

20.2. Section 8 H of the Danish Tax Assessment Act – donations for research

Pursuant to section 8 H of the Danish Tax Assessment Act, as amended by Act no. 90 of 8 February 1995 and Act no. 1072 of 20 December 1995, enterprises which are liable to tax under section 1(1), paras (1-2) c and (3 a-6), as well as section 2(1)(a), of the Danish Corporation Tax Act can deduct donations for research.

Be it noted that section 1(1), para (1 c), as inserted by Act no. 1072 of 20 December 1995, has not yet come into force.

It is a condition that the donation has been made to charitable or other non-profit organisations, foundations, institutions, etc., the assets of which are used for research.

Further, it is a condition that the organisation etc. receiving the donation is entitled to receive such donations with the effect that the amount donated can be deducted in connection with the determination of the donor's taxable income.

Under section 8 H of the Danish Tax Assessment Act, the right of deduction is conditional upon the approval of the receiving organisation etc. by the National Council for Research Planning (*Planlægningsrådet for Forskningen*) for the calendar year in which the donation is made. The approval by the National Council for Research Planning means that the organisation etc. is entitled to receive donations with the effect that the donation can be deducted in connection with the determination of the donor's taxable income.

Organisations, foundations, institutions, etc. can be approved if they are:

- 1) domiciled in Denmark
- 2) charitable or non-profit in some other way
- 3) using funds for research

All three conditions must be fulfilled.

The expression domiciled in Denmark corresponds to the wording used in section 1 of the Danish Corporation Tax Act. In accordance with normal practice, it is therefore crucial that both the Board of Directors – at least the majority of the members of the Board of Directors – and the head office are located in Denmark.

An institution is deemed to be non-profit if its activity in society can be characterised as being beneficial based on the prevailing perception among the general population. In addition, the purpose of the institution must benefit a large group of people.

The terms charitable and non-profit must be interpreted in the same way as they are interpreted in section 8 A of the Danish Tax Assessment Act on the right to deduct donations made to charitable or other non-profit institutions.

Research is understood as scientific research or study. The research may also be conducted as part of basic research. It may also be directed at practical objectives or applications. Basic research is defined in point 14.4 concerning section 8 B of the Danish Tax Assessment Act.

The rules on the deduction of donations are not subject to tax restrictions in the form of maximum amounts or percentages of the enterprise's profit, revenue, etc. However, some restrictions are entailed by section 114 of the Danish Public Companies Act (section 83 of the Danish Private Companies Act). Under this provision, the general meeting may decide that donations be made out of the enterprise's funds for charitable or equivalent purposes if deemed to be reasonable in light of the purpose of the donation, the enterprise's financial position and the circumstances in general. In

addition to the powers of the general meeting, the Board of Directors has the right to allocate resources for the above-mentioned purposes which, given the enterprise's financial position, are of little importance.

For enterprises which have not paid out dividend for some time, but which have accumulated dividend, the rules on deductions for donations mean that the tax authorities cannot establish covert distribution if the enterprise decides to make donations to approved organisations etc. On the other hand, the enterprise will be entitled to deduct such donations.

Organisations etc. are approved for one calendar year at a time.

Section 8 H of the Danish Tax Assessment Act was inserted through Act no. 835 of 18 December 1987 and takes effect as from the 1988 income year.

Section 8 H(1) of the Danish Tax Assessment Act has been amended both by Act no. 374 of 18 May 1994 (Private limited companies), and by Act no. 90 of 8 February 1995 (Taxation of Post Denmark).

In Act no. 374 of 18 May 1994, the reference in section 8 H(1) was changed to "section 1(1), paras (1-3) and (5-6), and subsection (2), first sentence" of the Danish Tax Assessment Act was changed to: "section 1(1), paras (1-2 a) and (3 a-6)". The amendment takes effect as from the 1994 income year for enterprises and organisations whose 1994 income year starts on 27 October 1993 or thereafter. For enterprises and organisations whose 1994 income year starts before 27 October 1993, the change does not take effect until the 1995 income year.

In Act no. 90 of 08 February 1995, the reference in section 8 H(1) was changed to "section 1(1), paras (1-3) and (5-6), and subsection (2), first sentence" of the Danish Tax Assessment Act was changed to: "section 1(1), paras (1-2 b) and (3 a-6)". The amendment takes effect from 1 January 1995.

Click [here](#) for the full Danish version of Circular on the Danish Tax Assessment Act (*Cirkulære om ligningsloven*).