DEN-1 Legal structure

European Cross-Border Estate Planning

EU States

Denmark

Denmark

Part I General Law

Introduction

Cph Lex Advokater [1]

Legal structure

DEN-1 The legal system in Denmark falls within the civil law concept with the most important source of law being the statutes passed by the Danish Parliament (Folketinget). At this stage two important bodies of law shall be mentioned. First, Act No.515 of June 6, 2007 on the Law on Inheritance (Arveloven), which contains important provisions on restrictions on testamentary capacity and the legitimate share of descendants and the surviving spouse. Secondly, the Act on the Legal Consequences of Matrimony Act No 37 of January 5, 1995, as amended—(Lov om Ægteskabets Retsvirkninger) which contains provisions concerning community property and separate ownership, liability for the debt of the other spouse and marriage contracts. Further, a number of tax laws contain important provisions with regard to estate and tax planning matters. These include the Estates of Deceased Persons Act and will be dealt with in greater depth in Part II (*see* para.52).

Under the various laws a minister may be authorised to issue regulations which will be binding upon the citizens of Denmark. Further, a minister may issue governmental circulars on a specific issue, but such circulars are only binding upon the Ministry itself.

Another important source of law are the judgments rendered by the Danish court. The Danish court system is a three-tier system consisting of Trial Courts, Courts of Appeal and the Supreme Court. Matters relating to division of the estate of a deceased are handled by the Probate Division of the Trial Court in the particular municipality where the deceased was domiciled. Since July 1, 2014, the decision as to whether the estate of a deceased person abroad can be referred for administration to a Danish court is a judicial one. Matrimonial matters are dealt with by the Trial Courts. An

© 2024 Thomson Reuters.

appeal may be made against a judgment, but only once. However, the Appeal Permission Board may grant a permission that a judgment rendered by the Courts of Appeal on an appeal may be brought before the Supreme Court. Such permissions may be obtained if the matter is of a principle nature. All civil matters must be brought before the trial court with a right of appeal to the Courts of Appeal. In case the matter is of a principal nature, a party may request the court to refer the matter to the Court of Appeal. Such matters may be appealed to the Supreme Court.

Footnotes

1 Ny Vestergade 17, 1471 Copenhagen K, Denmark

Telephone: 45 33 12 79 13, Facsimile: 45 33 93 03 13, Email: ce@cphlex.dk or rec@cphlex.dk, Website: http://www.cphlex.dk

End of Document

© 2024 SWEET & MAXWELL

DEN-2 Currency and movement of money

European Cross-Border Estate Planning

EU States

Denmark

Denmark

Part I General Law

Introduction

Currency and movement of money

DEN-2 Currency regulations no longer impose a major obstacle to the cross-border transfer of gifts and inheritance. Virtually all currency regulations were abolished as of October 1, 1988. Any transfer of funds to and from Denmark must be made through an authorised currency dealer. Most banks and brokers are authorised to undertake such transactions. More detailed information on these issues may be found in the executive order on foreign exchange regulations No.658 of July 11, 1994. The currency of Denmark is Danish Kroner (DKK). Even though a member of the European Union, Denmark has never introduced the Euro currency. There can be exchange rate issues although the rate only fluctuates within predetermined limits. Laws on money laundering are also of importance.

End of Document

© 2024 SWEET & MAXWELL

DEN-3 Financial year

European Cross-Border Estate Planning

EU States

Denmark

Denmark

Part I General Law

Introduction

Financial year

DEN-3 Most individuals use the calendar year as their financial year, whereas corporations may elect any financial year. However, the length of the year cannot exceed 12 months except for the first financial year of a corporation which may run for a period up to 18 months. Generally, individuals must file a tax return by July 1 in the year following the preceding calendar year. If the taxpayer is salary paid or only receives income from public sources, then the filing date is May 1. Corporations must file their annual accounts with the Commercial and Companies Agency in Copenhagen no later than five months after the end of their financial year, but no later than a couple of days after the date of the annual general meeting. Corporations must file their tax returns for the financial year in question no later than six months after the end of the income year. However, if the income year ends between February 1 and March 31, the filing date is postponed until August 1.

End of Document

© 2024 SWEET & MAXWELL

© 2024 Thomson Reuters.

DEN-4 Companies

European Cross-Border Estate Planning

EU States

Denmark

Denmark

Part I General Law

Legal persons and organisations

Companies

DEN-4 Two types of companies exist under Danish law. The private limited company (Anpartsselskab —abbreviated ApS) which is regulated by Act No.650 of June 15, 2006 and the public limited company (Aktieselskab—abbreviated A/S) which is governed by Act No.649 of June 15, 2006. A new Company Act may come into force in 2010.

The ApS may be compared with the UK Limited Company or the German GmbH while the A/S is similar to the UK Plc and the German AG.

The most significant difference between the two types of companies is the capital requirement and the management of the companies. An ApS must be formed with a minimum capital of DKK 80,000 or approximately £9,200 or €10,750 (exchange rate as at November 2016), which must be contributed in cash or in kind upon formation. The minimum capital of the A/S amounts to DKK 500,000 or approximately £58,000 or €67,000. The management of an ApS may be handled by one or more managers, by a board of directors or by a managing officer and supervisory board. If an ApS only has a single tier management, the day-to-day management as well as the supervisory duties of a board are vested in the management. With regard to an A/S a supervisory board of at least three individuals is required. The supervisory board employs a manager who is in charge of the day-to-day business of the company and responsible for carrying out the book-keeping of the company in accordance with the Act on Annual Accounts, Act No.935 of May 25, 2009 (Årsregnskabsloven) and any other applicable legislation. The main responsibility of the board is to ensure that the activities of the company are carried out in accordance with the articles of association and the Act. The board must ensure that the operating capital available to the company at any time is appropriate to the kind of business conducted by the company.

© 2024 Thomson Reuters.

DEN-5 All companies are registered with the Commercial and Companies Agency in Copenhagen, under the auspices of the Danish Business Authorities. Most registrations may be made online and the previous time-consuming registration procedures are no longer an issue. However, the founding members of the company are personally liable for any debts undertaken by the company during the period of incorporation. The liability of the shareholders is limited to the number of shares actually subscribed.

In case a company loses more than 50 per cent of its paid in capital, the directors must call an extraordinary general meeting at which the board shall make a statement concerning the economical position of the company and if necessary make suggestions concerning the steps which the board believes should be taken to recover the losses sustained. If the directors fail to take such steps, they may become personally liable for any losses suffered by the creditors of the company.

Foreign companies can register in Denmark without incorporating there. Registration can be on a temporary or permanent basis and deregistration is possible. Registration by foreign companies facilitates VAT and employer registrations as well as the administration of excise taxes.

End of Document © 2024 SWEET & MAXWELL

DEN-6 Trusts

European Cross-Border Estate Planning

EU States

Denmark

Denmark

Part I General Law

Legal persons and organisations

Trusts

DEN-6 The English trust concept does not exist under Danish law. However new controlled foreign corporation style rules were introduced in 2015 which, although not setting out a definition of trust, have set out certain characteristics of a trust. However the trust itself still does not exist in Danish law. It is possible to create a foundation (discussed below) that is an independent legal entity, which may hold its assets for the benefit of a designated group including the founder and his family. A foreign trust may be recognised if the settlor has no right demand a repayment of the funds transferred to the trust.

A testator or a grantor of a gift may retain an interest in the assets transferred under the will or as a gift either for his own or a third party's benefit. The beneficiary of the will or the recipient of the gift will acquire legal title to the assets but subject to the beneficial interest. The beneficial interest may be for a certain period or for the life of the beneficiary. At the time the beneficial interest lapses the owner will enjoy full benefit of the assets.

Finally, a testator may in his will arrange that one or more of his descendants may not enter into any inter vivos disposition over funds or assets inherited. Such a restriction may also be imposed on a gift. However, it is important to notice that the full legal title and beneficial ownership to the assets will pass to the descendants on the death of the testator. The Ministry of Justice may, under certain circumstances, decide that this ban shall be lifted if it is of importance to the welfare of the descendants.

In 2015, a general anti-abuse provision was introduced into Danish law, as a response to the BEPS project and changes in EU legislation. Along with this, new rules were introduced for the taxation

© 2024 Thomson Reuters.

of trusts due to a perception that foreign trusts were being used for tax avoidance. A type of Controlled Foreign Entity system of taxation was introduced in July 2015.

End of Document

© 2024 SWEET & MAXWELL

DEN-7 Partnership

European Cross-Border Estate Planning

EU States

Denmark

Denmark

Part I General Law

Legal persons and organisations

Partnership

DEN-7 A partnership may be established as a limited partnership (kommanditselskab) or a partnership (interessentskab). A limited partnership consists typically of one general partner who is liable for all the debts of the partnership and a number of limited partners who are only liable for an amount equal to their share of the partnership. The general partner may be an A/S or an ApS, thus limiting the liability to the share capital contributed to the company. All partners in a partnership are jointly and severally liable for all the debts of the partnership. The formation and running of partnerships are not regulated by any statutory provisions. For tax purposes partnerships are transparent and the individual partners are thus taxable on their share of the taxable income of the partnership.

End of Document

© 2024 SWEET & MAXWELL

DEN-8 Foundations

European Cross-Border Estate Planning

EU States

Denmark

Denmark

Part I General Law

Legal persons and organisations

Foundations

DEN-8 The concept of the foundation is the closest to the trust in Danish law. They are largely used for charitable purposes. The creation of a foundation under a will or inter vivos is governed by either Act No.698 of August 11, 1992 on Foundations and Certain Associations, as subsequently amended or Act No.652 of June 15, 2006 on Commercial Foundations. Foundations subject to these Acts are taxed under Act No.1192 of October 11, 2007 on the Taxation of Foundations. The Acts stipulate numerous conditions in order to create a foundation, but do not contain a statutory definition of the term foundation. According to the explanatory notes of the Bill introducing legislation in this area, certain requirements as to transfer of assets to the foundation and its independence of the founder must be met. The main requirement for the creation of a foundation is an irrevocable separation of the founder's assets from those of the foundation. This requirement will be met if the founder has undertaken a legal obligation towards the foundation which will be able to take action against the founder in a case of a breach of that undertaking.

Under Act No.652 of June 15, 2006, a foundation is considered to be a commercial foundation if:

(a)it supplies goods, grants a licence to intellectual property rights or supplies services for consideration;

(b)it is selling or letting real property;

(c)it controls more than 50 per cent of the voting shares of a company or may exercise control according to an agreement over a corporation or a business; or

(d)may exercise an significant control according to an agreement and is entitled to receive a significant share of the profit of a business without being in a position to exercise control as mentioned under (c) above.

A number of entities are exempted from the Act, even though they are business entities.

© 2024 Thomson Reuters.

The memorandum and articles of association of a commercial foundation must be registered with the Commercial and Companies Agency in Copenhagen. No such requirement applies to other foundations. The memorandum and articles of association of those must, however, be filed with the supervisory authority and the local tax authority within three months after the creation of the foundation.

The supervisory authority is, in the case of a foundation, a department of the Ministry of Justice named "Civilstyrelsen" and, in the case of a commercial foundation, the Ministry of Industry. However, if the main object of a commercial foundation falls within the authority of the Ministry of Justice then this Ministry is the supervisory authority. The supervisory authority does not have the power to investigate whether the objects of the foundations are carried out, but may act if, for example, notified by the auditors of the foundations in a case where the auditors believe that the board is not handling the affairs of the foundation in accordance with the articles of association or the pertinent Act. Further, certain transactions, including the distribution of the minimum capital of a foundation, need prior approval from the supervisory authority.

The Act stipulates that a minimum capital must be paid in upon the creation of a foundation. The minimum requirement with regard to a foundation is DKK 250,000. The Act further stipulates that the net equity of the foundation shall be of a reasonable amount when taking the object of the foundation into consideration. For a commercial foundation the minimum requirement is DKK 300,000.

The memorandum and articles of association of a foundation must contain the following information:

(a)the name of the foundation;

(b)the registered office of the foundation;

(c)the object;

(d)the amount of assets and net equity at the time of creation;

(e)any preferential rights in favour of the founder or others;

(f)the number of board members and provisions concerning their election;

(g)provisions concerning annual accounts; and

(h)application and profits.

Further requirements must be met with regard to the contents of the memorandum and the articles of association of a commercial foundation. The Acts limit the preferential rights a founder and his descendants may enjoy. The preferential rights must be limited in time and may only be in favour of the descendants of the founder alive at the time the foundation is established, and one unborn generation. This provision does not preclude these individuals from being beneficiaries of the foundation in line with any other member of the founder's family. A similar limitation is imposed with regard to the appointment of board members. The founder, his spouse, or their brothers and

© 2024 Thomson Reuters.

sisters and any ascendants or descendants of the mentioned group may not constitute, the majority of the board without prior approval from the supervisory authority.

Annual accounts must be prepared and, in the case of a commercial foundation, filed with the Commercial and Companies Agency. Other foundations must submit their accounts to the tax authorities, but not to the supervisory authority.

End of Document

© 2024 SWEET & MAXWELL

DEN-8A Societas Europaea

European Cross-Border Estate Planning

EU States

Denmark

Denmark

Part I General Law

Legal persons and organisations

Societas Europaea

DEN-8A All European member states created a new type of legal entity, a Societas Europaea or European Public Company ("SE"). The SE Regulation provides for a process by which any existing public company incorporated in a European member state can convert itself into an SE. Under the terms of the SE Regulation, any SE can freely move its corporate seat to another European Union member state.

Other than as set out in the SE Regulation or in the secondary legislation implementing it, an SE will take the characteristics of any other public company registered in that jurisdiction and be bound by its existing company law.

The SE Regulation also sets out the process for an SE to transfer its registered office to another member state. As with the conversion process, a number of procedural steps need to be taken to ensure that the interests of creditors, shareholders and employees of the SE are protected.

There are two ways in which the formation of an SE is significantly different from the formation of a domestic company. First, only existing companies (including an existing SE) can form an SE, not individuals, and those companies must have an existing transnational element. However, the specification of the type of company which may participate in the formation of an SE varies among the four types of formation procedure discussed below, as does the specification of the required transnational element. Second, the issue of employee involvement needs to be addressed before an SE is registered (art.12(2)). There, as well, the way in which the SE is formed affects in part the operation of the employee involvement rules.

The four methods of formation of an SE which the Regulation provides for are:

© 2024 Thomson Reuters.

- merger;
- holding SE;
- subsidiary SE;
- transformation.

In principle, an SE can be formed only by companies whose registered and head offices are located in the Community (though not necessarily in the same Member State), so that unity of head and registered offices is a requirement for the SE but not for the founding companies. However, art.2(5) of the Regulation authorises Member States to allow a company formed under their national laws and with its registered office in that state to participate in the formation of an SE, even though its head office is not located within the Community, provided that company has "a real and continuous link with a Member State's economy".

End of Document © 2024 SWEET & MAXWELL

DEN-9

European Cross-Border Estate Planning

EU States

Denmark

Denmark

Part I General Law

Forms of ownership

DEN-9 Property ownership relations between husband and wife are governed by Act No 37 of 5 January 1995 on the Legal Effects of Marriage. According to the Act a community of property is established between spouses unless otherwise agreed in a marriage contract. A wife and husband may in a marriage contract agree that separate ownership shall exist between the spouses or that a combination of community property and separate ownership shall govern the economic relations between the spouses. It is further possible to agree that the separate ownership shall only apply in the case where spouses are separated or divorced. All marriage contracts must be registered and a copy filed with the Trial Court at the town *Aarhus* in order to be enforceable. The books containing marriage contracts are available to the public. If a community of property is established between spouses then a spouse is in the case of separation or divorce entitled to one half of the other party's property against transferring one half of his/her own property. This manner of division is of importance if one of the parties is insolvent, because the other party must thus transfer one half without receiving any funds from the insolvent party. The distinction between community property and separate ownership is also of importance when determining the share which a spouse may dispose of freely by will. With regard to separate ownership a married testator may dispose of one half of his separate ownership and the entitlement of a surviving spouse is one third of the other half if the deceased leaves any issue. In the absence of such issue the surviving spouse takes half of the separate property under the Inheritance Act. In the case of community of property the surviving spouse is entitled to half of the deceased party's property who may then only dispose of half of the remaining half of his community property by will. The surviving spouse takes one third of the remaining quarter in competition with any issue or, in the absence of such, the remaining quarter in its entirety.

As of 1 January 2007, significant changes are introduced concerning annuities and under pension schemes. Under Act No 146 of 30 May 2006, section 16, any such rights belonging to the surviving spouse do not form part of the estate for division purposes. The surviving spouse is thus entitled to these pensions as if they were separate property. In case of separation or divorce, the spouses are

© 2024 Thomson Reuters.

entitled to their own pension schemes to the extent this is considered reasonable. According to the Bill submitted to the Danish parliament, the reasonable test shall only be applied in cases where the marriage has lasted for more than 15 years and only to the extent that there is a difference in the pension payment the spouses will receive of more than DKK50,000.

Danish law also recognises the co-ownership of property by more than one person. Co-ownership may exist between spouses or other individuals.

Registered partnerships are also possible in Denmark and were expanded in 2010 to include same sex couples. These partnerships have the same qualities as a marriage, and the same fiscal and legal rights and obligations are imposed on those engaged in a registered partnership as in a marriage.

End of Document

© 2024 SWEET & MAXWELL

DEN-10

European Cross-Border Estate Planning

EU States

Denmark

Denmark

Part I General Law

Lifetime gifts

DEN-10 Generally, the transfer of funds or assets as lifetime gifts does not have to meet any legal formalities. A gift may be defined as a promise to pass legal title to certain assets or funds without consideration. The offer is binding upon the donor, when it has been received by the donee. Thus the UK concept of consideration does not apply to lifetime gifts in Denmark.

However, one very important exception applies with regard to lifetime transfers between spouses. A lifetime gift from one spouse to the other is not valid inter partes or cannot be invoked against the creditors of the transferor, unless a written contract, stipulating the assets transferred, is drawn up and signed by the parties, s.30 of the Act under Legal Effects of Marriage. Further, in order to be valid, such a contract shall be registered with the Trial Court in the *Aarhus*. The books of the Trial Court are open to the public and any creditor of the spouses may thus investigate any lifetime gifts, which have been made between the spouses.

Capital gains tax on such gifts is deferred indefinitely.

Ordinary gifts such as birthday and Christmas gifts do not have to meet the above-mentioned requirement provided that the gifts can be considered to be ordinary and not in disproportion to the financial position of the spouses.

Under s.31 of the Act on the Legal Effects of Marriage a spouse may transfer half of his profits for the last calendar year to the other spouse without having to meet the requirements described above, provided a document stating the total of his profit is drawn up, and provided the spouse retained sufficient funds to cover his liabilities. This document shall not be registered with the Trial Court.

A transfer of land as a gift shall be registered with the Central Land Registry (Tinglysningsretten) in the municipality of Hobro. The registration is now made online and is usually done without any delays. The registration with the Land Registry is necessary in order to be able to invoke the

© 2024 Thomson Reuters.

transfer against the creditors of the transferor and against other parties to whom the transferor may attempt to transfer the land.

DEN-11 Even though a lifetime gift is made in accordance with the above-mentioned provisions the Act on Legal Effects of Marriage and Act No.1259 of October 12, 2007 on Bankruptcy, as amended (Konkursloven) contain provisions under which such lifetime gifts may be set aside.

According to s.33 of the Act on Legal Effects of Marriage a creditor of the donor of the lifetime gift may address his claims against the donee, provided that the creditor had a claim at the time the gift was made, and that the donee cannot prove that the spouse undoubtedly did retain sufficient funds to cover his/her liabilities. Under this provision a transfer may be set aside without initiating bankruptcy proceedings against the transferor.

Under s.64 of the Bankruptcy Act gifts made less than six months before the date of the bankruptcy order are void. Gifts made between six months and one year before the bankruptcy order are void unless the recipient can prove that the donor was not or did not become insolvent by giving the gifts. Gifts made within two years before the bankruptcy order are voidable if made to a spouse, ascendants or descendants, sisters and brothers and their spouses.

Gifts are charged to tax at a rate of 15%.

End of Document

© 2024 SWEET & MAXWELL

DEN-12

European Cross-Border Estate Planning

EU States

Denmark

Denmark

Part I General Law

Estates of deceased individuals

DEN-12 The provisions concerning the succession to estates of deceased individuals are found in the Act on Inheritance Law (Act No.515 of June 6, 2007) whereas the procedural provisions concerning the administration of such estates are set forth by Act No.383 of May 22, 1996 on the Administration of Estates as amended (Lov om Skifte af Dødsboer). Estate tax is levied at a flat rate of 50% on income from estate assets with a lower rate of 42% levied on income from shares. No inheritance tax is payable on that part of the estate that goes to the surviving spouse.

The EU inheritance regulations which came into effect on August 17, 2015 allow for property situated elsewhere in Europe to be administered within the estate of a deceased individual, in the jurisdiction of their habitual residence. The laws of the jurisdiction in which lies the asset can be overridden.

Denmark opted out of the succession regulations which formed part of Regulation 650/2012.

End of Document

© 2024 SWEET & MAXWELL

DEN-13 Various forms of wills

European Cross-Border Estate Planning

EU States

Denmark

Denmark

Part I General Law

Estates of deceased individuals

Various forms of wills

DEN-13 Two ordinary types of wills may be created according to the Act on Inheritance Law. A will may be signed by the testator and witnessed by the Notary Public. The Notary Public certifies the signature of the testator and that he is of sound mind according to the opinion of the Notary Public. A copy of the will is deposited with the Central Registry of Wills in Copenhagen and a transcript from this registry of the will has the same validity as the original. A will signed by a testator before the Notary Public may be revoked by destroying the original will, but the testator must leave some kind of evidence that he actually intended to revoke the will. If such evidence cannot be produced, it is assumed that the will is not revoked but only misplaced. The disposition, stipulated in such a will, may be set aside by the heirs by proving insanity, but the burden of proof rests upon the heirs, if the will is witnessed by the Notary Public. This type of will is the most common will in Denmark.

It is further possible to make a will, which is witnessed. Such a will must be in writing, signed by the testator, and witnessed by two independent witnesses in the presence of the testator in order to be valid. Finally, in case of an emergency a testator may leave a handwritten will or dictate orally his last will , record his last will or in any other manner leave a statement containing the last will —a so-called emergency will.

In order to make a will according to Danish law the testator must be 18 years old or be married (further the testator should be of sound mind).

Revocation of a will

DEN-14

© 2024 Thomson Reuters.

A testator may revoke his will by making a new will or, in case of an emergency, by a statement qualifying as an emergency will. It is thus necessary to meet the formal requirement for making a will in order to revoke an existing will except in a case of an emergency. If a testator has made a will in favour of his spouse and at a later stage is divorced the will is presumed revoked according to the Act, unless the will contains provisions to the contrary. Under Danish law the capacity of a person to make a will as far as movable property is concerned is governed by the domicile of the testator and as far as immovable property is concerned the place where the property is situated. The law governing the will of a deceased person and the distribution of his estate is as a main rule the domicile of the testator as far as movables are concerned. Danish law recognises that with regard to real property the law of the situs of the property shall apply. The Act on the Inheritance Law governs succession as well as intestate successions pursuant to the terms of the will of the deceased person.

Testamentory disposition

DEN-15 Denmark ratified in 1976 the Hague Convention on the Testamentory Dispositions of 1961. According to art.1 of the Convention, a testamentory disposition is valid as to form if it complies with:

(a)the internal law of the place where it was made;

(b)the nationality of the testator either when he made the will or at the date of his death;

(c)the place where the testator was domiciled, when he made the will or at his death;

(d)the place where the testator had his habitual residence, when he made the will or at his death;

(e)insofar as immovables are concerned the place where they are situated.

The convention is published in Denmark by Regulation 1976.62.

Ownership of property

DEN-16 According to s.5 of the Act on Inheritance Law, the descendants of a deceased have an absolute right to one-quarter of the estate. A testator leaving issue may thus dispose of three-quarters of his estate by will. The deceased may under a will limit the inheritance of one or more of his issue to DKK 1,000,000 or approximately £115,000 or €134,000 (exchange rate as at November 2016) even though a quarter of the estate may be a considerably higher amount. The amount of DKK 1,000,000 is indexed annually. A spouse has, according to s.10 of the Act, an absolute right to one-quarter of the estate. The deceased may thus dispose of three-quarters of the estate under a will. If the deceased does not leave any descendants, the surviving spouse will in the absence of a will inherit the entire estate.

© 2024 Thomson Reuters.

In determining the total share of the estate to which a surviving spouse has a claim, in case the deceased leaves issue or has executed a will, it is necessary to investigate whether a community of property exists between the spouses, separate property or a combination of these two arrangements.

In the case of community of property a surviving spouse is entitled to one-half of that property and only three-quarters of the remaining half may be disposed by will. If there are no children then the spouse is entitled to the part of the estate which cannot be disposed by will. This share will amount to three-quarters of the entire estate in the case of community of property and one-quarter in the case of separate property. It should be noted that for the purposes of determining the surviving spouse's entitlement the community of property and the separate property of the deceased party must be treated as two separate estates.

If the deceased leaves issue a surviving spouse has an absolute right to one-quarter. In case of community of property and the deceased has left the surviving spouse three-quarters under a will, the spouse will in total take fifteen-sixteenths of the entire estate. Three-quarters may be disposed by will and of the remaining part the surviving spouse takes one-half whereas the remainder will be divided equally among the issue. In the case of separate property, the surviving spouse will take as a minimum one-eighth of the entire estate.

Intestacy

DEN-17 The distribution on intestacy succession is as follows:

(a)if the deceased dies leaving a spouse and no issue the spouse takes the entire estate being half of a community of property or the entire estate in case of separate property;

(b)where the deceased dies leaving a spouse and issue the spouse takes one-half of the estate in case of community of property and one-half of the remaining half or a total of three-quarters and the remainder is distributed amongst the issue *per stirpes*, i.e. children taking an equal share and the children of any deceased child taking in equal shares the share which their parent would have taken had he or she survived. In case of separate property, the wife takes one-third of the estate and the remaining two-thirds is distributed amongst the issue;

(c)in the absence of a spouse or issue half of the estate passes to the deceased's father and the remaining half to the deceased's mother. In the absence of either the father or the mother the estate passes to the deceased's brothers or sisters and the children of any pre-deceased brothers and sisters. In the absence of parents, sisters and brothers the estate passes to the grandparents with one-quarter to each;

(d)if one of the grandparents is dead the estate passes to his children, but not to any of their descendants; and

(e)if there are no heirs the Kingdom of Denmark is the ultimate estate successor.

© 2024 Thomson Reuters.

Renouncement

DEN-18 The entitlement of a spouse or the descendants of the testator may be renounced. The Act on Inheritance Law does not describe any legal form but the spouse or the parent must be notified about the renouncement, which may be made against or without consideration. The renouncement will be binding on the issue of the person making the renouncement, unless their rights are retained when the renouncement is made.

Right to acquire property

DEN-19 With regard to family property a surviving spouse has the right to acquire that property according to the Inheritance Act. If a surviving spouse and other heirs wish to acquire the same property the spouse's right prevails. If the value of the property exceeds the share to which the surviving spouse is entitled the balance may be paid in cash to the estate in order to acquire the property.

In the case where the particular asset is the separate property of the deceased the right to acquire the asset by the surviving spouse is limited. The right can only be exercised to the extent that the value of the asset does not exceed the share of the surviving spouse.

If a parent makes a lifetime gift to one of his children, the value of such a gift may only be taken into consideration when distributing the estate, if so agreed between the parties, when the gift was made, or it is acknowledged by the child that the advancement shall be taken in or towards satisfaction of his share in the estate.

Administration of an estate

DEN-20 The Act on Administration of Estate stipulates several ways whereby an estate may be administered.

The authority to grant probate is vested with the Probate Court of which jurisdiction the deceased was a resident. If the deceased was not a resident of Denmark, the Minister of Justice may upon application grant probate if the deceased person was a Danish national or had special links with Denmark and no foreign authority grants probate to administer the estate or the deceased has assets in Denmark which are not administered by a foreign authority.

The Probate Court will, after having been notified of the death, summons the heirs to a meeting at the Probate Court unless the testator has appointed an executor (bobestyrer) in his will.

© 2024 Thomson Reuters.

The heirs of the deceased may request that the estate is administered privately if the following conditions are met:

(a)all heirs request private administration;

(b)the assets of the estate or any security placed by the heirs must be sufficient to cover the liability of the estate;

(c)at least one of the heirs shall be of legal age and in a position to pay his creditors when claims become due for payment;

(d)the deceased has not in his will excluded private administration of the estate.

When probate is granted the heirs shall place a notice in the Official Gazette (Statstidende) (which is now computerised and only available on the internet) requesting all creditors to submit their claims within eight weeks. Any foreign creditors shall be notified individually and the legal consequences of the notice shall be explained to the creditors. The creditor not filing his claim with the heirs within the eight-week time limit is barred from any subsequent filing of his claim.

Heirs requesting private administration of the estate become jointly and severally liable for any debts of the deceased, if the heirs have distributed the assets of the estate without settling the claims of any creditors. If the estate becomes insolvent the heirs may avoid personal and joint liability by requesting public administration of the estate and paying to the estate an amount equivalent to the value of the funds and assets received. Special provisions apply if an heir is not of legal age.

The Probate Court may further decide that a privately administered estate shall be administered publicly by an executor if:

(a)one of the heirs so demands;

(b)a creditor or a beneficiary entitled to a legacy according to the will of the deceased so requests and there is a significant likelihood that a continuation of the private administration will resolve a loss for the creditor or the beneficiary;

(c)a statement of account is not filed in due time or the administration of the estate cannot be considered to have been conducted in a responsible manner.

A statement of account must be filed within one year after the time of death. The statement of account must be filed by three months after the balance date at the latest. Irrespective of the balance date the heirs are granted a nine-month period within which to file the accounts. The accounts must be signed by all heirs.

If the heirs cannot agree upon private administration or if the testator has appointed an executor in his will, private administration is excluded. If the deceased is appointed an executor the Probate Court will nominate one of its authorised administrators to administer the estate. Prior to filing the application for grant of probate the executor must take out an insurance policy for embezzlement unless the executor is already covered by professional indemnity insurance. The expense of obtaining such insurance shall be paid by the estate. The Probate Court sets a maximum for insurance coverage.

© 2024 Thomson Reuters.

If probate is granted the Probate Court issues a certificate authorising the executor to act on behalf of the estate. The executor must place a notice in the Official Gazette requesting all creditors to submit their claims within eight weeks. After the expiry of this time limit the executor shall prepare a statement containing a list of all assets and liabilities at the time of death. The executor shall further make a statement concerning the solvency of the estate. The opening balance shall be filed with the Probate Court on special forms.

The executor will call meetings as required. Interim distributions may be made and the executor may retain the right to claim a repayment of any distributions if necessary. The final accounts must be filed within two years after the time of death. The statement of accounts must be filed two months after the balance date at the latest but the executor always grants a period of nine months from the time of death to submit the statement of accounts.

If it is not possible to conclude the administration of the estate within two years of the time of death then the executor shall, prior to the expiry of the two-year period, notify the Probate Court and explain the reason for the delay. The Probate Court may grant an extension subject to the executor filing a statement explaining the status of the administration within a reasonable period.

When the final accounts have been prepared the executor shall summon a meeting at which the accounts are approved by the heirs. Final accounts shall be filed within two weeks with the local tax authorities and the Probate Court.

In case of community of property between the spouses, a surviving spouse may take over the entire estate of the deceased on an unsettled basis (*see* para.54).

End of Document

© 2024 SWEET & MAXWELL

DEN-21 Taxation of the estate of a deceased individual

European Cross-Border Estate Planning

EU States

Denmark

Denmark

Part I General Law

Estates of deceased individuals

Taxation of the estate of a deceased individual

DEN-21 The taxation of estates is governed by Act No.908 of August 28, 2006, as amended (hereinafter referred to as TE).

Estates are not taxable entities unless the gross assets of the estate according to the final account of distribution exceeds the relevant limit. These figures are adjusted annually. If the estate becomes taxable the income is taxed at the rate of 50 per cent. Any income tax payable by the estate is deducted for purposes of calculating the net assets of the estate. Where the estate tax is levied, it is levied at 15%.

The income period of a taxable estate runs from January 1 in the year of death and until the balance date of the final account. An allowance per month is granted for the period from January 1 until the month of death.

The taxable return on the assets less deductible expenses constitutes the taxable income of the estate. If the deceased was married the assets of the surviving spouse form part of the estate for inheritance law purposes but the spouse remains liable to tax on the income generated by such assets. When the final account is made up an adjustment for the tax paid by the spouse shall be made. Such an adjustment only becomes necessary if a community of property exists between the spouses at the time of death. This may be the case at law or under marriage contract.

The estate succeeds in the taxable position of the deceased. The estate remains taxable for income derived from the date of death until the balance date in the final accounts unless an interim distribution is made. In this case the heir receiving the distribution becomes taxable from the date the interim distribution is made. A capital gain may be realised upon a distribution. (For further details *see* para.69.)

© 2024 Thomson Reuters.

When all the assets of the estate have been collected and all liabilities settled the final accounts of distribution must be prepared, including a tax return for the entire period of the estate. The heirs and any beneficiaries of a will shall approve the accounts. One copy of the accounts is submitted to the tax authorities in the municipality of which the deceased was a resident. The other copy is filed with the Probate Court. The tax authorities shall approve the valuation of the assets and the tax computation. The approval of the accounts by the tax authorities is final and cannot be questioned by the Probate Court. After having received approval, the estate duty is calculated by the Probate Court.

End of Document

© 2024 SWEET & MAXWELL

DEN-22 Intestacy

European Cross-Border Estate Planning

EU States

Denmark

Denmark

Part I General Law

Estates of deceased individuals

Intestacy

DEN-22 Where a person dies intestate, the Probate Court may place the estate under administration and appoint an administrator. It is also possible to apply for a grant of probate for the private administration of the estate. A number of conditions shall be met in order to obtain such a grant.

(a)It must be established with a certain degree of certainty that the estate is solvent. Sufficient evidence shall be submitted to the Probate Court when the application is filed. The court will then decide whether this condition is satisfied.

(b)All the heirs must agree to the private administration of the estate. For the purposes of the Act on Administration of Estates, a beneficiary under a will is considered to be an heir if he/she is entitled to the entire estate or a fraction of the estate. If the beneficiary is only entitled to a fixed sum or a specific part of the assets, then the beneficiary can have no influence on the manner in which the estate is administered.

(c)At least one of the heirs shall be of legal age and solvent.

(d)All decisions relating to the administration of the estate shall be unanimously approved by all heirs and an heir may at any time request that the estate is administered by an administrator appointed by the Probate Court.

(e)A notice (proklama) requesting all creditors to file their claims with the estate must be placed in the Official Gazette (Statstidende). Such claims must be forwarded no later than eight weeks from the date of publication of the notice.

The heirs do not become liable for the debts of the deceased by requesting private administration. However, if assets of the estate are distributed to the heirs before settling the claims of creditors having filed their claim within the eight-week filing period, the heirs become liable for the settlement of such claims. The liability of heirs under legal age is limited to the share the heir

© 2024 Thomson Reuters.

should have carried had the claim been settled prior to the distribution and cannot exceed the value of the distribution received. The liability of other heirs is joint and several.

An account of distribution must be prepared. One copy is filed with the Probate Court and one with the tax authorities. Any interim distributions, apart from cash distributions, must be reported to the tax authorities.

End of Document

© 2024 SWEET & MAXWELL

DEN-23 Property belonging to spouses

European Cross-Border Estate Planning

EU States

Denmark

Denmark

Part I General Law

International estate planning issues

Property belonging to spouses

DEN-23 In a number of cases it has been decided that the property regime between the spouses shall be governed by the matrimonial property regime of the state in which the husband was domiciled at the time of marriage. Domicile under Danish law is defined as the country or the territorial jurisdiction in which a person has his residence or stays with the intention of remaining permanently or at least without the intent that the stay shall only be of a temporary nature.

However, it is accepted that if the husband, in connection with the marriage, moves to the country of the wife, the laws of that state shall apply to the matrimonial property. It is also generally accepted that issues concerning matrimonial property continue to be governed by the laws of the country in which the husband was domiciled at the time of marriage even though the husband at a later stage changes his domicile.

The matrimonial property laws of the country in which the husband is domiciled at the time of marriage may provide that the parties can agree in writing that their matrimonial property arrangement shall be governed by the laws of another country. Such marriage contracts are accepted under Danish law.

If the husband is domiciled in Denmark at the time of marriage, Danish law will apply to immovable or movable property whether situated in Denmark or in another jurisdiction. If the deceased is not domiciled in Denmark, the property arrangements will be governed by foreign law.

End of Document

© 2024 SWEET & MAXWELL

© 2024 Thomson Reuters.

DEN-24 Forced heirship

European Cross-Border Estate Planning

EU States

Denmark

Denmark

Part I General Law

International estate planning issues

Forced heirship

DEN-24 It is generally accepted under Danish law that the relationship between the deceased and his heirs shall be governed by the laws of the country in which he was domiciled at the time of death. The laws of that country will then apply to questions of forced heirship and how the inheritance shall be divided between the heirs.

With regard to real property, the laws of lex rei sitae must be applied. It is generally found that a decision by a Danish Probate Court based on the laws of Denmark may not be enforceable in the country in which the property is located. The Danish provisions concerning forced heirship will thus only apply in case the deceased was domiciled in Denmark. (For a definition of domicile, *see* para.23.)

The EU Regulation 650/2012 has caused some changes here. Firstly, assets in Denmark which would fall within the estate of an individual whose habitual residence on death is in another jurisdiction, in which jurisdiction the estate is to be administered. Secondly, assets elsewhere may fall to be administered in Denmark, because they are within the estate of an individual whose habitual residence is in Denmark.

End of Document

© 2024 SWEET & MAXWELL

© 2024 Thomson Reuters.

DEN-25 Immovable property

European Cross-Border Estate Planning

EU States

Denmark

Denmark

Part I General Law

International estate planning issues

Immovable property

DEN-25 With regard to immovable property Danish international law usually refers to the laws lex rei sitae.

End of Document

© 2024 SWEET & MAXWELL

DEN-52 Scope of estate duty and gift taxation

European Cross-Border Estate Planning

EU States

Denmark

Denmark

Part II Taxation

Taxes

Cph Lex Advokater [1]

Estate duty and gift tax

Scope of estate duty and gift taxation

DEN-52 Under Act No.1159 of April 4, November 2007 as subsequently amended concerning Estate Duty and Gift (hereinafter referred to as "EDG") (Lov om afgift af dødsboer og gaver) an estate duty is imposed on inheritance and gift tax on certain lifetime gifts. The gift tax applies to lifetime gifts made by a donor to the following:

(a)the issue, stepchildren and their issues;

(b)the spouse of a predeceased child or stepchild;

(c)parents;

(d)individuals who have cohabited with the donor during the last two years preceding the time the gift is made, and individuals who have cohabited with the donor for a continuous period of at least two years if the reason for the termination of the joint residency is the fact that one of the parties is institutionalised, including taking up residence in a home for elderly people;

(e)foster children who have a joint residency with the donor for a continuous period of at least five years provided that the joint residency was established before the foster child reached the age of 15 years and only one of the parents of the foster child has lived together with the donor and the foster child; and

(f)step parents and grandparents (s.22).

© 2024 Thomson Reuters.

Lifetime gifts made to others shall be included in the ordinary income of the donee (State Tax Act s.4c).

The gift tax is imposed at the rate of 15 per cent. An annual allowance of DKK 61,500 (2016) is granted for each donor and donee. An allowance of DKK 21,500 is granted with regard to gifts made to the spouse of a child or a stepchild. A surcharge of 36.25 per cent is payable on gifts made to step parents and grandparents.

If the gift tax is paid by the donor then no additional tax is payable. (For additional information, *see* para.64.)

Gift tax is levied on lifetime gifts if either the donor or the donee is a resident of Denmark. Further, the duty is imposed even though the donor or the donee is not resident in Denmark if the gift is land or property located in Denmark and any assets relating thereto, and any net assets if such assets form part of a permanent establishment in Denmark (s.25). The liability introduced under this section is in accordance with the principles of the OECD Model Convention Treaty concerning inheritance and gifts.

The Act does not contain any statutory definition of residence. However, a deceased individual shall be deemed to have been a resident of Denmark if he had a permanent home available to him in Denmark or if he can be considered to have had closer or as close links to Denmark as to any foreign country because he has a habitual abode in Denmark.

Estate duty is levied if the deceased was a resident of Denmark (s.9). In this case the duty is imposed without any regard to the physical location of the assets inherited. If the deceased was not a resident of Denmark, estate duty is only imposed on land and real property located in Denmark or assets related thereto and any net assets which form part of a permanent establishment in Denmark (s.9.2).

Further, the Act on Administration of Estates contains an important provision (s.2.2) authorising the Ministry of Justice, upon application from the heirs of a deceased person, to grant probate with regard to assets located outside Denmark, if the deceased person was a Danish national and no foreign authority grants probate to administer the estate. In this case Danish estate duty becomes due on such assets as are administered in Denmark, even though the Danish national was not resident in Denmark at the time of death (s.9.3).

Estate duty is imposed at a flat rate of 15 per cent (s.1) on the net assets of the estate. An additional estate duty of 25 per cent is payable on the share of the deceased's assets which are received by persons other than:

(a)issue, stepchildren and their issue;

(b)the deceased's parents;

(c)the spouse of a predeceased child or stepchild;

© 2024 Thomson Reuters.

(d)individuals who have lived with the deceased during the last two years preceding the time of death, and individuals who have lived with the deceased for a continuous period of at least two years, if the reason for the termination of the joint residency is the fact that one of the parties is institutionalised, including taking up residence in a home for elderly persons;

(e)the deceased's separated or divorced spouse; and

(f)foster children who have a joint residence with the deceased for a continuous period of at least five years, provided that the joint residency was established before the foster children reached the age of 15 and only one of the parents of the fosterchild has lived together with the deceased and the fosterchild (s.1.2).

The additional estate duty of 25 per cent is further payable on the value of such assets as are subject to such conditions which make it impossible to determine before the duty is payable whether the 25 per cent additional duty will apply (s.1.3).

Section 3 of the Act exempts any inheritance received by the surviving spouse from the duty. Further, any life insurance received by the surviving spouse is exempt from estate duty, irrespective of whether such insurances are paid in instalments or as a lump sum (s.3(a)).

Pensions and certain payments under pension schemes received by the deceased's children or stepchildren under the age of 24 are also exempted from the duty (s.3(b)).

If only a limited interest is granted to the donee or the successor and legal title to the assets is retained or transferred to another person, then no duty is imposed on the capital value of the interest granted (s.3(e)). The person enjoying the limited interest is for income tax purposes subject to taxation of any return of the assets and the flat rate duty is imposed on the value of the assets inherited or received as a gift.

Calculation of estate duty

DEN-53 Estate duty is imposed at a flat rate of 15 per cent and an additional surcharge of 25 per cent is imposed on the share of the estate received by persons other than those listed in para.52. An allowance of DKK 264,100 (2008) is granted before calculating the tax (s.6). The application of these provisions may be illustrated by the following example:

Example

The deceased is survived by one son and one brother. According to a will, the child shall receive one half of the estate and the housekeeper of the deceased shall receive a legacy of DKK 100,000 net of any estate duty, whereas the brother shall take the remainder of the estate.

		DKK
(1)	Net assets of the estate	2,000,000
	Less allowance (s.6(a))	276,600

© 2024 Thomson Reuters.

		1,723,400
Estate duty 15 per cent		258,510
Net assets		2,000,000
Less estate duty		258,510
Total net assets		1,741,490
Child to receive one half		870,745
Brother to receive	870,745	
Less surcharge at 25 per cent	217,686	
Less legacy		100,000
Brother to receive		553,059
Total estate duty payable	258,510	
	217,686	4,476,196

The estate duty or gift tax is imposed on the net assets of the funds inherited or transferred as a gift. Any liabilities assumed by the donee/successor attached to the gift/inheritance may be deducted for the purposes of this calculation (s.12).

Further, in calculating the amount subject to estate duty, the cost of administering the estate and any income tax paid by the estate may be deducted. If a successor succeeds in the taxable position of the deceased with regard to assets subject to capital gains taxation or ordinary income, then rollover relief is granted which may be deducted for purposes of calculating the estate duty (*see* para.65).

Finally, a credit for foreign inheritance taxes paid is granted (s.15). The deduction cannot exceed an amount equivalent to the Danish estate duty on the assets in question. No credit is granted if the assets are exempt from Danish estate duty under the Act or exempt under a double taxation agreement concerning inheritance and gifts (s.15).

Undivided estates

DEN-54 The Act on Inheritance Law contains a rather unique feature enabling a surviving spouse to take over the entire estate of the deceased on an unsettled basis. Two conditions must be met before this provision can be invoked by the surviving spouse. These are as follows:

(a)the deceased and the surviving spouse must have common issue; and

(b)a community of property must exist between the spouses.

If a combination of community of property and separate property is established under a marriage contract and the separate property belongs to the deceased then this part of the estate must be taken under administration and divided according to the rules described above. Estate duty is payable on the amounts inherited by the issue. However, if the separate property provisions according to the marriage contract only is applicable in the case of divorce, then such assets

© 2024 Thomson Reuters.

are considered to be community property for inheritance law purposes and the surviving spouse may take these assets over on an unsettled basis. When the surviving spouse dies estate duty is imposed on the entire estate left to the common issue.

If the deceased and the surviving spouse did not have any common issue, it is not possible to take over the estate on an undivided basis, but no estate duty is imposed in this event.

Taxable event

DEN-55 In general, the taxable event is the time of death of the deceased. Even though the amount inherited is subject to a life interest, the assets received are subject to estate duty.

Estate duty is paid on the total amount of the estate. This means that if interest or other income is accumulated during the administration of the estate, such amounts will not only be subject to income tax payable by the estate but also to estate duty. Estate duty is thus paid on the value of the estate at the balance sheet date in the final account of distribution. If the estate is administered by an executor, then the executor shall be liable for the payment of estate duty (s.20). In the case of private administration of the estate the heirs are jointly and severally liable for the payment of estate duty (s.20.2). With regard to lifetime gifts the taxable person is the recipient of the gift, but the grantor and the recipient are jointly and severally liable for the payment of the tax.

Valuation principles

DEN-56 The main principles for the valuation of assets and liabilities of an estate and or a gift are governed by circular letter No.185 of November 17, 1982, as amended. The basic principle is that all assets and liability shall be fixed at market value. However, the circular letter contains favourable rules for the evaluation of certain assets.

Real property

DEN-57 The establishment of the market value of real property does not give rise to significant problems if the property is sold by the estate.

Real property in Denmark is subject to a public valuation each year. If the property is transferred to one of the heirs of the deceased, the tax authorities for estate duty/gift tax purposes will generally accept a value equivalent to the public valuation less 15 per cent. All valuations are done on a cash principle and it is thus necessary to establish the cash value of any liabilities taken over by an successor. In Denmark, mortgages do not necessarily

© 2024 Thomson Reuters.

become due upon the sale of real property but may be assigned to a new purchaser including a successor.

Shares and bonds

DEN-58 Bonds and shares listed on a stock exchange shall be included in the final accounts of distribution at their market value. The value of non-listed shares shall be determined applying the value on January 1, 1997 adjusted in accordance with certain factors published by the Central Assessment Board (Ligningsrådet). However, if the company has changed its policy with regard to dividend distribution and/or the principles for writing down its depreciable assets after the year end of its latest accounts, an actual evaluation to establish the market value may become necessary.

Livestock bloodstock or farm machinery

DEN-59 These assets shall be evaluated at their market value. The Danish tax authorities each year fix an average market value for livestock and bloodstock and these regulations may be taken into account for inheritance tax purposes. It should be mentioned that the market value of farm machinery is not necessarily equivalent to the basis value for taxable depreciations.

Chattels and domestic household effects

DEN-60 Such effects are usually evaluated by a professional expert for estate duty purposes, unless the estate is of an insignificant value.

Copyrights patents and other intellectual property rights

DEN-61 The main principle concerning the market value is also applicable with regard to these assets. However, in the absence thereof, the value for estate duty purposes may be fixed at two-thirds of the total return for the last three years before the death.

Goodwill

DEN-61A The goodwill of a business shall be fixed at its market value.

Interests

DEN-62

© 2024 Thomson Reuters.

With regard to a life interest in domestic effects, or interest on capital, the yearly value may be fixed at 6 per cent of the value of the assets. The yearly value is multiplied by an actuarial factor appropriate to the age and sex of the donee/successor.

Liabilities

DEN-63 The main principle states that the liabilities of an estate or related to a gift shall be fixed at their market value.

Exemptions

DEN-64 Gifts from a donor to his descendants are exempted from gift tax if the value of the gifts does not exceed DKK 61,500 (2016). The allowance is reduced to DKK 21,500 (2016) if the gift is made to the spouse of a child or stepchild. The donor may each calendar year make a gift of DKK 58,600 without paying any gift tax.

Gift tax is imposed at a flat rate of 15 per cent if the gift is made to the issue, the spouse of a predeceased child or stepchild or the parents of the donor. Gifts received by step-parents or grandparents are subject to taxation at a flat rate of 36.25 per cent. Gift tax is imposed on the net value of the gift received. A donor may make a gift of DKK 61,500 to each of the individuals mentioned above without triggering payment of the gift tax. A donor having three children may thus transfer as gifts a total amount of DKK 184,500 annually without paying any gift tax.

Gift tax is imposed on the net value of the funds transferred as a gift. Any liabilities assumed by the donee attached to the gift may be deducted for purposes of this calculation.

If a donee succeeds in the taxable position of the donor with regard to assets subject to capital gains taxation or ordinary income tax, then a roll-over relief is granted which may be deducted for purposes of calculating gift tax, (*see* para.65).

A credit for foreign gift taxes paid is granted. The deduction cannot exceed an amount equivalent to the Danish gift tax on the assets in question.

The economic value of providing lodging in one's own home or in hospital or a nursing home is exempted from tax (s.24.2).

If a limited interest is granted by the donor, and legal title to the assets is retained by the donor, then no gift tax is imposed on the capitalisation value of the gift. The return of the interest is in the hands of the donee either as gift tax or ordinary income depending upon the relationship between the donor and the donee.

© 2024 Thomson Reuters.

The donor and the donee are jointly liable for the payment of any gift tax. However, if the donor agrees to pay the gift tax, the amount of tax is not to be taken into consideration for purposes of calculating the gift tax. The effective rate of tax thus being reduced to 13.04 per cent. If the donor makes a gift of 100 and pays the tax of 15, the donee effectively receives a gift of 115, on which 15 is paid in tax or

$$\frac{15 \times 100}{115} = 13.04 \text{ per cent.}$$

Relief

DEN-65 A taxable estate succeeds in the taxable position of the deceased (TE s.20), i.e. the taxable basis upon which a gain is computed upon a subsequent disposal by the estate is the original purchase price paid by the deceased. If the asset has been depreciated for tax purposes, the basis will be the written down value at the time of sale or distribution.

Under TE s.27 any sale by the estate of a taxable item will be taxed according to the ordinary provisions applicable to such dispositions. (For further details see the section on capital gains tax at para.69.)

TE s.29 contains an exhaustive list of the assets which an estate may distribute without realising a capital gain. In this case the heir succeeds in the taxable position of the estate and consequently that of the deceased. In this context it should be noted that only physical persons and not legal persons are able to avail themselves of the provisions concerning succession. A surviving spouse may always succeed in the taxable position of the estate irrespective of the kind of assets distributed.

Under TE s.29.1 the assets of a business may be distributed with succession. However, capital gains realised upon the distribution of real property are taxable according to TE s.29.2 unless more than half of the property was used for purposes of the business conducted by the deceased or the surviving spouse. If less than half of the property was used for purposes of the business conducted by the deceased or the surviving spouse, then succession in the tax position of the deceased is possible with a proportionate share of the taxable gain equivalent to the commercial use of the property. The letting of real property is, for the purposes of s.29, not considered as a business activity and consequently succession is not possible.

Capital gains realised on the distribution of shares are subject to tax and may only in certain instances be distributed applying the succession principle. An heir may succeed in the taxable position with regard to shares provided the company does not, to a significant degree, invest in securities or lease real property. This limitation does not apply to shares in companies, as for

© 2024 Thomson Reuters.

tax purposes such holdings are considered as trading in securities or real property. In order to succeed an heir must receive at least one per cent of the share capital in the company.

The company is deemed to a significant degree to be leasing real property holding cash or securities if at least 75 per cent of its income (made up as an average of the last three accounting years) is derived from such activities or the market value of its leasing property cash and securities (made up as an average of the last three accounting years) amounts to at least 75 per cent of its total assets. If the company owns at least 25 per cent of the shares in another company then the income and assets of that company are to be taken into consideration for the purposes of determining whether the above-mentioned test is met. It is not possible to succeed in the taxable position of the deceased with regard to shares in investment companies. (For further details on investment companies, *see* para.75).

If the heir succeeds in the taxable position of the deceased then a relief is granted for purposes of calculating estate duty. The relief is initially calculated by the administrator but subject to acceptance by the tax authorities. The relevant figure for purposes of determining the amount of relief available is the taxable gain which would have been realised had the asset been disposed of by the estate.

If the gain was subject to ordinary income taxation the relief amounts to 30 per cent of the gain according to EDG s.13a; in the case of unlisted shares the relief is reduced to 22 per cent if the gain would have been taxed as share income. Share income is defined as the total of the following kinds of income:

(a)dividend distributions from Danish incorporated companies;

(b)amounts paid for redemption of shares issued via such companies;

(c)distributions from certain investment funds;

(d)capital gains on shares.

The relief is deducted from the assets of the estate when the final accounts are made up for estate duty purposes. It is also deducted from the value of the specific asset which is transferred to a successor.

Estate duty is calculated on the net amount received by the successor who can be said to receive compensation in advance for the taxes to be paid on a later disposal of the assets.

With regard to real property and shares special rules apply, which shall be dealt with in more detail under the Capital Gains section (*see* para.69).

The possibility of succeeding in the taxable position of a donor is also available with regard to lifetime gifts. According to s.33C of the Tax at Source Act a donor may during his life transfer his business or part thereof to his issue, brothers and sisters and their issue without any taxation. The donee succeeds in the taxable position of the donor and if the business at a later stage is disposed of by the donee, the taxable basis for taxation is the original acquisition price paid by

© 2024 Thomson Reuters.

the donor. The special relief of 30/22 per cent of gain described above applies under s.33D of the Tax at Source Act when calculating any gift tax to be paid.

The special relief provision, contained in s.33C of the Tax at Source Act, does not apply with regard to real property and certain bonds unless the donor for tax purposes is considered as trading in real property and bonds or more than half of the real property forms part of the donor's business. Letting of real property except for farms and forestry is not deemed a business activity within the meaning of the Act.

Relief is afforded against double taxation under the Double Taxation Agreements with Finland, Norway and Sweden, Italy, Switzerland, the United States, or under domestic provisions.

With regard to lifetime gifts, stamp duties may become payable. Any stamp duty paid by the donor or the donee in relation to real property may be set off against the fit tax levied on the gift. This relief is not available if the property is used for leasing purposes.

Dispositions by a private company

DEN-66 Transfer from a private company to a person related to the main shareholder will be considered a hidden distribution from the company to its main shareholder, and a gift from the shareholder to the donee.

Free use of property

DEN-67 The free use of property is a taxable benefit. The Tax Assessment Act—Act No.1061 of October 24, 2006 as subsequently amended, contains in s.16 detailed provisions concerning the free use of telephones, cars, yachts and real property.

If the employer pays all costs relating to the private phone, mobile phone and computers of an employee, the employee must include these in his taxable income at a rate prescribed annually.

The taxable value of a free car depends upon the value of the car. The taxable value amounts to 25 per cent of the value of the car if the purchase sum does not exceed DKK 300,000. The rate is 20 per cent on any amount in excess thereof. The taxable value is to be included in the annual income of the taxpayer. After three years the taxable basis is reduced to 75 per cent of the purchase sum. If the car is more than three years old when acquired then the taxable basis is the purchase price.

The taxable value of a yacht is made up on a weekly basis. The tax amounts to 2 per cent of the purchase price. The split between business and private use is made on the basis of estimates and is not prescribed.

© 2024 Thomson Reuters.

The taxable value of a personal dwelling, which is provided by a company controlled by the person residing in the house, is levied on the taxable value of the house. The taxable value is 5 per cent of the value assessed yearly by the tax authorities or of the acquisition price if the latter is higher than the value assessed. The taxable value is further increased. The increase is based on the public valuation of the house. Up to a public value of DKK 3,040,000 the increase is 1 per cent or DKK 30,400, and 3 per cent of any amount in excess thereof.

Individuals residing in their own property are annually taxed under the Act on the Taxation of the Value of Real Property—Act No.764 of September 11, 2002 (Ejendomsværdibeskatningsloven). This tax is also imposed on the value assessed by the tax authorities. The tax is imposed at 1 per cent up to DKK 3,040,000 (2016) (approximatey €408,000 or £351,000) and 3 per cent on any amount in excess thereof.

If a taxpayer makes a property available to his parents or grandparents (and the taxpayer himself would have been taxed under the Act on the Taxation of the Value of Real Property) the taxpayer has to include in his taxable income an amount equivalent to the tax he should have paid had he himself resided in the property. Any rent paid by the parents or grandparents shall only be included in the taxable income to the extent it is in excess of 250 per cent of the taxable amount. One further condition to apply to this provision is that the accommodation made available to the parent and grandparent is in the same house that the taxpayer occupies or close thereto. One of the parents or grandparents must also be entitled to certain social benefits or 65 years of age.

Payment of duty and tax

DEN-68 If a transaction is subject to gift tax then such a tax becomes due on the expiry of the calendar year during which the gift was made. The donor and the donee are required to file a return not later than May 1 with the tax authorities.

The donee is responsible for paying the tax. However, the donor and the donee are jointly liable for paying the tax (s.30).

If a gift is subject to income taxation the gift must be reported on the annual tax return which should be filed not later than May 11 in the year following the calendar year in which the gift was received. The gift is thus included in the total taxable income of the donee.

If an estate is administered by an executor, the executor is liable for paying the estate duty. The duty becomes due when the final accounts of distribution have been approved by the heirs.

When the estate is administered privately, the final accounts of distribution must be filed with the Probate Court not later than 15 months after the time of death. If the administration is not concluded at that time, a special form must be filed no later than one month after the expiry of the 15-month period. Based upon the final accounts or the special report the Probate Court

© 2024 Thomson Reuters.

calculates the total amount of estate duty. The amount becomes due four weeks after the Probate Court has notified the heirs as to the amount of duty to be paid and the latest payment day is a fortnight hereafter.

Estates administered by an executor are audited by the Probate Court. If the Probate Court approves of the final distribution account, then a certificate of discharge is issued.

Footnotes

1 Ny Vestergade 17, 1471 Copenhagen K, Denmark

Telephone: 45 33 12 79 13, Facsimile: 45 33 93 03 13, Email: ce@cphlex.dk or rec@cphlex.dk, Website: http://www.cphlex.dk

End of Document

© 2024 SWEET & MAXWELL

DEN-69 Capital gains tax

European Cross-Border Estate Planning

EU States

Denmark

Denmark

Part II Taxation

Taxes

Capital gains tax

DEN-69 The Act on Capital Gains Taxation was abolished as of January 1, 1996. However, the gains which were taxable under this Act are still subject to taxation under different provisions.

Under s.9.4 of the Act on Taxable Depreciations—Act No.1191 of October 11, 2007 (Afskrivningsloven), an individual taxpayer must include in his taxable income 90 per cent of gains and losses realised by the disposal of plant and machinery, fixtures and fittings which have been used exclusively for commercial purposes and which have been depreciated according to the Act. This provision only applies in case of the sale or transfer of a business. The taxable amount is the amount at which the assets are sold less the taxable basis at the beginning of the year. The rate of depreciation is 25 per cent.

Certain reduced rates, however apply. Under s.5B, vessels used for commercial transport of passengers and goods having a tonnage of 20 tonnes or above are depreciated separately if:

- owned by a Danish company;
- owned by company incorporated in the European Union; or
- hired out on bareboat basis or acquired for such purpose.

Such vessels may be depreciated at the rate of 12 per cent.

Under s.5C, a reduced rate of 15 per cent applies to the following assets:

(a)vessels used for commercial transport of passengers and goods having a tonnage of 20 tonnes or above and not subject to s.5B;

(b)aircraft and rolling stock;

© 2024 Thomson Reuters.

(c)oilrigs, production platforms and other installations for preliminary surveys, exploration, extraction and refining of oil and gas;

(d)fixed facilities for the production of heat and electricity having the capacity of more than 1MW and installations for pumping water for the general supply of water; and

(e)water treatment plants.

The following infrastructure facilities are also subject to the reduced rate of 15 per cent:

(a)facilities for the transportation storage and distribution of electricity, water, heat, oil, gas and wastewater;

(b)facilities for the distribution of radio, television and communication;

(c)fixed railway equipment.

The reduced rate does not apply to any computer hardware or software incorporated in the items mentioned above.

During a transitional period the following rates apply:

•2008 and 2009: 23 per cent;

•2010 and 2011: 19 per cent;

•2012 and 2013: 18 per cent;

•2014 and 2015: 17 per cent.

The taxable basis is made up of the additions of depreciable property acquired during the tax years less items sold less the depreciations claimed. If the balance becomes negative then this must be included in the taxable income in the year it became negative unless new depreciable assets are acquired in the following year or the negative balance is included in the taxable income in that year. In this case, no 10 per cent reduction is available.

Rates of capital gain

DEN-70 The capital gain on the items described above is to be included in the taxpayer's ordinary taxable income. The rate consequently depends upon the total of the taxpayer's income, but may go up to 63 per cent.

As far as shares and land and real property are concerned, reduced rates may apply according to the Act on Taxation on Gains and Shares and the Act on Taxation on Gains on Real Property. These provisions will be explained below.

Capital gains tax for corporations is charged at 27% on the first DK 62,000 and at 42% after that.

© 2024 Thomson Reuters.

Losses

DEN-71 If a depreciable asset is destroyed and not insured then no capital loss deduction is available. The depreciations can still be claimed. Any insurance payments received shall be treated according to s.48 as a sales sum reducing the depreciable balance. If the item is repaired then any insurance shall be deducted from the actual expenses. Repair expenses exceeding the insurance received may be deducted for income tax purposes. If the insurance sum exceeds the actual expenses, then the depreciable balance is to be reduced accordingly.

Taxation of shares

DEN-74 Gains on shares are subject to taxation under Act No.171 of March 6, 2009, as amended (the Act—Aktieavancebeskatningsloven).

DEN-75 Gains realised by an individual shareholder on listed and non-listed shares are taxable as share income irrespectively of the period of ownership (s.12). Share income is defined as the net income of dividends and capital gains and losses on shares. Gains not exceeding DKK 50,600 (2016) are taxed at the rate of 27 per cent. Gains exceeding DKK 50,600 are taxed at the rate of 42 per cent. Losses on non-listed shares may be set off against the taxable income of the individual (s.13). The taxable value of losses is deducted from other income tax payable by the taxpayer. Losses on listed shares may deducted from gains on other listed shares and dividends received from listed companies (s.14) provided any capital gain on such shares is exempted from taxation under transitional rules (such distributions are received on shares). Excess losses may be carried forward indefinitely.

The tax is levied on the average acquisition price (s.26).

The gain is taxed as capital income if the shares are issued by an investment company. Capital income is defined as the net income of interest and interest expenses, dividends which are not taxed as share income capital gains on shares in investment companies and other kind of passive income: Capital income may be taxed at a rate up to 59 per cent.

An investment company is defined as follows:

(a)A company encompassed by Council Directive 85/61 I/EEC of December 20, 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS).

(b)A company investing in securities, where, upon demand from the bearer, shares are redeemed by funds from the company at a rate which is not significantly lower than the

© 2024 Thomson Reuters.

intrinsic value of the company. A purchase of shares by a third party having undertaken vis-à-vis the company an obligation to purchase shares at a rate which is not significantly less than the intrinsic value of the company, is considered a redemption by the company. Goodwill, know-how and similar intellectual property rights are disregarded for purposes of calculating the intrinsic value. The requirement concerning redemption on demand will be deemed to have been met even if the demand is met over a certain time limit.

(c)A company is not deemed an investment company if the assets of the company, predominantly through subsidiaries, are investment in assets other than securities. A subsidiary is defined as a company in which the parent during the year directly or indirectly controls more than 50 per cent of the shares or the votes. A holding company is, thus, not considered an investment company for purposes of s.19 of the Act on Taxation of Capital Gains on Shares and it is, thus, not possible to establish a non-taxable holding company even if the holding company is required to redeem its shares upon demand.

(d)A company is not deemed an investment company if the same group of shareholders, directly or indirectly, owns at least 25 per cent of, or indirectly controls more than 50 per cent of the votes in, each company. Holdings by "relatives" must be taken into consideration for purposes of this test. The term "relatives" means a taxpayer's spouse, parents, grandparents, children and grandchildren, the spouse of such individuals, and the estate of such individuals.

(e)The term investment company does not encompass a distributing investment association as defined in s.16 C of the Tax Assessment Act or shares issued by an association subject to the Act on Taxation of Investment Associations Gains and losses on shares in investment companies are taxed according to an inventory principle meaning that the taxable gains and losses are calculated on an annual basis without been realised. If gains and losses are realised during the tax year, the actual gain or loss is taken into consideration for calculating the taxable income.

DEN-76 If, on May 18, 1993, a taxpayer was considered to be a main share holder, a specific relief provision may be invoked. Under this special provision a taxpayer is entitled to a relief of the taxable gain equivalent to 1 per cent per year of ownership prior to the income year of 1998. The relief cannot exceed 25 per cent, which resolves in a reduction of a marginal tax on share income from 40 to 30 per cent.

The relief provision does not apply to offshore shares or shares acquired for funds borrowed.

For purposes of calculating losses and gains on shares which have been owned for more than three years, the taxpayer may either elect the cost price of the market value on May 18, 1993 as the acquisition price for purposes of calculating any taxable gain. This provision does not apply to offshore shares.

Death

DEN-77

© 2024 Thomson Reuters.

Any sale by a taxable estate of a deceased individual is taxed according to the provisions described above. If the shares are allocated to the heirs of the deceased, two options are provided. One option is for the estate to treat the distribution as a taxable sale in which case any gain is treated as a sale during the lifetime of the deceased. Alternatively, however, the acquiring party may succeed in the taxable position of the deceased. In this case for estate duty purposes a special relief is granted (*see* para.65). This option is not available if the company having issued the shares is deemed to a significant degree to be leasing real property holding cash or securities. This is the case if at least 75 per cent of its income made up as an average of the last three accounting years is derived from such activities or the market values if its leasing property cash and securities made up as an average of the last three accounting years amounts to at least 75 per cent of its total assets. If the company owns at least 25 per cent of the shares in another company, then the activities of that company are to be taken into consideration for purposes of determining whether the above-mentioned test is met.

Further, the succeeding party must acquire at least one per cent of the shares of the company in question. It is not possible to succeed in the taxable position of the deceased with regard to shares issued by an investment company.

Only individuals may succeed in the taxable position of the deceased. If the value of the asset distributed to a particular individual exceeds his share of the estate then succession is only possible if the distribution is made to the surviving spouse, child, grandchild, brother or sister, or brother's or sister's child or grandchild. A corporate entity cannot succeed in the taxable position of the deceased.

Lifetime transfers

Roll-over relief

DEN-78 Section 34 of the Act on Taxation of Capital Gains on Shares enables a majority shareholder to transfer his shares without triggering any taxes provided the successor succeeds in the taxable position of the transferor.

The following conditions must be met:

(a)The transfer must be made to the issue of the transferor, brothers or sister and their issue.

(b)The transferor must be a main shareholder. A taxpayer is considered to be a main shareholder if he owns 25 per cent or more of the share capital or controls 50 per cent or more of the voting power of the company. For purposes of deciding whether the shareholder qualifies as a main shareholder, shares owned by the taxpayer's spouse, parents, grandparents, children and grandchildren, and their parents shall be taken into

© 2024 Thomson Reuters.

consideration. Convertible bonds are not to be taken into consideration for purposes of determining whether the above conditions are met.

(c)The shares acquired must control at least 1 per cent of the votes.

(d)The shares must be issued by a company, which to a significant degree is leasing real property holding cash or securities (*see* para.65).

(e)The shares must not be in an investment company as defined under s.19 of the Act.

The transferee succeeds in the taxable position of the transferor and his tax position is not subsequently changed irrespective of any partial sale of shares.

Real property and land

DEN-79 Gains realised on property and land form part of the capital income of a taxpayer. However, gains realised by an individual on his primary residence or summer house are exempt from taxation irrespective of the period of ownership. Under Act No.891 of August 17, 2006, on the Taxation of Gains on Real Property and Land (Ejendomsavancebeskatningsloven), the entire gain must be included in capital income if realised within the first three years of ownership. Hereinafter the profit realised is reduced by 5 per cent per annum, however, there is a maximum reduction of 30 per cent. After eight years' ownership 70 per cent of the gain must be included in a taxpayer's capital income. This reduction is, however, being phased out over a period of 10 years by 3 per cent per annum. The reduction will not be granted for property acquired after January 1, 1999.

These provisions do not apply to a trader in land and property. Any gains realised by a trader are subject to ordinary income taxation without any regard to the period of ownership. With regard to gains realised on a principal private residence *see para.72*.

Computation of taxable gain

DEN-80 If the property was acquired before May 19, 1993, the taxpayer may choose between several figures as the acquisition price for purposes of calculating the taxable gain. The taxpayer may elect to use:

(a)the actual purchase price;

(b)the public evaluation price as at January 1, 1993 plus an increase of that price of 10 per cent; or

(c)an adjustment of the acquisition price according to s.4B. The adjustment according to s.4A is calculated as follows:

Year of acquisition	**Adjustment percentage**
1975 or earlier	182.4

© 2024 Thomson Reuters.

1976	158.6
1977	140.0
1978	120.2
1979	108.0
1980	93.5
1981	79.9
1982	62.6
1983	49.3
1984	40.2
1985	32.5
1986	27.7
1987	23.6
1988	18.1
1989	12.5
1990	7.7
1991	5.6
1992	3.5
1993	0

With regard to property located in foreign countries, either the market value as at May 19, 1993 or the actual acquisition price is considered as the acquisition price for tax purposes.

The acquisition price is increased by DKK 10,000 per year of ownership. However, if the property is a farm or forestry, the acquisition price may be increased according to an index.

Roll-over relief

DEN-80A The taxation of any gain realised on the sale of real property or land may be postponed under a special provision, providing for roll-over relief. This relief may be invoked if the taxpayer in the year of sale, the previous year or the year following the sale acquires another property which is used for business purposes. In this case the acquisition price for the new property is reduced by the taxable profit realised on the disposal of the old property. Under those circumstances the profit is calculated without any regard to the actual period of ownership. The profit is thus not reduced by the 5 per cent allowance described above. However, with regard to farms and forestry property the provisions concerning indexation of the acquisition price still applies.

Losses realised on real property and land may be set off against other gains on real property and land, but not against any other kind of income. Excess losses may be carried forward for five years.

Death

DEN-81 A sale to a third party by a taxable estate is subject to taxation under the above-mentioned provisions.

© 2024 Thomson Reuters.

The allotment of land and property by a taxable estate to a surviving spouse or the heirs is a taxable event, unless the property in question was the main residence of the deceased or used in connection with his or the surviving spouse's business. The letting of land and property is not considered to be a qualifying business activity.

The allotment of a main residence does not give rise to any taxation, whereas gains on all other kinds of property are taxed in the hands of the estate. It is, however, possible to succeed to the taxable position of the deceased with regard to land and property used in connection with the deceased's or a surviving spouse's business.

Intellectual property: goodwill and other types of intellectual properties

DEN-82 The pertinent provisions concerning the taxation of intellectual property is found in Act No.1191 of October 11, 2007 as amended (Afskrivningsloven).

According to s.40.6 of the above-mentioned Act, the following gains are taxable:

(a)gains and losses realised on the disposition of goodwill;

(b)gains and losses realised on the sale of rights limited in time such as know-how, patents, copyrights, trademarks;

(c)gains and losses concerning the transfer of a dividend contract or a lease, compensation for the relinquishment of an agency ship and a lump sum or the acceptance of a non-compensation clause.

The gain is made up as the difference between sales price and the original purchase price reduced by claimed depreciations.

Writing down allowances

DEN-82A The acquisition price for goodwill know-how, patents copyrights and trademarks is written down over a period of seven years by one-seventh per annum. It is possible to deduct in full expenses incurred in connection with the purchase of patents and know-how related to the taxpayer's business in the year of acquisition. The compensation for the relinquishment of an agency or accepting a non-competition clause may, however, be written down immediately if the amount is less than 5 per cent of the total wage-bill in the business of the payer for the year in question.

If the transfer is made between an individual and a company controlled by that individual then the taxable basis on which depreciations may be claimed is equivalent to the taxable gain realised by the transferor and his taxable basis.

© 2024 Thomson Reuters.

Payment of the tax

DEN-82B Any capital gains realised during a tax year must be accounted for in the tax return for the particular tax year. Income taxes are, as far as wage earners are concerned, withheld from monthly or weekly salary payments. The amount withheld is based on an estimate of the taxpayer's income and is considered as a payment on account of the taxes due for the particular income year. Self-employed individuals also pay income taxes on account.

If the final amount of tax due for a particular income year exceeds the amount of taxes paid on account, the balance must be paid in three instalments payable in the months September, October, and November in the year following the tax year in question. Underpaid tax must be paid at the latest by July 1 in the following year. Taxes underpaid are subject to an interest charge of approximately 5.4 per cent per annum. The rate is adjusted annually. The interest is calculated on a daily basis, but is not deductible for tax purposes.

End of Document

© 2024 SWEET & MAXWELL

DEN-83 Documents subject to stamp duty

Stamp duty

Documents subject to stamp duty

DEN-83 Under Act No.95 of February 7, 2000, the number of documents subject to stamp duty has been significantly reduced. Only indemnity insurances taken out in Denmark, indemnity insurance covering risks in Denmark irrespectively of where taken out, or documents concerning insurances if the parties are residents of Denmark and the document is signed here unless no part of the premium is to be paid in Denmark. If the risk is placed in another Member State of the European Economic Area then no stamp duty is payable in Denmark.

The former provisions concerning stamp duty relating to land and property have been replaced by a registration duty. Stamp duty is no longer imposed on leases, debt instruments or building contracts.

Stamp Duty is levied at a rate of 0.6% rising to 1.5% and a fee of DKK 1,660 is also payable.

Transfer of land

DEN-84 Property or land is subject to a stamp duty of 0.6 per cent of the agreed purchase price under Act No.462 of May 14, 2007 (tinglysningsafgiftslov). However, if the purchase price is lower than the public valuation of the property then the stamp duty is levied on the amount at which

© 2024 Thomson Reuters.

the property is valued by the public valuation authorities. Any charge secured by a mortgage on land or property is subject to 1.5 per cent duty.

A lifetime transfer of land is subject to the duty as well as the allotment from the estate of a deceased individual to the heirs of the deceased is not subject to stamp duty.

All documents to be registered electronically with the Land Registry (Tinglysningsretten) are subject to a duty of DKK 1,400. This duty applies to lifetime transfer as well as allotments from an estate.

Payment of registration duty

DEN-85 Stamp duty becomes due when the document is filed for registration.

Companies capital duties

DEN-86 The Capital Duty Act has been abolished.

End of Document

© 2024 SWEET & MAXWELL

DEN-87 Residential property tax

European Cross-Border Estate Planning

EU States

Denmark

Denmark

Part II Taxation

Taxes

Residential property tax

DEN-87 All property in Denmark is valued for various purposes. All residential property is subject to a local property tax which varies from municipality to municipality but is levied on the value set by the public valuation.

End of Document

© 2024 SWEET & MAXWELL

DEN-88 Net wealth tax

European Cross-Border Estate Planning

EU States

Denmark

Denmark

Part II Taxation

Taxes

Net wealth tax

DEN-88 Net wealth tax was abolished with effect from January 1, 1997.

End of Document

© 2024 SWEET & MAXWELL

DEN-89 Domicile

European Cross-Border Estate Planning

EU States

Denmark

Denmark

Part II Taxation

Principles of estate planning

Domicile

DEN-89 The taxable position of a donee/successor under the Act on Estate Duty and Gift Tax depends on whether the deceased/the donor is a resident of Denmark or another country. Lifetime transfers are always subject to tax under the Act without any regard to the residence of the donor, whereas the estate is not subject to the duty if the disponor was a resident of another country and a grant of probate was actually granted by the country of residence.

However, if the donor is a resident of Denmark one may take the following steps into consideration for estate planning purposes.

Life gifts effected prior to death of the donor

DEN-90 In calculating estate duty, lifetime gifts, which were effected prior to the death of the donor are not taken into consideration. Each spouse may each calendar year transfer DKK 61,500 (2016) to each child without paying any gift tax.

Retention of a life interest in assets transferred

DEN-91 Where the donor has retained a life interest in the assets transferred, the taxable event is not the lifetime transfer but the death of the disponor. Under these circumstances estate duty is imposed on the value of the assets transferred at the time of the death of the disponor. However,

© 2024 Thomson Reuters.

a transfer of property subject to the donor's free use of the property for life will be considered a lifetime transfer, if the donee undertakes the economical risk related to the property including the obligation to pay interest on the mortgages and property taxes. If part of the purchase price is a gift then gift tax must be paid but estate duty on any future increase of the value of the property is avoided. If the donor does not undertake such economical risk then estate duty is imposed on the value of the property at the time of death of the disponor.

Life insurance

DEN-92 Amounts received under a life insurance policy are exempt from estate duty, provided the beneficiary has paid the premiums. This may be a means to ensure that sufficient funds will be available for the payment of estate duty.

Assets likely to increase in value

DEN-93 Assets which are expected to appreciate in value significantly should be transferred to the children or the grandchildren thus eliminating taxation of future capital appreciation.

Incorporation of a business in company with two different classes of shares

DEN-94 If a donor wishes to retain control of his business, incorporation of the business in a company with two different classes of shares may provide an attractive means of planning. Under Danish corporate law an Aps may-issue shares without any voting rights. As far as an A/S is concerned one class of shares may have ten times the votes of another class. A donor may thus transfer up to 90 per cent of the shares in a company to his issue while still retaining control of the company. For gift tax purposes the tax authorities do not recognise that different classes may be of different commercial value. If such a transfer takes place at an early stage of the development of the business substantial savings may be achieved.

Transfer of shares

DEN-95 As explained above under Capital Gains Tax (see para.69 *above*) transfers of shares may take place without any capital gains taxation provided that the requirements stipulated in the Act on Taxation of Gain on Shares are met. Under these circumstances the donee will succeed in the taxable position of the donor. If the shares are transferred as a gift then gift tax is imposed on the transaction.

© 2024 Thomson Reuters.

Generation skipping

DEN-96 Generation skipping used to be an effective means of tax saving. Estate duty is now levied on the estate of the deceased irrespective of the number of heirs and their relationship to the deceased. It is still possible to renounce the legal right to inherit the deceased. The renouncement shall be made at the latest by the first meeting called by the executor or, if the estate is administered privately, before an application is submitted to the probate court for the grant of probate to administer the estate privately. Under these circumstances the individual making the renouncement shall not be considered to have inherited the deceased for estate duty purposes, and the individual benefiting from the renouncement will be considered the heir. However, no tax saving is obtained.

End of Document

© 2024 SWEET & MAXWELL

DEN-97

European Cross-Border Estate Planning

EU States

Denmark

Denmark

Part II Taxation

Anti-tax avoidance

DEN-97 Danish tax laws did not generally contain anti-avoidance provisions, and the anti-avoidance provision in s.5(c) of the former Act on Inheritance and Gift Tax was abolished.

However, international and European Union pressure led to the introduction of some specific anti-avoidance provisions. In 2015 a general anti-abuse provision was introduced. This was to cover the requirements of the EU parent/subsidiary Directive 2011/96. It is also for the purposes of implementing the OECD BEPS initiative.

End of Document

© 2024 SWEET & MAXWELL

DEN-98

European Cross-Border Estate Planning

EU States

Denmark

Denmark

Part II Taxation

Double taxation relief

DEN-98 Relief from double taxation is afforded either unilaterally or on a bilateral basis. Denmark has entered into a large number of conventions.

End of Document

© 2024 SWEET & MAXWELL

DEN-99 Bilateral agreements

European Cross-Border Estate Planning

EU States

Denmark

Denmark

Part II Taxation

Double taxation relief

Bilateral agreements

DEN-99 Denmark has bilateral agreements with Finland, Norway, Iceland and Sweden. These conventions apply to Danish inheritance taxes and certain municipality taxes and are fairly similar.

According to art.4, inheritance tax may only be imposed by the contracting state of which the deceased was a resident at the time of death. An exception is made with regard to real property, which may be taxed by the contracting state in which the property is located.

Relief from double taxation is granted according to the exception method with the right to progression (old method).

Denmark's bilateral convention with Italy is based on the OECD Model Convention. As a main rule, inheritance tax may only be imposed by the country in which the deceased was a resident. With regard to land and property and business assets belonging to a permanent establishment the other state may impose inheritance tax (see arts 3 and 4). In the event of double taxation, relief is granted according to the exemption method (old method).

Denmark also has a bilateral convention with Switzerland which applies to inheritance from individuals who are residents of one or other of the contracting states at the time of death (see art.1.1). According to art.6 the right to impose tax is retained by the state of which the deceased was a resident at the time of death. However, under arts 5.2 and 5.3 real property and assets forming part of the business property of a permanent establishment may be taxed in the contracting state in which the permanent establishment is situated. Under art.8 relief for double taxation is granted according to the exception method (old method).

© 2024 Thomson Reuters.

The convention with the United States applies to Danish inheritance and gift taxes and in the United States the federal estate tax, the federal gift tax and the federal tax on generation skipping transfers. According to art.8 transfer of property other than the property especially stated in the convention shall be taxable only in the contracting state in which the deceased or the transferor was domiciled at the date of his death or the making of the gift or the deemed transfer. Under art.5 real property, under art.6 business property of a permanent establishment and assets pertaining to a fixed base used for the performance of independent personal service and under art.7 ships and contracts, may all be taxed in the contracting state in which the permanent establishment or real property is situated. According to art.10 relief for double taxation is granted according to the credit method.

End of Document

© 2024 SWEET & MAXWELL

DEN-100

European Cross-Border Estate Planning

EU States

Denmark

Denmark

Part II Taxation

Enforcement and exchange of information

DEN-100 The US convention provides for the exchange of information and automatic exchange of information is stipulated in a multilateral convention between Denmark, the Faroe Islands, Greenland, Finland, Iceland, Norway and Sweden. This convention came into force on 5 May 1991.

End of Document

© 2024 SWEET & MAXWELL