Transfer Pricing Country Summary

Denmark

May 2022

1. Introduction

Denmark's new law (L28/2020) requires Danish companies to submit a master file and a local file to the Danish Tax Agency within 60 days of the deadline for filing the annual corporate income tax return. Previously, contemporaneous transfer pricing documentation had to be prepared by the deadline for filing the annual tax return (30 June of the following year for most taxpayers), but it did not have to be submitted to the Danish Tax Agency unless the Danish Tax Agency requested it.

2. Laws & Regulations

a) References to OECD/EU/Local Rules

The Danish transfer pricing rules are generally in accordance with the OECD Transfer Pricing Guidelines. Still, it should be noted that the Danish tax administration increasingly formulates their own positions in areas where the OECD has not provided any (precise) guidance.

The transfer pricing documentation standards have been supplemented by legislation adopted on 25 November 2021. The transfer pricing documentation must be given to the Danish tax office within 60 days of the due date for filing the tax return, according to the new requirements. Taxpayers with entirely domestic regulated transactions are excluded from the transfer pricing documentation requirements under the new rules (that is, DK-to-DK transactions). Transfer price documentation will no longer be necessary for taxpayers with wholly or only DK-to-DK transactions. Moreover, database searches for benchmark studies will be substantially more common than previously.

The arm's length principle is governed by the Tax Assessment Act (Ligningsloven). Section 2 of the Assessment Act[1] contains the legal basis for applying the arm's length principle. Following a revision of the statutory transfer pricing documentation requirements in 2005 and the issue of a binding order on documentation requirements in January 2006, a Guidance Note of approximately 100 pages was issued in February 2006, which addresses not only documentation requirements but also a number of substantive transfer pricing matters. There are also an increasing number of court cases dealing with various transfer pricing issues.

b) Definition of Related Party

Pursuant to the Tax Assessment Act (Section 2) and the Tax Control Act (Section 37), related parties are specified based on either formal control (shareholding of >50%) or actual control (control based on shareholder agreement). The following must set prices and terms for controlled transactions according to the arm's length principle: Taxpayers over;

- which natural or legal persons exercise a controlling influence
- which exercise a controlling influence over legal persons
- which are affiliated with a legal person
- which have a permanent establishment abroad

[1] https://www.retsinformation.dk/eli/lta/2019/806

- which are a foreign natural or legal person with a permanent establishment in Denmark, or
- which are a foreign natural or legal person with hydrocarbon-related activities.

Section 2(2) of the Assessment Act defines control as:

- A concept based on legal control as opposed to a notion of de facto control;
- Ownership of more than 50% of the share capital;
- Control of more than 50% of voting power; or
- Not only direct but also indirect ownership of share capital or control of voting power is taken into account, also where de facto control is not present;

Furthermore, the above definitions are extended by also including shares and voting power of:

- Group related companies (as defined in Section 4(2) of the Act on Taxation of Capital Gains and Losses);
- Individual shareholders and certain close relatives, or foundation or trust set up by the persons mentioned earlier.

c) Nature of Transfer Pricing Documentation

Section 37-52 of the Danish Tax Control Act mandates that taxpayers a) reveal transfer pricing information in their tax returns, b) produce and submit transfer pricing documentation, and c) prepare and submit CbC reports. Legal Guidance describes Denmark's transfer pricing policies, guidance, and practices/case laws (DJV). The Legal Guidance is based on and is harmonised with the TPG guidance. Taxpayers must disclose the types and amounts of the inter-company transactions. The Controlled Transactions form (form no. 05.022) must be completed and enclosed with the tax return.

d) Tax Havens & Blacklists

Denmark adopts the EU List of non-cooperative jurisdictions regarding specifying tax havens. The list adopted by the Council on 5 October 2021 is composed of American Samoa, Fiji, Guam, Palau, Panama, Samoa, Trinidad and Tobago, US Virgin Islands, Vanuatu.

e) Advance Pricing Agreement (APA)

Unilateral, bilateral and multilateral APAs are available. There is no filing fee for APA. The validity of an APA could be extended if the fundamentals have not changed significantly.

f) Audit Practice

There are no specific transfer pricing audit procedures.

3. Transfer Pricing Documentation

a) Level of Documentation

The taxpayer must prepare and keep written documentation of the prices and terms set for controlled transactions. This written documentation must be submitted at the tax authority's request and provide a suitable basis for assessing whether the transaction was conducted at arm's length.

The documentation scope depends on the enterprise's complexity and the controlled transactions. The documentation must contain the following:

- Information on the group and its commercial activities
- Information on the controlled transactions
- A comparability analysis
- Information on the implementation of the pricing principles
- A list of any written agreements

b) Industry Analysis

By identifying value drivers for the relevant industry, a first indication of the level of profitability common in the industry is being given.

c) Company Analysis

A description of the management structure of the local entity, a local organisation chart, and a description of the individuals to whom local management reports and the country(ies) in which such individuals maintain their principal offices.

A detailed description of the business and business strategy pursued by the local entity, including an indication of whether the local entity has been involved in or affected by business restructurings or intangibles transfers in the present or immediately past year and an explanation of those aspects of such transactions affecting the local entity.

d) Functional Analysis

In conducting a functional analysis, an assessment is made of the significant activities and responsibilities that are performed by the related parties relevant to the Intercompany Transactions under review, the tangible and intangible assets that are employed and the risks that are borne in undertaking the business activities. Such an assessment is consistent with the recommendations that have been made in the OECD Guidelines in paragraph 1.51.

e) Choice of Transfer Pricing Method

The following methods are accepted:

- Comparable uncontrolled price (CUP) method
- Resale price method
- Cost-plus method

- Profit split method
- Transactional net margin (TNMM) method

f) Economic Analysis – Benchmark Study

Denmark has a database of comparable information. The tax authorities also accept foreign comparables, but Danish comparables are preferred.

g) Inter-company (IC) Legal Agreement

Although an Inter-company legal agreement formalises the business and financial relationship between group entities, the legal agreements have a lower ranking since the OECD 2017 Guidelines made the "conduct of parties" the prevailing concept.

h) Financial Statements

Most Danish companies are required by law to submit annual financial statements. These statistics are provided in electronic form. The law requires different amounts of data to be published depending on the company's income, balance, and number of employees.

The Financial Statements Act and other regulations govern financial statement reporting in Denmark.

Both national accounting standards and the IFRS are used in Denmark. Companies that trade on a stock exchange are required to use only IFRS.

Financial statements are required to be filed with the Business Agency (Erhvervsstyrelsen), which reports to the Ministry of Business and Growth.

The Ministry of Business and Growth does not require sole proprietors to submit financial statements. They do, however, file their financial statements with tax authorities on demand if necessary.

Financial statements are required for joint-stock companies.

Limited liability companies must file simplified financial statements if they meet the following criteria:

- Balance of up to 4 million DKK
- Income of up to 8 million DKK
- Employees up to 12

Financial statements must be filed within five months of the end of the fiscal year. Delays are penalized.

The full annual financial statement includes:

- Balance sheet
- Report on Profit and Loss
- Notes
- Directors' report
- Executive summary

- Auditor's report

i) Production Process for TP Relevant Returns, Documents, Forms and Financials

In the chart below, the existence of the filing requirements with the details of which format is used, the latest filing date, notification requirement and its deadline, thresholds to be applied in case it exists, and the required languages are demonstrated. These information can be seen respectively for CIT, master file, local file, CbCR, local forms, annual accounts and segmented P&L documentations.

	Prepare or File?	Format	Deadline	Notification Deadline*	Threshold* (Yes/No)	Local Language (Yes/No)*(If "No", it can be filed in English)
Corporate Income Tax	File	e-Filing	30 June of following FY	N/A	No	No
Master File	File	Special Form	2 months after CIT deadline (31 August)	N/A	> 250 employees, and > DKK 125 M assets or > DKK 250 M revenue	No
Local File	File	Special Form	2 months after CIT deadline (31 August)	N/A	> 250 employees, and > DKK 125 M assets or > DKK 250 M revenue	No
CbCR	File	e-Filing[2]	31 December (12 months after the FY end).	31 December (12 months after the FY end).	DKK 5.6 Billion (EUR 750 M)	No

[2] https://pdcs.skat.dk/dcs-atn-gateway/login/tsklogin?userType=virksomhed&targetUrl=aHR0cHM6Ly93d3cuc2thdC5kay9mcm9udC9hcHBtYW5hZ2VyL3NrYXQvbnRzZQ==

Form 05.022	File	Special Form[3]	30 June of following FY (with CIT)	N/A	DKK 5 million	No
Annual Accounts	File	Local IFRS	31st of May	N/A	DKK 100 million	No
Segmented P&L	N/A	N/A	N/A	N/A	N/A	N/A
* Denmark has signed the MCAA agreement on 27 January 2016 for the filing of CBCR.						

According to section 1 of Executive Order 1297 of 31 October 2018, a Local File must be prepared and filed by taxpayers who, when assessing their income for tax and dividend purposes, are required to use prices and terms in commercial or financial transactions with related parties (controlled transactions) that reflect those that could have been obtained had the transactions been conducted between unrelated parties (see section 2(1) of the Danish Tax Assessment Act), and who are required to prepare and keep written documentation to show how such prices and terms have been determined.

Local subsidiaries that are part of a non-resident group do not have to file the Local File prepared in the other country or countries. According to section 40 of the Danish Tax Control Act, taxpayers who alone or together with any associated enterprise, have fewer than 250 employees and have either an aggregate annual balance sheet total of less than DKK 125 million or an annual turnover of less than DKK 250 million shall only prepare a Local File in relation to:

- controlled transactions with natural and legal persons domiciled in a foreign state that has no double taxation treaty with Denmark and is not a member of the European Union or the EEA;
- controlled transactions with a PE located in a foreign state that has no double taxation treaty with Denmark and is not a member of the European Union or the EEA;
- controlled transactions with a PE located in Denmark, provided that the taxpayer with a PE located in Denmark, is domiciled in a foreign state that has no double taxation treaty with Denmark and is not a member of the European Union or the EEA.

With regard to filing obligations, the local subsidiary must file the Local File (and Master File) if subject to the documentation duty (and the exemption above does not apply).

SME taxpayers are exempt from documentation requirements and must only prepare transfer pricing documentation for special transactions. (but not from applying the arm's length principle). If their total intercompany transactions exceed DKK 5 million, they are subject to the disclosure requirement.

[3] https://skat.dk/getfile.aspx?id=142162&type=xlsx&name=05.022+-+juni+2020

The general deadline for filing the corporate income tax return is within 6 months of the end of the income year. If a corporation uses the calendar year as its income year, the deadline is 30 June. TP documentation needs to be filed at least 2 months after the corporate income tax return deadline. Upon request by the tax authority, transfer pricing documentation must be submitted within 60 days, and the statute of limitations is 6 years.

j) Mandatory Language

Transfer pricing documentation may be prepared in the following languages: Danish, English, Norwegian or Swedish.

k) Notification Requirement

Companies should notify the tax authorities whether another entity submits CbC Reporting for them. The deadline is 31 December for this.

l) Record Keeping

Transfer pricing legislation does not address the retention period for transfer pricing documentation. Still, Section 10(1) of the Act on Bookkeeping requires taxpayers to keep materials for 5 years after the end of the financial year to which they relate.

Given that the statute of limitation for taxpayers subject to the statutory transfer pricing documentation requirements of Section 3 B of the Tax Control Act is 6 years, there is probably an obligation beyond the 5 years of the Act on Bookkeeping to keep transfer pricing documentation.

m) Penalties and Interest Charges

Penalties apply if non-compliance with documentation requirements is intentional or due to gross negligence. See Section 17 (3) of the Tax Control Act. From a practical perspective, this means that penalties apply if no documentation exists or is so limited in amount and scope that no documentation exists effectively. Penalties could be the case if one or more of the basic components of good transfer pricing documentation are missing, e.g. the functional analysis or the choice and justification of transfer pricing method. In assessing whether documentation is sufficient or not, the overall situation must be examined, and a principle of proportionality is applied, taking into account the nature and value of the inter-company transactions. Penalties could also be levied if a taxpayer does not submit benchmarks or other additional information upon request or does not submit an independent auditor's statement upon request.

With effect as of 1 January 2013, the penalty regime has been tightened and now includes the following features:

- A minimum penalty of DKK 250,000 plus 10% of the profit adjustment applies;
- The level of the penalty shall be adjusted to the benefit achieved by non-compliance;
- The penalty is per year;

- If non-compliance is part of a systematic non-compliance with the tax legislation, the level of penalty may be increased by up to 50 per cent;
- There are similar high penalties for providing inaccurate information to determine if a taxpayer is subject to the transfer pricing documentation requirements.

If the taxpayer subsequently prepares and submits the documentation, the penalty is reduced by 50 per cent. It is not a condition for levying penalties to make a profit adjustment. Still, the penalty is increased by 10 per cent of the profit adjustment if an adjustment is issued. Penalties can also be levied for non-compliance with a request to prepare and submit a benchmark.