

Denmark

Transfer Pricing Country Profile

Updated August 2017

	SUMMARY	REFERENCE
The Arm's Length Principle		
1	<p>Does your domestic legislation or regulation make reference to the Arm's Length Principle?</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>The Tax Assessment Act, Section 2, contains the Danish arm's length provision and in the explanatory memoranda (preparatory legislative work) there is a direct reference to the arm's length principle contained and described in the OECD Transfer Pricing Guidelines (hereafter TPG).</p> <p>Hence, in Denmark the arm's length provision is interpreted according to the arm's length principle contained and described in the TPG.</p> <p>The Danish Tax Control Act, Section 3B, requires taxpayers to a) disclose information about transfer pricing in their tax returns and b) prepare and submit transfer pricing documentation on request and c) requires filing of CbC reports.</p> <p>Transfer pricing regulations and practices in Denmark are described in SKATs Legal Guidance (DJV). SKATs Legal Guidance is based on and fully aligned with the guidance provided in TPG.</p>	<p>Tax Assessment Act, Section 2 (Ligningsloven)</p> <p>Tax Control Act, Section 3B (Skattekontrolloven)</p> <p>http://www.skm.dk/love/gaeldende-love/gaeldende-skattelove</p> <p>SKATs Legal Guidance (DJV), Section C.D.11. Transfer Pricing.</p> <p>http://www.skat.dk/display.aspx?oid=2049948&vid=214580</p>
2	<p>What is the role of the OECD Transfer Pricing Guidelines under your domestic legislation?</p> <p>The Danish Tax Assessment Act, Section 2, includes a direct reference to the TPG in the explanatory memoranda.</p>	<p>DJV, Section C.D.11.1 Armslængdeprincippet i LL § 2</p> <p>(The arm's principle in the Tax Assessment Act, Section 2)</p>
3	<p>Does your domestic legislation or regulation provide a definition of related parties? If so, please provide the definition contained under your domestic law or regulation.</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>According to the Danish Tax Assessment Act, Section 2, related parties are defined based on either formal control (>50 pct. shareholding) or actual control (ex. control based on shareholder agreement)</p>	<p>DJV, Section C.D.11.1.2 Hvem er omfattet af arms længde princippet</p> <p>(Who is governed by the arm's length principle)</p>

When determining existence of control shareholdings of closely related persons and companies (and trusts) are included, cf. the Danish Tax Assessment Act, Section 2, paragraph 2.

Transfer Pricing Methods

4 Does your domestic legislation provide for transfer pricing methods to be used in respect of transactions between related parties?

- Yes
 No

If affirmative, please check those provided for in your legislation:

CUP	Resale Price	Cost Plus	TNMM	Profit Split	Other (If so, please describe)
<input checked="" type="checkbox"/>	<input type="checkbox"/>				

The above methods are to be used in Denmark, cf. the reference to the TPG in the explanatory memoranda to the Danish Tax Assessment Act, Section 2.

DJV, Section C.D.11.4.1 Valg af transfer pricing-metode
 (Choice of Transfer Pricing Method)

5 Which criterion is used in your jurisdiction for the application of transfer pricing methods?

Please check all that apply:

- Hierarchy of methods
 Most appropriate method
 Other (if so, please explain)

The Danish Tax Assessment Act, Section 2, refers to the arm's length principle as contained and described in the TPG.

The criterion used in Denmark for application of transfer pricing methods is fully aligned with the guidance outlined in Chapter II of the TPG.

DJV, Section C.D.11.4.1 Valg af transfer pricing-metode
 (Choice of Transfer Pricing Method)

6 If your domestic legislation or regulations contain specific guidance on commodity transactions, indicate which of the following approaches is followed.

- For controlled transactions involving commodities, the guidance contained in paragraphs 2.18-2.22 of the TPG is followed.
 Domestic legislation mandates the use of a specific method for controlled transactions involving commodities (if so, please explain)
 Other (if so, please explain)

DJV, Section C.D.11.4.1.1 CUP-metoden
 (Comparable Uncontrolled Price Method)

Comparability Analysis

7	Does your jurisdiction follow (or largely follow) the guidance on comparability analysis outlined in Chapter III of the TPG?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	DJV, Section C.D.11.5 Sammenlignelighedsanalyse (comparability analysis)
		The explanatory memoranda to the Danish Tax Assessment Act, Section 2 refers to the arm's length principle as contained and described in the TPG. Guidance on comparability analyses in Denmark is fully aligned with the guidance outlined in Chapter III of the TPG.	
8	Is there a preference in your jurisdiction for domestic comparables over foreign comparables?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
9	Does your tax administration use secret comparables for transfer pricing assessment purposes?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
10	Does your legislation allow or require the use of an arm's length range and/or statistical measure for determining arm's length remuneration?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	DJV, Section C.D.11.5.9 Tolkning og anvendelse af data til at fastlægge armlængdepriser og vilkår (Interpretation and use of data to determine arm's length prices and conditions)
		Arm's length range and/or statistical measure for determining arm's length remuneration are used in Denmark in accordance with the guidance outlined in Chapter III of the TPG.	
11	Are comparability adjustments required under your domestic legislation or regulations?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	DJV, Section C.D.11.5.9 Tolkning og anvendelse af data til at fastlægge armlængdepriser og vilkår (Interpretation and use of data to determine arm's length prices and conditions)
		The explanatory memoranda to the Danish Tax Assessment Act, Section 2 refers to the arm's length principle as contained and described in the TPG. Guidance on Comparability adjustments in Denmark is fully aligned with the guidance outlined in Chapter III of the TPG.	
Intangible Property			
12	Does your domestic legislation or regulations contain guidance specific to the pricing of controlled transactions involving intangibles?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	DJV, Section C.D.11.6. Armlængdeprincippet i relation til immaterielle aktiver

		<p>Pricing of controlled transactions involving intangibles are made in accordance with the TPG.</p> <p>Denmark has specific guidance on the use of valuation techniques in transfer pricing cases. The guidance is in compliance with the guidance outlined in Chapter VI of the TPG.</p>	<p>(The arm's length principle in relation to intangibles)</p> <p>Danish guidance on the use of valuation techniques in Transfer Pricing: https://www.skat.dk/SKAT.aspx?oId=1813084</p>
13	<p>Does your domestic legislation or regulation provide for transfer pricing rules or special measures regarding hard to value intangibles (HTVI)?</p>	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p> <p>The explanatory memoranda to the Danish Tax Assessment Act, Section 2 refers to the arm's length principle as contained and described in the TPG.</p> <p>There are no specific provisions on HTVI in Denmark – only legal guidance based on - and fully aligned with - the guidance outlined in Chapter VI of the TPG.</p>	<p>DJV, Section C.D.11.6.6 Immaterielle aktiver, der er svære at værdiansætte</p> <p>(Hard to value intangibles)</p>
14	<p>Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of transactions involving intangibles?</p>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>Capital gains or losses on the disposal of goodwill, know-how, patents, copyrights, designs or models, trademarks and similar rights are included in the calculation of taxable income, cf. the Danish Tax Depreciation Act (afskrivningsloven), Section 40, paragraph 6 combined with paragraph 1 and 2, and/or the State Tax Act (Statsskatteloven), Section 4.</p> <p>Tax Depreciation Act, Section 40, paragraph 1, 2 and 6. (Non-official translation)</p> <p>Paragraph 1. When acquiring goodwill, the acquirer may, with effect from the income year in which a final transfer agreement has been concluded, depreciate the purchase price when calculating the taxable income by up to 1/7 annually.</p> <p>Paragraph 2. When acquiring other intangible assets such as special manufacturing methods or similar (know-how), patent law, copyright and art rights and rights to designs or trademarks... the acquirer may, with effect from the income year in which a final transfer agreement has been concluded, depreciate the purchase price when calculating the taxable income by up to 1/7 annually...</p> <p>Paragraph 6. Gains and losses from sale or disposal of assets covered by paragraph 1 and 2 are included when calculating the taxable income. Gains or losses are calculated as the difference between the sales price and the acquisition price less depreciations ...</p>	<p>DJV, Section C.D.11.6.1 Hvad anses for et immaterielt aktiv i OECD's Transfer Pricing Guidelines</p> <p>(What is an intangible according to OECD TPG)</p>

		<p>State Tax Act, Section 4</p> <p>Paragraph 1. Taxable income, with the following exceptions and limitations, is considered to be the total annual income of the taxpayer, whether from this country or not, consisting of money or property of monetary value, such as.....</p> <p>(The State Tax Act, Section 5 and 6 contains tax exemptions and deductions.)</p>	
Intra-group Services			
15	Does your domestic legislation or regulations provide guidance specific to intra-group services transactions?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <p>The explanatory memoranda to the Danish Tax Assessment Act, Section 2 refers to the arm's length principle as contained and described in the TPG.</p> <p>Guidance on intra-group services in Denmark is fully aligned with the guidance outlined in Chapter VII of the TPG.</p>	<p>DJV, Section C.D.11.8 Armslængdeprincippet i relation til serviceydelser</p> <p>(The arm's length principle in relation to services)</p>
16	Do you have any simplified approach for low value-adding intra-group services?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <p>Denmark uses a simplified approach for low value-adding intra-group services in accordance with the guidance provided in OECD Transfer Pricing Guidelines.</p>	<p>DJV, Section C.D.11.8.4 Særligt om interne serviceydelser med lav værdi</p> <p>(Especially about internal services of low value)</p>
17	Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of transactions involving services?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <p>Tax deductibility of service payments is determined under the State Tax Act, Section 4-6.</p> <p>Costs related to stewardship / shareholder interests are not tax deductible in Denmark.</p>	
Cost Contribution Agreements			
18	Does your jurisdiction have legislation or regulations on cost contribution agreements?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<p>DJV, Section C.D.11.9 Armslængdeprincippet i relation til CCA'er</p> <p>(The arm's length principle in relation to CCA's)</p>

		<p>The explanatory memoranda to the Danish Tax Assessment Act, Section 2 refers to the arm's length principle as contained and described in the TPG.</p> <p>Guidance on cost contribution agreements in Denmark is fully aligned with the guidance outlined in Chapter VIII of the TPG.</p>	
Transfer Pricing Documentation			
19	<p>Does your legislation or regulations require the taxpayer to prepare transfer pricing documentation?</p>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p><i>If affirmative, please check all that apply:</i></p> <p><input checked="" type="checkbox"/> Master file consistent with Annex I to Chapter V of the TPG</p> <p><input checked="" type="checkbox"/> Local file consistent with Annex II to Chapter V of the TPG</p> <p><input checked="" type="checkbox"/> Country-by-country report consistent with Annex III to Chapter V of the TPG</p> <p><input checked="" type="checkbox"/> Specific transfer pricing returns (separate or annexed to the tax return)</p> <p><input type="checkbox"/> Other (specify):</p>	
20	<p>Please briefly explain the relevant requirements related to filing of transfer pricing documentation (i.e. timing for preparation or submission, languages, etc.)</p>	<p>The requirements related to filing of transfer pricing documentation and CbC reporting is found in the Tax Control Act, section 3B. The specific content of Transfer Pricing documentation is determined in Statutory Order nr. 401 of 28 April 2016. The specific content of Danish CbC filings is determined in Statutory Order nr. 1133 of 27 August 2016.</p> <p>Danish requirements are fully aligned with OECD standards.</p> <p>Preparation of transfer pricing documentation must be contemporaneous and the documentation must be submitted within 60 days upon request from the Danish Customs and Tax Administration.</p> <p>Documentation can be prepared in one of the Scandinavian languages or in English. Also, a specific transfer pricing return must be filed annexed to the tax return containing information about types of controlled transactions and amounts related to each type of transaction. (Tax Control Act, Section 3B, paragraph 1)</p>	<p>DJV, Section C.D.11.13 Transfer pricing dokumentations- og rapporteringspligten efter SKL § 3 B</p> <p>(Transfer Pricing documentation and reporting requirements according to Tax Control Act, Section 3B)</p>
21	<p>Does your legislation provide for specific transfer pricing penalties and/or compliance incentives</p>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p>	<p>DJV, Section C.D.11.13.1.3.3 Sanktioner ved manglende eller mangelfuld transfer pricing-dokumentation</p>

	regarding transfer pricing documentation?	<p>In Denmark there are penalties for not submitting the required transfer pricing documentation.</p> <p>Failure to timely submit adequate transfer pricing documentation is punishable by fines, cf. the Tax Control Act, Section 17, paragraph 3.</p> <p>The level of fine is determined in accordance with the following principles:</p> <ul style="list-style-type: none"> - not submitting transfer pricing documentation will be punishable by a fine fixed at DKK 250,000; - if adequate documentation is submitted subsequently, the fine may be reduced to DKK 125,000; and - if the income of the company is increased due to non-compliance with the arm's length principle, the fine for not submitting transfer pricing documentation will be increased by an amount equal to 10% of the increase. <p>The above principles on fines related to not preparing and submitting the required transfer pricing documentation apply equally in situations where a taxpayer fails to comply with SKAT's request for additional documentation or database searches.</p> <p>Failure to timely submit an adequate CbC report is also punishable by fine in Denmark but there are no predetermined/fixed size of the applicable fine.</p>	(Sanctions for not providing sufficient transfer pricing documentation)
22	If your legislation provides for exemption from transfer pricing documentation obligations, please explain.	<p>Small MNE's (less than 250 employees and with either an annual balance sheet total of less than DKK 125 million or annual revenue of less than DKK 250 million) are only required to provide partial documentation, cf. the Tax Control Act, Section 3 B, paragraph 6, and Section 14.</p> <p>Whether the thresholds have been exceeded, is determined on a MNE consolidated basis.</p> <p>The same threshold applies to both Master file and Local File.</p> <p>The threshold for CBC filing is 5,6 billion consolidated turnover in the financial year prior to the reporting income year.</p>	<p>DJV, Section C.D.11.13.1.4 Begrænset dokumentationspligtig (mindre virksomheder) efter SKL § 3 B, stk. 6</p> <p>(Limited documentation requirement small businesses) cf. the Tax Control Act, Section 3B, paragraph 6</p>
Administrative Approaches to Avoiding and Resolving Disputes			
23	Which mechanisms are available in your jurisdiction to prevent and/or resolve transfer pricing disputes?	<p>Please check those that apply:</p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Rulings <input type="checkbox"/> Enhanced engagement programs <input checked="" type="checkbox"/> Advance Pricing Agreements (APA) <input type="checkbox"/> Unilateral APAs 	<p>DJV, Section C.D.11.15.3 Advance Pricing Arrangements</p> <p>DJV, Section A.A.3 Bindende svar (Binding rulings)</p>

		<input checked="" type="checkbox"/> Bilateral APAs <input checked="" type="checkbox"/> Multilateral APAs <input checked="" type="checkbox"/> Mutual Agreement Procedures <input type="checkbox"/> Other (<i>please specify</i>):	
		In practice access to binding rulings on transfer pricing issues is very limited.	
Safe Harbours and Other Simplification Measures			
24	Does your jurisdiction have rules on safe harbours in respect of certain industries, types of taxpayers, or types of transactions?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
		Safe harbours are only on low value adding services, cf. TPG.	
25	Does your jurisdiction have any other simplification measures not listed in this questionnaire? If so, please provide a brief explanation.	No	
Other Legislative Aspects or Administrative Procedures			
26	Does your jurisdiction allow/require taxpayers to make year-end adjustments?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
		There is no legal reference other than the Tax Assessment Act, Section 2, which in the explanatory memoranda refers to the arm's length principle as contained and described in the TPG.	
27	Does your jurisdiction make secondary adjustments?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	DJV, Section C.D.11.16 Sekundære justeringer og betalingskorrektion (Secondary adjustment and payment correction)
		Secondary adjustments are made according to the Tax Assessment Act, Section 2, paragraph 5. Secondary adjustments can be avoided if the companies undertake to pay an amount equal to the transfer pricing adjustment.	

		As dividends paid by a subsidiary to a parent company are normally tax exempt under Danish tax law secondary adjustments in relation to transactions between group companies often have no or only limited impact on taxable income.	
Other Relevant Information			
28	Other legislative aspects or administrative procedures regarding transfer pricing	No	
29	Other relevant information (e.g. <i>whether your jurisdiction is preparing new transfer pricing regulations, or other relevant aspects not addressed in this questionnaire</i>)	No	