

WORTH KNOWING ABOUT

The Danish Transfer Pricing Rules



The Danish tax rules require that affiliated companies transact with each other on the same terms and conditions that they apply to unrelated parties. This is known as the “arm’s-length principle”. In order to comply with this requirement, it is therefore necessary to have established internal rules for settlements etc. - transfer pricing - between the companies.

It is not only in Denmark that such rules apply. Indeed, this is one of the few rules that broadly speaking all countries are in agreement about.

Just as in many other countries, there are rules in Denmark which require enterprises to furnish information about intragroup transactions to the tax authorities. In many cases they must also produce written documentation that such transactions are carried out in accordance with the arm’s-length principle.

Scope of the rules

The rules apply to related companies, dependent enterprises and majority shareholders. In other words, to companies etc. where there is an ownership of more than 50 percent of the share capital or controls more than 50 percent of the votes.

A company that owns more than 50 percent of the shares in another company is thus related to the second company, even though it may only control 40 percent of the votes.

Individuals’ shareholdings also fall within the purview of the rules. I.e., if an individual owns a majority of shares in two different companies, those companies are related entities. The same applies, even if the two companies have different owners if the owners are closely related to each other - father and son, for example.

It is important to note that the definition of a “group” for the purposes of these rules is not the same as for the purpose of joint taxation, where the proportion of votes controlled is the sole criterion for determining whether companies are related, and shareholdings of individuals are disregarded.

An important exception

The special requirements on written documentation relating to intragroup transactions do not apply to small enterprises. By that is meant, enterprises that have fewer than 250 employees and either have a balance sheet total of under DKK 125 million or have an annual turnover of under DKK 250 million.

These thresholds are applied at group level, and with foreign companies being included. It is therefore quite possible that a small Danish company may be above the thresholds, if it is owned by a large international group.

Moreover, written documentation is always required in respect of intragroup transactions with companies etc. located outside the EU/EEA or in countries with which

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Denmark does not have a double-taxation agreement, regardless of the size of the group.

Even though the Danish rules do not require documentation to be produced for small groups, the arm's-length principle must still be applied.

Disclosure requirements

Related companies - including those covered by the exception described above - are required to inform the tax authorities about their status as group constituents. This applies whether or not they trade - or carry out other transactions - with each other.

If transactions between the companies do take place, a summary must also be furnished of the nature and scope of the transactions in the tax return.

Documentation requirements

Enterprises that are not covered by the "small group" exception must produce and retain written documentation on how prices and conditions are fixed for transactions with related companies, dependent enterprises and majority shareholders. The documentation does not have to be submitted together with the tax return, but must be provided to the tax authorities upon request within 60 days.

According to the rule effective from 1 January 2019, TP documentation must be finalized no later than at the time of the tax return.

Controls, that ensure that the transactions are performed as described in the documentation must be established. In addition, procedures must be put in place that ensure that ongoing updates and adjustments of the procedures are implemented according to changes affecting the group. Thus, the documentation must at all times satisfy the requirements imposed by the tax authorities.

For income years starting 1 January 2017 or later, new documentation requirements are imposed. Going forward, the documentation must be presented as a master file and local files and the content requirements are more detailed.

Country-by-country-report

Groups with a consolidated turnover above DKK 5.6 billion must submit a country-by-country report. Notification on who will submit the report must be sent before the end of the income year the report covers.

Auditor's declaration

The Danish Tax Agency will in certain circumstances have the power to require a company to obtain an auditor's declaration concerning the company's TP documentation. This requirement can be imposed on companies that have had an operating loss in four consecutive income years, and on companies that have had controlled transactions with individuals or corporations in countries outside the EU/EEA with which Denmark does not have a double-taxation agreement.

Penalties

The Danish Tax Agency is empowered to impose penalties on enterprises that fail to produce sufficient TP documentation or do not file within the 60 day deadline.

The penalty is a fixed amount of DKK 250,000 per year. However, this can be reduced by half if satisfactory documentation is submitted subsequently. Conversely, the penalty is increased by 10 percent of any increase of assessed income resulting from a potential income adjustment.

If TP documentation has not been proposed, a discretionary assessment can be made.

Enterprises are subject to penalties in accordance with special rules for wrong information about the fulfillment of the conditions for the "small group" exception.

**DO YOU HAVE ANY
QUESTIONS?
PLEASE CONTACT**



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