TAX:WATCH
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Country-by-country reporting and three-tiered TP documentation

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Denmark has introduced country-by-country reporting and the three-tiered documentation approach as part of the transfer pricing documentation requirements.

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Country-by-Country reporting

The county-by-country (CbC) report must be prepared by the following companies if the group has a consolidated turn-over of at least DKK 5.6 billion (approx. EUR 750 million) in the previous year:

- An ultimate parent company, tax resident in Denmark
- A Danish tax resident company where the ultimate parent company is not Danish and one of the following criteria is met:
  - The ultimate parent company is not obligated to file a CbC report.
  - There is no automatic exchange of CbC reports between Denmark and the country where the ultimate parent company is resident.
  - There are other measures preventing the exchange and this has been announced to the company.

A Danish subsidiary may be exempted from filing a CbC report if certain conditions are met whereby the Danish tax authorities have access to the CbC report.

The CbC report must be prepared for fiscal years starting on 1 January 2016 or later.

The Danish tax authorities must be notified within the end of the fiscal year if filing of a CbC report is required and – if the ultimate parent company is not Danish and more than one company meets the requirements to file a CbC report – which company will file the report.

Submission of the CbC report to the Danish tax authorities must take place within 12 months after the end of the income year subject to the CbC report. The filing requirement differs from the ordinary transfer pricing documentation, which only has to be filed upon request from the Danish tax authorities.

The specific content of the CbC report will be enacted in an executive order. The requirements are expected to correspond to the standard recommended by the OECD. Non-compliance will be subject to the existing transfer pricing sanctions and penalties.

Three-tiered transfer pricing documentation

Previously, no specific norm has been applied in Denmark for transfer pricing documentation - except content requirements. However, with the introduction of CbC reporting, it will

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become mandatory to use the three-tiered transfer pricing documentation approach as recommended by OECD.

The three-tiered documentation consists of:

1. A master file; containing general information about the group
2. A local file; containing the relevant transactions for the local entity
3. The CbC report

Groups required to prepare transfer pricing documentation for Denmark but not required to prepare a CbC report will have to prepare a master file and relevant local files.

The three-tiered approach should be implemented by an amendment to the current Danish transfer pricing executive order.

Corporate tax for 2016

The corporate tax rate in Denmark is reduced from 23.5 pct. in 2015 to 22.0 pct. in 2016. The last day of payment of the first provisional tax rate for 2016 is 21 March 2016.

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The reduction in the corporate tax rate is a consequence of a political initiative to stimulate economic growth adopted in the spring of 2013. This included a – now completed - plan for a gradual reduction in the corporate tax rate from 25.0 pct. to 22.0 pct.

As provisional tax for 2016, companies are charged an amount equal to half of the average taxes for the tax years 2012, 2013 and 2014. The amount is collected in two installments, the first of which must be paid no later than 21 March 2016, while the other half must be paid no later than 21 November 2016.

The way in which provisional taxes are calculated implies that many companies are likely to incur residual taxes. In order to avoid this, companies have to make voluntary tax payments on account.

Voluntary tax payments can be made together with the provisional tax rates on 21 March and 21 November 2016 or on 1 February 2017.

Whether it is worthwhile to make a voluntary payment of provisional taxes depends on the interest rates on loans or deposit accounts. In our view, voluntary payment in March 2016 will only be attractive for companies paying negative interest on a deposit.

The vast majority of companies will probably wait making any voluntary payment until next year. By that time, a more accurate estimate of the earnings in 2016 will be available. Additionally, the different interest rates of the Corporate Tax Act for the year 2016 have been determined, which happens in December 2016.

It will rarely be worthwhile to make large voluntary payments if the intention is to apply for a refund of surplus taxes before the annual tax statements for 2016 are released in November 2017 as the current level of interest rates implies that negative interest will be due to the Danish tax authorities.

Companies, for which the provisional tax installments are expected to exceed the actual taxes, can themselves amend the provisional tax rates in the online systems of the Danish tax authorities. This must be done by 21 March 2016.