

# Denmark

## Employment

### Labor Concerns

Restricted stock and RSU plans have not expressly been included in the Danish Stock Option Act. The Stock Option Act will generally apply if a plan provides a right for an employee to purchase or be allotted stock at a later date (e.g. if certain conditions are met). This is generally the case for RSUs. However, if the employee becomes immediate owner of the stock and the restriction regards forfeiture, a sale back obligation or similar, such plans will not be subject to the Stock Option Act. This is generally the case for restricted stock.

#### RSU Plans (subject to the Stock Option Act):

If a RSU plan is subject to the Stock Option Act, the employee is generally entitled to retain rights to vested and unvested RSUs after termination of employment for reasons other than misconduct. Also, the employee will be entitled to receive a share, proportionate to the length of his employment in the accounting year, of the RSUs to which he would have been entitled according to agreement or custom, had he still been employed at the end of the accounting year or at the date of grant. Employees' rights under the Stock Option Act cannot be waived.

Furthermore, the Stock Option Act provides that an employee who himself resigns his position by giving notice of termination to his employer will automatically forfeit all his rights to unvested RSUs. The employee will also forfeit his rights to any future RSUs that the employee could have expected to receive had he continued his employment. The same will apply to employees who are terminated because of misconduct. The Stock Option Act does not, however, prevent an employer from allowing an employee more extensive exercise rights.

#### Restricted Stock Plans (not subject to the Stock Option Act):

The use of restricted stock in employment relationships has not been expressly regulated under Danish law, but grants of restricted stock will generally be considered to constitute part of the employees' remuneration and consequently comprised by Section 17a of the Danish Salaried Employees Act.

It has not yet been decided in case law, and the legal treatment is thus uncertain, but there is a significant risk that restricted stock will be considered to be fully acquired on the date of grant no matter the existence of forfeiture provisions relating to termination of employment, and no matter whether they are based on past or future performance (similar to the legal treatment of stock options granted before 1 July 2004 as established in case law).

Consequently, by analogy with Section 17a of the Salaried Employees Act, it follows that restricted stock granted to an employee cannot be forfeited due to termination of the employee's employment, regardless of whether termination is voluntary or involuntary and the employee will be entitled to retain all granted restricted stock as if he had still been employed. This applies irrespectively of contrary agreements or provisions in the restricted stock plan/agreement.

Even though there are good arguments to suggest that employees should only be entitled to retain a pro rata share of the restricted stock upon termination of employment, we expect the courts to be reluctant in reaching a judgment differing from the case law regarding stock options granted before 1 July 2004.

If employees are required to pay a significant amount to receive the restricted stock, the restricted stock may not be considered a part of the employees' remuneration and thus not covered by the comments above. Although this is currently the subject of some uncertainty in Denmark, if the restricted stock is not considered remuneration, it may to a limited extent (e.g. in bad leaver situations) be possible to enforce reasonable sale back obligations in case of termination of employment, although recent Danish case law has raised some uncertainty regarding the scope of this possible exemption.

This summary is intended to reflect local law and practice as at 1 May 2013. Please note, however, that recent amendments and legal interpretations of the local law may not be included in these summaries. In addition, corporate governance, administration, and option plan design facts that are specific to your company may impact how the local laws affect the company's equity based compensation plans.

With these matters in mind, companies should not rely on the information provided in this summary when implementing their stock plans.

# Denmark (cont.)

## Communications

As regards plans subject to the Stock Option Act, employers are required to distribute a separate written statement, in Danish, containing certain basic information on the terms and conditions of the plan to the participants within 30 days of the date of an employee becoming subject to a plan. For plans implemented prior to 1 July 2004, this information must accompany grants made after this date. There are no similar requirements with regard to plans not subject to the Stock Option Act. However, the employer is always obliged to provide information regarding employees' material entitlements in writing.

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## Regulatory

### Securities Compliance

To the extent the RSU award is deemed to be a stock option and is non-assignable, there will be no prospectus requirements under Danish law. In our opinion, a restricted stock award which is non-assignable does not entail an obligation to publish a prospectus. To the extent that the restricted stock/RSU award is assignable, then the main rule is that any offer of securities to the public in Denmark with an aggregate value at or above EUR 1,000,000 entails an obligation to publish a prospectus on the offering. However, notwithstanding the generality of the main rule, a number of exemptions may apply to the offering (e.g., the 150-person exemption and exemptions for certain employee-participation schemes). If the restricted stock/RSU award is not deemed to be a security, it will not be subject to the Prospectus Directive.

### Foreign Exchange

No exchange control restrictions will apply on the offering.

### Data Protection

Normally, the processing of non-sensitive personal data within the EU/EEA in connection with the administration of a restricted stock plan or a RSU plan does not require consent from the employees or approval from the authorities. Nevertheless, it is generally recommended that the employees' explicit consent to the processing of non-sensitive personal data is obtained prior to the processing of personal data. If the processing includes a transfer of personal data to a country outside the EU/EEA, the employees' explicit consent to the processing of non-sensitive personal data is required, unless prior approval of the transfer has been obtained from the Danish Data Protection Agency.

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## Tax

### Employee Tax Treatment

With regard to restricted stock, the employee is most likely subject to tax on the value of the shares when the restricted stock is granted, because the employee becomes legal owner of the shares at grant. However, depending on the circumstances, the employee may obtain a refund of the tax paid on grant if the employee is subsequently obliged to return the shares.

With regard to RSUs, the employee will, generally, be subject to tax on grant. However, performance based vesting criteria and, in certain circumstances, timed based vesting criteria may postpone the time of taxation until vesting.

Any capital gains realized upon a subsequent sale of shares will be subject to tax as share income at a progressive rate up to 42%.

### Social Insurance Contributions

Employee social insurance obligations apply to both restricted stock and RSUs.

### Tax-Favored Program

None.

### Withholding and Reporting

The employer has reporting requirements at the grant of restricted stock. There is some uncertainty with respect to RSUs. However, it is most likely that the employer has reporting requirements when the conditions to receive the stock are fulfilled. Withholding is not required.

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