Global Rewards Update
Extension of Section 7P of the Danish Tax Assessment Act of share-based payments

Background

According to existing rules in Section 7P of the Danish Tax Assessment Act, an employee can annually receive up to 10% of the yearly salary in shares, conditional share awards, stock options or warrants. Any gains from the sale of the shares is taxed as share income at a rate of 27% up to DKK 52,900 (2018) for individuals (approximately USD 8,500) and 42% for amounts exceeding this threshold (the threshold is doubled for spouses filing together). This means that no salary taxation is triggered at either grant, vesting or exercise; though, on the other hand the employer company will lose the ability to deduct any costs deriving from the grant.

According to a bill released in late December by the Danish Ministry of Taxation in a public hearing, which is based on negotiations between the two governing political parties, the threshold is increased from 10% to 20% of the yearly salary if the incentive scheme meets a certain requirement, i.e. that at least 80% of the company's employees are offered to participate in the incentive scheme. If the requirement is not met, the 10% threshold is applicable.

Calculating the 80% requirement

The bill addresses specifically how the 80%-requirement is going to be calculated in practice:

- First of all, the group of employees, which the 80%-requirement is calculated upon, can be limited, subject to general criteria, i.e. among others the following employees can be fully excluded from the calculation:
    - Employees with an employment period less than three years
    - Employees with less than 8 working hours a week
    - Managers that are part of another incentive program in the company

- After the above reduction has been carried out, the employer company can elect freely which 80% of the remaining employees should be offered to participate in the preferential scheme.

An offer to participate in the preferential scheme can be conditional upon each of the participating employees to finance the grant of shares by a reduction in gross salary, as under the current rules, and only the reduced gross salary will be subject to salary taxation. The new rules are intended to enter retrospectively into force as from **1 January 2018**.

Please note: A proposal that employees of small enterprises can receive up to 50% of the annual salary as share-based payments under Section 7P of the Danish Tax Assessment Act is not a part of the current bill. This proposal awaits an approval under the EU state aid rules before it can be implemented.

Deloitte's view

If the proposal is adopted by the Danish parliament, it will provide improved opportunities for beneficial tax treatment of share-based incentive schemes. Companies should consider the new possibilities deriving from the bill carefully, i.e. whether future grants of stock options and shares could be covered by the new rules, and whether there is a need for adaptations of existing programs in order to meet the requirements.

Please note, in order for the Section 7P of the Danish Tax Assessment Act to apply, including the proposed new threshold, a special agreement must be concluded between the employer and the employee at the date of grant of a share-based incentive.

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