WORTH KNOWING ABOUT

Joint Taxation in Denmark

TAX AND VAT
February 2024

Danish companies, which are part of a group of Danish companies, are covered by the mandatory rules on national joint taxation. International joint taxation with foreign group companies, foreign permanent establishments and foreign real estate is voluntary.

Danish companies treated as separate taxable entities shall calculate their taxable income, file the tax return and pay the corporate income tax due on their own behalf. Companies can, however, be covered by the rules on mandatory joint taxation where the company is taxed jointly with other group companies.

Joint taxation implies that the loss in one group company can set off taxable income in another group company, being part of the joint taxation group.

Danish corporate taxation comprises two different types of joint taxation; mandatory joint taxation, which applies to all Danish entities (including Danish permanent establishments of foreign companies and Danish situs real estate held by foreign companies) within the same group, and voluntary international joint taxation, which makes it possible to include foreign companies, foreign permanent establishments and foreign real estate in a joint taxation with Danish entities within the same group.

Entities included

Joint taxation includes all legal entities within a group of taxable entities. A group of entities is for joint taxation purposes defined according to the principles defining group consolidation for accounting purposes, i.e. the criterion for defining a group is the controlling interest held by other legal entities, either by the majority of votes or by other means.

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Moreover, agreements made between shareholders may also be important. In several binding rulings, it has been concluded that even if a company has the majority of the voting rights or the majority of the capital, joint taxation may still be denied due to agreement between shareholders. If for instance, a minority shareholder has a veto on important decisions in the company, the majority shareholder may not be jointly taxed with its subsidiary.

It is therefore crucial to review agreements made between the shareholders, before it can be concluded, whether two companies can be jointly taxed.

Companies under bankruptcy

A company under bankruptcy cannot take part in a joint taxation in any income period in the income year where the bankruptcy notice is passed.

Thus, a tax loss, which has been created in the company under bankruptcy, cannot be utilized in the positive taxable income of other group companies in the joint taxation for the income period in the income year during which the bankruptcy notice is passed. The rules are applicable for bankruptcy notices passed on 1 January 2017 or later.

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Mandatory joint taxation
All Danish legal entities regarded as separate entities for tax purposes within the same group - i.e. Danish companies, Danish permanent establishments of foreign legal entities and Danish real estate - are subject to mandatory joint taxation. The mandatory joint taxation will also apply to Danish entities, even if the group connection is outside Denmark, i.e. to Danish entities directly or indirectly controlled by the same foreign legal entity.

Each entity in a joint taxation must prepare a separate income statement and pay its share of the total corporate tax to the "management company" in the joint taxation group. An entity contributing with a tax loss to be set off against taxable income of other entities shall in return receive a cash payment equal to the tax value of the loss from the entities using the loss to reduce their taxable income.

The total income of each entity included in the joint taxation is aggregated within the group. This will also be the case even if the parent company does not own 100% of the capital of a subsidiary.

The management company in the joint taxation must file the tax return for the joint taxation group and to pay the net income tax due for the joint taxation group.

The entities comprised by joint taxation will have collective and several liability for the payment of tax as long as they are part of the joint taxation group.

An entity leaving or entering a joint taxation during the tax year must prepare interim tax accounts for the periods before and after this event. Thus, if an entity has not been included in the joint taxation for a full year, only the taxable income or tax loss for the period where the entity has been a part of the joint taxation is to be included in the joint taxable income.

Voluntary international joint taxation
It is possible for a Danish company or group to choose international joint taxation, which will include foreign group entities in the joint taxation with Danish group entities.

Please note that a foreign permanent establishment (including foreign real estate) of Danish companies is not subject to Danish corporate taxation unless the company has chosen international joint taxation.

The international joint taxation must include all Danish and foreign legal entities within the group according to the "Global Pooling Principle". Thus, it is not possible to include only the foreign entities with tax losses while not including the profitable entities in the Danish joint taxation ("Cherry-picking"). Furthermore, international joint taxation must be selected for a binding period of 10 years.

Recapture of losses
An international joint taxation group must keep records of all used tax losses contributed by foreign entities. These accumulated foreign tax losses will subsequently be reduced, if the relevant foreign entity in a subsequent year realizes a taxable profit subject to effective Danish corporate tax, i.e. the Danish tax on the income from the entity after foreign tax credit.

If a foreign entity leaves the joint taxation as a result of sale or liquidation, or if the international joint taxation is not chosen for a new period at the end of the 10 years limitation period, the tax value of the remaining foreign tax losses will be recaptured.
The taxable amount will be maximized to an amount equal to the taxable profit, which would arise from liquidation of the foreign entity at market value.

If the management company decides to cut off the international taxation before the expiration of the binding 10 years period, the remaining tax losses will be recaptured in full in the taxable income of the management company. Thus, companies carefully need to consider the consequences before terminating the international joint taxation prior to expiry of the minimum period of 10 years.

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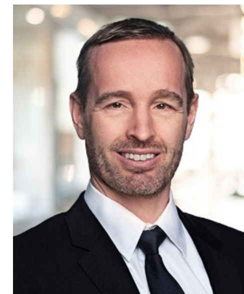

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