



**Recent trends and developments
in the Nordics**

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TP trends in Denmark

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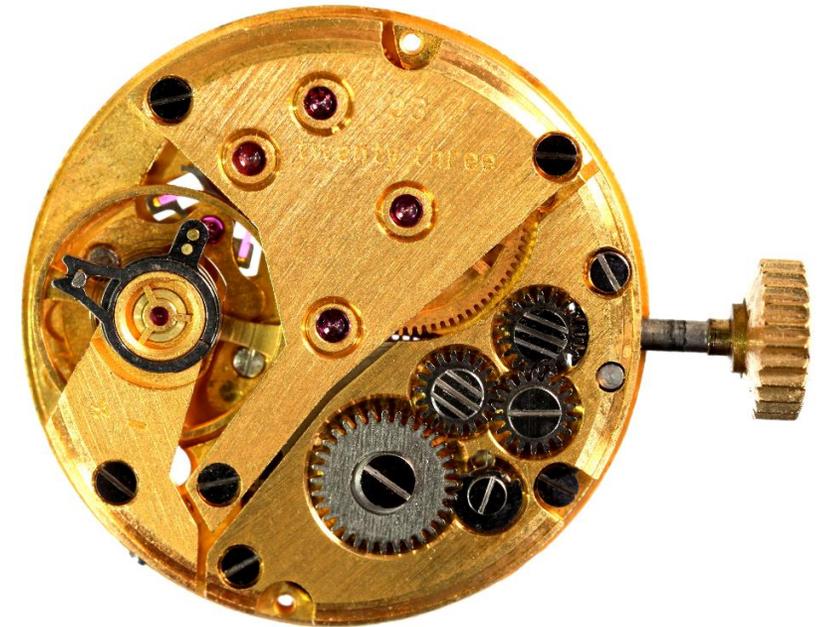
SKAT's TP Action Plan

SKAT (the Danish tax authorities) annually publish their focus areas for the coming year. In 2016 these areas included:

- Valuation
- Competent Authority (MAP/APA)
- Intercompany financing
- Intangibles
- Pricing of intercompany goods and services
- Analysis project focused on describing the TP segment in Denmark

SKAT have stated that they will continue the previous focus areas but have only explicitly listed the following projects:

- Project Transfer Pricing (focus on reducing risk of taxpayers not complying with the arm's length principle)
- Competent Authority (MAP/APA)



TP trends in Denmark

Implementation of BEPS

Country by Country reporting implemented as per 1 January 2016:

- Denmark has signed the Multilateral Competent Authority Agreement for exchange of Country by Country reports and signed a specific exchange agreement with the US.

Revised transfer pricing documentation requirements with effect from 1 January 2016:

- Transition period for 2016 with the possibility for taxpayers to choose between the old and the new requirements

Revised OECD transfer pricing guidelines effective as per October 2015:

- The Danish Tax Authorities apply the revised OECD transfer pricing guidelines with retrospective effect

Denmark signed the Multilateral Instrument in June 2016. However, along with a number of other countries, Denmark chose to make reservations everywhere possible.

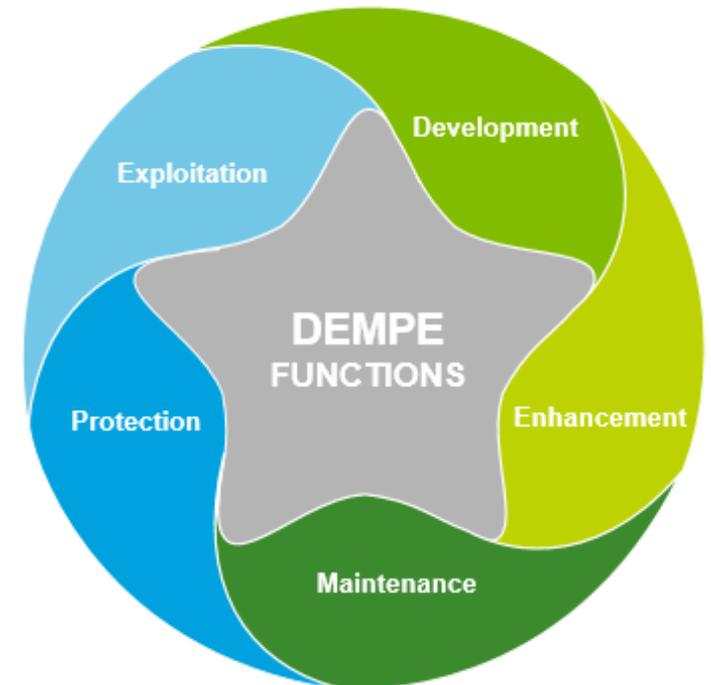
- As per today, the MLI has limited impact in Denmark due to the reservations made by Denmark



TP trends in Denmark

Alignment of contractual assumption of risk to actual conduct

- Although the contractual arrangement between the parties is the starting point for an analysis, the actual conduct and actual allocation of functions, risks and assets (and control over the risks) will be the basis for the allocation of profits.
- BEPS Action 8-10 specifies the importance of a thorough functional and risk analysis in order to determine the relative contribution by the parties involved in the creation of value of an intangible asset.
- The OECD has stated that this is done through a DEMPE analysis assessing the important functions performed and specific risks assumed in connection with the Development, Enhancement, Maintenance, Protection and Exploitation of the particular intangible.
- Further, Action 8-10 has emphasized the importance of having control over the risk which is contractually assumed by parties involved in an intercompany transaction.



TP trends in Denmark

CUP vs. Alternative valuation methods

- Although the OECD Transfer Pricing Guidelines have a preference for the CUP-method, an increasing trend in SKAT's use of alternative valuation methods has been observed.
- SKAT typically rejects the CUP data presented by the taxpayer with reference to lack of comparability. Although, SKAT may have a case in some cases, we believe that SKAT sets the threshold for adequate comparability under the CUP-method too high.
- In some cases, SKAT does not even try to use another TP-method after rejecting the CUP and jumps straight to the use of alternative valuation methods, e.g. a DCF methodology.
- The valuation calculations are prepared by the Competent Authority department of SKAT and we have observed that the field officers in some cases apply the results from the valuation without having sufficient knowledge about the approach/methodologies used.

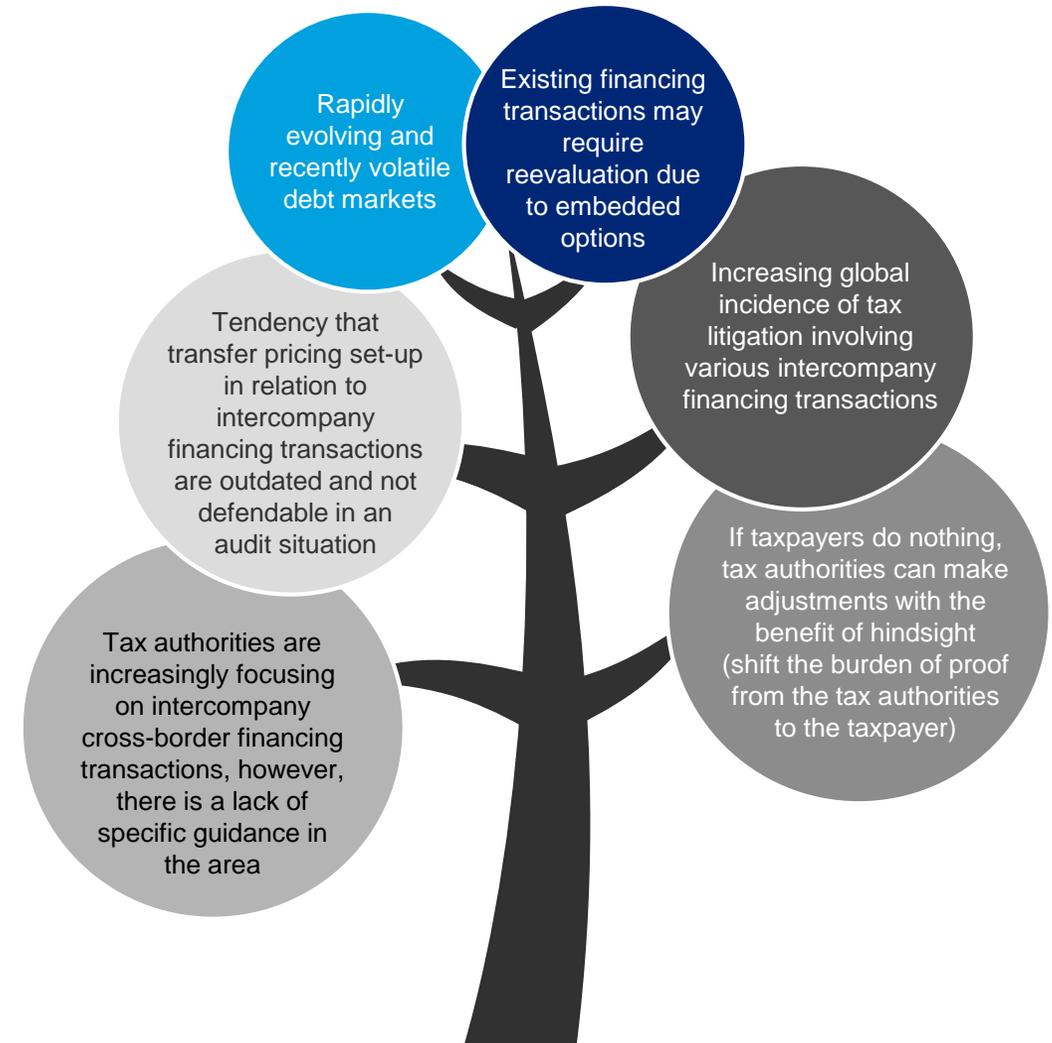


TP trends in Denmark

Financial transactions

Why now?

- SKAT **focuses increasingly on intercompany cross-border financing transactions**, however, there is a lack of specific guidance in the area. BEPS guidance expected during 2018/2019.
- Base Erosion and Profit Shifting “**BEPS**”. Focus on intercompany financial payments under “Action 4”, the purpose of which is to “*Limit base erosion via interest deductions and other financial payments*”. **Transfer pricing guidelines** on how to deal with financial transactions will be published.
- If taxpayers have an established and well documented policy in place, they can define the transactions and oblige the tax authorities to rebut the analyses.
- Determining the appropriate interest rate/price for intercompany financing transactions is **an important planning, treasury, tax and cash flow management tool**.



Beneficial ownership in Denmark

Beneficial ownership

Overall



Danish case law distinguishes between the *direct recipient of the income* and the *beneficial owner*.

The direct recipient of the income

- The legal owner of the shares

The beneficial owner

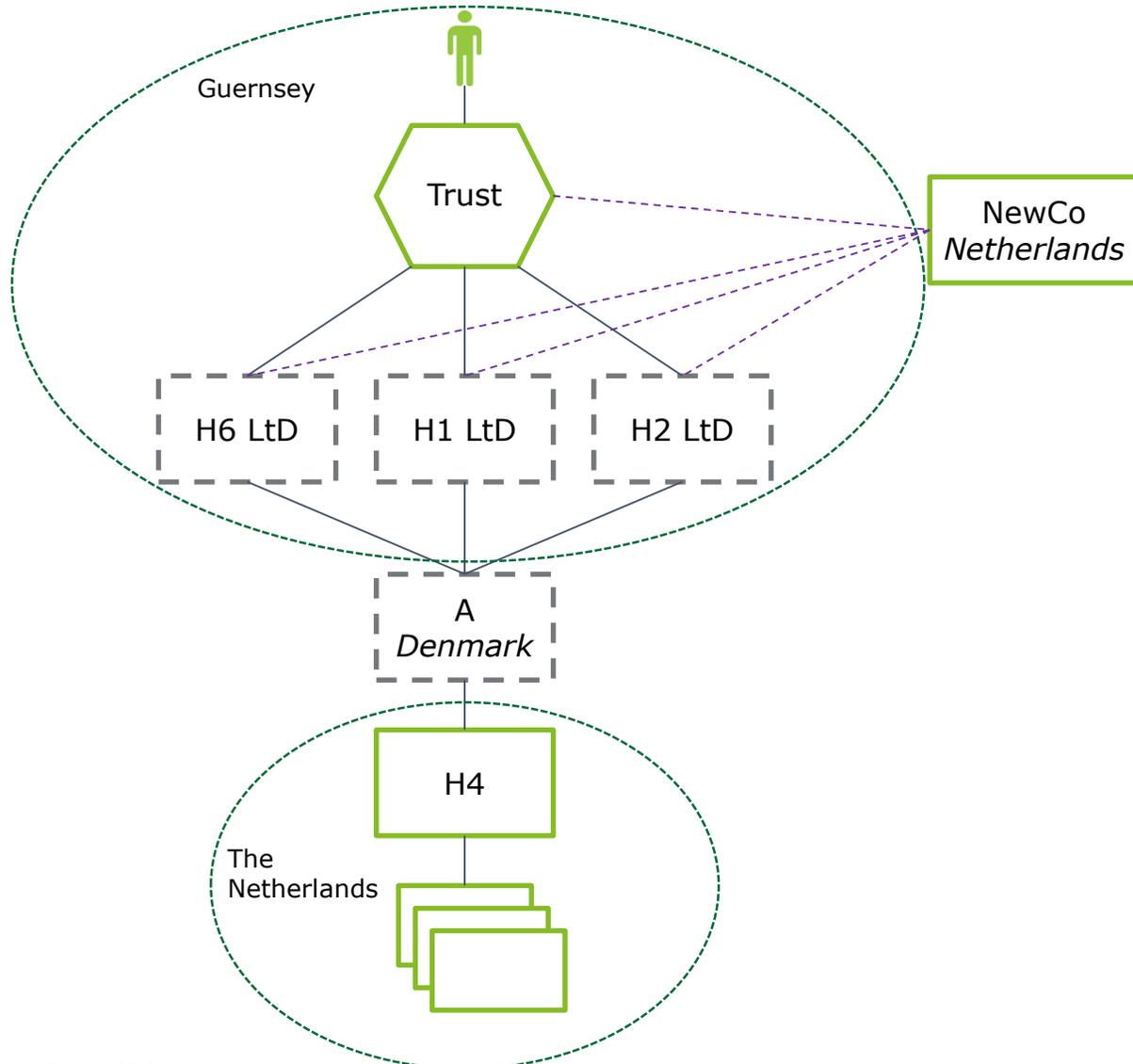
- The actual/economic recipient of the distribution

General Anti-Avoidance Rule (GAAR)

- GAAR allows countries to deny tax benefit of transactions or arrangements which do not have any commercial substance and where the only purpose of such transaction is to achieve the tax benefit

Beneficial owner

Danish case law



SKM.2017.626.SR

- The group plan to simplify the ownership structure of the group by liquidating all companies outside the Netherlands and establishing a new Dutch holding company.
- The question was whether NewCo could qualify as beneficial owner of the liquidation proceeds distributed from A.
- The Danish tax authorities concluded that NewCo did qualify as beneficial owner and hence, the liquidation proceeds from A was not requalified as dividends.
- This was based on the fact that the liquidation proceeds were not passed on to the person and hence, nothing was distributed to a third country with which we do not have a tax treaty.
- Additionally, the Danish tax authorities concluded that the situation was not subject to the anti-avoidance rule as there was no difference in the tax payable, whether or not the liquidation proceeds were passed on to the person.

Deduction of salary costs

Danish bill enacted



A Danish bill has per 1 January 2018 been enacted in order to expand the right to deduct salary costs in terms of tax provided that:

- The company is the rightful bearer of the salary costs;
- The costs are related to the business of the company in the interest of the company;

Consequence

- Previously salary costs were only tax deductible if related to the ongoing operation of the company
- However, the present bill allows companies to make tax deductions of salary costs related to establishments or expansion of the company etc.
- The bill is applicable as of income year 2008
- Requests upon reopening of former income years must take place at 1 July 2018 at the latest

Tax focus in Norway



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