

TAX:WATCH

DANISH TAX AND VAT NEWS IN ENGLISH

New Danish Transfer Pricing Documentation requirements

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The Danish tax authorities have issued new requirements of what the transfer pricing documentation should include.

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In an article in February 2016 issue of tax:watch, we described the new country-by-country reporting and three-tiered documentation requirements and that the latter would be followed up by an amendment to the Danish Transfer Pricing Executive Order. The new executive order was published 4 May 2016.

The three-tiered documentation must encompass a master file and a local file for each Danish entity and a country-by-country report, if relevant. This article addresses the new requirements to the content of the master file and local file(s).

The new requirements are mandatory for income years starting 1 January 2017 or later. For income years starting in 2016, it is optional if a group adheres to the new or the old requirements.

In general, the new requirements follow the final recommendations from OECD's BEPS Action 12, Annex I (master file) and Annex II (local file). As before, the purpose is to ensure that the documentation contains sufficient information to allow an arm's length evaluation. Under the new executive order, companies are required to include significantly more detailed information and analyses than under the prior executive order.

The level of details depends on the size and complexity of the group, the entity and the group's intercompany transactions.

There are no changes to the penalties for not having prepared documentation or insufficient documentation and the deadline for submitting documentation is still 60 days of request to do so.

Under the old executive order, it was possible to prepare documentation for each entity and hence, the level of information needed from the rest of the group could be limited. With the split into a master file and local file(s) and the new request for details, the demands for more global coordination within a group increases. As many countries adopts the master file/local file(s)-approach, it will be beneficial for groups to coordinate the information going into the master file. In Denmark, the documentation may be prepared in Danish, Norwegian, Swedish or English.

Master File

The information in the master file are those that pertain to the group as such. The new requirements include comprehensive information concerning, e.g.

- Drivers of business profit

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- The supply chain for the group's 5 largest products/services measured by revenue
- Market description
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Local File(s)

The local file must be prepared for each Danish taxable entity, i.e. Danish company or permanent establishment. The local file should include company specific information. Some of the new requirements are

- Detailed information on local management
- Intangibles
- Reconciliation spreadsheets that explain the correlation between the annual accounts and the data relevant for the transfer pricing method, irrespective of whether or not a country-by-country report must be filed

According to the old executive order, the documentation should include the past three years' earnings before tax (EBIT) and revenue. This is no longer a specific requirement.

Conclusion

Though the purpose and the overall requests to the documentation remains the same, there are a number of new issues that have to be incorporated into the documentation or details have to be added.

Even if a group decides to prepare documentation under the old executive order for FY2016, we recommend that the new requirements be taken into consideration. Experience shows that it may be time consuming to ensure the necessary coordination and available information within the group, partly because there may be different requirements in different countries. Also, it is likely that the Danish tax authorities will request the new information anyway in case of a transfer pricing assessment for FY2016 and it will be advisable to be prepared if that should be the case.

Declaration of foreign income and expenses

Individual taxpayers may experience problems when trying to declare foreign income and expenses on their Danish tax return.

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In the April 2016 issue of tax:watch, we described the issue of dividing deductible expenses between foreign and domestic source income. Individual taxpayers resident in Denmark working in both Denmark and another country may currently face a similar problem when preparing their Danish tax returns.

Such individuals may be covered by the social security system of a foreign country and are required to pay contributions to foreign social security. For employees, the contributions are generally withheld from the salary by the employer.

Depending on the circumstances, the individual may be entitled to a deduction on the Danish tax return for mandatory employee contributions to foreign social security. The deduction is important, as the contributions to social security are often of a significant size.

The deductible expenses must be attributed to work performed in Denmark and work performed abroad respectively. However, the Danish tax return is not designed to allow the taxpayer to declare the expenses for mandatory foreign social security contributions correctly in many cases. If you experience such problems, BDO can assist you preparing and filing you Danish tax return.

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