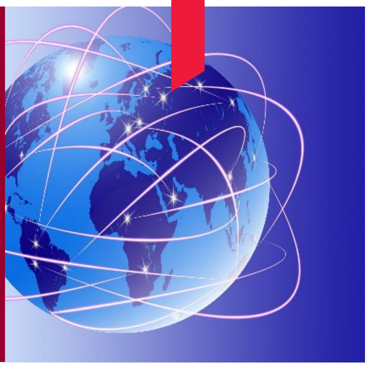
WORTH KNOWING ABOUT

The Danish Transfer Pricing Rules



TAX AND VAT
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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.

Introduction

The Danish transfer pricing 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". To comply with this requirement, it is therefore necessary to have established rules for pricing of controlled transactions - transfer pricing - between the affiliated companies.

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

The Danish rules require mandatory submission

Danish companies must submit the Master file and Local file to the Danish Tax Agency within 60 days after the deadline for submission of the corporate income tax return. This rule applies to tax years starting 1 January 2021 or later. Submission of transfer pricing documentation is carried out through the E-portal solution applicable also for other tax reporting requirements.

The rules contain an exemption for purely domestic controlled transactions unless the domestic transactions take place between affiliates taxed according to different tax regimes.

Despite the exemption, domestic transactions must still be priced in accordance with the arm's length principle. The Danish Tax Agency can still request the necessary documentation for assessing the arm's length nature of the exempted transactions.

Another important aspect of the Danish TP rules is the increased focus on database searches and benchmark studies (reference transactions) which the Danish Tax Agency will require to a much greater degree than before.

Who is covered by the rules and documentation requirements?

A company must prepare a transfer pricing documentation in Denmark if the company:

- is part of a Group that employs 250 or more employees or
- is part of a Group that has a revenue exceeding DKK 250 million and a balance sheet sum above DKK 125 million
- has intercompany transactions with companies etc. located outside the EU/EEA in countries with which Denmark does not have a double-taxation agreement, regardless of the size of the group, cf. above.

> *"Since 1 January 2021, Danish companies must submit comprehensive transfer pricing documentation to the Danish Tax Agency in the form of a group Master file and a Local file."*

Transfer pricing documentation requirements

The rules require the submission of a Master file and Local file. The Master file should provide an overall overview of the Group's activities and include information regarding the following aspects:

- the organizational structure
- geographic locations of operations
- the main value chain and drivers of business profit
- description of the Group's business activities
- intangible assets
- information regarding the financing of the Group.

While the Master file focuses on the Group as a whole, the Local file should provide information about the specific entity and its controlled transactions with affiliated companies. The Local file should provide information regarding the following aspects:

- management structure and lines of reporting of the local entity
- intercompany transactions executed during the year under review
- important intercompany agreement
- proper comparability analysis
- local entity financials

The preparation of transfer pricing documentation is a time-consuming process. Hence, it is our recommendation that the covered companies prioritize the documentation process in order to prepare a compliant transfer pricing documentation.

Penalties for lacking or non-compliant documentation

Failure to submit or submitting a non-compliant transfer pricing documentation will be penalized with an initial fine of DKK 250,000 per company, per year. This penalty will be reduced by 50% (DKK 125,000) following the submission of a compliant transfer pricing documentation. Initial non-compliance will further be subject to an additional penalty of 10% of a potential upward income adjustment made by the Danish Tax Agency.

Compliant preparation and submission of the Master File and Local file is therefore essential as a protection from significant penalties and shifts in the burden of proof in tax disputes relating to transfer pricing.

Country-by-Country Reporting

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

DO YOU HAVE ANY QUESTIONS? PLEASE CONTACT

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