



Denmark proposed legislation would amend transfer pricing rules

Global Transfer Pricing Alert 2019-029

Denmark's Parliament introduced draft legislation on 13 September that would require taxpayers to submit their transfer pricing documentation with their income tax returns. The draft legislation also clarifies the Danish Tax Agency's ability to conduct discretionary assessments in accordance with the Danish Tax Control Act.

The proposals are part of the effort to implement the EU's Council Directive 2016/1164 of 12 July 2016 regarding tax avoidance practices that directly affect the functioning of the internal market.

Transfer pricing documentation to be submitted together with company's tax return

The draft legislation provides that taxpayers must submit their transfer pricing documentation to the Danish Tax Agency simultaneously with the company's income tax return. Under the existing rule in paragraph 39 of the Tax Control Act, transfer pricing documentation must be finalized at the time of filing the tax return and submitted to the Danish Tax Agency upon request. Parliament's new proposal would eliminate the existing rule that gives taxpayers 60 days from the day of a request to submit their transfer pricing documentation to the Danish Tax Agency.

Under the existing rules, transfer pricing documentation must be prepared contemporaneously and must be finalized at the time of filing the income tax return. However, the transfer pricing documentation need not be submitted before the Tax Agency requests it.

The proposal does not change the existing rules on penalties; thus, late submissions, no submissions, or submission of insufficient documentation (documentation the tax authorities cannot use to determine whether prices and terms have been set in accordance with the arm's length principle) can be penalized (Tax Control Act article 84 (1) no. 5).

If the draft legislation is enacted, the proposed changes would enter into force on 1 January 2020 and would have effect for income years starting on or after 1 January 2020.

Clarification regarding options for conducting discretionary assessments

The draft legislation also proposes amending paragraph 39 (3) of the Danish Tax Control Act to stipulate that the Danish Tax Agency has the right to conduct a discretionary assessment if transfer pricing documentation has not been prepared in a timely manner, that is, if it is not submitted to the Danish Tax Agency along with the company's income tax return, regardless of whether the taxpayer submits the transfer pricing documentation after the date of submission of its tax return. Thus, if adopted, this proposal would allow the Danish Tax Agency to include only the transfer pricing documentation - if submitted - and the information received together with the tax return, to determine whether there is a basis for a discretionary assessment of the taxable income. As a result, the proposal could effectively lower the requirements for the Danish Tax Agency's access to perform discretionary assessments.

The existing legislation provides that the Danish Tax Agency may issue a discretionary assessment if the taxpayer's transfer pricing documentation upon submission is insufficient to determine accordance with the arm's length principle or if it is missing (article 46(1) of the Tax Control Act).

The proposed changes to the existing legislation may change before the final legislation is in place.

The Danish Tax Control Act's provisions on preparation of transfer pricing documentation for controlled transactions have most recently been amended with effect from 1 January 2019 as part of the modernization and rewriting of the Danish Tax Control Act.

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