



# TAX:WATCH

## More about TP documentation

***As a consequence of defeat in the TP case against Microsoft, the Danish Tax Agency will allow resumption of tax assessments where income was estimated due to no available TP documentation at the tax return filing deadline.***

By Anders Kiærskou, [æk@bdo.dk](mailto:æk@bdo.dk)

In February 2019, the Supreme Court ruled that the tax authorities could not make an estimate of the taxable income of Microsoft's Danish subsidiary, simply because the company's TP documentation was not available in its entirety at the tax return filing deadline.

Conversely, this was the position of the Danish Tax Agency for several years.

The Supreme Court stated that it was sufficient that the documentation was available at the time, when the Danish Tax Agency assessed the taxable income of the company.

Read more about the ruling of the Supreme Court in the [February 2019 issue](#) of tax:watch.

As a consequence of the ruling, the Danish Tax Agency will issue guidelines for resumption of tax assessments in cases, where the Danish Tax Agency has estimated the taxable income, simply because the required TP documentation was not available at the tax return filing deadline.

At the time of writing, the Danish Tax Agency has yet to publish the guidelines. However, a hearing of draft guidelines has recently been completed.

According to the draft, the possibility of resumption applies to the income year 2008 and up to the time, when the rules were amended.

For companies with a financial year following the calendar year, this implies up to and including the income year 2017, as for these companies, the new rules take effect from the income year 2018.

### Unchanged practice concerning fines

When the Danish Tax Agency approaches a company and asks for documentation concerning controlled transactions, a 60-day deadline applies for the company to provide the requested TP documentation.

If the deadline is not respected, the company may be fined - regardless of whether the taxable income of the company may later be subject to estimation by the Danish tax authorities.

Basically, the fine amounts to DKK 250,000 per year. This applies regardless of whether the Danish Tax Agency collects TP documentation for several years in a single letter, which is often the case.

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The fine is reduced to half - i.e. DKK 125,000 per. year - if the documentation is later submitted.

However, the fine can also be increased by an amount equal to 10 pct. of any increase of the taxable income applied by the Danish Tax Agency.

The Supreme Court ruling in the case against Microsoft does not affect fines.

This was established in a recent ruling by the district court, where a company was sentenced to pay a fine of DKK 500,000 plus legal costs for failing to submit its TP documentation on time - allegedly as a result of a misunderstanding between the company and its parent company, concerning which company was responsible for the country-specific TP documentation.

## Consequences when reporting your own tax evasion

***Individual taxpayers, who have failed to report income to the Danish Tax Agency and consequently evaded taxes, can normally expect a reduced penalty if they subsequently declare the income on their own initiative.***

By Anders Kiærskou, [aek@bdo.dk](mailto:aek@bdo.dk)

However, you should only expect a reduction of the fine if the Danish Tax Agency is not already onto you.

Individuals relocating to Denmark from abroad should take extra care in making sure that their Danish tax return is complete, as they often own taxable assets abroad and earn income from these assets that may not automatically be reported to the Danish Tax Agency.

Deliberate tax evasion is generally sanctioned with a fine, which is normally calculated as equal to the part of the evaded taxes not exceeding DKK 60,000 and twice the amount of evaded taxes exceeding this threshold.

If the total evaded taxes exceed DKK 250,000, the individual taxpayer may face a prison sentence and an additional fine equal to the entire amount of evaded taxes. Besides the fine, the taxpayer will also have to pay the evaded taxes, the corresponding residual tax surcharge and interest.

If you report your own tax evasion, you can expect a reduced penalty. If the evaded taxes do not exceed DKK 100,000, no fines are issued, and the case will be settled, when you have paid the evaded tax, the corresponding residual tax surcharge and interest.

If the evaded taxes amount to more than DKK 100,000 but less than DKK 250,000, you risk a fine equaling the evaded taxes, but you can avoid a prison sentence.

Should the evaded taxes amount to more than DKK 250,000 but less than DKK 500,000, you risk a suspended prison sentence and an additional fine amounting to 50 pct. of the evaded taxes.

If the evaded taxes exceed DKK 500,000, you risk a prison sentence and an additional fine amounting to 50 pct. of the evaded taxes.

The reduced penalties associated with reporting your own tax evasion do not apply, if the Danish Tax Agency is already onto you.

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