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## **Greenland Landsting Act no. 11 of 15 November 2007 to amend Greenland Landsting Act on Income Tax**

### **(Termination of joint tax assessment for cohabiting married couples, introduction of transfer pricing rules, thin capitalisation and CFC taxation)**

#### **Section 1**

The following amendments shall be made to Greenland Landsting Act no. 12 of 2 November 2006 on Income Tax, as amended by Greenland Landsting Act no. 2 of 26 April 2007:

**1.** Section 4 shall be worded as follows:

**"Section 4.**-(1) Each spouse is taxed on their income.

(2) The taxable income of cohabiting spouses who are both liable to tax in Greenland shall be calculated according to the provisions of this Act.

(3) Upon separation or divorce of cohabiting spouses, cohabitation is deemed to have ended for tax purposes at the time of separation or divorce.

(4) Where cohabitation ends without separation or divorce, cohabitation is deemed to have ceased for tax purposes at the end of the income year in which cohabitation terminated.

(5) Where a married couple resumes cohabitation after separation or cohabitation has terminated, cohabitation is deemed to have been resumed for tax purposes at the time cohabitation resumed.

(6) Where liability to tax as a resident terminates for one of the spouses, cohabitation is deemed to have ended for tax purposes at the time the tax liability terminated."

**2.** The following shall be inserted after section 4:

**"Section 4 a.**-(1) Income relating to a business is taxed at the level of the spouse who operates the business. If both spouses participate in the operation of the business, the income will be recognised at the level of the spouse who mainly operates the business.

(2) A wage agreement between spouses who both participate in the operation of a business owned by one or both may be assigned tax effect if the obligations pursuant to this Landsting Act and Greenland Landsting Act on labour market charges (landstingslov om arbejdsmarkedsafgift) are observed. The wage agreement will apply for tax purposes from the date on which the agreement is concluded. The salary of the spouse who is not the principal operator of the business shall not be

disproportionate to his/her work in the business. The spouse who is obligated under subsection (1) to recognise income from the business is deemed employer with the obligations and duties which follow from this Landsting Act. The other spouse is deemed employee.

(3) Where both spouses participate in running the business of one or both, and the spouses are equally liable for the obligations of the business, the spouses may upon joint request divide the results of the business between them to the extent this is commercially justifiable in relation to the operation of the business. The participation and liability must remain unchanged for the entire tax year. In the calculation of the taxable income the assets and liabilities of the business are divided between the spouses according to the same proportion as the results of the business are distributed between the spouses.

(4) Spouses can reverse their decision to apply the rule in subsection (3) if a joint request is submitted to the tax administration before the end of the income year.

**Section 4 b.**-(1) Investment income is included in the income of the spouse who under marriage law controls the property or in the case of deductible expenses is liable for the payment. Where it is not possible to decide which spouse an amount concerns, each of the spouses will include half of the amount.

**Section 4 c.**-(1) Tax depreciations on assets used in a business operated by a married person shall be taken by that person, regardless of whether the assets belong to the person in question or to his/her cohabiting spouse.

(2) Where a spouse surrenders or transfers assets to his/her cohabiting spouse for use in his/her business, the profit or loss from such shall not be included in the transferring spouse's taxable income. Upon surrender or transfer, the assets will be treated for tax depreciation purposes as if they were acquired by the latter spouse on the dates and for the amounts at which they were originally acquired, and any depreciation previously taken shall be deemed taken by the person in question.

(3) The above rules shall not apply to the transfer of goods belonging to a business run by the transferring spouse.

(4) The rules in subsection (2) shall not apply to the surrender or transfer of assets to a spouse if the latter changes the use of the assets from commercial use only to private use or vice versa. Such change is treated as a sale or purchase of the assets in question. This also applies in the case of changeover from or partial commercial use. The fair value at the time when the usage is changed is the sales price or purchase price.

**Section 4 d.**-(1) For each spouse income tax is calculated on the basis of their taxable income.

(2) Where the taxable income of one spouse shows a loss, and the spouses are living together at the income year-end, the loss is deductible to the extent possible in the taxable income of the other spouse. The loss must be deducted before carry forward of the other spouse's unused losses from previous years pursuant to section 30(1). In this connection income taxed abroad and not in

Greenland is disregarded in the taxable income of the spouses. However, the provision in the second sentence shall not apply where the income tax is reduced by credit relief in accordance with section 69.

**Section 4 e.**-(1) To the extent a married person who is living together with his/her spouse at the income year-end cannot make use of his or her personal allowance, the unused amount of the allowance is used to reduce the income of the other spouse.

(2) To the extent a married person who is living together with his/her spouse at the income year-end cannot make use of his or her tax exempt amount for B-income, cf. section 20, the unused amount may be deducted in the B-income of his/her spouse. However, the transferred tax exempt amounts cannot reduce the spouse's B-income to a negative amount."

**3.** Section 10(1) shall be worded as follows:

"Where a surviving spouse takes over the community property in connection with the death in order to retain undivided possession of the property, the surviving spouse shall assume the tax position of the deceased."

**4.** Section 11(1) shall be worded as follows:

"(1) Where the estate is divided or taken over by the surviving spouse in order to retain undivided possession of the property in connection with the death, the tax of the deceased in the income year in which the death occurred is finally settled by the payment of the preliminary income tax amount due before death or which should have been withheld on income earned before that time."

**5.** In section 11(2) "DKK 4,000" shall be changed to: "DKK 10,000" and "DKK 500" shall be changed to: "DKK 2,000".

**6.** Section 20(1), second sentence shall be worded as follows:

"For the income year in which the marriage is terminated by the death of a spouse, the surviving spouse will be granted a tax-free amount which is twice the amount determined under subsection (2)."

**7.** Section 21(1), second sentence shall be worded as follows:

"For the income year in which the marriage is terminated by the death of a spouse, the surviving spouse will be granted a standard allowance which is twice the amount determined under subsection (2)."

**8.** In section 34(1), 3) "spouse who is jointly taxed" shall be changed to: "cohabiting spouse".

**9.** Section 36(1) shall be repealed and in subsection (3) which becomes subsection (2), "subsection (2)" shall be changed to "subsection (1)".

Subsections (2)-(5) will subsequently become subsections (1)-(4).

**10.** The following shall be inserted after section 36:

**"Section 36 a.**-(1) For the purpose of the calculation of the taxable income, a taxpayer who

- 1) is controlled by natural or legal persons including companies, associations, etc. which do not constitute an independent taxpayer under Greenland tax rules but whose affairs are governed by corporate law, a corporate agreement or association bylaws, or
- 2) controls legal persons, or
- 3) is group-related to a legal person, or
- 4) has a permanent establishment abroad, or
- 5) is a foreign natural or legal person with a permanent establishment in Greenland, etc., cf. section 2(1) paras. 10-12

must apply prices and terms for business or financial transactions with the above-mentioned natural or legal persons and permanent establishments, etc. (controlled transactions) which correspond to what would be agreed between independent parties.

(2) Control in this connection means ownership or control of voting rights where more than 50 percent of the share capital is directly or indirectly owned or more than 50 percent of the votes is controlled. The following is taken into account for the assessment of whether the taxpayer is deemed to exercise control over a legal person or whether a legal or natural person exercises control over the taxpayer:

- 1) shares or voting rights held by group-related companies, cf. subsection (3),
- 2) shares and voting rights held by physical shareholders and their immediate family,
- 3) shares or voting rights held by a foundation or trust established by the parent company itself or by the mentioned group companies, immediate family, etc., or by foundations or trusts established by these,
- 4) equity interests and voting rights held by other shareholders with whom the shareholder has an agreement on the exercise of control, and
- 5) equity interests and voting rights held by a person subject to section 1 jointly with immediate family or foundations or trusts established by these.

(3) Immediate family is defined as spouse, parents or grandparents of the taxpayer as well as the taxpayer's children and grandchildren and their spouses and estates. Stepchildren and adoption relationships are equated with family blood relationships.

(4) Group-related companies are:

- 1) companies and associations in which the same circle of shareholders directly or indirectly own more than 50 percent of the votes in each company at establishment of the debt or later,
- 2) companies and associations in which the same circle of shareholders directly or indirectly control more than 50 percent of the votes in each company at establishment of the debt or later,
- 3) a foundation and companies in which the foundation directly or indirectly owns more than 50 percent of the share capital in each company at establishment of the debt or later,
- 4) a foundation and companies in which the foundation directly or indirectly controls more than 50 percent of the votes in each company at establishment of the debt or later.

(5) Shareholders referred to in subsection (2) para. 4 are considered as a single shareholder for the assessment of the circle of shareholders. In calculating the voting shares, votes which are merely gained by transfer of voting rights in connection with security gained on the shares are disregarded.

(6) A legal or natural person is considered a foreigner if the person is resident in a foreign state, Denmark or the Faroe Islands, including under the provisions of a double tax treaty.

(7) In the case of changes in the assessment of the taxable income under subsection (1), the taxpayer may avoid further subsequent changes (secondary adjustments) by undertaking to make payment in accordance with the prices and terms described in subsection (1). The first sentence only applies to controlled transactions which fall within the scope of section 36 b if the foreign tax authority in question levies tax in accordance with the prices and terms on which the taxpayer's income was assessed under subsection (1).

**Section 36 b-**(1) Taxpayers subject to section 36 a must provide information in their tax returns on the nature and extent of commercial or financial transactions with foreign natural and legal persons and permanent establishments mentioned in section 36 a (controlled transactions).

(2) The taxpayer must prepare and retain written documentation on how the prices and terms of the controlled transactions were determined. The written documentation must be stored safely for 5 years from the end of the financial year which the material concerns. The written documentation must be submitted to the tax authorities on request and must be adequate for an evaluation of whether or not prices and terms have been fixed in accordance with what would be agreed between independent parties.

(3) Where the taxpayer has not prepared the documentation specified in subsection (2), section 19 of Greenland Landsting Act on Administration of Taxes will apply.

**Section 36 c-**(1) Interest expenses and capital losses attributable to the excess amount of the controlled debt which belongs to a company or an association, etc. are non-deductible if

- 1) the company or association falls within the scope of section 1(1) paras. 3-14,
- 2) the company or association has debt to foreign legal persons referred to in section 36 a(1) (controlled debt), and
- 3) the debt-to-equity ratio of the company or association exceeds 2:1 at the income year-end.

(2) However, capital losses, cf. section 1, are deductible against capital gains on the same loan in following income years.

(3) A loan granted by a third party for which the controlling owners or group-related companies of such have provided direct or indirect collateral is deemed to be controlled debt.

(4) The deduction of interest will not be capped if the company or association can prove that similar financing applies for the parent company and its group-related companies.

(5) The right of deduction is capped only to the extent the controlled debt exceeds DKK 5 million. The right of deduction is capped only on the amount of controlled debt which should be reclassified as equity in order for the debt-to-equity ratio to amount to 2:1 at the income year-end.

In the event that there is intergroup controlled debt as well as third party controlled debt, the interest on the intergroup controlled debt will be capped before the interest on the third party controlled debt.

(6) Debt includes debt from claims subject to section 17(1) and (18)1 and convertible bonds. The debt is calculated as the market value at the income year-end.

(7) The equity is calculated at the income year-end as the value of assets calculated at fair value minus debt pursuant to subsection (6). Equity contributed by the owners is only included to the extent it remains in the company for at least 2 years.

(8) Where several Greenland group-related companies are controlled, cf. section 36 a(4), subsections (1)-(7) will apply to the assets and liabilities in such companies, and shares held by Greenlandic companies in other companies included in the total calculation will be disregarded as well as debt and claims between these companies.

(9) Subsections (1)-(8) also apply to taxpayers who fall within the scope of section 2(1) para. 10. The calculation of debt and equity in accordance with subsection (2) and (3) includes only the value of assets and liabilities associated with the permanent establishment. A loan from a third party is considered controlled debt where the head office is liable for the debt.

**Section 36 d.**-(1) Where a taxpayer under section 1 or section 2(1) paras. 10-12, controls, cf. section 36 a(2), a low-taxed foreign legal person (subsidiary), cf. section 36 a(6), where the financial assets on average make up more than 10 percent of the company's total assets, the taxpayer must include the subsidiary's CFC income in the taxable income.

(2) A subsidiary is considered low taxed if the foreign tax is significantly lower under Greenlandic rules or if the taxation is significantly deferred compared to Greenland rules.

(3) The calculation of the subsidiary's assets under subsection (1) is based on the carrying amounts, however intangible assets are recognised at fair value.

(4) The CFC income is calculated as the portion of the subsidiary's income which corresponds to the largest share of the share of the subsidiary's total share capital owned by the shareholder during the income year in question. However, only income earned by the subsidiary during the part of the income year when the conditions in subsection (1) are met will be included.

(5) CFC income calculated under this Greenland Landsting Act is the sum of:

- 1) Taxable interest income and deductible interest expenses.
- 2) Taxable gains and deductible losses on claims, debt or financial contracts.
- 3) Deductible commission, etc.
- 4) Taxable dividends and taxable consideration regarding shares.
- 5) Taxable gains and deductible losses on the disposal of shares.
- 6) Payments of all categories which are received as payment for the use of or right to use intangible assets. However, the first sentence does not apply to payments from companies which are not

affiliated with the subsidiary, cf. section 36 a(1), for the use of or right to use intangible assets resulting from the subsidiary's own R&D activities. Intangible assets include all copyright to literary, artistic or scientific work, including feature films and films for radio or television programmes, any patent, trade mark, pattern or model, drawing, secret formula or secret processing method or information on industrial, commercial or scientific experience.

7) Tax deductions related to income listed in 1)-6) above.

8) Taxable income from financial leasing. Profits and losses on the disposal of assets used for financial leasing are also included.

9) Taxable income in connection with insurance business, banking or mortgage credit institution or other financial activities.

(6) In calculating CFC income, losses related to the CFC income are deductible in the subsidiary's CFC income under the rules in section 30.

(7) Credit for paid foreign taxes is granted under section 69."

**11.** In section 41(1), second sentence "jointly taxed spouses or registered partners" shall be changed to: "cohabiting spouses or cohabiting registered partners".

**12.** Section 67(2), first sentence is repealed:

**13.** Section 68(4) is repealed.

**14.** Section 96 is repealed.

**Section 2-**(1) This Greenland Landsting Act will come into effect on 1 January 2008 and will apply as from and including income year 2008, cf. however subsection (2).

(2) Section 1, Nos. 9 and 10 will apply as from 1 May 2007. The provision in section 36(1) of the Greenland Landsting Act on Income Tax as repealed by No 9 of section 1 of this Act will remain in force for transactions before 1 May 2007.

Greenland Self-Government, 15 November 2007

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