



# TAX:WATCH

## Pension reform proposed financed by mark-to-market tax on real property

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*The Danish Government has reached a political agreement on a new pension reform, which is to be partly financed through an annual mark-to-market capital gains tax on certain real property assets.*

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The Government has not yet presented a preliminary bill for the pension reform (and the financing hereof), until then it is not clear how the capital gains tax on certain real property will play out in detail.

The following is thus based on the current official statements from the Danish Ministry of Taxation.

### The new regulations: DKK 100 million threshold

Based on the political agreement, the new mark-to-market tax on real property will only include rental properties owned by companies, funds or associations. Properties used for the company's own business operations, however, are exempted.

This exemption applies, for example, to properties used by the company itself or a group company for administration, storage, production or agriculture.

Moreover, the published agreement states that the new mark-to-market real property tax will not apply to personally held real property.

Further, the new tax regime will only include the more dominant property owners in the Danish market, as the new rules would only apply to portfolios in excess of a value of DKK 100 million as determined on a group level.

It is estimated that up to 75 per cent of real estate companies will therefore be exempted due to this threshold.

The taxation of real properties will come into force from the income year of 2023 and apply to value increases from 2023.

Properties acquired before this date, will until the end of 2022 only be taxed in the income year in which the property is sold.

### Accounting valuation form the basis of the taxation

The taxation will - according to the current official statements - be based on accounting values.

This should make the taxable income statement less complicated for companies that state their rental properties at fair value.

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If a rental property owned by a company decreases in value from one year to another, the impairment should be deductible in other taxable income, and it will therefore not be considered a ring-fenced loss, unlike the current rules where such losses are indeed ring-fenced.

It is still unknown just how many properties will be subject to the new tax regime. However, the Government estimates that the regime will apply to properties of a total value of approx. DKK 350 billion.

An annual taxable value increase assumption of 2.2% would therefore trigger DKK 7.7 billion of taxable value increase which (taking into account deductible losses) should lead to a tax revenue of DKK 1.15 billion, i.e. an effective tax rate of 14.7%.

## A New proposed legislation on transfer pricing documentation in Denmark

**Consequently, transfer pricing documentation must be submitted to the tax authorities along with the corporate income tax return in the future.**

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On October 7, 2020, the Ministry of Taxation in Denmark resubmitted a proposed amendment to the Danish transfer pricing regulations.

The new and stricter requirements in the proposed legislation will apply to all companies who are covered by the rules which demands them to prepare mandatory transfer pricing documentation.

According to the current legislation and regulations, the transfer pricing documentation must be finalised but not submitted to the tax authorities at the deadline for filing the income tax return.

The companies will only have to submit the documentation if the Danish Tax Agency request it.

Transfer pricing documentation consists of:

- A master file for the entire affiliate
- A local file for each company in the group

If the transfer pricing documentation is non-compliant or not prepared/submitted in timely manner the company will risk extensive sanctions in form of fines and it will give the Danish Tax Agency mandate to perform a discretionary assessment of the taxable income in the company.

This also applies even if the company subsequently prepares proper transfer pricing documentation. Therefore, it is most important that companies comply with the applicable rules and in the future ensure that the documentation is submitted to the authorities in timely manner.

The new legislation is expected to be adopted in its current form and will apply to tax years which start from January 1, 2021.

If you have any questions to the new proposed legislation or any other transfer pricing conditions, you are welcome to contact one of our tax advisors.

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