



TAX LAW AND ENTREPRENEURSHIP

Tax Obstacles to Entrepreneurship – a Danish Perspective

Danish-Swedish Tax Network
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- The role of entrepreneurship in overall policy goals in society
 - Decline in entrepreneurs
 - Entrepreneurship as engine for future growth and wealth
 - Danish Government (SVM) has claimed an ambition to become the best nation globally for entrepreneurship!
 - EU goals

- Best strategy to incentivize entrepreneurship?
 - Picking winners?
 - Are politicians and government officials best suited to make such choices?

 - Defining entrepreneurship?
 - Who should be supported: entrepreneurs, investors, broader framework?

 - Fiscal policy vs. financial support
 - EU vs. US approach
 - Relevant tax policy needs
 - Avoid the most negative implications – understand the special needs of new businesses
 - Access to financing/alternative financing
 - Compliance burden
 - Handling of and value of losses (tax assets)
 - R&D incentives + other incentives
 - Use of stock-based remuneration

- The EU is (maybe) waking up.....
 - Acknowledge that taxation plays a significant role in securing investments and growth
 - The “enabling side” of tax policy
 - EU strategy - Business Taxation for the 21st Century, COM(2021) 251 final)
 - Ensuring productive investments and entrepreneurship
 - Treatment of corporate losses (NOLs)
 - Recommendation (C(2021) 3484 final): Allow carry back 1-3 fiscal years up to 3 mio. EUR per FY.
 - Consider the possibility to introduce EU wide rules regarding cross border loss utilization for SMEs.
 - “DEBRA” – Debt Equity Bias Reduction Allowance – EU version of ACE

- General obstacles to entrepreneurship in current (Danish) tax system
 - Apart from little understanding for the needs to promote entrepreneurship.....
 - Complexity and magnitude
 - Lack of stability and mixed signals
 - Mistrust leading to the introduction of excessive anti-abuse legislation which cover much more than tax abuse
 - Mistrust from government officials

- Danish NOL legislation – “Mindestbesteuerung” – only utilize NOL’s over a longer period of time above DKK 9.5M
 - Taxation of income (eg in exit) which in essence was never earned
- Limited cost deductibility of business costs due to obsolete notion and official ambition to narrow scope (not least regarding R&D expense)
- De facto prohibition (double taxation - gross) of co- and reinvestments with investors due to broad anti abuse legislation (CTA § 2 D)
- Taxation of earn-outs – taxation of gains which are never realized and where a subsequent deduction has no tax value
- Mark-to-market taxation – IPO and founders’ shares in personal holding companies
- Financial innovation (Convertibles, SAFE etc.)
- The “fix” – Political agreement on entrepreneurship 21. June 2024
 - Entrepreneur washing?
 - Increased NOL utilization within one year from DKK 9.5 m to DKK 20M.
 - Abolition of dividend taxation from unlisted portfolio shares (less than 10% ownership)
 - Clearly beneficial – applies to Danish and foreign investors and companies
 - Controlling foreign shareholders excluded
 - Postponed taxation of the taxation of earn outs
 - Postponed mark-to-market taxation for 7 years of newly listed portfolio shares.
 - Increased amounts in tax credits – from DKK 25M to DKK 35M (cash value @22%).
 - Renewed R&D uplift to 120%



THANK YOU!