



# Deloitte.

## Information guide

### How to set up a business in Greenland

# Contents

|  |           |
|--|-----------|
| <b>1. General information</b>  | <b>4</b>  |
| 1.1 Introduction   | 4         |
| 1.2 Political system   | 4         |
| 1.3 Legislation and administration of justice  | 4         |
| 1.4 Infrastructure   | 4         |
| 1.5 Climate  | 5         |
| 1.6 Oil and Mineral Strategy 2014-2018   | 5         |
| 1.7 Large Scale Project Act  | 6         |
| <b>2. Types of businesses</b>  | <b>7</b>  |
| 2.1 Subsidiary   | 7         |
| 2.2 Registered branch office   | 7         |
| 2.3 Representative office  | 8         |
| 2.4 Particular requirements governing businesses licensed under the Mineral Resources Act and their subcontractors | 8         |
| <b>3. Responsibilities and duties of boards of directors and executive boards</b>                                  | <b>9</b>  |
| 3.1 Twotier management structure (one-tier structure optional in ApS companies)                                    | 9         |
| 3.2 General duties of management bodies  | 9         |
| 3.3 Specific duties of management bodies   | 10        |
| <b>4. Accounting and audit requirements</b>  | <b>11</b> |
| 4.1. General requirements  | 11        |
| 4.2 Bookkeeping  | 11        |
| 4.3 Auditing   | 11        |
| 4.4 Loss of capital  | 11        |
| 4.5 Loans to foreign parents etc.  | 11        |
| 4.6 Management liability   | 12        |
| <b>5. Establishing an A/S or an ApS company</b>  | <b>13</b> |
| 5.1 Forming a company  | 13        |
| 5.2 Purchase of shares in a shelf company  | 13        |
| 5.3 Formation expenses   | 14        |
| <b>6. Establishing a registered branch office</b>  | <b>15</b> |
| 6.1 Subsidiary versus registered branch office   | 15        |
| 6.2 Tax liability for short-term operations – permanent establishments   | 17        |
| <b>7. Corporate taxation</b>   | <b>18</b> |
| 7.1 Basic principles of corporate taxation   | 18        |
| 7.2 Computation of taxable income  | 18        |
| 7.3 Tax depreciation or amortization   | 18        |
| 7.4 The relationship between corporation tax and dividend tax  | 18        |
| 7.5 Tax losses   | 20        |
| 7.6 Intercompany transactions and royalty  | 20        |
| 7.7 Transfer pricing   | 20        |
| 7.8 Thin capitalization rules  | 20        |
| <b>8. Corporation tax, VAT and levies, AMA and personal income tax</b>   | <b>21</b> |
| 8.1 Corporation tax  | 21        |
| 8.2 VAT and levies   | 21        |
| 8.3 The AMA scheme and AEB   | 21        |
| 8.4 Personal income tax  | 21        |
| 8.5 Taxation of employees  | 22        |
| 8.6 Double taxation treaties   | 24        |

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## How to set up business in Greenland

### **Nuuk, October 2015**

This guide contains basic information on how to set up business in Greenland. The particular purpose of this guide is to give foreign investors an overall insight into special Greenlandic company and tax rules.

Like the rest of the world, Greenland is suffering from the difficulties that the mining industry generally has in securing funding of their exploration projects. Over the past few years, the Government of Greenland, Naalakkersuisut, has issued exploitation permits for three projects, and one of them is at the time of writing in the process of building up a ruby mine south of Nuuk. And more project owners have applied or are about to apply for an exploitation license.

The former Government of Greenland implemented a royalty model that will offer Greenland greater assurance of a continuous government take. Also, laws have been made containing particularly easy terms for large projects.

This guide is meant as a general information guide and is based on Greenlandic legislation in force at 1 October 2015. Please note that part of the legislation/interpretation may have changed already when you read this guide. Deloitte assumes no responsibility for any losses that might arise from direct use of the information given. The Government of Greenland its ministries, agencies and units including but not limited to the Ministry of Mineral Resources, the Mineral Licence and Safety Authority (MLSA), the Ministry of Finance and the Greenlandic Tax Agency is neither accountable for any information in this guide nor liable for any loss caused by the use of this guide.

We therefore recommend that specific professional advice be sought before any decision is made. Deloitte would be pleased to provide advice on how to do business in Greenland, and interested readers may benefit from contacting our office in Nuuk or in Copenhagen.

Any comments on this guide are welcome and will be taken into consideration when preparing the next update.

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# 1. General information



## 1.1 Introduction

Greenland is the world's largest island with an area of 2,166,086 km<sup>2</sup>, of which 410,449 km<sup>2</sup> are free of ice. This makes approx. 81% of the island covered with ice. Geographically, Greenland belongs to the northern American continent, but geopolitically to Europe. The island has a population of around 57,000, of which some 15,000 live in the capital, Nuuk.

Greenland, the official name of which is Kalaallit Nunaat (Land of the Greenlanders), like the Faroe Islands, is part of the Danish Realm. With the introduction of the Home Rule of Greenland in 1979, competency, and thereby responsibility, were transferred from the Danish political authorities to the Greenlandic political authorities, which took over both the financial and the administrative responsibility for a number of tasks from the Danish Government. So, from 21 June 1979, Greenland had both the legislative and the executive power.

## 1.2 Political system

### 1.2.1 History

21 June 2009 (Greenland's national day), Greenland changed its status from Home Rule to Self-Government under the Danish Realm.

Representative government is based on the Inatsisartut (the Parliament of Greenland) consisting of 31 members, who are elected for a maximum period of four years. The Parliament of Greenland is the supreme legislature. The administrative government of the country (the Greenlandic Cabinet) is elected by the Parliament and typically consists of five to eight members. The country is presently divided into four municipalities with the elected representatives of the people discharging local political governance. Through the 1980s and the beginning of the 1990s, the Home Rule government was given responsibility for a number of very large and complex areas:

The economy of the Home Rule of Greenland was to be based on own revenue in the form of taxes and levies as well as a block grant from the Danish Government which is equivalent to the amount that the Danish Government had spent on the areas in the years prior to transferring them to the Home Rule.

The Danish state is still responsible for a number of areas, namely foreign policy, defense and security, imprisonment and probation, working environment and part of the veterinarian services, and a number of Danish institutions performing specific tasks in Greenlandic society such as the Geological Survey of Denmark and Greenland (GEUS), the Commission for Scientific Research in Greenland (KVUG), the Danish Civil Aviation Administration, the Danish Maritime Authority and Denmark's Meteorological Institute (DMI).

One of the major changes in the transition from home rule to self-government is that management of mineral resources is now solely the responsibility of Greenland. Since 1 July 1998, the administration of mineral resources activities in Greenland has been exercised by the Bureau of Minerals and Petroleum in Nuuk.

### 1.2.2 The European Community (EC)

Being a member of the Danish Realm, Greenland joined the European Community (EC) in 1973. In 1985, however, the Home Rule decided to withdraw from the EC.

## 1.3 Legislation and administration of justice

As indicated above, Greenland and Denmark have close ties, also when it comes to legislation and administration of justice. A number of areas have been put into force directly under Danish rules, and several areas where Greenland has the right to legislate are inspired by comparable Danish legislation. The principles are mainly based on rules of construction.

The judicial system is designed with a permanent option of having a case tried by two courts. So far, Denmark is responsible for the administration of justice. The Supreme Court is placed in Denmark.

## 1.4 Infrastructure

### 1.4.1 Telephony

Tele Greenland A/S (wholly owned by the Government of Greenland) is the primary provider on telephony in Greenland. Telephony in Greenland is based on a combination of a coast-long radio link and satellite connections transmitting data as well as ordinary telephony. Like everywhere else in the world, mobile telephony (GSM) is widely used, including GPRS (data transmission via mobile phones) and Iridium (satellite-based telephony functional outside mobile coverage).

A sea cable connects Greenland with North America and Europe, which ensures high speed Internet.

#### 1.4.2 Transportation of goods

The majority of goods is transported by sea. Royal Arctic Line A/S (wholly owned by the Government of Greenland) has the concessionary right to sea freight to and from all Greenlandic towns and settlements. The majority of imports and exports are carried on the route to Aalborg in Denmark from where goods may be transported to other countries. Royal Arctic Line A/S has a few direct connections to Iceland and Canada. Special freight, including transportation of ore, falls outside the concession.

#### 1.4.3 Air traffic

International flights to Greenland are primarily serviced via Kangerlussuaq, but Narsarsuaq in South Greenland and Kulusuk in East Greenland have international flights too. All domestic flights are serviced by Air Greenland A/S (jointly owned by the Government of Greenland, the Danish Government and SAS).

International flights primarily have Copenhagen as their destination. Air Iceland offers year-round air service between Nuuk and Reykjavik and summer air service to multiple destinations in Greenland.

### 1.5 Climate

The climate in Greenland is predominantly arctic. This means that the average temperature – even during the warmest month of the year – does not exceed +10°C. In the valleys, which are located in continuation of the deepest fjords, however, the average temperature exceeds +10°C by a few degrees. The large area of the country means considerable climatic variations between North and South Greenland, but also large variations between the coastal areas, especially between areas with open sea all year and areas located further inland.

### 1.6 Oil and Mineral Strategy 2014-2018

This section outlines the main features of the 2014-2018 Oil and Mineral Strategy that was adopted by the former Government of Greenland. So far, the new Government, which was elected in November 2014, sticks to this strategy which has as its overall goal to have three or five active mines in Greenland and to have offshore oil exploration activities.

The focus areas of the Strategy are:

- Oil/gas;
- Minerals;
- Taxation;
- Geosurvey Kalaallit Nunaat;
- Sustainable development.

#### Oil/gas

From 2014 to 2018, the Government of Greenland will put out tenders in particular, geologically interesting areas at two-to-three-year intervals. One notable change is that the size of the areas put out to tender will range between 1,000 and 4,000 square kilometers compared to 10,000+ square kilometers in previous rounds.

#### Minerals

The Government will continue to analyze and map Greenlandic geology to promote Greenland as an attractive country to primary producers. The focus will be on iron, copper, zink, rare soil types, gold and gems.

#### Taxation

A royalty model will be introduced for minerals under which a percentage of revenue will be paid to Greenland in addition to corporate income tax or dividend tax.

#### Geosurvey Kalaallit Nunaat

The Strategy mentions setting up Geosurvey Kalaallit Nunaat (GKN) to handle geological mapping, laboratories, databases and dissemination of information as an independent self-governing business under the Government of Greenland. It is uncertain, however, if and when GKN would be established.

#### Sustainable development

During the strategy period, the Government of Greenland's focus on sustainability will be broadened to also include infrastructure, health service and training in addition to environmental protection.

Also, the Government of Greenland is planning to extend the period set for responding to consultation documents from four weeks to eight weeks and to formalize procedures and form to ensure earlier involvement of citizens and stakeholders.

### 1.7 Large Scale Project Act

In December 2012, the Parliament of Greenland approved the Large Scale Project Act, the aim of which is to enable import of labor for the planning of projects that may be designated as large scale projects. The Act defines a large scale project as one with costs of construction in excess of DKK 5 billion.

- The employees working on such project need not do so under Greenlandic labor contracts;
- Wages must not be below the Greenlandic minimum pay rate for unskilled workers (from 2013, the hourly rate under SIK contracts is DKK 86.03);
- The employer may deduct expenses for transport, accommodation, clothing and meals from the pay.



## 2. Types of businesses

A foreign corporation may start business activities in Greenland through:

- A subsidiary;
- A registered branch office;
- A representative office; or
- A taxable entity.

The regulations applicable to subsidiaries and registered branch offices are laid down in the Greenlandic Companies Act.

Joint venturing is also a well-known structure used for close collaboration among foreign and Greenlandic enterprises. A joint venture may be established as a partnership. A partnership is not defined by law and is therefore only regulated by the agreement signed by the parties. A joint venture may also be structured as a joint shareholding in a Greenlandic subsidiary.

Finally, special rules apply to enterprises holding exploration or exploitation licenses under the Mineral Resources Act.

It goes for all types of businesses that the Greenlandic business must be registered with the Greenlandic Business Register (GER) and subsequently with the employer registration system if the business does or intends to employ staff.

### 2.1 Subsidiary

Legally, a subsidiary is an independent entity. The liability of the shareholders is limited to the amount of share capital, i.e. the capital invested. The Companies Act provides for two types of companies. A company may be established either as an "aktieselskab" (A/S - equivalent to a public limited liability company) or as an "anparts-selskab" (ApS - equivalent to a private limited liability company).

Both types of companies must be registered with the Danish Business Authority (DBA) and are given a company number. In addition, new companies are automatically given a GER number.

The requirements applicable to an A/S and an ApS are largely the same, with a few exceptions.

The most significant differences relate to:

#### 2.1.1 Share capital

An A/S must have share capital of at least DKK 500,000. The entire share capital must be paid in in order for the A/S to be registered. Share capital must be paid in in cash or in kind. An A/S may hold up to 10% of its own shares.

An ApS must have share capital of at least DKK 125,000. The entire share capital must be paid in in order for the ApS to be registered. Share capital may be paid in in cash or in kind. No share certificates are issued. An ApS cannot hold any of its own shares.

#### 2.1.2 Promoters

At least one promoter is required to form an A/S company. At least one of the promoters must be a resident of Greenland. However, the Ministry of Economic and Business Affairs may grant exemption from this requirement. The promoters must be of age and not have been adjudged bankrupt.

A promoter may be a legal entity based in Greenland and is not required to subscribe for share capital.

At least one promoter is required to form an ApS company. A promoter must be of age and not have been adjudged bankrupt. A promoter may be a legal entity. The promoters are required to subscribe for the entire share capital, although only one subscribing promoter will suffice.

### 2.2 Registered branch office

A foreign corporation may, subject to certain conditions, normally establish a registered branch office in Greenland.

This is conditional upon the company being lawfully registered in its home country. Also, permission to set up a branch office will only be granted if the parent is registered in the EU, the Nordic Countries, the U.S. or Canada.

In addition, activities in Greenland must be carried out over a certain period of time in order for a company to set up a registered branch office.

Legally, a registered branch office is not regarded as an independent entity but as a division of an independent entity (the head office). The head office has unlimited liability for all branch office debts.

The Companies Act and the Trade Act hold certain legal requirements applicable to a registered branch office, for instance, it must be registered with the DBA and the Greenlandic Business Register (GER).

No requirements apply to branch office capital.

A registered branch office must have one or more branch office managers, appointed by the head office. The branch office managers must be residents of Greenland. Non-Greenlandic residents must file an application with the Government of Greenland for being appointed manager.

The branch office of a foreign corporation is not required to prepare or present financial statements for the branch office and, thus, a branch office is not required to have its financial statements audited. However, a branch office is governed by bookkeeping law and needs to apply the rules set forth in the Bookkeeping Act for tax purposes.

The branch office manager must file a certified copy of the foreign corporation's audited financial statements with the DBA within five months and three weeks of financial year-end. The foreign corporation's financial statements will be available to the general public.

It is important to emphasize that non-compliance with the requirement to submit a certified copy of the audited financial statements will cause the authorities to dissolve the branch office.

It should also be noted that the branch office may not initiate business activities in Greenland until registration has taken place.

### 2.3 Representative office

When a foreign corporation wants to set up in Greenland, it often starts off by opening a representative office because such office makes the foreign corporation physically present in the market place without it having to meet the obligations and administrative requirements inherent in the establishment of a Greenlandic company or branch office.

The main object of a representative office is to provide marketing assistance with respect to the products and/or services sold by the foreign corporation to its Greenlandic customers.

Legally, a representative office is not defined or regulated, nor governed by statutory requirements. For tax purposes, a representative office is not considered a permanent establishment of the foreign corporation. In order to maintain this tax status, the representative office (or its representatives) may neither enter into sales agreements nor provide after-sales services.

### 2.4 Particular requirements governing businesses licensed under the Mineral Resources Act and their subcontractors

For foreign corporations having been granted an exploration license under the Mineral Resources Act, the provisions governing branch offices are generally relaxed to some degree, meaning that the "branch office" need not be registered according to the rules of the Trade Act or the Companies Act. Similar relaxation applies to the subcontractors of the license holders. Both types of business, however, must be registered with the Greenlandic Business Register (GER).

For tax purposes, an exploration license is considered a taxable entity similar to a permanent establishment in Greenland, meaning that an annual tax return must be filed, among other documents.

Companies holding exploration or exploitation licenses under the Mineral Resources Act are entitled to carry forward tax losses indefinitely.

A permanent establishment is also relevant to taxation of explorers in Greenland because, as a general rule, explorers will be considered employees of a Greenlandic business. Please also see section 8.5.

In general, exploitation licenses are only granted to companies registered in Greenland (i.e. an A/S company).

It is possible to incorporate a permanent establishment under a number of special provisions in this respect – please see section 5.1 for further details.



# 3. Responsibilities and duties of boards of directors and executive boards

## 3.1 Two-tier management structure (one-tier structure optional in ApS companies)

An A/S company must have a board of directors and the number of board members must be at least three. Members of executive boards and board of directors are not subject to any residency requirement. Foreign corporations, however, need to be particularly aware of the rules applying in their home country as the rules on management's real seat may imply that the Greenlandic enterprise has dual domicile and is thereby liable to pay tax in the country where management has its seat in case this matter is not regulated by a double taxation treaty.

The board of directors (bestyrelse) must appoint an executive board (direktion) consisting of at least one executive officer. As mentioned, members of boards of directors are not subject to any residency requirement. The executive officer may be elected to the board of directors, but cannot be elected chairman. The board of directors must mainly consist of individuals who are not executive officers of the company. Board members and executive officers must be of legal age and they must register with the DBA along with their signing powers as prescribed by the company's bylaws. If the composition of the board of directors and/or the executive board changes, such changes must be reported to the DBA within 14 days of the date when the change took place.

The board of directors and the executive officer are jointly responsible for managing the company.

An ApS company may have a board of directors or an executive board, or both. If it has both, the board of directors has the overall responsibility for managing the company. However, if the ApS company has more than 35 employees for a consecutive period of three years, it must have a board of directors.

## 3.2 General duties of management bodies

In an A/S company and a two-tier ApS company, the board of directors is responsible for supervising the executive board, establishing general policies, ensuring that the books are kept in compliance with relevant rules of law, ensuring that asset management is effected properly, and making decisions on extraordinary transactions.





The executive board is in charge of the day-to-day operations of the company.

In a one-tier ApS company, the supreme management body must perform all managerial duties vested in the board of directors and the executive board.

The general and flexible nature of the Greenlandic rules pertaining to the duties and responsibilities of boards of directors and executive boards is designed to allow each company ample latitude to decide how the sphere of authority between the board of directors and the executive board should be.

### 3.3 Specific duties of management bodies

#### 3.3.1. Register of members

Immediately after incorporation of the company, the board of directors of an A/S company and the supreme management body of an ApS company must open a register of members stating the name and address of each member and the number of shares held by the individual members. The board of directors and the supreme management body are obliged to keep the register of members updated.

#### 3.3.2 Rules of procedure

The board of directors of an A/S company must prepare and adopt a set of specific rules of procedure relating to the exercise of its powers. The rules of procedure are not available to the general public.

If an ApS company has a board of directors, such board is not required to prepare or adopt any rules of procedure. It is common practice, however, for two-tier ApS companies to adopt such rules.

#### 3.3.3 Convening general meetings

The board of directors of an A/S company and the supreme management body of an ApS company are obliged to convene annual general meetings, and also extraordinary general meetings should it prove necessary to hold such meeting. General meetings may be held outside Greenland as well. Often, meetings take place without the physical presence of the shareholder(s) but by way of an instrument of proxy given by the shareholder(s), and this must be evidenced in the minutes.

As the board of directors and the supreme management body are responsible for filing the annual report with the DBA no later than five months and three weeks after the end of the relevant financial year, the annual general meeting must be convened for a point in time which allows for the annual report to be filed within the five-month-and-three-week period.

Extraordinary general meetings must be held no later than 14 days after a request has been made for this by a shareholder of an A/S company holding at least 10% of the shares, or when a request for such meeting has been made by the supreme management body, the auditor or a shareholder of an ApS company. The board of directors and the supreme management body are obliged to ensure compliance with these requirements.

The annual general meeting must be convened giving at least eight days' notice (unless shorter notice is stipulated in the bylaws). Notice of a general meeting in an A/S company cannot be given earlier than four weeks before the scheduled date of the meeting.

#### 3.3.4 Disclosure of information

All A/S companies and ApS companies must file their certificate of incorporation and bylaws with and report the names of the members of their respective boards of directors, executive boards and auditors to the DBA when applying for registration. All subsequent additions and amendments must be reported to the DBA. This information is available for public inspection.

The main rule is that all material submitted to the DBA must be in Danish.

# 4. Accounting and audit requirements

## 4.1. General requirements

A business entity is required by law to record all of its financial transactions consistently with generally accepted bookkeeping principles. Minimum bookkeeping requirements are laid down in the Greenlandic Bookkeeping Act as well as in regulations and guidelines issued by the tax authorities.

Companies incorporated as an A/S or an ApS are required to prepare an annual report, which comprises a management commentary, an income statement, a balance sheet, a cash flow statement and appropriate explanatory notes to the financial statements. The preparation of such annual report is governed by law, which sets out the format, contents and standard principles governing financial statements. The provisions of the Greenlandic Financial Statements Act have been graded according to the size of the enterprise. The Greenlandic accounting standards are generally very similar to the International Financial Reporting Standards (IFRS).

## 4.2 Bookkeeping

The Greenlandic Bookkeeping Act was updated in 2008. It is now permitted under the Act to retain accounting records in the Nordic countries for an indefinite period of time and to retain them for the current and preceding month in other countries subject to certain conditions. Also, permission may be requested to retain accounting records indefinitely in other countries. Generally, individuals and businesses liable to keep accounts are required to keep accounting records on file for the preceding five financial years.

## 4.3 Auditing

Either a state-authorized public accountant (equivalent to a certified public accountant) or a registered accountant must audit the annual report. Applicable Greenlandic standards on auditing are based on the International Standards on Auditing (ISA).

The audited annual report must be adopted by the shareholders at the annual general meeting and filed with the DBA. Once filed, the annual report will be made available to the general public.

## 4.4 Loss of capital

### 4.4.1 A/S company

If the operations of an A/S company lead to a loss, on an accumulated basis, that equals at least half of its nominal share capital, the board of directors must convene a general meeting to report on the financial situation of the company. If necessary, measures must be taken to restore the capital loss or to re-capitalize or liquidate the company. Please note that the Greenlandic Companies Act does not require that specific measures be taken, and the DBA cannot dissolve an A/S company if no measures are taken, but the board members may be held liable to pay damages to any party suffering a loss due to financial distress.

### 4.4.2 ApS company

If the operations of an A/S company lead to a loss, on an accumulated basis, that equals at least half of its nominal share capital, the supreme management body must report to the shareholders about the financial situation of the company. Moreover, the supreme management body must propose measures to be taken to restore the capital lost or to re-capitalise the company, or make a proposal for the dissolution of the company.

In case the share capital of an ApS company amounts to less than DKK 125,000 after the loss of capital, the supreme management body must propose to increase the share capital to this amount as a minimum or to dissolve the company. A transcript of the minutes must be submitted to the DBA no later than seven days after the shareholders have considered the proposal of the supreme management body.

In case an ApS company fails to restore its equity after half of it has been lost, the company will be dissolved if the DBA so decides.

## 4.5 Loans to foreign parents etc.

An A/S company or an ApS company is not allowed to grant loans to or provide security for its shareholders, board members or executive officers. These restrictions do not apply to loans granted by a subsidiary to a Greenlandic or EU parent or to credit arrangements originating from ordinary business transactions carried out on usual terms of payment.



#### 4.6 Management liability

If a loss is sustained by an A/S company or an ApS company due to acts or omissions by members of the board of directors and/or the executive board, such members may be held personally accountable to the company or third parties in case the loss was caused to the company due to wilful default or negligence, see the Greenlandic principle of fault.

Under Greenlandic law, the principle of fault is used in different ways depending on the context in which it is to be applied. As for board members' or executive officers' liability, the principle of fault requires that such members and officers perform their duties diligently and properly. Wrong decisions made in good faith and with due care and on the basis of proper investigations cannot lead to liability in damages (the rule of business judgement).

If a board member or an executive officer is found to be liable in damages under the Greenlandic management liability rules, the damages that the board member or executive officer is required to pay may be reduced if reduction is found to be reasonable considering the circumstances, especially the degree of guilt and the size of loss.

Moreover, if the board of directors or the executive board fails to perform its duties, e.g. the duty to open a register of members, the duty of A/S companies to prepare and adopt a set of rules of procedure, or the duties relating to loss of capital, the individual board members or executive officers may be fined.

# 5. Establishing an A/S or an ApS company

A foreign investor who intends to set up a subsidiary in Greenland may either form a new company or purchase the shares of a shelf company.

## 5.1 Forming a company

The promoters must prepare and sign a certificate of incorporation, which is also required to contain draft bylaws of the company.

The draft bylaws must, among other details, state the name of the company and the location of its registered office as well as provide information about the object of the company, the share capital, the board of directors, general meetings, the auditor and the company's financial year.

The bylaws may be amended subsequently, if so desired, but the shareholders must authorize the amendments at a general meeting.

Furthermore, the certificate of incorporation must state the names and addresses of the promoters, and, for A/S companies, the subscription price of the shares and the deadline for subscription and paying in subscribed capital.

The formal decision to form the company is made at the first general meeting of the shareholders. Once formation has been adopted, the shareholders must adopt the bylaws and elect the members of the board of directors and appoint the auditor.

The board of directors is obliged to register the company with the DBA within six months (two months in case of an ApS) of the date of signature of the certificate of incorporation.

A company in the process of incorporation, i.e. a company that has not yet been registered, is not considered an independent entity, for which reason the promoters are personally liable for the activities of the company. Once registered, the company comes into existence legally. When registered, the company will take over all responsibilities and obligations arising from activities that have been carried out from the date of formation to the date of registration.

Acquiring an operational company from one week to the next may easily be arranged by using a shelf company as described below.

### 5.1.1 Non-cash contribution of assets/sale of assets by a promoter/shareholder

It is possible to form a new company by contributing assets against the issue of shares in the new company. In order to establish a company by way of non-cash contribution, a number of requirements must be fulfilled. The most important requirement is the preparation of a valuation report containing the following elements:

- 1) Description of each contribution;
- 2) Information about the approach applied in the valuation;
- 3) Statement of the consideration fixed for the acquisition;
- 4) An assurance report stating that the value of the contributed assets at least equals the agreed consideration, including the nominal value of the shares to be issued plus any premium.

The valuation report is to be prepared by an independent party, normally a state-authorized public accountant.

In certain cases, however, it will be necessary to involve other experts to confirm the valuation.

The valuation must be made no more than four weeks before the statutory general meeting.

Most often, the valuation report will be based on documented budgets and a financing plan.

If major capital assets are transferred from a promoter or a shareholder within the first 24 months of the date of formation, a valuation report is also to be prepared, as mentioned above.

### 5.2 Purchase of shares in a shelf company

As it may be rather time-consuming to incorporate a new company, it is quite common to purchase the shares of a shelf company instead. A shelf company is a registered company which has carried out no activities in its lifetime.

The acquisition of a shelf company makes it possible to set up business at once. Immediately after acquisition, an extraordinary general meeting must be held for the purpose of voting for the desired amendments to the bylaws and electing new board members and an auditor.

Such amendments to the bylaws would normally involve changing the company's name, object and financial year.

Amendments adopted at the general meeting must be registered with the DBA within four weeks (two weeks in certain cases) of the date of adoption.

### 5.3 Formation expenses

#### 5.3.1 Forming a subsidiary

The minimum share capital required to form a new company is DKK 500,000 for an A/S company and DKK 125,000 for an ApS company.

No capital contribution tax is levied. Fees to advisers such as attorneys, auditors etc. may be charged.

The promoters may provide in the certificate of incorporation that these fees are to be paid by the company.



# 6. Establishing a registered branch office

A registered branch office of a foreign corporation is entitled to carry on any business activity falling within the object of the head office. The head office must register the branch office with the DBA and file the following documents:

- A copy of the bylaws of the head office;
- The certificate of incorporation of the head office;
- A certified power of attorney issued to a branch office manager together with documentation that the branch office manager meets the residency and citizenship requirements.

The documents must be translated into Danish if so required by the DBA.

A registered branch office must have a name that includes the word "filial" (branch office) as well as the name of the foreign corporation and the country of incorporation.

Furthermore, the branch office is to be registered with the Greenlandic Business Register (GER).

## Special rules applying to companies holding an exploration license under the Mineral Resources Act

If a foreign corporation holds a license under the Mineral Resources Act, the "branch office" need not be registered according to the rules of the Trade Act. Please also note that transition from exploration to exploitation may only be commenced if an exploitation license has been granted, and such license can only be granted to a company registered in Greenland.

It is possible, subject to certain conditions, to transfer exploration expenses in whole or in part from the "branch office" to the company obtaining the exploitation license – also see section 5.1.1 on non-cash contribution.

### *Establishing a registered branch office*

No capital requirements apply to a registered branch office.

No registration fee is payable to the DBA or Greenlandic Business Register (GER).

Fees to advisers such as attorneys, auditors etc. may be charged.

## 6.1 Subsidiary versus registered branch office

A foreign corporation having decided to set up business in Greenland will have to decide whether such business is to be established as a subsidiary or as a registered branch office. Before the final decision is made in this respect, the corporation should study the most significant differences between operating through a subsidiary and through a registered branch office.

The most significant differences are summarized below.

### 6.1.1 Liability

A foreign corporation is fully liable for the activities carried out by a registered branch office as opposed to a subsidiary, where the liability of the foreign corporation is limited to the share capital of the subsidiary.

### 6.1.2 Management fees/overhead costs

A foreign corporation may charge a Greenlandic subsidiary a management fee, including a mark-up, provided that the charge is in accordance with the arm's length principle. A management fee charged to a Greenlandic subsidiary is fully tax deductible for the Greenlandic subsidiary.

A foreign corporation is not allowed to charge a Greenlandic registered branch office a management fee, but it may transfer a share of its overhead costs equivalent to the share of overhead costs attributable to the earning of taxable income by the registered branch office.

### 6.1.3 Payment of interest on group debts

Unlike interest paid by a subsidiary to a foreign parent, the interest paid by a registered branch office on a loan granted by the foreign head office is generally not tax deductible for a Greenlandic branch office. The interest paid by a registered branch office on a loan granted by a group company other than the foreign head office is usually deductible if the loan has been granted on an arm's length basis.

### 6.1.4 Profit distribution

Profits generated by a registered branch office may be remitted to the foreign head office free of Greenlandic withholding tax.

When a Greenlandic company distributes dividend, dividend tax is to be withheld on distribution. The applicable dividend tax rate corresponds to the personal income tax rate applicable in the municipality in which the company distributing dividend is registered.

Dividend tax must be paid to the tax authorities no later than 30 days after the adoption of distribution of dividends at the general meeting.

Current dividend tax rates are listed in the table below:

| 36%  | 42%                                       | 44%   |
|--|---|---|
| Department of Inland Revenues  | Ivittuut<br>Paamiut<br>Nuuk<br>Tasiilaq   | Kangaatsiaq<br>Aasiaat<br>Qasigiannugit<br>Ilulissat                                  |
| (Companies holding a license under the Mineral Resources Act and offshore activities etc. as well as specific staff employed by the license holders) | Ittoqqortoormiit<br>Sisimiut<br>Maniitsoq | Qeqertarsuaq<br>Uummannaq<br>Upernavik<br>Qaanaaq<br>Nanortalik<br>Qaqortoq<br>Narsaq |

(Valid for 2015)

Companies holding an exploitation license under the Mineral Resources Act must – regardless of their physical domicile – have the Department of Inland Revenues as their domicile in pursuance of tax law. Thus a rate of 36% is applied to compute dividend tax.

Dividends paid are **deductible** for the dividend-distributing company in the year of distribution when computing the taxable income of that company. However, companies may apply for permission to take the right of deduction to the year to which the dividends relate.

### 6.1.5 Tax losses

In its home country, a foreign corporation may often offset a loss incurred in a registered branch office in Greenland against positive taxable income.

Normally, a foreign corporation will not in its home country be entitled to offset a loss from a Greenlandic subsidiary against positive taxable income.

Greenlandic law provides for tax losses to be carried forward for a period of five years, and this goes for both subsidiaries and registered branch offices.

Companies holding exploration or exploitation licenses under the Mineral Resources Act may carry forward tax losses indefinitely.

### 6.1.6 Filing requirements

A subsidiary must file its audited annual report with the DBA, where it is made available to the general public.

The manager of a registered branch office must file a certified copy of the foreign corporation's audited annual report or financial statements with the DBA. Once filed here, the material is made available to the general public.

The annual report of the registered branch office is prepared for tax purposes only and need not be audited.

### 6.1.7 Sales promotion

Some Greenlandic customers may consider the establishment of a subsidiary a stronger commitment by the foreign corporation to remain in the Greenlandic market than would be the case had the foreign corporation set up a registered branch office.



## 6.2 Tax liability for short-term operations – permanent establishments

Generally, companies are liable to pay tax in Greenland. Isolated operations of short duration and/or minor activities, however, are not regarded as permanent establishments in Greenland.

New Greenlandic tax rules took effect on 1 January 2010, which particularly affect license holders under the Mineral Resources Act and subcontractors/operators working in this area regardless of whether the work is performed on land, in territorial waters or on the continental shelf.

Generally, all businesses holding a prospecting or exploration license are considered liable to pay tax in Greenland. (Exploitation activities must always take place in an A/S company registered in Greenland and are therefore taxable in Greenland.)

Subcontractors/operators performing work directly related to the exploration or exploitation in a license area will have a permanent establishment from day one. The exception is companies carrying on activities for less than 30 days during a 12-month period. For group enterprises providing identical services, the number of days is calculated collectively.

Subcontractors/operators engaging solely in prospecting and who do not themselves have a license are subject to the general rules on permanent establishments.

Below is a list of the most important time limits for other activities:

|                        | Onshore   | Consulting           | Offshore   |
|------------------------|---|----------------------|--|
| <b>Denmark</b>         | Construction etc.: 6 consecutive months   | 90 consecutive days  | In certain cases, vessels/aircrafts used as auxiliary/transport crafts in connection with exploration/exploitation activities are exempted |
| <b>Norway</b>          | Construction etc.: 6 months within 24 months  | Not defined          | In certain cases, vessels/aircrafts used as auxiliary/transport crafts in connection with exploration/exploitation activities are exempted |
| <b>Iceland</b>         | Construction etc.: 6 consecutive months   | 183 consecutive days |  |
| <b>Faroe Islands</b>   | Construction etc.: 3 consecutive months   | 183 consecutive days |  |
| <b>Other countries</b> | All other onshore activities including prospecting activities (companies without a license): 3 to 12 consecutive months | 90 consecutive days  |  |

# 7. Corporate taxation

## 7.1 Basic principles of corporate taxation

Corporation tax is levied at a flat rate of 31.8%, and this rate applies to a resident company and a registered branch office of a foreign corporation. Neither a resident company nor a registered branch office is subject to wealth taxation. Taxable capital gains are taxed at the same rate as the rate applying to taxable income from business operations.

The corporation tax rate applicable to companies holding a license under the Mineral Resources Act is 30%.

## 7.2 Computation of taxable income

Taxable income is computed on the basis of the profit disclosed in the statutory annual report, adjusted to comply with applicable tax provisions.

The tax provisions listed below are those most commonly applied in computing the taxable income of a company or a registered branch office.

## 7.3 Tax depreciation or amortization

The permissible rate and method of depreciation or amortization for tax purposes depend on the asset group being depreciated or amortized.

### 7.3.1 Groups of depreciation or amortization

Tax depreciation or amortization can be divided into four groups:

- Buildings and related installations are depreciable by no more than 5% per year, calculated on the basis of the acquisition price;
- Aircrafts and vessels are depreciable by no more than 10% per year, calculated on the basis of the acquisition price;
- All other items such as machinery, equipment, intangible assets etc. may be depreciated or amortized collectively as if they were single composite assets using the diminishing-balance method by no more than 30% per year. Special rules apply to leased assets. Sale of assets within this group leads to the remaining balance being lowered by the selling price of assets sold;

- Acquired partial offshore licenses must be amortized over ten years, whereas acquired partial mineral licenses must be amortized over a period of four years.

Assets costing less than DKK 50,000 per unit may be written off in the year of acquisition.

### 7.3.2 Amortization or depreciation of gains

If a taxable gain is realized from the sale of buildings, vessels or aircrafts, the taxpayer may perform effect special amortization or depreciation corresponding to the calculated gain. Amortization may freely be deducted from the balance in one of the four groups of amortization or depreciation specified above provided that the remaining balance of the group remains positive or is zero.

Companies holding exploitation licenses under the Mineral Resources Act may, when computing their taxable income, deduct any changes in the provisions made to ensure that a closing-down plan is financially realizable.

## 7.4 The relationship between corporation tax and dividend tax

As is evident above, it is possible to lower taxable income to zero when distributing dividend on which, for instance, 42% in dividend tax is withheld (the current dividend tax rate is stated in section 6.1.4).

Accordingly, the company's profit for the relevant year must be taxed at a total rate of 42%.

If the company decides not to distribute dividend but to strengthen its financial position instead, 31.8% of retained (taxable) earnings must be paid in corporation tax. Upon subsequent distribution of the remaining 68.2% of retained earnings, 42% must then be paid in dividend tax.

The following model shows computation of taxable income:

|   | Year 1   |                  | Year 2   |                  |
|---|----------|------------------|----------|------------------|
|   | DKK      | DKK              | DKK      | DKK              |
| Profit before tax according to annual report                            |          | 1,000,000        |          | 1,000,000        |
| Book depreciation and amortization according to annual report           | 150,000  |                  | 150,000  |                  |
| Other book adjustments  | 50,000   | 200,000          | 50,000   | 200,000          |
| <b>Taxable income before tax depreciation and amortization</b>          |          | <b>1,200,000</b> |          | <b>1,200,000</b> |
| Ordinary tax depreciation and amortization:                             |          |                  |          |                  |
| Buildings   | -50,000  |                  | -50,000  |                  |
| Vessels and aircrafts   | -100,000 |                  | -100,000 |                  |
| Operating equipment below DKK 50k/each                                  | -95,000  |                  | -95,000  |                  |
| Operating equipment, 30% declining balance depreciation                 | -225,000 | -470,000         | -130,500 | -375,500         |
| <b>Gain amortization:</b>   |          |                  |          |                  |
| Buildings   | -50,000  |                  | 0        |                  |
| Vessels and aircrafts   | 0        |                  | 0        |                  |
| Operating equipment   | 0        | -50,000          | 0        | 0                |
| <b>Taxable income before tax loss carryforwards from previous years</b> |          | <b>680,000</b>   |          | <b>824,500</b>   |
| Dividend paid   |          | -100,000         |          | -100,000         |
| Tax loss carryforward from previous years                               |          | -100,000         |          | 0                |
| <b>TAXABLE INCOME</b>   |          | <b>480,000</b>   |          | <b>724,500</b>   |
| <b>Operating equipment</b>  |          |                  |          |                  |
| Opening balance   |          | 500,000          |          | 285,000          |
| Addition in the year, less than DKK 50k/item                            |          | 95,000           |          | 125,000          |
| Addition in the year, exceeding DKK50k/item                             |          | 250,000          |          | 150,000          |
|   |          | 845,000          |          | 560,000          |
| Depreciation equipment below DKK 50k/item                               |          | -95,000          |          | -125,000         |
|   |          | 750,000          |          | 435,000          |
| 30 % declining balance depreciation                                     |          | -225,000         |          | -130,500         |
|   |          | 525,000          |          | 304,500          |
| Profit amortization (closing balace can't go below zero)                |          | -240,000         |          | -304,500         |
| Balance closing   |          | 285,000          |          | 0                |

Greenlandic companies must withhold dividend tax corresponding to the personal income tax rate applicable in the municipality of registration. For companies holding licenses under the Mineral Resources Act or the Exports of Ice and Water Act, the present dividend tax rate is 36%.

In the event of subsequent liquidation of the company, no further tax is to be paid on retained earnings provided that the activities are not continued elsewhere by the same group of persons.

Normally, profits earned are taxed at the dividend tax rate, but with the possibility of applying a lower rate if the profit is carried forward in the company's financial statements until the time of its liquidation.

In case of inappropriate tax planning, the worst-case scenario would be the company having to pay both corporation tax and dividend tax on the same income.

It is important to note that any profit-making company should carefully plan an appropriate composition of dividend, depreciation, amortization, etc.

### 7.5 Tax losses

A tax loss may be carried forward for five years and offset against taxable income. It is not all allowed to carry back losses to previous income years. Special provisions apply, however, which may restrict the loss carryforward.

It should be noted in particular that material changes in ownership or activities may cause forfeiture of tax loss carryforwards unless the necessary exemptions have been granted.

Companies holding exploration or exploitation licenses under the Mineral Resources Act may carry forward tax losses indefinitely.

### 7.6 Intercompany transactions and royalty

Payments such as interest, royalty, management fee payments, etc. that are made from Greenland to other countries under intercompany agreements are tax deductible in Greenland provided that the payments are effected on an arm's length basis.

Generally, this also holds true for payments made between a Greenlandic permanent establishment and its foreign head office.

Royalty payments from Greenland are taxable for the recipient as the recipient will always be considered liable to pay tax thereon in Greenland. The royalty payer must withhold and pay royalty tax to the tax authorities.

### 7.7 Transfer pricing

Greenlandic tax law now includes specific provisions on documentation of related party transactions. Agreements between related parties must be documented, including written documentation as to how prices and terms are determined for intercompany transactions. Written documentation must be of such nature that it can be used to assess whether or not the prices and terms applied are consistent with the arm's length principle.

Documentation must be kept on file for five years.

### 7.8 Thin capitalization rules

Greenlandic tax law now also has specific rules on thin capitalization. It is generally important to note that related party lending must comply with the arm's length principle.

Thin capitalization rules will affect companies with an equity-to-debt ratio of 1:2. However, related party lending is not subject to these rules if the parties can provide documentation that loans are granted on an arm's length basis.

# 8. Corporation tax, VAT and levies, AMA and personal income tax

## 8.1 Corporation tax

Corporate tax returns, which must be filed annually, are due no later than four months after the end of the financial year.

Permission is usually given to postpone submission of tax returns if an application to this effect is filed with the tax authorities.

Tax falls due no later than 10 months and 20 days after the end of the tax year.

## 8.2 VAT and levies

Greenland has no VAT system.

Import duties are levied on certain products such as motor vehicles, meat products, alcohol and cigarettes.

In addition, an environmental tax that took effect in 2011 is levied on products intended for energy production. It is DKK 0.10 per liter (15° Celsius) of petrol, diesel, jet A-1, etc. A similar approximate tax is levied on other energy products.

## 8.3 The AMA scheme and AEB

All employers must make contributions to a continuing education scheme (the AMA scheme). AMA is charged at 0.9% of payroll, including any kind of remuneration, commission on profits etc.

On a monthly basis, the employer must determine, report and make AMA contributions to the tax authorities.

Further, employers have to take out industrial disease insurance. Yearly costs per employee come to between DKK 300 and DKK 600.

## 8.4 Personal income tax

Before a foreign corporation decides to send employees to work in Greenland, we strongly recommend it to examine whether work and residence permits are required. As a general rule, only Scandinavian workers are automatically allowed to work and reside in Greenland and need not apply for a work or residence permit. The rules in this area are quite complex and we recommend companies to seek advice in this respect.

Moreover, the rules on occupational injury and those stipulating the health benefits to which foreign workers are entitled when working in Greenland are complex, and we recommend companies to seek advice on this as well.

### 8.4.1 Obligations when hiring employees

Employees are subject to unlimited Greenland taxation if:

1. They reside (have a permanent address) in Greenland; or
2. They stay in Greenland (without establishing a residence) for a consecutive period of six months or more. This period need not be within a calendar year. Any given six-month period will result in tax liability for the employee under this rule.

Individuals who are not subject to unlimited taxation may be subject to limited tax liability on income from Greenlandic sources, e.g. income from work performed in Greenland, interest income from Greenlandic sources, income from a permanent establishment in Greenland, etc.

Individuals working in Greenland are subject to limited tax liability. Generally, limited tax liability takes effect for salary income etc. as soon as an individual starts working in Greenland for a Greenlandic company or any other type of taxable entity domiciled in Greenland (companies with a permanent establishment in Greenland). See section 6.2 regarding permanent establishments.

Individuals are neither fully nor limitedly liable to tax in Greenland, however, if they meet the following criteria:

- Their stay in Greenland does not exceed 14 consecutive days\*);
- Work is performed for and paid by the usual employer;
- Work is not related to prospecting, exploration or exploitation.

\*) 183 days within a 12-month period if the individual's home country is Denmark, Norway, the Faroe Islands or Iceland.



If an individual is undoubtedly subject to the power of instruction of a Greenlandic business or a branch office (by being “hired out” by the usual employer), he or she will be considered liable to pay tax in Greenland.

These rules may be quite complicated, for which reason we recommend seeking specific advice.

Any employer must be registered in the employer register.

#### 8.4.2 Consultants

Independent consultants may stay in Greenland for up to 90 days before they will be considered to have a permanent establishment. See also section 6.2 dealing with consultants coming from a country that has entered into a double taxation treaty with Greenland.

#### 8.4.3 Tax at source

The following items, paid by a Greenlandic employer, are subject to tax at source: cash allowance and the taxable value of a company-paid telephone, a company car, a holiday home and some private insurance paid by the employer. Presently, taxable benefits arising from the exercise of stock options are not subject to tax at source.

The employer is monthly to report to the tax authorities the salaries paid and tax withheld for each employee and to pay tax withheld to the tax authorities.

The taxable amount for the employees is to be reported to the Greenlandic tax authorities by way of an annual payroll statement. The employer is obliged to file the statement no later than 30 January of the year following the year in which the amount was paid to the employee.

### 8.5 Taxation of employees

#### 8.5.1 Ordinary taxation

Individuals subject to unlimited taxation will be liable to pay tax on their worldwide income.

Greenland applies a flat income tax rate system, meaning that the rate applied is the same for everyone regardless of income. The income tax rates comprise state and municipal taxes.

Personal income tax rates are as follows:

| 36%  | 42%  | 44%  |
|--|--|--|
| Department of Inland Revenues  | Ivittuut<br>Paamiut<br>Nuuk<br>Tasiilaq<br>Ittoqqortoormiit<br>Sisimiut<br>Maniitsoq | Kangaatsiaq<br>Aasiaat<br>Qasigiannguit<br>Ilulissat<br>Qeqertarsuaq<br>Uummanaq<br>Upernavik<br>Qaannaq<br>Nanortalik<br>Qaqortoq<br>Narsaq |
| (North East Greenland and offshore as well as specified staff employed by the license holders) |  |  |

(Valid for 2015)

If an individual is a taxpayer with unlimited tax liability, he or she is granted a personal and basic allowance of DKK 58,000 on his or her income. Individuals with limited tax liability are granted a personal and basic allowance of DKK 49,000.

In both cases, the allowance reflects the ratio of duration of the stay to the calendar year.

Employees must submit their tax card to their employer upon engagement. If no tax card is submitted, the employer is required to withhold 45% in tax of the employee's salary.

As a main rule, all types of salary income/remuneration, whether in cash or in kind, are subject to income taxation. This includes:

- Salary during lieu days taken as earned from work carried out in Greenland;
- Bonus;
- Salary received during holidays;
- Employers' contributions to pension plans;
- Free board and lodging.

This list is not exhaustive.

For an employee, remuneration in kind may include items such as free housing, free private use of a telephone, free private use of a company car, free home travels, etc.

In some cases, the taxable value of such benefits is based on an estimated value. In other words, the taxable value of the benefits is not necessarily equivalent to cost for the employer.

It is important to note that Greenland does not recognise international net wages schemes such as the Danish International Ship Register (DIS) except where Danish vessels in regular service are concerned.

If employees receive net pay, it must be converted into gross pay applying the following formula:

Gross pay = (net pay less allowance)/(1 tax percentage point) + allowance.

Then tax is computed according to general rules.

Certain types of pension savings in Greenlandic and Danish pension funds are deductible for taxpayers when computing their taxable income.

Example of tax computation:

|   | Year 1 | Year 2  |
|---|--------|---------|
|   | DKK    | DKK     |
| <b>Tax resident:</b>                    |        |         |
| Monthly salary                          |        | 40.000  |
| Pension scheme, 4% (example)            |        | -1.600  |
| A-income                                | 38.400 |         |
| Personal allowance                      | -4.000 |         |
| Standard allowance                      | -833   |         |
| Tax base (rounded)                      | 33.560 |         |
| Tax, 42%                                |        | -14.095 |
| Net salary                              |        | 24.305  |
| <b>Other contributions:</b>             |        |         |
| Holiday allowance, 12% (minimum)        |        | 4.800   |
| AMA contribution                        |        | 360     |
| <b>Non-tax resident, net salary:</b>    |        |         |
| Agreed payment per day (20 x 1.200 DKK) |        | 24.000  |
| Income                                  | 24.000 |         |
| Personal allowance (DKK 131,50/day)     | -2.630 |         |
| Standard allowance (DKK 2,74/day)       | -55    |         |
| Free food and lodging (DKK 135,62/day)  | 2.712  |         |
|   | 24.028 |         |
| Converted to before tax and allowances  | 41.427 |         |
| Tax, 42%                                |        | 17.399  |
| Tax Allowances                          | -28    |         |
| Gross salary (for AMA calculation)      | 41.390 |         |
| <b>Other contributions:</b>             |        |         |
| AMA contribution                        |        | 373     |

### 8.5.2 Gross income tax scheme

In 2011, a new element was added to the Greenlandic tax system, subjecting certain categories of employees to a new gross income tax scheme.

Under this scheme, employees fulfilling the conditions are taxed at a definite rate of 35% of their gross income with no possibility of deducting allowances other than contributions made by the employer to Greenlandic or Danish pension funds.

Changes in the taxation of individuals apply to:

1. Large-scale rural projects: Individuals who perform tasks under an employment agreement relating to planning and construction work as well as installation work performed outside towns and settlements and who have not been liable to pay tax in Greenland for a six-month period preceding their employment;
2. Minerals: Individuals who have not been liable to pay tax in Greenland for a six-month period preceding their employment and who mainly perform specific tasks under an employment agreement relating to prospecting, exploration and exploitation of minerals.

#### Common rules

As a general rule, the employees concerned are taxed at a gross income tax rate of 35%, which is the definite rate. The employee is not obliged to file a tax return. If the employee needs documentation of tax paid, the tax authorities may draw up such documentation.

Gross income tax is computed on any income arising from the project, including employee benefits such as free board and lodging, telephone etc. When computing gross income tax, only pension contributions paid into approved Greenlandic and Danish pension funds may be deducted. Any other income – such as income earned during the year in which a construction project was completed and in which the person remains employed – will be subject to normal tax rules.

If an employee also receives income taxed at source for other tasks that do not fall within the scope of this rule, the employee is no longer eligible for the gross income tax scheme and will be subject to normal tax rules.

### 8.6 Double taxation treaties

Greenland has entered into double taxation treaties with the following countries:

- Denmark;
- Norway;
- The Faroe Islands;
- Iceland.

Also, the Danish double taxation treaty with Canada contains a special arrangement regarding distribution of dividend from a Greenlandic company to a Canadian recipient.

These treaties are relevant particularly to dividends and in determining the commencement date of tax liability for both individuals and businesses.









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