

Worth knowing about:

Transfer pricing documentation

Review of Danish documentation requirements

This article reviews the Danish requirements for companies' transfer pricing (TP)

Companies that have transactions with controlled or controlling parties - i.e. "controlled transactions" - must prepare and retain written documentation on how prices and terms are determined for the controlled transactions. The documentation must be able to form the basis for an assessment of whether the prices and terms are set in accordance with what could have been achieved on "arm's length terms", i.e. if the transactions were concluded between independent parties.

Companies covered by the documentation obligation

All companies that are liable to pay tax in Denmark are generally subject to the rules regarding the preparation of TP documentation. However, companies that alone or on a consolidated level have fewer than 250 employees and either an annual consolidated balance sheet of less than DKK 125 million or an annual consolidated turnover of less than DKK 250 million are only required to prepare documentation for the controlled transactions that the company has with controlled parties in non-EU/EEA countries with which Denmark has not entered into a double taxation treaty.

The controlled transactions covered

As of the income year starting 1 January 2021, only cross-border controlled transactions are generally covered by the Danish documentation obligation. However, controlled transactions between Danish taxpayers are still covered if the parties to the transaction are not taxed under the same set of rules.

Requirements for the content of a transfer pricing documentation

The Danish TP Executive Order sets out the requirements for what must be included in a TP documentation.

The documentation must include a description of the group's legal structure and geographical location, the organisational structure, the primary business activities, the industry conditions and historical development, any restructuring and changes in significant functions and risks as well as an explanation of any deficits. Furthermore, the documentation must contain a detailed description of the controlled transactions, including a function and risk analysis and a comparability analysis. Finally, an account must be given of the pricing of the controlled transactions and why the pricing is assessed to be in accordance with the arm's length principle.

The requirements for preparing comparability analyses have been tightened as of the 2022 income year.

The TP documentation must be prepared in Danish, Norwegian, Swedish or English. However, the companies have 60 days after SKAT's request to submit the documentation. However, the TP documentation for income years commencing 1 January 2021 or later must be submitted to the tax authorities no later than 60 days after the dead-line for submitting the information form (tax return).

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The Danish transfer pricing rules entail a large documentation and reporting burden for taxpayers subject to the rules.

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Documentation requirements

The documentation requirements include a three-part documentation obligation consisting of country-specific documentation, common documentation for the entire group and a "country-by-country" report containing standardised and schematic information about the group.

Joint documentation

The joint documentation must include relevant information about the group as a whole. The requirements include, among other things, comprehensive information on:

- The most important value-creating factors (drivers of business profit)
- A description of the group's supply chain
- A list of the group's intangible assets
- Description of how the group is financed
- Description of the group's TP policies in relation to research and development activities and financial arrangements.

Country-specific documentation

The country-specific documentation must be prepared for each taxpayer and must contain company-specific information. The requirements include, among other things:

- Detailed information about the local management and the company's activities
- Transfer pricing analysis of the controlled transactions, including a comparability analysis
- Attachment of the annual report
- Allocation tables showing how the accounting data can be reconciled to the annual report for the taxpayer.

"Country-by-country" reporting

Companies that are part of a group with a consolidated turnover of at least DKK 5.6 billion are subject to the rules on country-by-country reporting. The reporting obligation is twofold and consists of:

- Notification of which company submitting the country-by-country report
- Submission of the "country by country" report

Danish companies that are subject to the rules on country-by-country reporting must notify SKAT that they are subject to the country-by-country reporting obligation. In the notification, the company must state which company in the group submits the "country-by-country" report. If the Danish company is the ultimate parent company and if a foreign parent company is not obliged to submit a country-by-country report, or if there is no exchange with Denmark, the Danish company is also obliged to submit a country-by-country report.

Fines for missing or incomplete documentation

The Danish Tax Agency may impose fines of up to DKK 250,000 per company per income year for the years in which transfer pricing documentation has not been submitted on time, or where the documentation submitted on time is so inadequate that it cannot form the basis for an assessment of whether the company has acted in accordance with the arm's length principle. The fine will be reduced by 50% if adequate TP documentation is submitted after the deadline. If the Danish Tax Agency assesses that the company has not traded at arm's length, the company may be further fined 10% of an increase in income. If the taxpayer has not submitted or has submitted inadequate TP documentation, the Tax Agency may also determine the taxable income on a discretionary basis.

Conclusion

BDO recommends that companies familiarise themselves with the documentation requirements and start considering the preparation of common documentation and country-specific documentation in collaboration with the rest of the group.

**Do you have any questions?
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