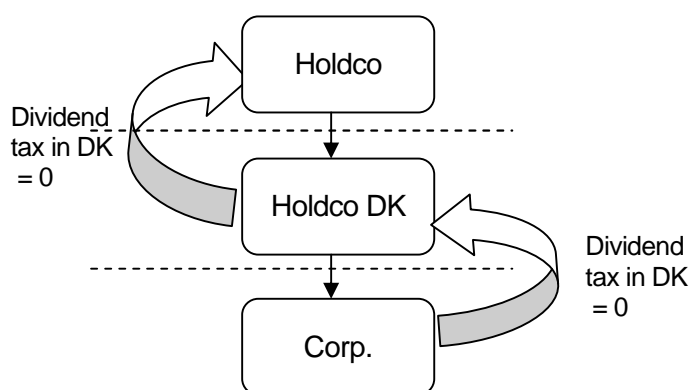


### Holding company in Denmark

In some cases it might be relevant for foreign parent companies to have a Danish "intermediate" holding company between activities in certain countries and the home country of the parent company.



The reason why this is an interesting model is that on the one hand Danish companies are often able to receive tax-exempt dividend, either due to internal Danish rules or according to double taxation agreement with the country in question. Denmark has double taxation agreements with a total of just under 100 countries.

On the other hand it is possible to pay dividend out of Denmark without dividend tax being withheld, either because Denmark has no internal basis for taxation or because Denmark is not entitled to withhold dividend tax according to one of the many double taxation agreements.

Please, be aware that only Danish taxation is covered by this memo. There might well be cases, when dividend tax must be paid in the foreign country from where the dividend originates. The question must be clarified in each case. But please notice that quite a lot of countries do not withhold tax on dividends to Danish parent companies

Furthermore, please be aware that some countries might consider the Danish holding company as a "conduit company" meaning a company not being the qualified receiver of the dividend. In these cases a dividend tax might be withheld in the country of origin as the dividend is considered paid directly to the Holdco owning the Danish holding company. This, however, is usually only the case, when ownership of the dividend paying shares is the only activity of the Danish holding company.

### Inbound dividend

*The Danish company controls the foreign subsidiary*

If the Danish intermediate holding company holds more than 50% of the votes in the foreign subsidiary or otherwise controls the subsidiary, dividend received by the Danish company is tax-exempt in Denmark regardless of the country of origin of the dividend.

If a sale of subsidiary shares creates a gain, this gain is tax-exempt regardless of period of ownership. On the other hand there is no deduction for loss.

*The Danish company owns at least 10%, but does not control the foreign subsidiary*

If the Danish intermediate holding company owns at least 10% of the foreign company in question, there is still no internal basis for taxation of dividend in case the dividend originates from a company covered by Directive 90/435/EEC (the parent company/ subsidiary directive), or from a company covered by a double taxation agreement with Denmark that restricts the Danish taxation of dividend.

However, dividend tax might be payable on dividend from a company, if the said company is allowed to deduct distributions of dividend in its taxable income in its home country, unless the company in question is covered by Directive 90/435/EEC.

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If sale of subsidiary shares creates a gain, this gain is tax-exempt regardless of period of ownership. On the other hand there is no deduction for loss.

*The Danish company owns less than 10%*

If the Danish intermediate holding company does not own at least 10% of the shares of the foreign company, dividends received are taxable to Denmark. The company tax is 25% (2010). Credit is granted for taxes paid in the originating country, given that the originating country is entitled to taxation according to the double taxation agreement with Denmark.

If sale of subsidiary shares creates a gain, this gain is taxable, and loss is deductible.

### **Outbound dividend**

*The foreign company owns at least 10%*

If the foreign company owns at least 10% of a Danish company (e.g. a Danish intermediate holding company) Denmark has no internal basis for taxation, i.e. no withholding tax. However, this is only the case for payment of dividend to companies covered by directive 90/435/EEC, or companies covered by a double taxation agreement with Denmark that restricts the Danish taxation of dividend.

*The foreign company owns less than 10%*

In such cases 28% dividend tax is to be withheld by the dividend paying company. In most double taxation agreements the Danish tax is reduced, most often down to 15%. If more tax has been withheld, repayment of excess tax must be claimed from the Danish tax authorities.

### **Other challenges**

*Challenge no. 1 – Restricted interest deduction*

Denmark has thin capitalization rules etc. regarding restriction of interest reduction.

Firstly, there is restricted interest deduction on intra-group loan, in case the debt exceeds DKK 10 million, and the equity does not constitute at least 20% of total assets (equity/debt ratio of at least 1:4). Interest expenses concerning the excess debt is not tax deductible. If the interest deduction is restricted according to this set of rules, the corresponding interest income will normally be tax-exempt in Denmark.

Secondly, interest deduction might be restricted, if the net financing expenses exceed DKK 21.3 million (2010). Special rules apply regarding the range of restriction of interest deduction, if any.

*Challenge no. 2 – CFC taxation*

If the Danish company controls a financial company (Controlled Financial Company) CFC-taxation might occur in Denmark on the income from the said company. The assessment of whether or not the Danish company controls the financial company is based on whether the Danish company – directly or indirectly - holds more than 50% of the votes in the foreign company. All shares of the subsidiary owned by other group companies and by the personal shareholders behind them – including shares held by close relatives – are included in the assessment.

If the group only holds the maximum of 50% of the votes in the financial company, no Danish CFC taxation will apply on the subsidiary's income.

However, CFC-taxation in Denmark on income from the subsidiary will only apply, if the financial company has substantial financial activities. The definition of financial activities is in this connection based on the distribution of the assets respectively the taxable income. If more than half the taxable income of the subsidiary derives from financial investments and during

the income year more than 10% in average of the assets consists of financial assets, the Danish CFC-taxation applies.

Taxation in Denmark will in these cases be based on the part of the income of the subsidiary equalling the Danish company's owner share of the subsidiary.

#### *Challenge no. 3 –The seat of management in Denmark*

A foreign company is considered tax resident in Denmark if the seat of the management is in Denmark, even if the company is incorporated in a foreign country.

In such cases the income of the subsidiary is tax liable in Denmark, except income earned by a foreign permanent establishment of the subsidiary.

#### *Closing comments*

If the above content gives rise to comments, questions or the need of clarification, we are of course at your service.

Tax Support Department, May 2010

**RSM.plus**

Statsautoriserede revisorer

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