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Karin Attorps
Partner, Attorney


Erik Björkeson
Partner, Attorney


Jonas Aartun
Partner, Location Head Tax


Ingvar Gjedrem
Partner


Jakob Schilder-Knudsen
Partner, Head of Tax, Denmark


Antti Paloniemi
Partner, Head of Tax


Mario Fernandez
Partner

In our quarterly Nordic Tax Law bulletin, our tax lawyers across the Nordic region highlight relevant news and trends on the Nordic Tax market scene. The bulletin intends to provide high-level knowledge and insight. Want to learn more? Our team will be happy to hear from you.

Highlights from Norway

- **Classification of Swedish convertible instruments**

  In case SKNS1-2024-58, the Norwegian Tax Appeals Committee (NTAC) concluded that a Swedish convertible instrument was to be classified under Norwegian tax law as an equity instrument with shares as the underlying object and not as a debt instrument.

  The case concerned an investment made by a Norwegian limited liability company (AS) in a Swedish limited liability company (AB). The investment was made by means of an instrument (Instrument) described as a "convertible" in the investment agreement.

  The question before the NTAC was whether gain on the realization of the Instrument should be taxed as a gain on a debt instrument (taxable) or as a gain on an equity instrument with qualifying shares as the underlying object (tax exempt under the Norwegian Participation Exemption method).

  The Swedish law definition of a "convertible" is the same as the Norwegian law definition of a convertible bond. Under Norwegian law, a convertible bond is usually described as a compound financial instrument consisting of a debt receivable (debenture/bond) and a right of issuance (subscription right/option). A convertible bond has characteristics of both equity and debt and is therefore often referred to as hybrid capital. The Norwegian Supreme Court has ruled (in the REC and Bonheur cases) that any gain on convertible bonds is not to be decomposed but is to be taxed integrally as a debt instrument.

  In this particular case, the NTAC took the substance over form approach and made a concrete assessment of the classification of the Instrument based on its characteristics and the factors set out in Norwegian law to determine the classification.

  The rationale behind the investment was for the Instrument to reflect the value of the issued B shares in AB without giving voting rights to AS (Swedish law doesn't permit the issuance of non-voting B shares, which underlined the reason for the chosen investment structure).

  The Instrument was intended to be realized upon a future IPO or sale of AB, in which case AS could realize a gain or loss.

  Under the investment agreement, only AB had the right to demand conversion of the Instrument into B shares and any claim by AS for repayment of the principal amount from AS could be met with a claim by AB for conversion or cash settlement equal to the value of the B shares, also at maturity.

  As AB had no obligation to repay the principal amount and AS could not claim conversion or settlement by cash, the entire investment could be lost if the value of the B shares was lost. The repayment of the principal amount depended on the value of the B shares not falling, and any gain depended on the increase in the market value of the B shares. This distinguished the Instrument from a Norwegian convertible bond, where the investor generally has a right to repayment of the principal amount regardless of fluctuations in the share value.

In addition, the Instrument didn't bear interest, so yield on the investment depended on AB paying dividends (which AB had no intention of doing). The investment also had priority behind other creditors upon bankruptcy or liquidation of AB so had the capacity to absorb losses.

Although the Investment was treated as a loan in AB's accounts and was described as a "convertible" under Swedish law, the NTAC concluded that the investment was most similar to an equity instrument with shares as the underlying object.

The gain realized by AS following realization of the Instrument was tax free under the Norwegian Participation Exemption Method.

Highlights from Sweden

- **New interim report on tax incentives for research and development**

  The Swedish government has appointed a special inquiry to improve the international competitiveness of Swedish R&D regulations and simplify their application. In an interim report presented on January 15, 2025, the committee proposed several changes to the rules on R&D deductions and expert tax. The report proposes simplifying and expanding the definitions of research and development, and increasing the tax relief on expert tax from 25% to 30%.

  For the R&D deduction, the new definitions for research and development are intended to broaden the scope of R&D activities that qualify for deduction rules. The report suggests removing the requirements for systematic and qualified work, allowing development work to qualify if it aims to improve a product with new solutions to scientific or technical problems. The report also recommends removing the requirement for employees to spend at least 15 hours per month on R&D.

  For the expert tax rules, the report proposes simplifying the competence rule and lowering the requirements, so that it only includes individuals with a PhD or equivalent experience in research and development. The tax relief should be increased to 30%, and Swedish citizens should also be eligible.

  The changes are proposed to enter into force on January 1, 2026.

- **Proposal regarding carried interest taxation**

  On January 28, 2025, the investigation regarding specific rules for carried interest published their proposal. The key element of the proposal is to include active partners in the venture capital industry who receive carried interest subject to the rules for qualified shares under the closely held company regime. The proposal refers to carried interest that's directly, or indirectly, received from an alternative investment fund (as defined in the Swedish legislation based on the AIFM Directive). And the right to interest isn't in proportion to invested capital; and the right to carried interest is related to the individual's work.

  Under the proposal, the closely company tax rules will apply regardless of passive owners who might otherwise render the rules inapplicable. The period to cease being active in the company is suggested to be extended to ten years instead of the usual five years. Additionally, the proposal eliminates the possibility of benefitting from lower taxation based on salary payments. Higher thresholds have been proposed to finance the changes anticipated from the proposal. This has been criticized by the private equity sector; it may result in heavier taxation compared to the current rules for qualified shares. The changes are proposed to take effect on January 1, 2026.

Highlights from Finland

- **Finnish Supreme Administrative Court's ruling 2025:7 of January 17, 2025, makes the use of an employee share issue more flexible within the meaning of Section 66a of the Finnish Income Tax Act**

  The company planned to issue shares to its employees within the meaning of Section 66a of the Finnish Income Tax Act. The company already had an employee share option scheme. And if the employees subscribed for shares in the planned share issue, the corresponding number of employee share options offered to the employees would be cancelled.

  The Supreme Administrative Court had to decide whether the planned share issue was covered by the employee share issue provision of the Income Tax Act or whether it was an exercise of employee share options or even a tax avoidance scheme.

  The Supreme Administrative Court ruled that an employee share option right is a right granted by an employer to an employee, which the employee may or may not exercise, and that non-exercise doesn't constitute a financial advantage for the employee. In the proposed employee share issue, the subscription of shares is based on an employee share issue and not on the basis of employee share option rights. The proposed share issue should be considered as an independent and separate arrangement from the employee share option scheme. The cancellation of the share options did not constitute an exercise or transfer of employee share options or a tax avoidance, so the employees didn't receive any benefit in the form of salary under the employee share option plan.

  Based on the ruling, it may be possible to replace the use of share options with an issue of shares to employees under Section 66a of the Finnish Income Tax Act, which is usually taxed at a much lower rate than employee share options.
- **Finnish Central Tax Board rules that the Swedish fund (Fund) in the form of a limited liability company (AB) was to be considered a controlled foreign corporation (CFC) for tax purposes**

  According to the Finnish Central Tax Board's ruling 2024/35 of October 24, 2024, the Fund was to be operated in such a way that it didn't generate taxable income, ie it didn't actually pay income tax in Sweden. The Fund was not subject to any general tax exemption, pass-through or special tax exemption rules for funds, but was generally exempt from tax due to the exemption from capital gains tax and dividends available to all Swedish limited liability companies.

  The Finnish Central Tax Board considered that, in the circumstances described, the Fund couldn't be treated as a tax-exempt domestic contractual special investment fund, but as a limited liability company with an effective tax rate of less than three-fifths of the tax rate of a Finnish resident company.

  The Fund itself had no owned or leased premises, equipment or personnel, but only the financial resources necessary for its operation and had otherwise outsourced all its activities. The Finnish Central Tax Board held that the economic activity exception didn't apply to the Fund and that the applicant's share of the Fund's income was taxable as CFC income.

The decision is not final and has been appealed.

- **Finnish government reviewing the possibility of abolishing inheritance tax and replacing it with a capital gains tax**

  As set out in the Government Programme, the Finnish government is currently examining the possibility of replacing inheritance tax with a capital gains tax, whereby the increase in the value of inherited property would only be taxed when the property is sold. The aim would be to support Finland’s long economic downturn and strengthen domestic property ownership.

Highlights from Denmark

- **Denmark implements ‘entrepreneur tax incentives’**

  In June 2024, the majority of the Danish Parliament reached a political agreement on entrepreneur initiatives, with the objective of making Denmark a “worldclass” jurisdiction for entrepreneurship and accelerating investments into Danish companies.

  The agreement contained a number of tax-incentives, which were introduced in draft bills L 25 and L 28 in the autumn of 2024, and subsequently implemented into Danish law in December 2024 with effect as of January 1, 2025.

  Below, we’ve highlighted a couple of the most significant changes introduced for Danish companies.

  Exemption of Danish withholding tax on unlisted Danish shares

  Capital gains on Danish unlisted shares are tax exempt for Danish and non-Danish shareholders, regardless of ownership percentage and/or holding period. But if a shareholder owns less than 10% of the shares in an unlisted Danish company, dividend received has historically been subject to an effective Danish withholding tax of 15%.

  As of January 1, 2025, dividend payments will be exempt from Danish withholding tax for Danish corporate shareholders and non-Danish shareholders resident in an EU/EEA or double tax treaty state regardless of the ownership percentage.

  The objective is to accelerate investments – including minority investments – into Danish companies.

  The change will also have an ancillary effect on other existing Danish tax rules, where capital gains in certain cases were treated as dividend payments for anti-abuse purposes.

  R&D incentives

  R&D cash credit increased

  Under Danish tax law, Danish companies in a loss-making position can receive tax cash credits for losses arising from qualifying research and development (R&D) costs.

  The companies can apply for a cash pay-out of the tax value of the losses related to the R&D costs, with the current cap being at DKK25 million (tax value DKK5.5 million) per income year (tax group level).

  The law raises this cap to DKK35 million (tax value approx. DKK7.7 million), effective from the 2027 income year. The calculation is made on tax group level.

  Increase of R&D deductions

The incentives also introduced an increased tax deduction for qualifying R&D costs, with a gradual increase from to 120% in 2028. For 2025, the deduction will remain at 108%, and will increase to 114% in 2026, 116% in 2027 and ultimately 120% in 2028.

To benefit from the R&D incentives above, the costs in question must qualify as "R&D expenses," where the Danish tax agency historically have applied a strict interpretation.

Abolition of immediate depreciation for expenses for acquiring knowhow and patent rights

The possibility of immediate depreciation for expenses related to the acquisition of knowhow, patent rights, and associated license rights has been abolished.

This abolition takes effect from January 1, 2025. Consequently, immediate depreciation will no longer be available.

Expenses for the acquisition of knowhow, patent rights, and associated license rights incurred on or after January 1, 2025, can only be depreciated on a straight-line basis over seven years, similar to other intangible assets.

Realization-based taxation for listed shares with less than 10% ownership – Retroactive Option

Under current tax rules, companies holding less than 10% ownership in a listed company are taxed based on a mark-to-market principle. This means that gains and losses are taxed annually, regardless of whether the shares were actually sold.

The new bill allows companies holding less than 10% ownership in listed companies to elect realization-based taxation for up to seven years after an IPO.

Originally, the option to elect realization-based taxation was limited to IPOs from January 1, 2025, onward.

However, an amendment extends this option retroactively to IPOs from January 1, 2015, to December 31, 2024, for original shareholders who held shares at least 30 days before the IPO.

Increased thresholds for loss utilization

Under Danish tax law, tax losses can as a starting point be carried forward indefinitely. In 2024, taxable income up to a threshold of DKK9,457,500 could be eliminated by tax losses carried forward, whereas taxable income exceeding that threshold could only be reduced by 60% as a result of tax losses carried forward.

The lower threshold has now been increased to DKK20,829,000 (2025) with effect from January 1, 2025.

We're awaiting further implementation in 2025 of certain initiatives, including an amendment of the taxation of earn-out payments in an M&A context.

- **New Guidelines for Real Estate VAT: Self-supply VAT could be relevant if a sales-project is changed to leasing project**

Starting on January 28, 2025, the Danish Tax Agency has introduced new guidelines affecting building projects on which VAT initially was recovered but where the case is changed to VAT exempt use.

The new rules state that when the use of the property is changed to pure VAT-exempt use, the VAT self-supply rules apply, regardless of when the change occurs.

Self-supply VAT effectively means that the owner will be liable to account for a fictious sales VAT of 20% of the market value of the property regardless that the property is not sold.

Previously, a change to a pure VAT-exempt usage within the financial year the building was completed would lead to a 1:1 repayment of the initially recovered VAT as a VAT correction.

The guidance doesn't further specify how the property's market value is to be determined. Since the self-supply VAT arises because of VAT-exempt rental, it should be expected that the "market value" should be based on a rental case rather than the sale of individual apartments. But this is yet to be determined.

Example

A company constructs a building with ten apartments with the intention to sell after completion and is granted VAT recovery (10) on the total cost (50).

But at completion it becomes evident that it's not possible to sell the apartments and they are instead rented out. Following the new practice, the rented apartments become subject to self-supply VAT.

If the completed property has a market value of eg DKK60 million, the owner will have to account for sales VAT of DKK12 million compared to the initial DKK10 million recovery.

Self-supply VAT will in practice increase the financial cost by introducing a further cost when the property is leased exempt from VAT which is the case for residential properties. It's therefore imperative to consider the intended use of the real estate from the very beginning and ensure it's determined before starting any activities.

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