



Denmark finalizes implementation of OECD three-tiered approach to transfer pricing documentation

Global Transfer Pricing Alert 2016-017

The Danish tax authorities (SKAT) on May 4 issued an executive order that implements the transfer pricing documentation recommendations from Action 13 of the OECD's base erosion and profit shifting (BEPS) Action Plan, including the master file/local file requirements.

Since the release of the final OECD BEPS reports in October 2015, Denmark has worked on implementing the three-tiered approach to transfer pricing documentation described in Action 13 into Danish legislation.

The Danish parliament on December 18, 2015, approved new transfer pricing legislation introducing country-by-country (CbC) reporting requirements. The new Danish CbC reporting requirements apply as of January 1, 2016. In addition to the new act, a draft executive order on CbC reporting was submitted for consultation on April 6, 2016. Once finalized, the draft executive order will specify certain technical details, as well as provide further details on the information and format to be contained in the CbC report.

Parallel to the implementation of the CbC reporting requirements, Denmark has been working on an update of its transfer pricing documentation requirements. The May 4 executive order implements the transfer pricing documentation recommendations from BEPS Action 13. As of FY 2016, Danish companies subject to the transfer pricing documentation requirements will have to prepare a master file and a local file.

Together, the new Danish CbC reporting requirements and the new transfer pricing documentation requirements effectively finalize the Danish implementation of the OECD's three-tiered approach.

Danish companies subject to the new transfer pricing legislation should expect a significant increase in compliance costs, compared to costs under the prior legislation.

Country-by-Country Reporting

According to the new Danish CbC reporting requirements, Danish companies are obligated to file a CbC report if the following conditions are met:

- The multinational group's consolidated turnover exceeds DKK 5.6 billion (approx. EUR 750 million) in the financial year preceding the reporting year of the CbC report; and
- The group's ultimate parent company is resident in Denmark for tax purposes.

If the Danish company is not the ultimate parent company or not a tax resident of Denmark, the company need not prepare a CbC report under the Danish legislation. However, if the

group's ultimate parent company is resident in a country that does not have a CbC reporting requirement, the rules may apply nevertheless.

The Danish CbC reporting requirement provides that Danish companies that are not the ultimate parent company shall prepare a CbC report if the Danish company is a tax resident of Denmark and one or more of the following conditions are met:

- The group's ultimate parent company is not required to file a CbC report in the country where it is resident for tax purposes;
- The CbC report is not automatically exchanged with Denmark through a specific agreement between the Danish competent authority and the jurisdiction of the ultimate parent company (even if a double tax treaty or similar agreement may exist); or
- The Danish company has been notified by the Danish tax authorities of a "systemic failure" by the ultimate parent company's country of residence to provide the CbC report to the Danish tax authorities.

In addition, the Danish regulations include a final exemption. A Danish company that is not the ultimate parent company, but is required to provide a CbC report because of one of the conditions listed above may not be required to provide the CbC report if it notifies the Danish tax authorities that another group company has been appointed surrogate parent company.

If no exemption applies, the CbC report must be filed with the Danish tax authorities no later than 12 months after the end of the fiscal year.

It should be noted that SKAT must be notified by the end of 2016 of which entity will submit the CbC report covering the Danish entity to which the Danish CbC legislation applies, and where this entity is resident for tax purposes. Thus, groups with Danish entities are advised to look into which group entity will prepare the CbC report. Although Denmark has aligned its implementation of the CbC reporting rules with the OECD guidance, other countries may add country-specific requirements into their local legislation. Therefore, it is further recommended that companies review the various local requirements when the CbC report is prepared.

As a supplement to the Danish CbC reporting legislation, a draft executive order was sent into consultation on April 6, 2016. Once finalized, the draft executive order will provide further details on the specific information to be filed and guidance on the format of the submission.

On January 27, 2016, Denmark, along with 30 other countries, participated in the signing ceremony for the OECD Multilateral Competent Authority Agreement (MCAA). From a Danish perspective, the signing of the MCAA effectively ensures the exchange of CbC reports between the Danish tax authorities and local tax authorities that have signed the MCAA. As of May 6, 2016, 33 countries had signed the MCAA.

At present, several countries have already implemented, or are in the process implementing, CbC reporting requirements into national law. Parallel to the national implementation process, the EU Commission has drafted a revision to the Administrative Cooperation Directive, which was published on January 28, 2016, as part of the EU Anti-Tax Avoidance Package. The draft proposes mandatory implementation of the OECD's CbC reporting requirements within the EU.

Denmark generally supports international standards regarding transfer pricing. Therefore, it is expected that Denmark will support the EU Commission's proposed directives.

New Danish transfer pricing documentation requirements

The new executive order on transfer pricing documentation published May 4 replaces the former executive order on transfer pricing documentation, and generally follows the transfer pricing documentation recommendations from the BEPS Action 13 final report. As a result of this alignment with the international standard, the former specific Danish requirements, such as inclusion of the past three years of earnings before interest and tax (EBIT) and revenue, are not included in the new executive order.

Danish companies subject to the new Danish transfer pricing documentation requirements will have to prepare a master file and a local file in accordance with the new executive order as of FY 2016.

The exact level of detail of the transfer pricing documentation is for companies to decide, and depends on the extent and complexity of the group and its intercompany transactions. Under the new executive order, companies are required to include significantly more

information and material, and perform more detailed analyses than under the prior executive order.

Danish transfer pricing documentation may be prepared in Danish, Swedish, Norwegian, or English.

The new Danish master file requirements generally follow those specified in Annex I of the “Transfer Pricing Documentation and Country-by-Country Reporting Final Report.” Thus, companies are required to include comprehensive information regarding drivers of business profits and the supply chain, including a description of the group’s five largest products/services measured by revenue, intangibles, sources of financing, detailed market descriptions, etc.

The information included in the master file shall be information that applies to the group as a whole.

In addition to the master file, the new executive order requires Danish companies and Danish permanent establishments to prepare a local file containing company-specific information.

As in the case of the master file, the new executive order generally follows the OECD BEPS Action 13 guidance, and thus must contain the information specified in Annex II of the “Transfer Pricing Documentation and Country by Country Reporting Final Report.”

Some of the information to be included in the local file is similar to the information required under the prior Danish transfer pricing documentation requirements. However, companies should expect the level of detail of the information and analyses required to be higher under the new executive order. The new executive order also requires new types of information, including copies of intercompany agreements, detailed information regarding local management, reconciliation spreadsheets that explain how the intercompany transaction volumes can be reconciled to the annual accounts, and allocation of roles and responsibilities of key employees.

In summary, the information required under the new statutory order is significantly more comprehensive and detailed than was required under the former Danish transfer pricing documentation requirements.

Penalties

The already existing Danish transfer pricing penalty regime will continue to apply following the introduction of the new requirements for transfer pricing documentation, and will also apply to the new CbC reporting requirements.

Conclusion

The new Danish transfer pricing rules adopting the OECD’s three-tiered approach are significantly more prescriptive than the prior rules with respect to the specific information to be provided.

By introducing the new legislation on CbC reporting requirements and signing the MCAA, Denmark has effectively taken all the necessary steps to implement the CbC reporting requirements into Danish law. Danish companies subject to the Danish CbC reporting requirements will have to closely observe the ongoing status of the MCAA and similar CbC exchange agreements, to ensure that the group company that is preparing the CbC report on behalf of the group is located in a country that has signed the MCAA. Otherwise, a copy of the CbC report must be submitted to the Danish tax authorities.

The new Danish transfer pricing documentation requirements will require Danish companies to rethink their transfer pricing documentation if they have prepared documentation in accordance with existing rules. For many companies, the new regulations will require a new level of global coordination and documentation. In addition, the revised guidance contained in the OECD BEPS Action 8-10 report will have to be observed when preparing transfer pricing documentation. Specifically, thorough analyses will be necessary regarding the allocation of risks, functions, and actual decision making.

Contacts

Asger Mosegaard Kelstrup
akelstrup@deloitte.dk
+45 30 93 45 96

Anja Svendgaard Dalgas
adalgas@deloitte.dk
+45 30 34 69 44

Jonathan Bernsen
jbernsen@deloitte.dk
+45 30 55 75 49

Jesper Skovhus
jskovhus@deloitte.dk
+45 20 74 28 04

Kasper Toftemark
ktoftemark@deloitte.dk
+45 30 16 21 77

Useful links

Resources

[2015 Global Transfer Pricing country guide](#)

[Arm's length standard](#)

[Transfer pricing alerts](#)

Get connected

[Deloitte tax@hand](#)

[Join Dbriefs](#)

[Follow @DeloitteTax](#)

www.deloitte.com/tax

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as "Deloitte Global") does not provide services to clients. Please see <http://www.deloitte.com/about> for a more detailed description of DTTL and its member firms.

Deloitte provides audit, consulting, financial advisory, risk management, tax and related services to public and private clients spanning multiple industries. With a globally connected network of member firms in more than 150 countries and territories, Deloitte brings world-class capabilities and high-quality service to clients, delivering the insights they need to address their most complex business challenges. Deloitte's more than 220,000 professionals are committed to making an impact that matters.

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively, the "Deloitte network") is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser. No entity in the Deloitte network shall be responsible for any loss whatsoever sustained by any person who relies on this communication.

© 2016. For information, contact Deloitte Touche Tohmatsu Limited.

Deloitte.com | [Legal](#) | [Privacy](#)



30 Rockefeller Plaza
New York, NY 10112-0015
United States



Official Professional Services Sponsor

Professional Services means audit, tax, consulting and financial advisory services.

Copyright © 2016 Deloitte Development LLC. All rights reserved.
36 USC 220506
Member of Deloitte Touche Tohmatsu Limited

To no longer receive emails about this topic please send a return email to the sender with the word "Unsubscribe" in the subject line.