



NEW EMPLOYEE SHARE SCHEME FOR SMALLER COMPANIES

28 December 2020

Introduction

In January 2019, the Danish Parliament passed a bill introducing a favourable employee share scheme for smaller Danish companies. However, the scheme had to be approved by the European Commission as there were elements of legal state aid in the bill.

The European Commission approved the bill on the condition that additional criteria must be included in the bill. Thus, a new bill, which incorporated these additional criteria, was proposed and passed 21 December 2020.

The Scheme

The scheme allows for certain Danish companies to remunerate their employees in shares, options and warrants of a value equal to 50% of the employees' annual salary at the time when the remuneration agreement is entered into. Under this scheme, shares, options and/or warrants granted to the employee are taxed as capital gains instead of salary income, which in general entails a lower taxation for the employee – hence why the scheme is regarded as favourable.

Danish smaller companies that can make use of this scheme must fulfil the following criteria:

1. At the time of the remuneration agreement, the company must not have had more than 50 employees registered in one of the two latest the annual accounts of the company.
2. At the time of the remuneration agreement, the company must not have had a net turnover exceeding DKK 15 million or a balance sheet total exceeding DKK 15 million in one of the two latest the annual accounts of the company.
3. The company must have been commercially active for less than five years before the calendar year in which the remuneration agreement is entered into.
4. At the time of the remuneration agreement, the company must not operate a business which predominantly consists of passive capital investments.
5. At the time of the remuneration agreement, the company must not be in a financial crisis.
6. At the time of the remuneration agreement, the company must not have failed to comply with a claim for repayment of illegal state aid.
7. The scheme cannot be used by employees who own more than 25% of the share capital or control more than 50% of the voting rights in the employer company at the time of the remuneration agreement. In this calculation, shares owned by the employee's close family is included.
8. The company or any companies in the same group must not be listed on any stock exchange or in any other way be admitted to trading on a regulated market.

9. The company's use of this scheme is considered to be an indirect receipt of state aid, and the company must therefore calculate and report the amount of aid to the Danish Customs and Tax agencies if the total amount of the aid exceeds EUR 500,000 in a calendar year.

The new employee share scheme will enter into force on 1 January 2021.

If you have any questions or require further information regarding any of the above, please do not hesitate to contact us:



Poul Guo (Quach)
Senior Associate

poul.guo@moalemweitemeyer.com



Flora Hua Ting Chieng
Associate

flora.chieng@moalemweitemeyer.com

The above does not constitute legal counselling and Moalem Weitemeyer does not warrant the accuracy of the information. With the above text, Moalem Weitemeyer has not assumed responsibility of any kind as a consequence of any reader's use of the above as a basis for decisions or considerations.

This news piece has been produced in the English language only. Are you a client or a prospective client, and should you require a Danish version, please email us at news@moalemweitemeyer.com with a link to the article that you would like to request to receive in Danish, and we will attend to your request without undue delay.