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# Key Danish Tax Considerations for Private Equity



# Key Tax Considerations

- This presentation provides an overview of key tax issues from a Danish perspective.
- The contents in this presentation should not be relied upon as tax advice since more in-depth analysis may be required.
- We have focused on the tax considerations with respect to the financing of the transaction, repatriation of funds and exit.
- We have not analysed the tax treatment of potential losses carried forward in the Danish portfolio companies.
- The key objectives are:
  - To obtain interest deduction.
  - To avoid or reduce Danish withholding taxes.
  - To provide an overview of other possible taxes.



# Key Tax Considerations

- **Entity classification**

- At the outset the Danish tax treatment depends on the classification of Foreign Investor Co for tax purposes.
- If similarity to Limited Partnerships it may be considered transparent for Danish tax purposes.
- Accordingly, the investors will be considered the relevant parties for Danish tax purposes when considering the tax position of the structure.
- Obviously, this issue should be further analysed once the transaction progresses.

# Key Tax Considerations

- **Financing**

- In Denmark interest expenses are tax deductible in the corporate income tax.
- Interest expenses in an acquisition vehicle may be offset against operating income (including rental income and capital gains from sale of apartments) of the acquired company through the Danish mandatory joint taxation regime.
- This is an often applied debt-push-down strategy.
- Danish tax consolidation through mandatory joint taxation does not require the establishment of a common Danish holding company.
- Since the debt obligation remains in the target companies a specific acquisition vehicle is not required.
- The deductibility of interest and capital losses may be restricted under three sets of rules for corporate taxpayers:
  - 1) The thin capitalisation test, (not likely to affect the structure)
  - 2) The asset test and (likely to affect the structure)
  - 3) The EBIT test.



# Key Tax Considerations

- **The Thin Capitalisation Test**

- A corporation is thinly capitalized if the debt-to-equity ratio exceeds 4:1 at the end of an income year, provided that the *controlled debt* exceeds 10 MDKK.
- Interest expenses and capital losses regarding the controlled debt that should be converted to equity so the debt-to equity ratio is not exceeded, are not deductible.
- The thin capitalisation only applies to controlled debt to companies.
- The rules also include third party debt which is secured by a group company.
- If the company is able to substantiate that the financing is at arm's length terms, the company will be allowed to deduct interest expenses even though the 4:1 ratio is exceeded.
- The thin capitalisation test shall be applied on a consolidated basis for Danish companies belonging to the same group.

# Key Tax Considerations

- **The Asset Test**

- Under the asset test net financing expenses may be deducted only if the expenses do not exceed a standard rate of presently 4.5 per cent (2011) of the value of the tax base of certain qualifying assets.
- The value of the tax base consists of the depreciated value of the company's assets. Assets, which are not depreciable, are included at the acquisition costs plus improvements.
- As a main rule, shares and claims are not part of the tax base according to the asset test.
- The deductibility of net financing expenses up to DKK 21.3 million (2011) is not restricted by the asset test.
- The assets and the net financing expenses are considered on a consolidated basis for group companies.
- The minimum rule regarding net financing expenses up to DKK 21.3 million then apply on a group basis.

# Key Tax Considerations

- **The EBIT Test**

- Remaining interest payments which are deductible after the application of the thin capitalisation rules and the asset test may be restricted under an EBIT test.
- According to the EBIT-test, the deductible net financing expenses cannot exceed 80 % of the earnings before interest and tax.
- As with the asset test, the EBIT test only applies if net financing expenses exceed DKK 21.3 million (2011).
- The net financing expenses and the EBIT should be considered on a consolidated basis for group companies.
- The minimum rule regarding net financing expenses up to DKK 21.3 million apply on a group basis.

# Key Tax Considerations

- **Repatriation of Funds**

- Dividends may be subject to a *withholding tax* of 28% if the shareholder is a non-resident.
- Exemption from WHT
  - Corporate shareholders qualifying as a parent corporation may be exempt from the dividend withholding tax.
  - The requirements that should be fulfilled in order to obtain the exemption are:
    - Direct ownership of at least 10% of the shares in the company paying dividends.
    - The foreign corporate shareholder should be classified to be of a similar nature as a Danish taxable corporation (broadly defined).
    - The taxation of the dividend should be reduced or eliminated according to the EU parent-/subsidiary directive or a tax treaty. Exemption can also be obtained if the corporation does not fulfil the 10% ownership criteria, but qualify to joint taxation with the Danish subsidiary.





# Key Tax Considerations

## – Reduction of Withholding Tax

- The withholding tax will be reduced to 15%, if any non-Danish investor is resident in a jurisdiction which has a tax information exchange agreement with Denmark.
- Danish withholding tax could also be reduced under the Nordic Tax Treaty.
- Nordic countries fulfill this requirement
- The tax position of potential institutional investors should be analysed carefully.
- The final result depends on the classification of the investors and the degree of ownership of the investors.
- If the investors are organised in a way similar to a Danish taxable entity and own more than 10% of the share capital each there should be no Danish withholding tax.



# Key Tax Considerations

- **Sale of Shares**

- A sale of shares in a Danish company by a foreign investor does not give rise to Danish withholding taxes or other taxes.

- **Taxation of Gains arising from the sale of single apartments**

- Any gains obtained from the sale of apartments are taxable on a Danish real estate company at the corporate tax rate of 25%.
- However, interest payments which are not restricted can be used to offset the positive income generated from rental payments and capital gains from the sale of the apartments.