

DENMARK

TRANSFER PRICING PROFILE

1. Reference to the Arm's Length Principle

The Tax Assessment Act, Section 2, contains the Danish arm's length provision and in the explanatory memoranda (preparatory legislative work) there is a direct reference to the arm's length principle contained and described in the OECD Transfer Pricing Guidelines (hereafter TPG).

Chapter 4 of the Tax Control Act (*Skattekontrolloven – hereafter SKL*) requires taxpayers to a) disclose information about transfer pricing in their tax returns and 2) prepare and submit contemporaneous transfer pricing documentation within 60 days upon request and 3) requires filing of CbC reports. Article 42 authorises the tax authorities (*DTA*) to issue rules regarding the content of such documentation. Those rules were issued under Executive Order nr. 401 of 28 April 2016 (hereafter EO401). The Danish requirements are fully aligned with OECD standards.

Transfer pricing regulations and practices in Denmark are described in SKATs Legal Guidance (DJV). SKATs Legal Guidance is based on and fully aligned with the guidance provided in TPG.

2. Reference to the OECD Transfer Pricing Guidelines

There is a direct reference in the explanatory memoranda (preparatory legislative work) to the arm's length principle contained and described in the OECD TPG.

Hence, in Denmark the arm's length provision is interpreted in accordance with the arm's length principle contained and described in the TPG.

3. Definition of related parties

According to the Danish Tax Assessment Act, Section 2, related parties are defined based on either formal control (>50 pct. shareholding) or actual control (e.g. control based on shareholder agreement)

4. Transfer pricing methods

Danish law does not require that a specific method must be used for transfer pricing purposes but that the most appropriate method is selected. Reference is made to the OECD transfer pricing guidelines and the methods therein.

5. Transfer pricing documentation requirements

Under Article 39 and 40, SKL, taxpayers must keep a contemporaneous written documentation of the way in which the prices and terms of their controlled transactions have been determined. The documentation must be submitted to the Danish tax authorities upon request within 60 days. It shall be of a standard, which enables the DTA to assess the arm's length pricing. The documentation requirements were issued under EO401 and they are fully aligned with OECD standards. It stipulates that a Master File and a Local file is prepared.

Database searches only need to be done if requested by the tax authorities, subject to a minimum time limit of 60 days. Certain exemptions apply to small taxpayers and insignificant transactions.

Article 43 SKL enables the DTA to request taxpayers to obtain an independent auditor's statement on the quality of its TP documentation.

Transfer pricing documentation guidelines are available in Danish online [here](#) (www.skat.dk > Virksomhed > Told og udland > Transfer pricing).

EO 401 stipulates the Danish transfer pricing documentation requirements which implements the three-tiered approach presented as part of the BEPS project (Masterfile, Local file and CbCR).

6. Specific transfer pricing audit procedures and / or specific transfer pricing penalties

There are no specific TP audit procedures other than the Transfer Pricing Documentation should be submitted within 60 days upon request from the DTA. The audit procedure follows the standard tax audit procedures. However, the statute of limitations for a transfer pricing assessment is 1 May in the sixth year after the income year concerned (e.g., the statute of limitations for the income year 2013 is 1 May 2019).

There are specific TP penalties:

Article 84, paragraph 3, SKL penalises inadequacy or lack of a TP documentation. The penalty amounts to DKK250,000 per legal entity per year for which lack of or inadequate transfer pricing documentation is submitted. If the tax authorities make an income adjustment, an additional fine of 10% may be imposed on the income adjustment.

If the taxpayer provides inadequate documentation or no documentation and subsequently provides documentation that meets the requirements, the fine can be reduced to half of the original amount (DKK125,000). However, the 10% penalty on any income adjustment still applies.

Moreover, there are penalties if information about transfer pricing is not disclosed in the tax returns.

7. Information for Small and Medium Enterprises on TP

Small MNE's (less than 250 employees and with either an annual balance sheet total of less than DKK 125 million or annual revenue of less than DKK 250 million) are only required to provide partial documentation, cf. the Tax Control Act, Section 40.

Whether the thresholds have been exceeded, is determined on a MNE consolidated basis. The same threshold applies to both the Master file and the Local File.

8. Information on dispute resolution

Competent Authority	Ministry of Taxation Danish Tax Agency (DTA) Large Companies — Competent Authority Sluseholmen 8 B DK-2450 Copenhagen SV Tel: (both entities) +45 7222 1818 Fax: (both entities) +45 7222 1919
Organization	Head of Competent Authority, Large Enterprises: Mr. Bo Darling Larsen
Scope of MAP & MAP APA	<ul style="list-style-type: none">• Relief of double taxation for specific taxpayers.• Application and interpretation of articles in Double Tax Conventions.
Domestic guidelines & administrative arrangements	None.

Time for filing	MAP: Specified in the Double Tax Convention. APA: No specific rules.
Form of request	MAP: No specific form is required. Written request is however expected. APA: It is recommended that the taxpayer follow the OECD suggestions <i>i.e.</i> a preliminary meeting with DTA, Large Companies — Competent Authority, after which the taxpayer will submit a detailed proposal.
Documentation requirement	No specific rules under Danish law. In practice domestic transfer pricing documentation requirements are relevant especially in relation to APA cases.
User fees	None
Tax Collection / penalty / interest	The normal principles apply.
Other dispute resolution	The EU Arbitration Convention
Government Website	http://www.sktst.dk

9. Relevant regulations on Advance Pricing Arrangements

Guidelines are available (in Danish) under www.skat.dk > Jura, tal og statistik > Juridiske vejledninger > Den juridiske vejledning > C.D Selskabs-, fonds- og foreningsbeskatning > C.D.11 Transfer Pricing > C.D.11.7 Hvordan undgås transfer pricing-dobbeltbeskatning > C.D.11.7.3 Advance Pricing Arrangements

10. Links to relevant government websites

Danish Tax Agency: www.sktst.dk and www.skat.dk
Danish Tax Ministry: www.skm.dk

11. Other relevant information

The Legal Guidance (in Danish only) is available on: <http://www.skat.dk> > Jura, tal og statistik > Den juridiske vejledning.

Adjustments

It is a pre-condition for a downwards transfer pricing adjustment that the other party has received a corresponding upwards adjustment that is taxed in Denmark or another country.

Coordinated Transfer Pricing Controls with foreign nations

We have a provision stipulating that when a foreign national is in Denmark and receives information in accordance with Denmark's international obligations then he is protected and also subject to the same rules in the Danish criminal code as a Danish civil servant.