ireland	Isle of Man	Israel
Italy	Jamaica	Japan	Jersey
Jordan	Kenya	Kuwait	Kyrgyzstan
Latvia	Lebanon	Lithuania	Luxembourg
Macedonia	Malaysia	Malta	Mexico
Montenegro	Morocco	New Zealand	Norway
Pakistan	Poland	Portugal	Romania
Russia	Serbia	Singapore	Slovenia
South Africa	South Korea	Sri Lanka	Sweden
Switzerland	Taiwan	Thailand	Tanzania
Trinidad and Tobago	The Philippines	Tunisia	Turkey
Uganda	Ukraine	United States of America	United Kingdom
Venezuela	Vietnam	Yugoslavia	Zambia

10. Joint Taxation

According to the Danish joint taxation regime, all Danish group companies, and all permanent establishments and real estate in Denmark owned by foreign group companies are taxed on a joint basis. The consolidated taxable income is calculated as the sum of the taxable income of each group company, irrespective of whether or not the group company is wholly owned or not.

In order to avoid abuse in the form of a "double dip", a special anti-abuse rule has been introduced with respect to foreign group companies' permanent establishments in Denmark. According to the rule, losses incurred by a foreign group company's permanent establishment in Denmark can only be included in joint taxation to the extent the losses are not included in calculating the taxable income of the foreign group company.

International joint taxation (i.e. joint taxation with foreign group companies) is optional. If a group opts for international joint taxation, all foreign group companies as well as all permanent establishments and real property in foreign countries owned by group companies will have to be included in the joint taxation. Thus, it is not possible to include only some foreign group companies in Danish joint taxation.



The rules on international joint taxation only apply to a foreign company if: (i) no shareholder is liable for the company's obligations, and (ii) the company's profits are distributed in proportion to the capital invested in the company by the shareholders. If the two conditions are not meet, the foreign company's income is not included in joint taxation unless the company is considered transparent for Danish tax purposes or constitutes a permanent establishment.

If international joint taxation is elected, the choice will be binding on the group for a period of 10 years. However, a group may choose to terminate international joint taxation prior to the expiry of the 10 year period against taxation of the full amount of losses deducted under the joint taxation.

As part of the joint taxation, a so-called "administrative company" must be appointed. The administrative company must be the Danish group parent company. The main duty of the administrative company is payment of taxes levied on the consolidated taxable income of the group.

In June 2012 the Danish Parliament reintroduced joint and several liability for jointly taxed group companies. The administration company of the joint taxation group and jointly taxed companies in which all shares are held directly or indirectly by the ultimate parent company at the end of the income year will be jointly and severally liable for tax. Certain individuals will have to be included in the assessment. Other companies included in joint taxation (i.e. minority companies) will be liable on a subordinated basis. Similar principles will apply for withholding tax.

Group companies include all companies (with minor exceptions) that qualify as group companies. A company (the subsidiary) is deemed to be part of the same group as another company (the parent company) if the parent company holds the majority of the voting rights in the subsidiary, may appoint or remove a majority of the members of the management in the subsidiary or is able to control the subsidiary in any other way.

11. Tax-Exempt Contributions

In general, contributions - other than capital contributions made in connection with increases in share capital, including premiums - are included in the taxable income for the receiver and are not deductible for the grantor, unless the contribution can be substantiated as a business cost incurred in the interest of the grantor.

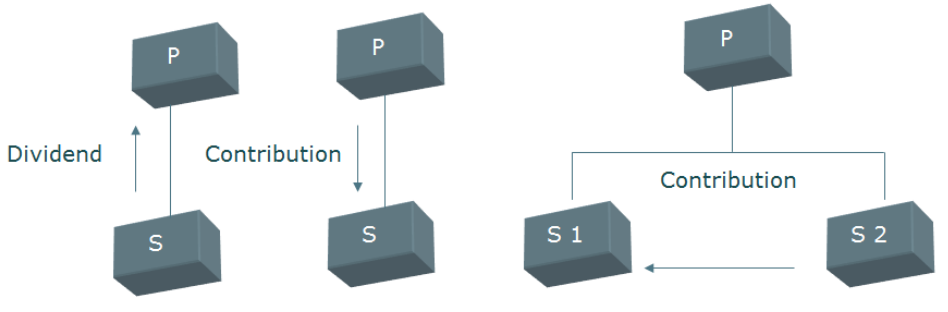
However, contributions from a company that is under joint taxation or could have been under joint taxation with the recipient company may be received as tax-exempt. Correspondingly the grantor of the contribution cannot deduct the contribution.

Contributions are only tax-exempt if the grantor is directly or indirectly the parent company to the recipient company, or if the grantor and the receiver have a joint parent company (and are therefore sister companies).

Further contributions between sister companies are only tax exempt if the grantor could have distributed tax-exempt dividends to the common parent company. If the parent company is not a Danish entity, it must be covered by the provisions of the Parent-Subsidiary Directive (Directive 90/435/EEC) or by a tax-treaty according to which the Danish taxation of dividends paid to such a foreign company must be waived or reduced.

A contribution is not tax-exempt if it can be deducted by an affiliated company outside Denmark or if the grantor is a so-called investment company.

The relation between dividends and contributions may be illustrated as follows



12. Losses

Companies may carry forward tax losses in one income year and set-off such carry forward losses against taxable income in following income years. Until recently the right to utilise carry forward losses has been indefinitely and unlimited. However, a newly adopted rule limits the right to set-off carry forward losses in taxable income.

Under the new rule companies are permitted to set-off carry forward losses against annual taxable income up to DKK 7.5 million (approximately EUR 1 million) per year. If the taxable income exceeds DKK 7.5 million, a cap on carry forward losses applies. The remaining losses can at most reduce the taxable income by 60 %. The remaining 40 % of the income will be taxed at the general corporate tax rate at 25 %.

The basic amount of DKK 7.5 million is regulated on a yearly basis. However, the first regulation will not be until 2014.

The rule applies at group level to companies that are jointly taxed under the joint taxation regime. Thus, the basic amount of DKK 7.5 million applies as a total to the entire group. The limitation of the right to set-off carry forward losses must be split on a pro-rate basis between the jointly taxed companies. The rule also applies to foreign companies' permanent establishments in Denmark.

13. Interest Deduction Limitation Rules

Denmark has three rules limiting the deductibility of interest in the form of thin capitalisation rules, a rule on interest celling and a rule on EBIT (Earnings Before Interest and Taxes). Thus, three tests have to be made in order to determine the actual deductibility of net financing costs.

13.1 The thin capitalisation test

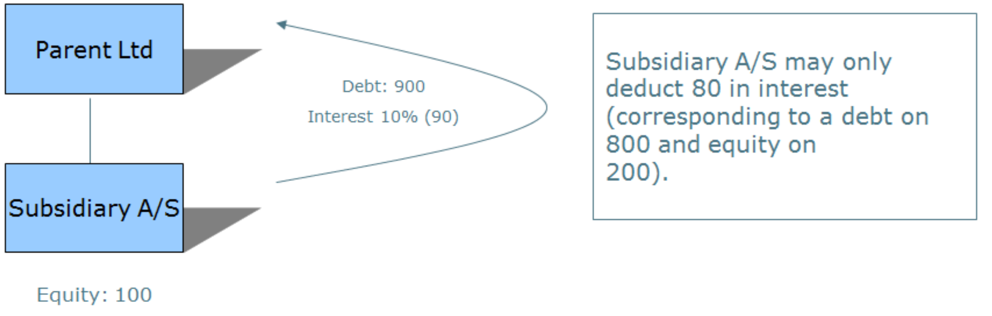
The Danish rules on thin capitalisation apply to Danish legal entities that have debt to Danish or foreign legal entities that either controls the Danish entity, are being controlled by the Danish entity or are under joint control together with the Danish entity ("controlled debt").

Control exists if a company or an individual (or a group of affiliated companies or related persons) owns, directly or indirectly, more than 50 % of the shares in the relevant company or may exercise more than 50 % of the votes in the relevant company. The definition of control also includes:

- Entities and associations that are fiscally transparent under Danish tax law but are governed by the rules of corporate law, a corporate agreement or articles of association.
- Entities with joint management
- Entities that have entered into an agreement regarding the exercise of a joint controlling influence.

Controlled debt also includes third party loans which have been guaranteed by the controlling shareholder(s) or its affiliates.

If the debt-equity exceeds 4:1 the interest on the excess part of the controlled debt is not deductible if the controlled debt exceeds DKK 10 million. However, the limitation only applies to that part of the debt which should have been equity in order to avoid the limitation.



As an exception, interest can be deducted if the taxpayer is able to show that a similar loan could be obtained from an independent third party without any security from the controlling shareholder(s) or its affiliates.

If the total debt is comprised of controlled debt and debt to an independent third party, the limitation on deductibility will only apply for interest on the controlled debt.

Interest that cannot be deducted is not qualified as dividends. Therefore, no withholding tax applies for such payments.

13.2 The interest ceiling test

According to the "interest ceiling" net financing costs exceeding a ceiling calculated as a standard rate (3.5 % in 2012) of return on the tax value of the company's assets and exceeding an annual minimum relief of DKK 21,300,000 are not deductible. Accordingly, interest (and other financing costs) below the annual minimum relief of DKK 21,300,000 are always deductible unless limited by the thin capitalisation rules.

Net financing costs are defined as the negative sum of interest income and interest expenses, deductible and taxable loan commissions, gains and losses on debt claims and financial contracts (with certain exceptions) the interest element of financial leasing and taxable dividends, taxable capital gains and off-set losses on shares. Net financing costs include interest irrespective of whether the interest relates to intra-group debt or external debt.

The tax value of the company's assets basically consists of the depreciated value of depreciable assets, the cost base of other assets and carry-forward losses, excluding the value of cash, debt, claims, financial contracts and shares.

However, only 20 % of the acquisition price for shares in directly owned subsidiaries not subject to joint taxation is included in the tax value, subject to complex mechanisms. As all Danish group companies are taxed jointly, the provision will in practice only be relevant in relation to foreign subsidiaries. The rule is gradually phased out between 2010 and 2017.

Calculation of the net financing costs and the tax value is made on a consolidated basis for companies that are jointly taxed. For companies that are jointly taxed, the DKK 21,300,000 threshold is calculated on a group basis.

13.3 The EBIT test

The EBIT-rule constitutes an additional limit for net finance costs deductions relating to the EBIT of the company. The limitation applies to all debt, i.e. debt to unrelated as well as related parties.

Under the rule, net finance costs cannot reduce a company's EBIT by more than 80 %. The limitation is made after reductions under the thin capitalisation rule and the interest ceiling test and deductions up to a floor of DKK 21,300,000 are not limited by the EBIT rule. The DKK 21,300,000 is calculated on a group basis.

Unutilised net finance costs can be carried forward.

13.3.1 Example of application of the three rules limiting the deductibility of interest:

1. Thin capitalisation:
   - Equity 525, debt 2,600
   - Only deduction for interest concerning debt on 2,500 (corresponding to 80% of the assets)
   - Limitation on interest deduction: 7
   - Deductible interest: 200 – 7 = 193

EBIT:	50
Interest on controlled debt:	100
Interest on third-party debt:	100
Income:	-150
Assets:	3,125
Debt:	2,600
Equity:	525
Calculated tax value of assets:	2,163

2. Interest ceiling:

- 3,5% of 2,163 = 76
- Limitation on interest deduction: 193 – 76 = 117
- Deductible interest: 76

EBIT:	50
Interest on controlled debt:	100
Interest on third-party debt:	100
Income:	-150
Assets:	3,125
Debt:	2,600
Equity:	525
Calculated tax value of assets:	2,163

3. EBIT:

- EBIT: 80% of EBIT = 40
- Limitation on interest deduction: 76 – 40 = 36
- Deductible interest: 40

EBIT:	50
Interest on controlled debt:	100
Interest on third-pary debt:	100
Income:	-150
Assets:	3.125
Debt:	2.600
Equity:	525
Calculated tax value of assets:	2.163

Result of the limitation:

Income: -150

Total limitation of interest deduction: 160

Income after interest limitation: 10

EBIT:	50
Interest on controlled debt:	100
Interest on third-party debt:	100
Income:	-150
Assets:	3,125
Debt:	2,600
Equity:	525
Calculated tax value of assets:	2,163

14. Hybrid Instruments

If a company has debt to a person or a company abroad and the tax laws in the foreign country classify the debt as equity, the debt will also be treated as equity for the purposes of Danish taxation. Thus, the interest cannot be deducted by the Danish company. Instead any interest and capital gain relating to the "debt" is treated as dividends for Danish tax purposes.

15. Transfer Pricing

The Danish transfer pricing legislation is based on the general arm's length principle. Accordingly, all transactions between affiliated parties must be concluded on general market terms as if the parties to the transactions were independent entities. Parties are affiliated if a company (or a group of companies) owns, directly or indirectly, more than 50 % of the shares in the relevant company or may exercise more than 50 % of the relevant votes in the relevant company.

In order to catch private equity funds and similar arrangements, the definition not only includes companies but also extends to:

- entities and associations which are fiscally transparent under Danish tax law and which are governed by the rules of corporate law, a corporate agreement or articles of association
- entities with joint management
- entities that have entered into an agreement regarding the exercise of a joint controlling influence.

The Danish practice in respect of transfer pricing is generally in accordance with the OECD guidelines.

Danish law requires affiliated companies to provide information in their tax return evidencing the nature and extent of any transactions with associated companies. An exemption applies to small and medium sized companies. Such companies are only obliged to prepare transfer pricing documentation in respect of controlled transactions entered into outside the EU or the EEA and with which Denmark has not entered into a tax treaty. Further, a general exemption applies to controlled transactions that are deemed immaterial in respect of either volume or frequency.

16. CFC Taxation

Under the Danish CFC legislation, a Danish resident parent company is liable to tax of the net financial income of a non-resident subsidiary or a foreign permanent establishment, if the non-resident subsidiary or foreign permanent establishment are (i) controlled by a Danish parent, (ii) have financial income (such as interest, dividends, royalties, and capital gains on shares, debts, and financial instruments etc.) constituting more than half of their total income, and (iii) have financial assets constituting more than 10 % of their total assets.

A company's financial income and financial assets are calculated on a consolidated basis together with any subsidiaries located in the same jurisdiction. The total income of a CFC will be included in the taxable income of the Danish parent and relief will be granted for tax payments made by the CFC.

The CFC legislation also applies to permanent establishments of Danish companies. Therefore, a Danish company will be subject to taxation on any positive CFC income from a permanent establishment in a foreign country provided that the CFC conditions are met.

Insurance companies, banks and mortgage credit institutes with substantial activities in foreign countries may apply for exemption from CFC-taxation.

The CFC rules do not apply to subsidiaries that are included under international joint taxation or which are investment companies.

17. Investment Companies

Specific legislation exists in relation to so-called investments companies (in Danish "investeringsselskaber"). Investment companies are for tax purposes generally defined as:

(i) undertakings for collective investments in transferable securities comprised by the UCITS Directive (85/611/EEC);

(ii) companies whose businesses consist of investment in securities and where, at the request of the holders, shares in the company will be redeemed by the company or a third party at a price not materially below the net asset value; and

(iii) companies whose businesses consist of investments in securities and which have at least 8 shareholders. Affiliated entities and related parties are regarded as a single shareholder. Certain exceptions apply.

Such investment companies are fully tax-exempt.

For Danish residents, gains and losses on shares in investment companies are taxed pursuant to the mark-to-market principle. Thus, gains and losses are calculated each year, even if no shares have been disposed of. Gains are taxed as capital income, currently at a rate of up to app. 43.5 per cent.

Dividends on shares in investment companies distributed to Danish individuals are taxed as capital income at a rate of currently up to app. 43.5 per cent.

Generally, foreign investors will not be taxable in Denmark of income from an investment company if certain ownerships requirements are met. The investment is not a direct alternative to a holding company.

18. Exit-Taxation

A change of tax residence for a Danish company or taxable legal entity will usually be considered as liquidation with the same taxation effect as a sale.

On 26 May 2011, the European Commission took action against Denmark regarding this rule. While Danish company law allows in principle a Danish company to transfer its seat of management outside of Denmark without losing its Danish corporate existence and nationality, Danish tax law provides for immediate taxation of Danish resident companies changing their seat of management to the effect that they become tax residents of another state. However, the pending matter only regards the transfer of assets by companies continuing, irrespective of such asset transfers, their existence as Danish companies and tax residents.

The Commission's view in its letter of formal notice is that the Danish exit tax rules are disproportionate since less restrictive ways exist for Denmark to secure taxation of the capital gains that are transferred abroad than to levy taxes immediately at the time of the transfer.

In its reply to the Commission, the Danish government admitted that the Danish legislation on exit taxation constitutes in principle a restriction of the freedom of establishment. However, the Danish Government argued that the rules on exit taxation are nonetheless compatible with EU law as they are justified by the need to preserve the powers of taxation within Denmark and prevent an arbitrary redistribution of the Danish tax base to other states.

19. Binding Rulings

To obtain full certainty of a specific transaction, it is possible to apply for a binding ruling from the Tax Authorities.

The applicant may ask for consequences for the applicant itself and/or for others. A binding ruling may be obtained both on intended and completed transactions when the application concerns consequences for the applicant itself. A binding ruling may only be obtained on intended transactions when the application concerns consequences for others than the applicant.

A binding ruling will be binding on the tax authorities for five years or a shorter period determined by the tax authorities.

If assumptions or legislation change or in case of non-compliance with EU law or foreign authority interpretation of double tax treaties the ruling is not binding.