



Danish Tax Council Clarifies Application of Section 7 P to Existing Share Option Grants

The Danish Tax Council has issued a binding ruling (SKM2025.630.SR) addressing whether existing employee share option agreements may be amended to qualify for the favourable tax treatment under Section 7 P of the Danish Tax Assessment Act.

Background

Section 7 P provides favourable tax treatment for employee share schemes. Under this provision, taxation is deferred until shares are sold and is treated as capital income at a marginal rate of 42 per cent instead of salary income at rates of up to 60.5 per cent (per 1 January 2026). A key requirement is that the employer and employee must agree to apply Section 7 P.

The Case

In the ruling SKM2025.630.SR, a Danish company participating in an international share option programme had granted options over multiple years without applying Section 7 P. The company sought clarification from the Tax Council on whether the existing option agreements could be amended so that Section 7 P would apply going forward.

The Decision

The Tax Council held that an amendment is possible only where the options have not yet been finally acquired by the employee, meaning that the options remain subject to unfulfilled conditions that create genuine uncertainty as to vesting. Accordingly, amendments cannot apply retroactively to vested options or issued shares.

Key Findings from the Ruling

- Amendments are permissible under Section 7 P (3), but only for unvested options subject to genuine uncertainty as to vesting
- Valuation must be determined based on circumstances existing at the time the Section 7 P agreement is concluded, not the original grant date

Practical Implications

This ruling provides flexibility for employers, particularly multinational groups operating option programmes not originally structured under Section 7 P. However, the ability to amend is limited to unvested options. The availability of amendments depends on the specific contractual terms governing each arrangement and the timing of final acquisition of rights. We therefore recommend agreeing on Section 7 P at the time of entering into the agreement. This ensures clarity for all parties and avoids any doubt regarding the tax treatment.

Do you need advice?

If you have questions about Section 7 P or employee incentive programmes, please feel free to contact us. We are ready to help structure your incentive schemes in the most advantageous way.

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