

# Preferential Tax Treatment of Danish Equity Compensation Awards

---

September 23, 2016

---

---

The Danish Parliament recently adopted new Section 7P of the Danish Tax Assessment Act to provide, effective July 1, 2016, preferential tax treatment for certain share-based compensation granted to Danish recipients. Similar in concept to "incentive stock options" in the United States, under the new legislation, share-based compensation meeting certain requirements is not subject to taxation until the shares acquired in connection with the award are subsequently sold by the recipient. At the time the shares are sold, any gain is taxable as capital gains rather than as employment income. In order for Section 7P to apply, the following conditions must be met:

- Both the employer and employee must agree for Section 7P to apply in the award agreement.
- The award agreement must specify the nature of the award (e.g., shares, conditional shares, options, terms for receiving the shares, etc.).
- The value (using Black Scholes for options) must not exceed 10 percent of the employee's annual salary.
- The award must be provided by the employing company or a related group company.
- The award must provide a right to shares, stock options, or warrants and the shares must be ordinary shares.
- Awards must be non-transferable.
- Awards must entitle the employee to acquire actual shares.

After a Section 7P agreement has been entered into, the employer will be required to report the grant and subsequent vesting of awards to the Danish tax authorities. As a tradeoff, employers who enter into Section 7P agreements will lose the corporate tax deduction in relation to the cost of Section 7P awards.