

SHARE OPTION PLANS

What is the scope of the Danish Stock Options Act which regulates this area?

The Act governs the employees' right to exercise share options following the termination of their employment and is mandatory in the sense that it cannot be deviated from to the detriment of the employee. The Act only comprises employees. Managing directors, general managers and board members, (apart from employee elected board members), are not considered "employees" for the purposes of the Act.

An immediate right to purchase shares does not fall within the Act. In cases where the Act does not apply, the employee may have additional rights to maintain entitlements to share options in case of the employee's own resignation or the termination of the employment by the company.

Which documents and information must the employer provide to the employee?

The Danish Stock Options Act obligates the employer to provide the employee with the following information about the conditions of an offered share option plan in a separate declaration:

- a) the time of grant,
- b) the criteria or conditions for the grants,
- c) the exercise time or period,
- d) the price or the method of fixing the price the employee must pay for the shares,
- e) the rights of the employee upon termination and
- f) the financial aspects of participating in the share option program.

This information must be given in writing in Danish at the time of the incorporation of the share option plan in the employment contract at the latest. It is not sufficient to incorporate the information in the employment contract.

The Danish Act on Employment Particulars must at the same time be complied with, meaning that certain information must be implemented in the employment contract (See also "Employment & Labour Law").

Non-compliance with the duty to inform may entitle the employees in question to compensation.

What happens in case of termination of the employment?

The consequences set out below are the default consequences in lieu of an agreement between the parties. The Danish Stock Options Act cannot be deviated from to the detriment of the employee.

Cause for termination	Consequences
The employee terminates the employment without the employer having breached the terms of the employment	The employee loses the right to: 1) exercise options that have been issued, but not exercised at the time of termination of the employment, and 2) the grant of options that have not been issued at the time of the termination of the employment.
The employee rightfully terminates the employment due to breach on the part of the employer	The employee maintains the right to: 1) exercise the share option instrument in accordance with the terms of the scheme or the agreement as if the employee was still employed, and 2) receives a proportionate share of the allotments that the employee would have been entitled to if the employee was still employed at the time of the allotment or at the end of the accounting year.
The employer terminates the employment due to breach on the part of the employee	The employee loses the right to: exercise options that have been issued but not exercised at the time of termination of the employment, and the grant of options that have not been issued at the time of the termination of the employment.
The employee is rightfully dismissed due to material breach	The employee loses the right to: 1) exercise options that have been issued but not exercised at the time of termination of the employment, and 2) the grant of options that have not been issued at the time of the termination of the employment
The employee resigns because the employee has reached the age of retirement	The employee maintains the right to: 1) exercise the share option instrument in accordance with the terms of the scheme or the agreement as if the employee was still employed, and 2) receives a proportionate share of the allotments that the employee would have been entitled to if the employee was still employed at the time of the allotment or at the end of the accounting year.
The employer terminates the employment due to	The employee maintains the right to: 1) exercise the options in accordance with the terms of the

lack of work	<p>scheme or the agreement as if the employee was still employed, and</p> <p>2) receives a proportionate share of the allotments that the employee would have been entitled to if the employee was still employed at the time of the allotment or at the end of the accounting year.</p>
The employer terminates the employment due to the employee's illness	<p>The employee maintains the right to:</p> <p>1) exercise the options in accordance with the terms of the scheme or the agreement as if the employee was still employed, and</p> <p>2) receives a proportionate share of the allotments that the employee would have been entitled to if the employee was still employed at the time of the allotment or at the end of the accounting year.</p>
The employer terminates the employment for other reasons without the employee being in breach of the employment contract	<p>The employee maintains the right to:</p> <p>1) exercise the options in accordance with the terms of the scheme or the agreement as if the employee was still employed, and</p> <p>2) receives a proportionate share of the allotments that the employee would have been entitled to if the employee was still employed at the time of the allotment or at the end of the accounting year.</p>
The employee dies	<p>The situation where the employee dies is not directly governed by the Act. Nonetheless, the case where an employee dies is treated as a termination of the employment by the employee with the result that the right to share option terminates at time of death, unless otherwise agreed.</p> <p>The probate estate loses the right to:</p> <p>1) exercise options that have been issued, but not exercised at the time of death, and</p> <p>2) the grant of options that have not been issued at the time of death.</p>

What tax issues are relevant when implementing share option plans?

Generally, taxation is postponed until the options are exercised or disposed of in accordance with Section 28 of the Danish Tax Assessment Act. The amount that is subject to taxation when the options are exercised equals the difference between the market value of the shares at the time of exercise and the total amount paid for the shares. This amount is taxed as salary income at a maximum effective tax rate of 56.1% (2011) and

is consequently also subject to social tax. As the amount is taxed as salary income, the employer may deduct a corresponding amount.

Upon a subsequent sale of the shares acquired, the employee will be taxed on the difference between the market value at the time of exercise and the sales price. This amount is taxed as share income at 28% up to a total share income of DKK 48,300 and 42% for share income above DKK 48,300 (2011). If the employee realises a loss, such a loss may, under certain circumstances, be offset against other share income.

However, a more favourable tax regime exists pursuant to which the employee will not be taxed upon exercise or disposition of the options, but only at the time of sale of the shares. Any income recognised by the employee is taxed as share income, and not as salary income. Consequently, the employer does not obtain a deduction equal to the amount the employee must recognise. However, the employer may deduct any costs paid to accountants or attorneys in connection with the administration or establishment of the stock option programme. In order to qualify under this alternative tax regime, a number of requirements must be met. These requirements include that the share option program must state that it is to be subject to Section 7H of the Danish Tax Assessment Act. Also, the value of the options granted must not exceed 10% of the employee's yearly salary.

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