

## DENMARK

### TRANSFER PRICING PROFILE

#### 1. Reference to the Arm's Length Principle

Article 2 of the Tax Assessment Act (*Ligningsloven – hereafter LL*) refers to the arm's length principle. Article 3B of the Tax Control Act (*Skattekontrolloven – hereafter SKL*) requires taxpayers to a) disclose information about transfer pricing in their tax returns and b) prepare transfer pricing documentation. Article 3B also authorises the tax authorities (*SKAT*) to issue rules regarding the content of such documentation. Those rules were issued under Statutory Order nr. 42 of 24 January 2006 (hereafter SO 42).

#### 2. Reference to the OECD Transfer Pricing Guidelines

In the explanatory memoranda of our transfer pricing legislation.

#### 3. Definition of related parties

Article 2, LL and Article 3B, paragraphs 2 and 3, SKL.

#### 4. Transfer pricing methods

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

#### 5. Transfer pricing documentation requirements

Under Section 3B, paragraph 5, SKL, taxpayers must keep written documentation of the way in which the prices and terms of their controlled transactions have been determined, to be submitted to the Danish tax authorities upon request within 60 days. It must form the basis of an assessment on arm's length pricing. Database searches only needs 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.

SO 42 stipulates the Danish transfer pricing documentation requirements. Alternatively the EU Masterfile system or the Pacific Association of Tax Administrators (PATA) Transfer Pricing Documentation Package rules may be followed.

As of 2013, Article 3B, paragraph 8, SKL, enables SKAT to request taxpayers to obtain an independent auditor's statement on the quality of its TP documentation. Such taxpayers should either have made losses for at least 4 consecutive years or transacted with related parties outside the EEA and other Danish tax treaty countries. Transfer pricing documentation guidelines are available in Danish online at <http://skat.dk/SKAT.aspx?oId=1845128&vId=0> (www.skat.dk > Virksomhed > Told og udland > Transfer pricing).

Implementation of the Code of Conduct on Transfer Pricing documentation for associated enterprises in the European Union (EU TPD) - summary of Member States' responses to the 2013 JTPF questionnaire on the implementation of the EU TPD:

[http://ec.europa.eu/taxation\\_customs/resources/documents/taxation/company\\_tax/transfer\\_pricing/forum/jtpf/2013/summary-ms.pdf](http://ec.europa.eu/taxation_customs/resources/documents/taxation/company_tax/transfer_pricing/forum/jtpf/2013/summary-ms.pdf)

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

There are no specific TP audit procedures.

There are specific TP penalties: Article 17, paragraph 3, SKL penalises shortcomings in TP documentation; Article 14, paragraph 4, SKL penalises wrongful use of documentation relief for SME's. 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

Information relevant for SMEs in tackling transfer pricing matters is available on the JTPF webpage at: [http://ec.europa.eu/taxation\\_customs/resources/documents/taxation/company\\_tax/transfer\\_pricing/forum/profiles/profile-dk.pdf](http://ec.europa.eu/taxation_customs/resources/documents/taxation/company_tax/transfer_pricing/forum/profiles/profile-dk.pdf)

## 8. Information on dispute resolution

<b>Competent Authority</b>	<p><b>Individuals and other double taxation issues:</b>          Ministry of Taxation          Head of Office          Mr. Jesper Wang-Holm          Danish Customs and Tax Administration (DCTA)          Law Department          Østbanegade 123          DK-2100 Copenhagen Ø</p> <p><b>Transfer pricing (articles 9 and 7):</b>          Ministry of Taxation          Danish Customs and Tax Administration (DCTA)          Large Companies — Competent Authority          Sluseholmen 8 B          DK-2450 Copenhagen SV          Tel: (both entities) +45 7222 1818          Fax: (both entities) +45 7222 1919</p>
<b>Organization</b>	Head of Competent Authority, Large Enterprises: Mr. Troels Kjølby Nielsen
<b>Scope of MAP &amp; MAP APA</b>	<ul style="list-style-type: none"> <li>- Relief of double taxation for specific taxpayers.</li> <li>- Application and interpretation of articles in Double Tax Conventions.</li> </ul>
<b>Domestic guidelines &amp; administrative arrangements</b>	None.
<b>Time for filing</b>	<p>MAP: DTC or domestic rules.          APA: No specific rules.</p>
<b>Form of request</b>	<p>No specific rules under Danish law.          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 DCTA, Large Companies — Competent Authority, after which the taxpayer will submit a detailed proposal.</p>
<b>Documentation requirement</b>	<p>No specific rules under Danish law.          In practice domestic transfer pricing documentation requirements <i>cf.</i> article 3 B in the Danish Tax Control Act is relevant especially in relation to APA cases.</p>
<b>User fees</b>	None

<b>Tax collection / penalty / interest</b>	Normal principles apply.
<b>Other dispute resolution mechanisms</b>	The EU Arbitration Convention
<b>Government Website</b>	<a href="http://www.skat.dk">http://www.skat.dk</a>

Dispute resolution under the Arbitration Convention does not need to be initiated and may be suspended if one of the enterprises involved is subject to a 'serious penalty' for the transactions giving rise to the profit adjustment (Article 8).

Unilateral Declaration of Denmark on Article 8 of the Arbitration Convention (*Official Journal L 225, 20/08/1990 P. 0010 – 0024*)

"The concept of 'serious penalty' means a penalty for the intentional infringement of provisions of the Criminal Law or of special legislation in cases which cannot be regulated by administrative means.

Cases of infringement of provisions of tax law may, as a general rule, be regulated by administrative means where it is considered that the infringement will not entail a punishment greater than a fine."

## 9. Relevant regulations on Advance Pricing Arrangements

Guidelines are available (in Danish) under [www.skat.dk](http://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 and Customs Administration: [www.skat.dk](http://www.skat.dk)  
Danish Tax Ministry: [www.skm.dk](http://www.skm.dk)

## 11. Other relevant information

Secondary and compensating year-end adjustments may result in double taxation. Two questionnaires launched by the EU Joint Transfer Pricing Forum (JTPF) in 2011 took stock of the situation prevailing in each EU Member State with respect to secondary and compensating year-end adjustments as on 1 July 2011.

[Secondary Adjustments - overview on the legal and administrative/practical aspects in the different Member States](#)

[Compensating/year-end Adjustments - overview on the legal and administrative/practical aspects in the different Member States](#)

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